ROLE OF THE NATIONAL ASSEMBLY IN COMBATING ORGANISED CRIME AND CORRUPTION (2001–2011)

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PUBLISHED WITH THE SUPPORT OF OPEN SOCIETY FOUNDATIONS

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RiskMonitor Foundation
Sofia, 2011, ISBN 978-954-2914-12-9

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ROLE OF THE NATIONAL ASSEMBLY IN COMBATING ORGANISED CRIME AND CORRUPTION (2001–2011)

Executive Summary

In the last decade, the need to effectively combat Organised Crime and Political Corruption (OCPC) has become a manifestly evident social and political problem in Bulgaria. Despite a handful of haphazard achievements in this field, the overall appraisal of progress seen through the eyes of society and the country's main foreign political partners remains univocally negative. The systemic failure of political actions undertaken with the purported aim of tackling organised crime and rooting out corruption prompts many to allege the existence of a symbiotic link between organised crime and the State, which is best evidenced by the political clout shielding corruption held in place by those belonging to the highest echelons of power.

Patent notoriety of the issue

Indubitably, an acute question arises as to whether a society marred by systemic political corruption that has spread to all levels of the political system, distorts the very principles upon which it is founded and effectively serves as the focal point of political life can be an efficient player in the implementation of public policies designed to tackle OCPC. Neither a resoundingly affirmative nor a firmly negative answer to this question would do on a stand-alone basis because both opportunities to tackle the problem and currently insurmountable obstacles to resolve this major social and political conundrum by taking decisive action exist.

Scope of the studies

The central task of the studies is to outline the scope of feasible political actions to be taken, including specific measures enabling the achievement of decisive progress in combating organised crime and corruption thriving under political clout.

Summary of conclusions

No matter how ambiguous the results achieved to date are Bulgaria has come a long way and gained a wealth of experience in combating OCPC. The slogans repeated as a mantra in the programmes of all major political parties are gradually being translated into concrete actions that, along with the development of strategies and plans for government action, now include legislative changes and, more recently, setting up dedicated institutions with a mandate to counteract this specific aspect of homeland security.[1] The direct involvement of the National Assembly (Parliament) in the deployment and implementation of such actions in the domain of lawmaking and by making use of the tools of parliamentary oversight, both present opportunities to depoliticize this important sectoral policy at institutional level.

Public support for solution seeking efforts

The promises to tackle political corruption and organised crime remain a sustainable driver that boosts electoral support prior to any round of general elections whilst informing the public of government action taken in this area, and thus have a stabilising effect on public trust in and support for governments in power. Many discussions place an emphasis on either the "political will" or the manifest absence of such will in those in power to effectively tackle OCPC in

[1] For example, the State Agency for National Security (SANS), the Commission for Establishing of Property Acquired from Criminal Activity (CEPACA); the Conflict of Interest Commission; the Anti-Corruption Unit (BORKOR), etc.

stark juxtaposition with the much lesser significance accorded to the strong and increasingly insistent electoral demands, since 1998, that anti-OCPC policies deliver a tangible result. The institutional breakthrough in countering OCPC may neither be attributed to a single political party nor said to be the result of political feasibility or the enactment of a handful of specific laws.

The special role of the National Assembly

Efficient results of a radically different order in counteracting OCPC are likely to be produced not so much by continuing to set up new homeland security institutions but by forging systemic links within the comprehensive mechanisms that already exists. Within this broad framework, the Parliament may play a significant role at the respective stages of target setting, enactment of the necessary enabling legislation and exercising public oversight with a view to ensuring the efficient functioning of the system in place. Regardless of the actual possibilities available to it to ensure the achievement of better results in counteracting and combating OCPC, the Parliament remains hampered by the overall framework defined by the style in which the executive power carries out its functions and responsibilities at macro level, the defunct judiciary and the constraints resulting from the current constitutional set-up. A decisive enhancement of the capacity of Parliament to ensure homeland security policy is implemented with greater efficiency can only be achieved by a radical redesign of the entire institutional framework in place.

Understanding the gist of the matter

The main barrier to boosting the efficiency of counteracting OCPC is the failure to make a distinction between two fundamental concepts, notably corruption thriving under political clout and the economic crime it generates and all other forms of corruption and organised crime. Hence, the placing of an emphasis on the intermittent efforts put into prosecuting offenders and focusing on isolated flagrant scandals instead of concentrating on the institutional drivers that effectively enable criminal behaviour in the public services sector to thrive under political protection. This is the ultimate cause underlying the weakness of the authorities in tackling OCPC, which means that their efforts have a sporadic and scattered nature due to the notable absence of a well thought-through policy capable of counteracting and rooting out political corruption. This is particularly evident in the economic manifestations of political corruption, which continues to generate conflict of interest, customs and tax evasion crimes, misappropriation of national and EU funds, etc., all of which have direct and significant social and political implications for key aspects of public life.

Key recommendations

A solution needs to be sought along the lines of designing and implementing a policy based on a sound systemic analysis of underlying causes, the dynamics fuelling processes under way and the results of implemented measures, which integrates the concerted efforts of all responsible institutions and not only those in the security sector. Such policy should incorporate measures designed to produce results in the existing institutional environment that would enhance the role and boost the efficiency of the Parliament in the implementation of targeted anti-OCPC policies:

1. Enhancing the level of professional skills across the sector:
   - pooling political know-how by conducting regular discussions between MPs, ministers and deputy ministers engaged in the implementation of the government's anti-OCPC strategy on the basis of regular reports setting out

an analysis of developments in the dynamics of this sectoral policy and its outcomes;

- developing a comprehensive homeland security code laying down rules and outlining, as its core element, the institutional framework and responsibilities of the bodies engaged in counteracting OCPC;
- setting up a specialist unit in Parliament tasked with conducting professional analyses of developments in the area and providing responsible expert advice to national MPs on an ongoing basis;

i. Ensuring a transparent, responsible and balanced representation of group interests by the urgent enactment of a law on lobbyism and a Code of Ethics.

2. Working to achieve consensus by eschewing majoritarian parliamentary practices – introducing the parity principle in parliamentary committees, notably those whose main responsibilities have a direct bearing on lawmaking, and not simply those carrying out functions relating to parliamentary oversight;

3. Developing a parliamentary strategy for tackling OCPC and its public endorsement by all political parties represented in Parliament. Fostering intolerance towards political parties known for tacitly condoning political protection of OCPC or that are investigated over allegations of conflict of interest (published in the media or exposed by fellow Parliamentarians) by organising parliamentary forums on a regular basis;

4. Setting up a specialist standing parliamentary sub-committee on homeland security and public order tasked with the systematic oversight of all agencies engaged in counteracting OCPC on an ongoing basis. Stipulating the powers relating to parliamentary oversight vested in the sub-committee in the Ministry of Interior Act with a view to ensuring the efficiency of its work;

5. Making a more proactive use of the possibilities available to the Parliament to formulate bespoke policies in the domain of homeland security and delegate tasks to the relevant institutions thereby enhancing the efficiency of the tools allowing it to control their spending as a means of influencing the outcomes of their work.

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Within the framework of the project *New Policy Responses to Organised Crime: The Bulgarian National Assembly as a Pro-active Policymaker* financed by the Think Tank Fund – Budapest, a team of RiskMonitor Foundation conducted an empirical study, including in-depth interviews with 20 experts in the area of tackling OCPC.[2] The task of the descriptive study is to examine the full circle of political life and the existing system of institutions whose work has a direct bearing on the potential of the National Assembly to play a role in the implementation of anti-OCPC policies. The empirical conclusions and the state-of-affairs outlined in the study are intended to serve those tasked with and commanding the necessary resources at operational level to implement a comprehensive policy in the domain of homeland security. Each of the three published reports sets out the opinion of its respective author and is not representative of the position of any of the institutions mentioned therein or their officials.

[2] Primarily, publicly known party functionaries who are directly involved in the work of parliamentary committees concerned with the implementation of anti-OCPC policies and/or the heads of public institutions (Ministry of Home Affairs, Prosecution Service), legal experts, including investigative journalists that follow and are well-versed in Parliamentary proceedings and efforts in this area. The interview questionnaire is annexed to the full report.

Introduction

In the last decade, the need to effectively counteract Organised Crime and Political Corruption (OCPC) has become a manifestly evident social and political problem in Bulgaria matched only by the failure of scores of successive governments in this important area of social, political and economic life. Despite a handful of haphazard achievements, the overall appraisal of progress seen through the eyes of society and the country's main foreign political partners remains univocally negative. There is a stark absence of a comprehensive policy. The systemic failure of political actions undertaken with the purported aim of counteracting organised crime and rooting out corruption prompts many to allege the existence of a symbiotic link between organised crime and the State.

It is widely believed that the problem stems from the "absence of political will". This line of thinking is incorrect not only because it empties of meaning the tangible efforts made to date but also because it terminates right at the end of a widely shared *cul-de-sac* of pervasive fatalism. Without proper understanding of what constitutes the existence or absence of political will to tackle political corruption and the economic crime it generates, society will simply continue to wait for the next saviour to miraculously descend from on high and have its expectations shattered for decades to come. Indeed, a reversal is required, i.e. the underlying obstacles that erode and undermine political will should be effectively removed.

The low efficiency of the efforts to tackle OCPC to date is largely due to their haphazard non-systematic nature. In its monitoring reports on Bulgaria, the European Commission has repeatedly underlined the failure to develop and put in place a comprehensive policy capable of remedying this social pathology best evidenced by the failure to set up an appropriate institutional mechanism. Addressing the problem of the inadequate institutionalisation of anti-OCPC policy requires an enhanced role of the national Parliament in the system of interinstitutional cooperation for three reasons:

1. As the sectoral policy concerned calls for long-term action, it is crucial that work is done in a sustainable manner that continues beyond the four-year horizon of rotating governments. Hence the Parliament, which is traditionally better able to ensure continuity than any single government, should be a significant player in the implementation of public policy in this area;

2. The Parliament is a platform for active opposition whose main priority is to present arguments and alternatives to the government in power, i.e. it is an arena where the different political parties compete and a sounding board for ideas and political decisions that have passed the test of sometimes bitter adversarial proceedings, apart from being more public and open to scrutiny than any decision of the executive power;

3. The Parliament makes use of different instruments that allow it to oversee and influence public policies and their outcomes or failure. When used efficiently, they ensure the process of political decision-making is based on a sound rationale and is better informed by public interest.

Yet a number of stumbling blocks stand in the way of enhancing the role of Parliament in anti-OCPC policy-making. In the whirlpool of an unstable party-political system new political parties emerge and gain the upper hand remaining

unable to tackle the problem in an institutionalised manner. At the same time, older and better established political entities become embroiled in bitter public controversy due to clientelism and dependencies with a direct effect on all implemented policies.

The absence of a comprehensive political vision means that even the main political parties in Parliament grope in the dark thereby failing to outline, agree on and deploy a realistic and feasible national strategy and programme setting out specific actions. The only instruments used are fragmented and intermittent initiatives and sporadic efforts, mainly in the field of police work and criminal prosecution, destined to fail in the achievement of the systemic outcome sought from the very beginning.

The failure to deploy a comprehensive, multifaceted policy transforms anti-OCPC legislative initiatives into a handful of badly thought-through and frequently conflicting rules that not only fail to ensure the achievement of set goals with any amount of efficiency but wreak havoc on the very systems set in place to counteract OCPC thereby causing an institutional rift and a legislative vacuum to emerge.

The analysis of current state-of-play shows that an appraisal of the framework outlining the possibilities available to Parliament to effectively engage in combating OCPC should take into account two main factors. Both are internal and have implications for the role of Parliament as an institution implementing public policies. Yet a host of external factors remains to be considered, including the institutional design inherited from the past, certain idiosyncrasies of the political culture, the relations between the Parliament and other public institutions, etc. Other factors of special relevance to Parliament include the low level of professional skill of both MPs and the officials engaged in administrative and advisory roles, the lack of information about the work of the institution presented in a systematic manner and the failure to adopt adequate rules on conflict of interest. In parallel, parliamentary oversight is also compromised by manifest failings, and particularly a lack of clarity as to its very nature as a power vested in the legislature.

In order to rectify these failings and transform Parliament into a fully-fledged institution and a player of consequence in the system geared to counteract OCPC, action should be taken to alter the very approach to the problem. The transition from intermittent and fragmented prosecution of the outward manifestations of organised crime to implementing a comprehensive prevention policy at system level is a key prerequisite for success. In parallel, it is necessary to rethink the overall institutional design and mechanism for sectoral cooperation, including at constitutional level, in order to ensure greater efficiency of interinstitutional dialogue and individual institutions and, ultimately, a radical transformation of the model of anti-OCPC public policies.

Beyond these long-term goals, the involvement of Parliament in combating OCPC in the short-term can be enhanced by introducing readily available technological solutions. The following sections of the report explore in detail the factual and conceptual rationale underlying the main premise set out in the report. On the basis of the results of conducted empirical studies, the authors also outline specific recommendations for a more result-oriented approach to tackling OCPC.

The National Assembly as a Player in Combating Organised Crime and Political Corruption

(Empirical Study Results)[3]

Georgi D. Dimitrov

"Fraud will remain one of the clearest failings of EU governance until much that is now unspoken becomes openly debated." p. 162

John Peterson

"The European Union: Pooled Sovereignty, Divided Accountability", in: Political Corruption, ed. Paul Heywood

"Passivity in the face of corruption and organised crime is the weakness of this as well as of previous governments"

Ambassador John Beyrley, US Embassy, Sofia, 20 April 2007

"Bulgaria has failed to register convincing results in tackling high-level political corruption. There are very few final and enforced sentences in this area and few to no indications of an active, concerted action being taken to tackle high-level political corruption"

Report of the European Parliament and of the Council on the progress achieved by Bulgaria under the Verification and Cooperation Mechanism, 20 June 2011

[3] This study presents a summary of the main findings and conclusions set out in the analytical report drafted in relation to a pilot study whose full version contains a detailed description of all empirical data gathered as well as an explanation of the analytical procedures used to interpret information. The full version of the report is available on the website of RiskMonitor Foundation.

1. Study outline

1.1 Methodology used

Due to the methodological limitations of the set of instruments used,[4] the findings and outcomes of the study should not be construed as evidence or unambiguously determined parameters outlining the full scope and all aspects of the problem. The cognitive task is to describe the situation in general terms and explain its complexity, internal structure, potential manifestations and the possible lines along which it may develop in the future as well as the realistic and feasible actions that may boost the efficiency of anti-OCPC policy.

1.2 Special significance of context

Parliament does not function in a social vacuum. The social environment imposes limits on its freedom of action even where such action is underlined by the best of intentions, regardless of whether they come from individual MPs or departments of the National Assembly. The predefined boundaries of the playing field on which parliamentary initiatives come into being and evolve means that an emphasis needs to be placed on the structural context taking into full account the predominant values (mentality) in the homeland security sector and potential future developments in it. The author has the task of compiling, at minimum, an exhaustive inventory of the key factors with direct implications for the possibilities available to Parliament to engage in and implement anti-OCPC policies:

- the main political players, i.e. the parties represented in Parliament, which represent the interests of different groups in society; the programmes of political parties defining the parameters of key sectoral policies; the professional and expert potential and established channels allowing priorities to be recognised; and the inherent mechanisms and resources necessary for policy implementation;
- the internal institutional potential of Parliament from the point of view of expert knowledge and structural possibilities available to it to implement anti-OCPC policies;
- the departments and bodies of the executive power, which are directly engaged in the implementation of anti-OCPC policies and with whom the National Assembly should cooperate within the framework of dedicated, well-defined mechanisms (line ministries, agencies and commissions);
- the judiciary called upon to apply the laws and regulations enacted by Parliament.

[4] The personal opinion of the author may be manipulative or one-sided. However, the totality of the expert discourse is objective and should be construed as inherently linked to the findings set out in the study report.

Faking efforts to combat OCPC

Anti-OCPC policy receives a radically different interpretation when considered against the background of the idiosyncratic society in which it is deployed and implemented. The greatly diverse multitude of cases and happenings in national history may be categorised into two models based on ideal typologies, notably those of "classic representative democracy" and a "façade democracy". Organised crime and political corruption play diametrically opposing roles and have a completely different significance in the social and political life characteristic of two types of democracies. In a traditional representative democracy OCPC is a deviation from the "rules of the game" that occurs fairly infrequently as it is largely due to violations of rules conducted by individuals who are prosecuted on the basis of their personal liability under law. In a façade democracy, OCPC is a basic rule of public life. Corruption is seen as a legitimate resource allowing problems in society to be tackled that neither affords individuals an opportunity to develop on the basis of their own merit nor ensures their protection by public authorities. In order to maintain the pretence of a democracy, anti-OCPC policies are also pursued in façade democracies as well. Efforts, however, by virtue of their very nature, are destined to fail as they never touch upon the systemic nature of this social evil. Standards from genuine representative democracies are used, i.e. prosecuting persons who have committed wrongdoing and occasional pointing of fingers at arbitrary scapegoats, but with an aim of ensuring the principles upon political life is founded remain intact.

2. Main findings

2.1 Nature of Bulgarian political parties and specificities in their engagement in anti-OCPC policy implementation

Gathered information presents weak evidence that Bulgaria is a genuine representative democracy, which protects public interest in sustainable social and economic development. This is the reason why actors in the political arena regard anti-OCPC policy implementation as their topmost, standing priority. Conversely, study outcomes suggest that:

- lack of in-depth familiarity with the electoral programmes of political parties or at best superficial knowledge has frequently been observed even amongst key political figures;
- programme declarations in this regard leave an impression of empty rhetoric;
- an amorphous and highly unspecific idea of public policies in the domain of homeland security, particularly those aiming to prevent and counteract OCPC;
- a critically-low sectoral competence amongst politicians;
- a pervasive impression of a wrong approach to the problem being followed, which places a strong emphasis on prosecuting and sentencing those found guilty of wrongdoing and not on rooting out the institutional drivers for criminal conduct, particularly in cases of systemic corruption;
- a high degree of expedience (significant differences in anti-OCPC policy pursued depending on the political party in power and the individual members of governments).

2.1.1 Tolerance towards corruption stems from the non-authenticity of political representation

These findings warrant the conclusion that due to the largely inauthentic political representation of civic interests political parties are overly tolerant to the manifestations of economic crime and high-level corruption. The election programmes of political parties frequently set out intentions to pursue stringent anti-OCPC policies that remain purely declarative or an expression of political correctness (even political PR), which means that they are never implemented in practice. Even where underlined by an actual intention to take action, the robust mechanisms of institutional life invariably succeed in transforming the well-indented commitments undertaken before citizens or in blocking efforts put into combating OCPC. This perpetuates the problem and makes it ever more acutely felt.

2.1.2 Absence of a meaningful vision

For example, there is a clear discrepancy between the assertion that the programmes of all political parties set out intentions to combat OCPC and the absence of an overall, clearly structured and meaningful vision of anti-OCPC policy, which experts are familiar with and understand. Respectively, the relatively low level of conceptual consistency in the expert opinions obtained from representatives of the party-political elite is as an important indicator of current state-of-play. Conversely, the alleged absence of a meaningful vision is borne out by the very structure of the discourse, which may be defined by a great number of parameters, *inter alia,* superfluous knowledge of party programmes, intentions frequently expressed with formality and caged in declarative rhetoric, inadequate approach (behind the intentions concerned), admission of failure and/or deviation from stated intentions and even direct involvement of political parties in practices akin to political corruption.

Yet, it is abundantly clear that the *de facto* link between OCPC and the formal exercise of power is not underlined by the absence of programme intentions. The vacuum created by a non-existent realistic programme vision has long been filled with various practices and manifestations of OCPC. The marginal significance accorded to anti-OCPC policies in the programmes of political parties, however, creates tolerance towards a diverse range of economic crime (contraband, excise duty and VAT fraud, misappropriation of EU funds, embezzlement and various infringements in the implementation of infrastructure projects etc.) or to high-level political corruption. The governments led by ODS (*Community of Democratic Forces*) and GERB (*Citizens for European Development of Bulgaria*) clearly demonstrate that undertaking clear and specific party-political commitments in the domain of homeland security is a guarantee that a failure to make subsequent progress in this area will gain unwelcome prominence and crawl to the top of public agenda.

2.1.3 Failure to deliver on stated priorities

Two equally valid trends emerge. In the first place, political parties are clearly and strongly aware of the importance of homeland security as a sectoral policy (particularly the “older“ ones, which rely on a pool of professionals in this field; have set up internal specialist party structures; etc.). In the second place, the problem remains far removed from actual political and party agendas and is most certainly not recognised as a standing priority at supra-political level. Party-political and policy consensus on OCPC, which has direct implications for the entire society, is even farther removed from reality.

The situation is further compounded by a host of interwoven factors mentioned by various experts in the course of the study. These include, *inter alia*:

- the idiosyncrasy of political culture;
- the flagrant incompetence of a great number of MPs being elected to Parliament for the first time[5];
- the manner of work of public institutions, which is a legacy of the past five decades, i.e. an unreformed public administration, which is the principle source of systemic corruption; and
- the acceptance of corruption as standard practice and not a social pathology by the general public; and
- no tradition in public institutions working in cooperation even where this is required by the nature of their responsibilities.

This culture and institutional environment allows the vested interest of political parties and their functionaries in taking palliative measures against political corruption to be easily masked as enthusiastic and tireless but inefficient efforts to combat OCPC on a trial and error basis. The results or rather their stark absence is largely a foregone conclusion even at the level of selecting an approach to tackling the problem. Therefore, it comes as no surprise that the specific actions taken in this regard, which are a mere manifestation of this approach, are haphazard, formalistic and intended to merely throw dust in the eyes of the general public.

2.1.4 Expert opinion

The opinions expressed by the respondents are dominated by three main lines of thinking:

- The priority accorded to ensuring convictions (and of the relevant institutional procedures), i.e. a line of thinking that can be loosely defined as a *penalty-driven mentality*;
- the peculiar *police mentality*, i.e. the line of thinking that accords the greatest importance to the powers, competencies and procedures for police work (in its capacity as the central, if not the only, body actively engaged in combating OCPC);
- Although an exception, there are examples where thinking is underlined by a purely political rationale that places an emphasis on the prerequisites for institutional efficiency across the board, and particularly those that define the presence or absence of political will.

The study has further gauged a diverse range of attitudes slightly dominated by those espousing a *police mentality*[6]. Some experts have underlined the complexity of the issue and the need for a systematic policy capable of effectively counteracting and preventing OCPC.

In light of these results a curious question needs asking, i.e. whether any concrete and specific proof has been found that an anti-OCPC sectoral policy is being implemented in Bulgaria, at least on an *ad hoc* basis. More specifically,

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[5] See the outcomes of the research conducted by S. P. Stoychev *Transformation and Europeisation of the Bulgarian Parliamentarian Elite (1990-2009)* (currently reprinted)

[6] This is easily understandable given the police background of the respective respondents and the inescapable importance of the Ministry of Interior and security services in combating OCPC.

whether corroborating evidence can be found that the Parliament is deploying the full set of instruments available to it in order to combat and counteract OCPC given that, according to the current political doctrine laid down in the Constitution, it is the main powerhouse in Bulgaria.

2.2 Idiosyncrasy of the parliamentary involvement in combating OCPC

2.2.1 The broad picture

A half-hearted attempt to describe the broad picture in jocular terms would reveal a number of parliamentary anti-OCPC initiatives that fail to achieve any results. This semi-jocular statement, however, requires important nuances and details to be distinguished.

On the one hand, a positive trend clearly exists:

- persistent efforts are being made by taking specific actions (amending the Penal Code and the Penal Procedure Code, extending the competencies and powers vested in different institutions responsible for homeland security, etc.);
- a welcome and positive change signifying a stronger institutional commitment to combating OCPC is the establishment of specialist institutions (SANS, the so-called *Kushlev* Commission, a Commission on Conflict of Interest, the specialist unit responsible for combating organised crime known as BORKOR, etc.).

On the other hand, a negative trend has also been observed, notably:

- political inexperience;
- no specialist competence;
- inadequate set up of the institutions tasked with combating OCPC;
- an inappropriate approach followed by institutions that compounds and does not help to tackle OCPC;
- An inadequate approach according priority to police work and imposing penalties and not on *a systematic policy of prevention, including at institutional level.*

The situation is further compounded by active resistance against effective anti-OCPC policies. Such resistance has two manifestations – a soft one in the form of failing to include combating OCPC in the list of political priorities of a series of governments and a harder and more pronounced one in the form of a vested interest in the failure to achieve tangible results and progress. The main proponents of the latter form of opposition include factions of key political figures if not the entire spectrum of political parties.

The experience gained by Parliament in the area of combating OCPC is the sum total of the interaction between these mutually amplifying elements of the problem. This snapshot paints the picture of a society investing efforts into breaking away from the pole of fa⊠ade democracy (helpless pluralism). At the same time, the society concerned remains far from the pole of a genuine democracy. Within this theatrical setup the Parliament plays a secondary and somewhat pointless role.

2.2.2 Idiosyncrasies in the use of the set of instruments for parliamentary oversight

On the one hand, there can be no doubt that in recent years persistent attempts have been made to make full use of the instruments for parliamentary oversight[7] for the purposes of counteracting OCPC. Throughout the years and despite several successive changes in government and the corresponding change in political priorities and the manner of policy implementation, the Parliament has made use of the entire range of possibilities available to it – from collecting information received from citizens and referring it to the respective compentent instutions, parliamentary hearings and setting up enquiry committees, the development of strategic documents, taking specific legislative initiatives and setting up dedicated parliamentary bodies responsible for counteracting OCPC and specialist institutions by the enactment of dedicated laws.

On the other hand, one cannot fail to notice that the Parliament makes use of the least efficient instruments, notably forwarding information to different institutions of the executive power and the prosecution service, which are not obligated to report back to them on the outcome of actions taken or conducted investigations, if any, as well as parliamentary hearings relating to specific cases whose resolution again depends on the cooperation of other institutions, which as a rule fails to produce any result.

It should also be noted that a number of experts on parliamentary anti-OCPC policy claim that the parliamentarians said to have expert knowledge in the area include notorious figures widely regarded as being linked to or involved in political corruption. This would not have been the case had political parties not been in a position to systematically (and not merely incidentally) make use of the State resources, particularly those of a weakened Establishment[8]. From this point of view, the problem is not so much that the most powerful and efficient tools, i.e. the permanent institutions responsible for counteracting OCPC, are underused due to being recently set up and, therefore, mentioned relatively infrequently. The heart of the problem is that despite establishing specialist institutions the underlying cause, notably the nature of the relationship between society and the State, respectively State power as a driver fuelling and generating corruption practices, remains intact and unchallenged. These systemic prerequisites are tacitly endorsed by political parties and their priorities because the nature of the political system ensures the “right“ persons enter into and remain on the political arena.

Hence the understandably ambivalent appraisals of parliamentary work in this area. Although boasting a long and memorable tradition of active engagement in countering OCPC and despite certain achievements, tangible results remain the exception and not the rule. It is therefore fully logical that the overwhelming sentiment surrounding efforts made to date is one of disappointment.

The influence of the society and its inherent systems can also help us explain:

- the reasons for the low efficiency of parliamentary action: the institutional non-cooperation, systematic attempts being made by parliamentary majorities

[7] See the outcomes of the research conducted by S. P. Stoychev *Transformation and Europeisation of the Bulgarian Parliamentarian Elite (1990-2009)* (currently reprinted)

[8] This is easily understandable given the police background of the respective respondents and the inescapable importance of the Ministry of Interior and security services in combating OCPC.

to "shield their own" and the refusal of subsequent governments to investigate its predecessors in power;

- the common root of the problem stemming from the institutional design of the institutions of power, which regard the exercise of power on an arbitrary and discretionary basis as their topmost priority.

2.2.3 Specific nature of the resources available to Parliament

Although empirical evidence appears to outline a positive picture, that same picture blocks a greatly disturbing situation from view. On the surface one may be led to believe that no significant problems arise in relation to MPs using expert advice in the area of counteracting OCPC – a significant share of respondents shy away from mentioning that problems exist and even where problems are acknowledged they tend to be referred to as information/logistical/technological, etc. problems or ones arising from a comparison between actual practice and the goals and outcomes laws seek to achieve or international experience. However, the failure to place an emphasis on the deficiencies in the pool of expert knowledge in the domain of anti-OCPC policy is generally the result of the low parliamentary capacity to integrate professional know-how and expert legal advice into the daily work of the National Assembly. This, in turn, is rooted in an even more deeply-entrenched institutional and political problem, notably:

- the *de facto* dependence of Parliament on the executive power due to a re-ordering of the centres of power; and
- the fact that the executive power is at once both the main target of anti-OCPC policy and the leading actor in its implementation.

Given this institutional set up, it is easy to understand why successive Parliaments have shied away from enacting a comprehensive legislation package[9] capable of ensuring problems relating to OCPC are tackled effectively and finally. In light of the existing institutional and political macro framework, the achievements within the transition from a *façade* (helpless) to a genuine democracy are almost outstanding.

Many examples show that external expert help and advice in different forms have been sought in various situations, albeit for varying reasons, including prestige in the eyes of the general public, internal party-political controversies and even genuine social responsibility, although primarily under international pressure and with an ambiguous (problematic) final outcome. It is nevertheless important that a wide range of partnerships has been established (with experienced professionals, non-governmental organisations and national and international institutions from the public and private sectors), including different forms of cooperation (commentary on draft legislation; making use of the results of different studies and concepts, organising public discussions, training events, etc.). In other words, there are a number of practices that may be integrated into a comprehensive, permanently functioning public mechanism, which informs a highly-competent public anti-OCPC policy relying on the commitment and dedicated efforts of the entire society.

No comprehensive, sustainable model of work has been developed to date. Likewise, results achieved are inefficient despite the use of the know-how of a significant pool of experts and professionals. This is largely due to the incidental nature of fostered partnerships against the backdrop of (a) a predominantly international initiative for cooperation and (b) the nature of cooperation seen as a

[9] Legislative initiatives, standing and *ad hoc* committees, different forms and procedures for parliamentary oversight

tool to convince the public that efforts are being made as opposed to expending time, resources and energy on anti-OCPC policy design and implementation.

The situational nature of external know-how used positioned on top of the shaky ground of the deficiency of specialist know-how in Parliament is not a momentary lapse in combating OCPC. It is a logical consequence of the institutional design and the *de facto* division of powers in the country. This includes the existing institutional barriers to the pursuit of a public policy by the instruments of Parliamentarism and not only the specific stumbling blocks that would ordinarily result from a vested party-political interest in a low efficiency of the efforts to counteract OCPC.

2.2.4 Specificity in the functioning of the Anti-Corruption and Conflict of Interest and Ethics Committee of the National Parliament

Within the paradigm of representative democracy, particularly of the Nordic/ Protestant type, any form of corruption but particularly a high-level political one is a rare exception and not a rule. Hence the concern that a potential parliamentary committee tasked specifically with combating OCPC would have more time on its hands than it knows what to do with. This explains the deliberate strict limits imposed on the composition, in terms of number, and the high requirements (purportedly competence and education related) for membership of the committee justified by considerations relating to the confidentiality of information. It also goes a long way towards explaining the many diverse tasks and responsibilities delegated to this body, which, on account of their allegedly incidental nature, are regarded as sufficient justification for its functioning as an essentially *ad hoc* body.

Naturally, an altogether different situation emerges in countries marred by systemic corruption, last but not least because corruption thrives under political clout and in some cases has a link to organised crime. In such societies the information alleging abuse of power by the bodies of the executive, local and legislative power, including the judiciary, is enormous. But the free flow of information needs to not only be channeled to other public institutions (responsible for conducting checks and investigations) but requires the *cases of alleged abuse to be studied in terms of structure and problem areas* as well as to be thought through, including the need for legislative intervention capable of influencing the institutional environment in order to curb the systemic nature of corruption practices. Last but not least, specialist professional know-how and studies are needed, a task the members of the Parliamentary Committee are manifestly unprepared to undertake, last but not least because of the limits imposed by the length of their term in office.

The committee can simply not afford to persist in the pursuit of its declared goals, particularly as they tend to be loosely defined and are hardly ever set in writing. As a rule, adequate financing is also unavailable.

This same root cause, however, creates an imperative need for a national, consensus-based, supra-party security policy, which accords countering OCPC appropriate significance as one of its topmost priorities. The Parliament should naturally be the institution where the programme translating this policy into action is developed as this would ensure it is truly supra-party and underlined by impartial decision-making in the best interest of the public (for example, by qualified majority of the votes). This means that a radically different approach to the functions and powers of the institutional committee tasked with the responsibility of countering OCPC is needed, both in terms of its composition,

the level of competence and the powers delegated to members and in terms of the working mechanism and financing available to it, including the statutory instruments for cooperation with other public institutions. Such a radically different approach would signify a carefully thought through political responsibility for the implementation of an anti-OCPC policy.

Taking action under external pressure on a trial and error basis is only capable of producing half-baked and fragmented results. The good news is that this task has already been achieved and its tangible results as well as the stumbling blocks outlined above now clearly define the future tasks and framework in which they can be achieved.

2.3 The problematic link between Parliament and the executive power

Anti-OCPC policy and effort remains a constant source of pressure in the relations between the legislative and executive powers due to a mismatch between the provisions laid down in the Constitution and actual political life as it unfolds on a daily basis, which accords MPs a role of being political "props" keeping the government in office and allowing it to implement its set of chosen policies. Hence the emphasis placed on the oversight functions of Parliament as the only instrument allowing government policy to be challenged and the ruling cabinet held to account.

The controversy stems from the equally valid rationale underlying both lines of thinking. On the one hand, the Parliament in attempting to gain the upper hand in countering OCPC continues to grope in the dark whilst the actual problem of political corruption lies in government policy giving in to corporate interest through institutional disinterestedness and irresponsibility. For this reason, the two parallel lines of thinking rarely clash directly whilst continuing to generate constant pressure. A persistent impression emerges that the government, in principle, deploys the entire set of instruments available to it to curb parliamentary freedom (to an extent where in literally imposes legislative initiatives on the MPs). The true clash of interests in the domain of anti-OCPC policy, however, stems from the ever growing aspirations for more power of the police supposedly to be harnessed in countering systemic corruption. So far, the Parliament has successfully countered these attempts.

Tasked with responsibilities it is manifestly underprepared to deliver on, the police are constantly clamouring for more powers and money against the backdrop of the strikingly low efficiency of its efforts to counter and prevent political corruption. On the other hand, the Parliament continues to resist these demands although it continues to support the government-endorsed policy line that the best way to address problems relating to OCPC is to pursue robust investigations and convictions. Thus, against the backdrop of unrelenting protest against government-imposed limitations (including the blatant endorsement of the dubious interests of various lobbyists), the government remains content and does not protest too loudly against the line chosen by Parliament to counter OCPC[10]. In light of this, the implementation of such a reactive policy to counteract OCPC is a natural development that takes place in perpetuity with occasional

[10] On the one hand, using its legislative initiative the Parliament has set up the Anti-Conflict of Interest Committee whilst on the other hand the government does not appear to be in a hurry to make efficient use of this innovative institutional decision. BORKOR is a case in point; little was heard about it other than the idea to set up the committee (largely to help dispel the conflict that flared up in the wake of escalating tension between the government and the publicly denounced alleged flagman of organised crime).

mild confrontations between the police and Parliament along the way. However, as always the devil is in the details.

The picture painted by empirical evidence warrants a conclusion that the attempts of Parliament to engage in anti-OCPC policy implementation through legislative instruments are, in fact, not being thwarted by the leaders of some or all of the political parties represented in Parliament. Nor is an active stance against OCPC seen as a must because the emphasis is firmly placed on the prosecution of those involved in OCPC under political clout and protection and not on remedying the institutional causes for abuse of power and conflict of interest.

Furthermore, in individual cases the leaders of political parties themselves put pressure on Parliament to give in to pressure thus abusing the resources of the administration. The main problem is the constant unlawful lobbyism on behalf of generous party sponsors and not the relatively isolated cases of corruption where incentives (bribes) are given and accepted for personal enrichment.

As already demonstrated above, the combination of the root causes compounds the problem of OCPC beyond measure. The specific problem is complicated by the undue burden of the failure to address it resolutely, appropriately and unambiguously. The problem relating to systemic OCPC is deeply rooted in the institutional setup, which regards it as an incidental exception to the rule that may only be redressed by seeking to incriminate the implicated individuals or political parties as the case may be. Finally, the problem is further compounded by the exploitation of anti-OCPC policy to achieve narrow party-political goals[11].

Hence the shift in emphasis from a debate on the underlying causes of OCPC to throwing dust in the eyes of the general public by loudly and persistently drawing its attention to COMBATING OCPC due to the tangible risk of the topic gaining narrow party-political significance[12]. The politization of homeland security issues is a permanent trend and forms the overreaching framework for public articulation of the host of unresolved controversies it covers. In turn, this is easily understandable given the high corruptibility of political elites and the failure to ensure public institutions are able to resist giving in to party interests.

In the meantime, the proportions of the problem have doubled due to OCPC being interpreted strictly within the paradigm of an offence being committed by individuals and, therefore, requiring that individual to be prosecuted and sentenced accordingly (police mentality at work again). Where systemic corruption is rife, such an approach would (inescapably) lead to an exponential increase in the number of offences, which, in turn, boosts the credibility of the argument favouring a police State. Thus, the actual problem is swept out of view with public attention being shifted to the excessive methods used to prosecute and bring those involved in OCPC to justice, safely away from the need to root out the underlying causes of criminal conduct. This serves to further diminish the chances of remedying the actual problem effectively and once and for all.

[11] RZS (the Law and Order Party) is a case in point, which, to varying degrees, signifies a goal shared by all party-political elites – the failure of countering political corruption being decried by those serving as the link between organised crime and politics.

[12] It should be noted, however, that glaring public controversy and conflicts do not signify a systemic, persistent attempt to undermine OCPC on the part of political entities. On the contrary, the very inadequacy of the chosen approach clearly demonstrates the haphazard and half-hearted attitude and the unwillingness of the political class to address the issue. On the other hand, the self-organised, shaky and inefficient line pursued as a main instrument to counteract OCPC is a positive and fairly recent development.

In short, experts' responses reveal different nuances of a picture that is already all too familiar – both in terms of its general framework and telling details. Both the snapshot and general trends in anti-OCPC policy pursued by the instruments of parliamentary initiative and action are the ultimate product of other conditions prevailing in society and not a standalone factor in the specific domain of homeland security policy.

For this reason, it is appropriate to examine the external environment and those factors capable of enhancing the efficiency of the anti-OCPC policy pursued by Parliament. Given that the main function of the National Assembly is to legislate and that there are barriers before the application of the law, which remain strictly outside the control of the Members of Parliament, it is hardly surprising that legislative initiative has been on the wane.

2.4 The judiciary as a partner of the National Assembly in the enforcement of anti-OCPC policy

According to the resoundingly unambiguous results of the empirical study, only one out of twenty experts has expressed the view that anti-OCPC policy is a priority for the judiciary. All others have instead gone into lengthy and detailed explanations of why this is not the case.

It is noteworthy that respondents invariably resort to examples to illustrate the main point of their argument. At face value, what comes across is that the prosecution service in particular should definitely accord priority to anti-OCPC action but such a trend in the daily work of prosecutors has become more prominent only recently. By way of explanation, respondents mention the highly controversial appointments of certain individuals in the judiciary, notably the previous two incumbents of the office of the Prosecutor General, whose decisions within a highly-regimented institution with an intricate hierarchical structure have a direct bearing on the work of individual prosecutors, not to mention the almost limitless power it places in the hands of the official concerned. Hence the numerous examples given that illustrate the links between prosecutors and political parties or other groups with strong economic interests in society. Concerning the links and dependencies be they political, criminal or otherwise unlawful[13], most respondents fail to make a distinction between prosecutors and judges. The sole distinction made is the fact that prosecutors tend to be regarded as being more likely to give in to political pressure from the government in office.

The empirical picture that emerges leaves no room for doubt that the Bulgarian judiciary fails to function as a single institutional mechanism. Each institution acts independently and, therefore, does not have the high level of social responsibility for and commitment to tackling this social problem amongst its priorities. Within a failing judiciary individual cases are the individual parts of a non-existent whole that logically undermine the mere possibility to achieve a breakthrough and put paid to a long series of disappointing and controversial results. Unable to rely on the system for meaningful guidance individual tribunals and panels give in under the pressure of OCPC and resort to sentencing individual on purely formalistic grounds. The formalistic approach is also the weakest aspect of pretrial investigations, which is not geared towards collecting sufficient evidence for the innocence or guilt of alleged offenders.

A specific manifestation of the gist of the problem is the widely held belief that the court's primary and sole function is to adjudicate whilst the low efficiency of court work and its disappointing outcomes, which fail to meet public expectations

[13] For example, masonry but also personal acquaintances etc.

for justice administration within a reasonable timeframe, are attributed to a number of deficiencies in the system and the main actors in it. Thus, the actual explanation of the problem is being replaced by a series of allegations relating to numerous deficiencies and failings with implications for the phase of pretrial investigation.

Each tribunal and panel is expected to be totally above board and impartial. Society also has strong expectations that the judiciary functions in the best interest of citizens, i.e. that it rules efficiently and fairly within a reasonable timeframe whilst precisely the opposite takes place. This is a systemic problem, which derives from the inadequate internal self-imposed rules for the functioning of the judiciary, including the procedures for recruitment, appointment and career development of magistrates, the rules for the appointment of heads of the supreme courts, the administrative process in general and the checks and balances and professional ethics arrangements in place.

The Bulgarian judiciary is seen as a constituent element of the system of division of powers, i.e. the matter relating to its constitution and functioning appears to be construed as being solely linked to the structure of State power whereas the principal failing is the severed link between the State and civil society.

The design of State power is underlined by the presumption that each power is immutable and eternal. Key prerequisites for the efficient functioning of State institutions have failed to be set in place:

- *the presumption that they are nothing more than instruments to be used in order to address certain problems and should therefore be malleable and flexible depending on the nature of the task at hand;*
- *the presumption that being a mere tool they are imperfect and can therefore be improved through external monitoring;*
- *the presumption that in order to be held accountable State institutions should function in a manner allowing their performance to be monitored and appraised;*
- *The main criterion for appraisal of the work of public institutions is the extent to which they are able to effectively address problems in society and protect citizens' interests.*

This lies at the very heart of the extremely low efficiency of combating OCPC. The current State power design actively prevents institutional accountability. In fact, public accountability, where not entirely absent, is grossly underdeveloped.

Hence the problem of the independence of the judiciary, which may only be addressed by altering the structure of State power. On the one hand, the existing model is manifestly incapable of ensuring any form of independence from the interests of political parties and of the executive power. On the other hand, the current institutional model is a near total guarantee for unaccountability and, therefore, irresponsibility. Such institutionally-backed irresponsibility, compounded by the high level of independence the judiciary enjoys under the Constitution, allows it to (a) become increasingly encapsulated and removed from social life; (b) avoid embracing meaningful criteria for the efficiency of its work and, therefore (c) subordinate its internal mechanisms to extraneous and arbitrary criteria (be they personal loyalties and political or corporate dependencies).

Thus, the judiciary continues on a path to becoming ever more conservative and entrenched whilst functioning under strong pressure that undermines its foundations and exposes it to a high risk of degradation (corruption) due to the absence of clear criteria that allow a distinction to be made between acting in the public interest and to the detriment of that same interest.

Naturally, the problem has implications for all branches of the judiciary but gains special significance in the context of the efforts to combat OCPC. By virtue of its very nature, OCPC is a threat to the viability of the entire society and this is precisely where the ability of the body of society to self-regulate becomes crucial. Standing face to face with this problem best reveals the principal flaw of the current setup of the judiciary, which not only fails to achieve results but is unable to put in place a set of meaningful rules and procedures necessary to ensure its adequate functioning[14].

Therefore, the big issue this study should address is to what extent the respondents are aware of the complexity of the problem.

2.5 Where to next – strategies and programmes for action?

The analytical appraisal outlines a challenge that is much more complex than the well-intentioned legislative initiatives of MPs. This is so because as already explained the efficiency of legislative initiative, including in respect of setting up specialist bodies tasked with the responsibility to counteract OCPC, may not rest solely on personal experience regardless of the level of competence of specialist knowledge of individual experts.

Yet another important consideration with overall implications for anti-OCPC policy is that an idea has been considered for some time to delegate the main responsibility for developments in this area to a specialist body in Parliament. Even more importantly, a strong sectoral policy directly engaged in remedying a severely injured public interest may benefit from fostering and enhancing cooperation between a number of public entities (State institutions and non-governmental organisations).

This view tends to be summarily espoused within the discourse of expert appraisal of the situation, regardless of the difference in opinion as far as individual experts are concerned. Indeed, very few respondents would admit to having come up with the idea on their own. Yet most of them share the understanding of the intricate complexity and multifaceted nature of the requisite policy although each would formulate an intrinsically different solution in terms of the specific parliamentary initiatives to be deployed.

It goes against logic to expect that an intrinsically complex and failing interinstitutional cooperation would produce outstanding results and a high level of efficiency given that each individual institution has more than its fair share of deeply-entrenched problems. Hence, the responsibility of MPs for devising an appropriate response to the challenge of OCPC takes on a different aspect. In other words, if shying away from bold initiatives and taking action to counter OCPC are undoubtedly reproachable would not the same be true for the chimera of limitless freedom to pursue parliamentary initiatives or taking the reins of sectoral policy implementation.

Indeed, there is a potential to engage Parliament in a public debate on the issue underlined by genuine know-how, if not actually transform it into the focal

[14] See the dedicated reports of the Open Society Institute, the Centre for Liberal Strategies, the Centre for Study of Democracy, Transparency International-Bulgaria and the Market Economy Institute.

point of efforts to effectively tackle OCPC. In the context of the historically predetermined inexperience of the institution and the publicly known involvement of the major political parties in different forms of organised economic crime and political corruption, this option should not be easily discarded.

While pursuing this option is both achievable and able to produce results, it is highly complex and specific in terms of the requisite institutional structure of a systemic order, which by necessity will have to take into account the points of view of all major players in political life.

3. Main conclusions drawn on the basis of the analysis and recommendations

3.1 Main conclusions

Anti-OCPC policy has two defining aspects. It is, firstly, substantially ambivalent both as a whole and in each of its multitudinous details. Secondly, the current state-of-play is not substantially different from the situation, which may reasonably be expected to arise in the domain of anti-OCPC policy, taking into account the social environment at macro level. The host of currently experienced problems is not rooted in a refusal to implement an anti-OCPC policy. If in the last two decades actions to at minimum curb organised crime and particularly high-level corruption failed to produce tangible results, then an explanation should be sought in a long series of specific circumstances and not in a deliberate, consistent policy pursued by the political class in furtherance of its private vested interest.

Beyond this, the devil remains in the details:

Concerning ambivalence, it is undeniably true that there are political parties in Bulgaria with an unwavering commitment to tackling OCPC. Those parties have set up special units engaged in the development of different programmes and policy documents. They rely on a pool of experts in the area and address the matter on a regular basis as a matter of a political priority. On the other hand, however, such parties tend to be an exception. Not only were they amongst the first to be set up in the wake of the fall of the communist regime but even their programmes are rarely translated into concrete actions beyond political declarations and PR exercises. In other words, a great deal is being said and very little, if anything, is being done, which is why good intentions far outnumber tangible achievements in combating OCPC[15].

The country has come a long way and gained a wealth of experience but continues to take action on a trial and error basis and the entire trajectory now left behind as a legacy of the past leaves an impression of haphazardness and not consistency and continuity. It is easier to talk about individual actions taken in different areas than about a comprehensive policy that is well thought through, analysis-based, adequately financed, implemented by competent institutions and regularly updated.

The Parliament is able to produce a long list of legislative initiatives aiming to address the multitude of problems relating to OCPC but even the most dedicated ones, for example the decision to set up the State Agency for National Security

[15] 1998 Single National Crime Prevention Strategy, http://sun450.government.bg/old/bg/oficial_docs/strategies/srtategy_crime_bghtm

Integrated Anti-Organised Crime and Corruption Strategy, http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=577

(SANS), the Commission for Establishing of Property Acquired from Criminal Activity (CEPACA), BORKOR etc., leave a lot to be desired[16]. In addition, the manner in which these institutions are set up in practice is frequently directly contrary to that intended by the lawmaker.

Although individual examples can be given for party-political opposition against individual anti-OCPC policies, there are no grounds to assert that sectoral policies in the area of homeland security have ever come under any measure of political pressure. Naturally, the explanation that leaps out is that, in fact, no such policy exists. Yet it is worth noting that any effort to achieve a breakthrough is being sabotaged by institutional inertia, which is the main source of systemic corruption. Hence the inadequacy of the currently dominant paradigm in anti-OCPC policy, which relies heavily on police investigations and prosecution as opposed to institutional prevention.

The National Assembly is engaged in anti-OCPC policy by making intensive use of the entire set of instruments available to it. However, the efficiency of that engagement depends primarily on whether its efforts meet with cooperation from other State institutions. Yet another factor is the extent to which the judiciary regards combating OCPC as a priority. The fundamental crisis of the Bulgarian judiciary essentially underlines the possibility for the efforts of Parliament to produce a positive and sustainable result in society.

Secondly, given the macro-level limitations that currently define the boundaries of the parliamentary playing field, no significant breakthrough in anti-OCPC policy may be expected until actions taken in this area are underlined by the presumption that the phenomenon is the mechanical sum of isolated crimes and not a significant structural problem of society, which goes to the very heart of Bulgarian society. The common delusion that political parties have the necessary know-how to address these specific problems because former police officers hold positions of power and the profound inadequacy of continuing to apply the prosecution and sentencing paradigm as a major deterrent whilst turning a blind eye to systemic corruption lie at the very core of compounded failure. Whilst a host of drivers at micro-social level continue to keep political parties hostage to clientelism and corporate interests, genuine representative democracy will continue to wane with political culture remaining a mere farce for the majority of MPs. The capacity of the National Assembly to exercise adequate parliamentary oversight will never reach its full potential if statutory-backed institutional irresponsibility remains the order of the day, including in the judiciary.

The intrinsic complexity of the problem is compounded by a number of extraneous factors:

- the heritage of socialist mentality and manner of work in public institutions, including in the Ministry of Home Affairs and the Prosecution Service;
- the hugely complex and precarious nature of anti-OCPC policy implementation requires a level of competence, professional skill and dedication that law enforcement agencies are currently unable to rise up to;
- the lukewarm commitment of various institutions engaged in anti-OCPC policy, which precludes efficient interinstitutional cooperation;
- the necessity to view combating political corruption and related economic crime as a special case that requires a bespoke approach that differs in

[16] Even “loopholes“

substance from that employed to combat conventional crime, including a necessity to set up specialist institutions;

- the constitutional deficiencies with implications for the balance between the three branches of power and their specialist bodies, including but not only the judiciary;

- the absence of political will to engage in anti-OCPC policy implementation either because of the attempts to subordinate this sectoral policy to party-political interests or an interest in merely giving an outward appearance of making an effort as opposed to engaging in day-to-day result-oriented work.

There are a number of possibilities to take action geared to increase the efficiency of anti-OCPC policy implementation in the current institutional environment. A substantial breakthrough and better performance would heavily depend on implementing a comprehensive and systemic policy aiming to limit the possibilities for OCPC at institutional level.

3.2 Recommendations

3.2.1 Possible action to be taken with a view to raising the efficiency of anti-OCPC policy in the current environment

Several main priorities may be outlined in this regard.

- Training programmes

The pool of professional experience gained in the context of working for the security services should not be regarded as the only source of know-how in the area of countering OCPC. The topic has been the subject of extensive study with more developed traditions in democracy for a number of years. Reliance on life experience does not have the potential to help us break away from the paradigm of prosecution and sentencing as the only tool to combat OCPC. The complexity of the issue means that MPs should be appraised of developments on a regular basis, including in the framework of induction programmes shortly after taking office, in order to ensure that they produce an adequate response by proposing adequate legislative initiatives in the area of anti-OCPC policy. Such in-depth training to be conducted by an institution commanding a wealth of proven experience is particularly important for the members of the specialist parliamentary committee/committees tasked with tackling OCPC. Such specialist training programmes should also be deployed across other law enforcement institutions and include political journalists due to their special role in shaping public opinion, including in the anti-OCPC policy domain.

A key emphasis should be placed on the distinction between the different actions taken to combat OCPC and those that are essentially manifestations of a bespoke, systemic and sustainable policy in the security sector and the need to prioritize prevention by putting pressure on the institutional environment, which generates conditions in which OCPC thrives. Training does not mean that the Parliament should not work to build proprietary in-house know-how on which it may draw on when undertaking initiatives in the anti-OCPC policy domain as such know-how would in parallel ensure continuity and depolitization at institutional level.

- Establishing a parliamentary committee

Secondly, in contrast to current state-of-play, there are possibilities to radically alter the role and standing of the parliamentary committee responsible for anti-OCPC policy implementation. In the first place, this creates a need to clarify

the entire range of potential commitments the committee may undertake at conceptual level – from receipt of information alleging involvement in OCPC, analysing information flows, developing legislative initiatives on the basis of case typologies with a view to ascertaining the causes underlying corruption (possibly in direct cooperation with other bodies, for example BORKOR, the Anti-Conflict of Interest Committee, etc.) to developing specific mechanisms for thematic parliamentary oversight of the work of public institutions, particularly those operating in the security sector, as well as involvement in the formulation of the tasks and responsibilities of public institutions, the monitoring of their performance and ensuring that they are accountable for their actions. It is manifestly clear that clarifying tasks and responsibilities and the competencies and powers of such a parliamentary committee at conceptual level and ensuring that it is properly staffed and financed (providing it with the necessary administrative and financial resources and technical backup) will help it perform its functions adequately and efficiently as a major player in the anti-OCPC policy domain. The implementation of a comprehensive policy without having first set an integrated and fine-tuned system of institutions in place is a mission impossible. Such a move would be particularly unfeasible in the anti-OCPC policy domain as evidence from the recent past abundantly shows.

- Partnership programme

The high priority to be accorded to anti-OCPC policy, to which the entire Parliament and its committees should have an unwavering commitment, require creating a sustainable country-wise network of partners whose know-how covers all aspects of policy implementation – training, developing concepts, conducting analyses, lawmaking and monitoring and oversight. This means that a comprehensive programme for cooperation between the Parliament and different Bulgarian and international partners should be developed that is capable of successfully replacing the partnership model used so far, notably its *ad hoc* nature and, respectively, the unsatisfactory results achieved. Anti-OCPC policy should be informed and coordinated as well as updated (readjusted) on a regular basis, which should be one of the main objectives of the future parliamentary committee to be tasked with policy implementation in this domain.

The above demonstrates that actions with a common denominator should be taken in this area. In general, fresh public (institutional) resources should be mobilised and diverse and wide-reaching public and expert support sought in the process of developing a brand new sectoral policy on counteracting OCPC.

3.2.2 Possibilities to alter the public institutional setup upon which the scope and intensity of the anti-OCPC effort depends

The National Assembly has important oversight functions, which it discharges primarily through its standing and *ad hoc* committees. The most important role it may possibly have as a player in anti-OCPC policy implementation is a strictly legislative one. A radical improvement of the results achieved in the domain of this sectoral policy is heavily reliant on adopting a set of specific prevention measures by means of altering the public institutional setup. This gives the National Assembly a much more prominent role to play because enacted legislation determines the manner in which government ministries, agencies and commissions will function.

The legislative initiative capable of raising the efficiency of anti-OCPC policy implementation in response to the justified expectations of Bulgarian citizens and supranational alliances of which the country is a member (notably the European Union and NATO) should have three main priorities:

- Changes in the internal setup of institutions and mechanisms of work

The setup of public institutions is the main source of systemic corruption, which greatly facilitates organised crime with direct and significant implications for the economy and national politics. This does not require a radical overhaul of legislation *per se* but rather of the modus operandi of the police service, the customs and inland revenue agencies and all other institutions operating in the sector of homeland security. The current Constitution does not even mention, let alone lay down rules on the most important players in society, notably citizens and civil society. Respectively, public institutions have been established and function with the primary task of exercising powers and not protecting public interest. This allows wide room for improvement of the Public Administration and Civil Servants Act[17] etc, which may be amended so that the possibilities for corruption are reduced to a minimum. The Public Procurement Act may also be altered so that the accountability of the officials responsible for conducting public tenders are increased. Regrettably, the current draft law does not envisage such modifications. Compiling an exhaustive list of all laws laying down the rules on the functioning of the public institutions responsible for the implementation of sectoral policies would be too time-consuming although improvements can be made in each and every case if counteracting political corruption is to be transformed into high political priority in deed and not in word only. By way of example, it will only be noted that the basic principle of the tacit refusal underlying the work of all public institutions at present should be replaced by the principle of the tacit approval.

- Interinstitutional coordination

In the last few years, taking into account the growing threat for society presented by OCPC and under external pressure, a number of specialist bodies and institutions were established whose principal task is to counteract OCPC now seen as a social pathology to be radically uprooted, *inter alia*, SANS, CEPACA, BORKOR, the Anti-Conflict of Interest Committee, etc. In many cases, the decisions to do so were influenced by strong external pressure and specific circumstances. It is this expedience and not a well thought-through concept and anti-OCPC policy that informs the mechanisms of work stipulated in the special laws governing each of the bodies and institutions concerned. This is manifestly evident particularly against the stark absence of any degree of cooperation between them. In order to improve performance and achieve tangible results in anti-OCPC policy implementation it is firstly necessary that a comprehensive concept for interinstitutional synergy between ministries, agencies and commissions evolves, which requires legislative amendments to all relevant pieces of legislation. This also covers the relations between the institutions concerned and the National Assembly as a player in anti-OCPC policy implementation.

[17] Let us recall that in stark contrast to Bulgaria in which civil servants provide services to the State, in English speaking democracies a special rank of civil servants specialises in providing services to the general public, which is a fundamental difference with momentous implications.

- Constitutional amendments

Undoubtedly, constitutional amendments are the most fundamental building blocks expected to kick start a change and improve the efficiency of anti-OCPC policy implementation.

This necessitates adopting a brand new set of rules on the setup, functioning and role of public institutions in social life so that the paradigm of the State acting for and on behalf of society and frequently fully usurping its place can be left behind. This means that public life should be allowed to evolve and self-regulate on the basis of horizontal interaction between private individuals, which will inescapably shift the role of public institutions to serving citizens efficiently and responsibly. It also means that the current Constitution should not simply be amended but wholly replaced to take into account the legitimate interests of citizens. Special attention should be paid to the constitutional provisions setting out the rules governing the mechanisms of political life – the representation of legitimate interests, the principles of freedom, accountability, balance between institutions etc. The study does not allow these matters to be explored in detail as a set of arguments of an entirely different order and different know-how would be needed to face up to the challenge. The overall rethinking of the constitutional setup of public life in Bulgaria, however, should be clearly underlined by several important principles:

- institutionalisation of result-oriented political action;
- permanent dynamics in the overall institutional setup of public life;
- mechanisms allowing the inefficiency of government to be sanctioned;
- mechanisms ensuring accountability through transparency and partnership with civil society.

Until these fundamental building blocks of policy implementation are set firmly in place, combating OCPC will remain patchy, haphazard and disappointingly inefficient.

Parliamentary Capacity for Policy Implementation in the Area of Combating Organised Crime and Political Corruption

Rumyana Kolarova

This analysis explores and seeks to address the inefficiency of policies geared to counteract organised crime and political corruption that is a standing feature of Bulgarian politics.

The issue at hand presents a paradox with two dimensions both of which are directly related to the role played by the Bulgarian National Assembly. The first one is that since 1998[18] measures to combat high-level corruption and organised crime have been a stated priority for each and every government in office. Such measures have invariably been at the core of all effective political attacks launched by any parliamentary opposition as well as the driver of political success for all political formations not previously represented in Parliament. On two occasions this policy was the key stated priority of new entrants in the political arena, which went on to subsequently form a government enjoying constant parliamentary support during its first term in office, notably NDSV (the *National Movement Simeon II*) with the support of its coalition partner DPS (*Movement for Rights and Liberties*) in 2001 and GERB with the support of ATAKA as a coalition partner in 2009.

This shows that organised crime and political corruption are a severe chronic problem haunting society and the political class in Bulgaria, but in addition and most importantly, that promises to combat OCPC are a lasting generator of electoral support in every situation on the eve of elections, and public declarations of government action in that regard ensure the stabilization of voter confidence and support for any incumbent government. It is common to discuss a deficit or the presence of "political will" on the part of any governing party or coalition to combat OCPC, yet commentators seem to overlook the fact that all elections since 1998 have revealed a consistent and even growing will of voters to support policies aimed at combating OCPC.

On the other hand, it would be unfair to claim that the four governments that have held office since 1998 have merely been paying lip service to combating OCPC while failing to undertake any concrete measures[19]. Rather, we could assume that, as least so far, the policy in that area has been the "goose that lays the golden egg" for all participants that use public resources through the political

[18] A period of 12 years during which the country has been governed by four different governments and three general elections have produced three different parliamentary majorities.

[19] For examples of such measures at the beginning of the period under review, see the *Comprehensive National Strategy Against Crime* of the Kostov Government (16 July 1998) http://sun450.government.bg/old/bg/oficial_docs/strategies/srtategy_crime_bg.htm, and *An Integrated Strategy for Prevention and Combating Corruption and Organised Crime* http://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=577 at the end of the period, during the Borissov Government.

process: for the "political class"; for those benefiting from corruption schemes; for political forces which have not gained parliamentary representation; for the non-government organisations seeking channels for participation in public policy-making; and perhaps for organised crime itself. So far no one has been short-sighted enough to kill the goose that lays the golden egg.

Political science is well aware of the strong correlation between calls against corruption and political populism. In the case of Bulgaria, this means that in so far as anti-corruption parlance has been typical of both traditional and new parties and of both ruling majorities and oppositions for the past 12 years, all of those formations exhibit growing levels of political populism[20] and its inherent imprint on the policy-making process such as opportunism, lack of accountability and inefficient representation.

At the same time, this state of play should logically be expected to erode competition among parties, which is the essence of any democratic system, or to radically change the inter-party competition model. One of the tasks of this analysis is to explore the ways and the extent to which changes in the model of inter-party competition affect the institutional capacity of the National Assembly to combat OCPC.

Analyses on the topic often dwell on the *political economy aspects of the genesis of corruption and organised crime:* the regulatory framework of the privatisation process and the actions of the executive branch in compliance (or in breach) of such regulations. Yet 12 years later, after the main factors behind these two phenomena have been publicly identified and all participants in the political process have explicitly set themselves the goal to curb and counteract both corruption and organised crime, the big question now is about the *genesis of the helpless political pluralism*[21] in this sectoral policy. It refers to the now established cyclical pattern in parliamentary decisions whereby measures against corruption and organised crime become "drivers of a political change" that reproduces the status quo: old majorities and old politicians step down without being held to political account, while new parties and MPs retain the previous algorithm of action and get the opportunity to govern in comfort for an entire parliamentary term. In this case, it is important to make a comparison with the previous period, which was characterised by premature parliamentary elections and unstable parliamentary majorities.

One of the important questions, which cannot be answered by this study is whether such stable electoral support for anti-corruption promises made by parties and governments will bring about any change to a real policy model for combating OCPC that has so far been inefficient or whether it will continue to erode the existing party system which has reached ridiculous heights of instability[22]. These levels of instability in voter preferences demonstrate that more than half of those who voted in three parliamentary elections in a row

[20] Andreev, Svetoslav, *Types of Populist Parties and the Future of Democracy in Bulgaria,* pages 3-31 of issue 4 of 2007 in the Bulgarian magazine *Politicheski Izsledvania*.

[21] Carothers, Thomas, *The End of the Transition Paradigm,* in the Bulgarian magazine "Razum".

[22] Normal levels of electoral instability in the range of 10-12% are usually registered as one-off events in parliamentary elections where new parties emerge. In case they recur, they are seen as indications of erosion in the party system of parliamentary governance. In the period under review, the levels of instability in party preferences of Bulgarian voters are extremely high and exhibit significant increases on the preceding three parliamentary elections as shown in the table below:

1991	1994	1997	2001	2005	2009
13.6%	14.7%	28%	48%	40%	46.5%

do not hold to account the MPs who have completed their full term of office in Parliament but merely wish to replace them with new would-be MPs who are actually politically unknown to them.

The goal of this analysis is to focus on the proceedings of the National Assembly and study its institutional capacity to accomplish a breakthrough in the established model of diffuse political populism characteristic of all parties producing position papers, programme declarations and parliamentary initiatives in the sector of combating OCPC.

In analytical appraisals, the easiest though least productive observation to make is that policies aimed at combating corruption and organised crime are strongly politicized. It is the banal truth that measures in this area require an agreement in principle (a basic consensus) among all political formations, yet over the past 12 years they have continuously remained an area of the bitterest political confrontation, a focus of inter-party competition. It fails to provide a basis for any meaningful analysis or recommendations since it merely rewords the findings pointing to endemic populism and high instability in the party system.

The second easy though unproductive observation is that political decisions and actions in this area take place *ad hoc* and *ad hominem*. The banal truth that every newly emerged, unconsolidated regime and every new policy are first implemented *ad hoc* and *ad hominem* can hardly produce any meaningful problem assessments or recommendations. All we can do is share the observations that the style of making policy "to fit a particular situation" and "to fit a particular person" cannot be shaken off by declarations of political will or by developing "an action plan" and "a programme of concrete measures", which elected politicians have done at least four times over the past 12 years.

In summation: four parliamentary majorities in a row took a number of decisions in the absence of both a basic consensus and a long-term strategy[23].

1. Institutional parameters of the analysis

Given the situation described above, an institutional breakthrough in combating OCPC could not be credited to any single party or ruling coalition, due to the continuity in key policies, which is a characteristic of parliamentary democracies (in European democracies, sectoral policies can only be effective provided there is an agreement in principle among the main political parties representing, respectively, the main governance alternatives). Hence, the above-mentioned strategies of the executive branch are but a prerequisite and cannot be symptomatic of an institutional breakthrough in the policy of combating OCPC. The institutional breakthrough can occur exclusively in parliament.

In this context, the proposition that the institutional breakthrough in combating OCPC cannot be effected "where appropriate" means that it cannot be the result of adopting (or amending) one or several special legal acts. As shown by comparative studies of the problem and as evident from the monitoring and evaluation criteria used by the EU and globally, a dramatic turnaround in counteracting corruption and organised crime is achievable not through successful goal-setting (reforms) but through a change in the level of procedural "integrity" effected by an increase in the transparency and accountability of the main political institutions, with Parliament playing the leading role.

[23] Two obvious facts, the mere establishment of which cannot lead to any meaningful assessment or concrete recommendations.

In the parliamentary form of government, legislatures are institutions with a specific organisational setup, which yields itself to significant transformations. This has largely been routine practice in the National Assembly and over the past twenty years there have been significant changes to the Rules of Procedure of Assemblies with different parliamentary majorities; moreover, radical changes have been made within a single term of office. Naturally, such differences in the rules of procedure of parliaments can either facilitate or hamper the performance of their core functions.

To produce a meaningful analysis of the National Assembly's role in the policy of combating OCPC, the authors have taken into account not only the opinions and assessments of the interviewed experts but also data from the work of specialised parliamentary committees and the results of a survey of media publications on the topic.

2. Institutional failings in the National Assembly

A functional analysis of legislatures reveals five main characteristics of their activities[24], which ensure the efficiency and effectiveness of parliamentary procedure. These will serve as benchmarks in evaluating any deficits and possible measures to overcome them.

2.1. Information

By definition, being well informed is a prerequisite for making effective decisions, which in turn ensures that party confrontation is avoided. Paradoxical as it may seem, it is a fact that in well-informed political decisions party-biased juxtaposition is not expressed in the form of confrontation between mutually exclusive alternatives; instead, there is always an area of mutually acceptable decisions rather than "an intersecting point".

Given the present level of development in media and communications, parliamentarians are presumably very well informed, but as pointed out by all researchers and as indicated by the available data bases on parliamentary procedure, when the latter is concerned, being well informed can be guaranteed not by media and communications but by: (1) professionalization of parliamentarians, and (2) setting up specialised teams and units to provide support for the law-makers.

Since one of the main information sources used for the purposes of this analysis is "interviews with experts", it is necessary to make the following caveat. Our respondent group includes not so much people with expert status but rather politicians with long experience in the sector. Long experience, however, is not necessarily tantamount to professionalism.

All "experts" interviewed specifically underlined that in terms of the anti-OCPC policy, the deficit of professionalism stands out as the number-one problem for parliamentary efficiency. Moreover, according to "old hands" (individuals who have been actively involved in this area for more than 10 years), the deficit of professionalism is on the increase, i.e., it is widening instead of shrinking. This observation might find a very simple empirical explanation in the high turnover rate of MPs. However, even the quantitative data analysis shows that this easy explanation is misleading. Although the share of new MPs in the 40th National

[24] Cf. Carey, John M. "Legislative Organisation" in: The Oxford Handbook of Political Institutions, 2006, pp. 430-454.

Assembly is relatively lower (see table below), experts do not think that it has resulted in a higher level of professionalism.

National Assembly	38th	39th	40th	41st
Percentage of first-term MPs	61.3%	68.3%	42.9%	70.8%

In fact, for sectoral policies the most important factor is the stability in the respective sector scope and the membership of standing parliamentary committees. Such stability can be observed and it served as a basis in the selection of "experts" whose opinion was analysed. Much more importantly for professionalization, however, is the circulation of a cadre of politically responsible individuals from parliament to the executive government and vice versa. In effectively functioning parliaments, the rule is for specialised parliamentary committees to include both former and future ministers in the respective policy area.

In the case of Bulgaria, the Committee for Home Security and Public Order in the three most recent National Assemblies included only one former minister and not a single future minister, i.e. none of the ministers of interior had been a member of the sectoral committee prior to assuming his/her ministerial post. The lack of parliamentary experience in the sectoral committee of newly appointed interior ministers can largely explain the prevailing responses by the experts interviewed who said that in their initiatives they primarily take into consideration the positions and standpoint of officials from the executive branch and totally ignore the expertise accumulated in parliament[25]. This tendency can also explain the radical confrontation between ministers of interior and the parliamentary opposition: none of these politicians has had the opportunity to take part in meetings of sectoral parliamentary committees which also typically include constructive debates among political opponents.

The second factor underlying the lack of professionalism, particularly among parliamentarians involved with anti-corruption policies, is the "swing door" approach: each subsequent parliament is combating corruption and dependencies with organised crime in the previous government and the previous parliamentary majority. In practical terms, this indicates the complete absence of continuity and common standards. Therefore, the first step in ensuring professionalism and high levels of expertise is for the current parliament to start imposing anti-corruption sanctions on its own executive government and MPs from the current parliamentary majority.

Another significant failing as far as information goes was usually described by respondents as a lack of "structured information" and as not having "the whole picture" of the status and the dynamics of organised crime and corruption. In parliamentary democracies, "structured information" and "the whole picture" can only be the result of the focused efforts of the executive branch. The negative effect of the lack of unified information systems in law-enforcement institutions on political decisions has often been commented on, yet it is not due to any specific institutional deficit in parliament, and definitely cannot be overcome by way of institutional changes in the National Assembly. Indeed, MPs encounter more serious difficulties as a result of the practice of multiple amendments

[25] In the other sectoral committees, this is not a strictly defined trend. For ministers nominated by the BSP (Bulgarian Socialist party), this can be clearly observed, and even from the analysis of ministerial nominations from new parties in their first term in parliament, we can see them making use of personal expertise acquired either in previous legislatures or in managerial positions in the public administration of the respective ministry.

to existing laws, and the even greater multitude of secondary legislation, for which the powers to amend lie entirely in the remit of the executive government. At least two of the experts claimed that MPs "are unfamiliar with their own legislation". However, almost all respondents pointed out that Parliament has "theoreticians" but lacks "practitioners". In this case, the statement hardly refers to a comprehensive knowledge of reality but rather to a lack of experience with the operation of the overall complex system of secondary legislation governing and regulating the sector[26].

Although this is an established practice in the National Assembly, and not only in the sector of anti-OCPC policy, we have to say that there are examples of positive solutions to the problem; moreover, these can be found within the Bulgarian parliamentary heritage. The counterproductive practice of "piecemeal" law-making in the area of electoral laws and the Political Parties Act was curtailed by the consensus decision to adopt an Electoral Code. Indeed, in the domain of electoral legislation, it has taken more than 12 years from the drafting of legislative proposals[27], through tabling draft acts, to the adoption of the legal act, but the change in the legal basis is of high quality. The problems in the sector of combating OCPC could be addressed in a similar way: through a package of acts which can be codified. On this matter, a consensus in principle has existed for a long time now.

The lack of a specialised expert unit (an analytical department in Parliament) is a chronic weakness of the National Assembly. Such a department operated for just two years (from 1995 to 1997), thanks to a US donor programme. During the other parliamentary terms, the National Assembly has been using expert support as follows:

- either by way of specialised legislative councils (a BSP practice linked to the mechanisms for generating expert opinions well-known to that party and used in the 1950 – 1989 period),
- or through *ad hoc* projects. Two typical examples are: (1) the various drafts for an electoral code, which were commissioned by external entities and had external donors but were not linked to the real law-making process of the 38th, 39th and 40th National Assemblies and produced no results; (2) the practice of student internships, the result of which is extensive information-gathering.

Needless to say in addition to the specialised unit option, expert support can be provided by individual experts attached to the parliamentary committees, the Parliament's library or individual MPs. This form of expert support has proved to be inefficient in the case of Bulgaria not only in the sector of combating OCPC but also in the other sectoral policies. Such a diffuse expertise cannot offset the severe deficit of professionalism in Bulgaria's National Assembly because the performance of experts is not assessed by the final product they deliver: if they are active at all, their duties have to do with on-going operational issues. Only the re-establishment of a specialised unit, a department of parliamentary research, will ensure a democratic model of responsible and systematic expert support.

[26] According to an analysis of secondary legislation, the Ministry of Interior Organic Act is one of the four pieces of primary legislation having the greatest number of secondary legislation instruments (37 instruments). See Issue No 2, pages 6-8 of the Bulgarian magazine Yuridicheski Barometer).

[27] The first draft was written in 1999.

2.2 Representation

The representative nature of Parliament's power implies that legislative decisions are taken in a balanced manner, taking into account various and often contradictory interests. Unlike party strategies, special group interests are always in juxtaposition and, therefore, it is not a matter of consensus but one of balance. That is why representation in legislatures is politically responsible, given there are guarantees to ensure that lobbying practices are transparent, there are effective sanctions against undeclared conflict of interest and the presence of clearly formulated ethical standards. Ensuring the transparency of lobbying practices and the development of a code of ethics are urgent tasks, which have been ignored and underestimated by four consecutive National Assemblies. The respective drafts found their way to first reading and died there[28]. The issue of the so-called "lobbyist amendments" has to do not only with non-transparent pressure by special interest groups on parliamentarians but also with a trend, as indicated by most experts, for "lobbyist amendments" to generate high levels of corruption among central and local government authorities, and provide procedural safeguards protecting the high levels of organised crime. It can be argued that currently accountable and transparent lobbying does not and cannot exist in the National Assembly; moreover, it is possible to have pressure applied by various interest groups (and in the experts' opinion, this is quite common), whereby such groups effectively push through parliament various legislative amendments securing certain advantages for themselves[29]. For example, trading in political influence has been a routine practice in the law-making activity of all four National Assemblies, yet the adoption of draft legislation which could put an end to, or at least drastically curb, such routine practice has been systematically delayed.

It is in this turning of non-transparent lobbyist pressure into a routine that one may discern the *genesis of the helpless political pluralism* in the sectoral policy at hand. As indicated by at least half of all experts interviewed, after the completion of the major privatisation deals, the absorption of public resources has been done under laws, which are designed to generate corruption.

The 41st National Assembly marks a step forward, insofar as a specialised standing committee is responsible both for combating corruption and conflict of interest and for parliamentary ethics. However, it is the functioning of that very committee which illustrates the humiliating effects of the severe legislative deficit. Although for the first time there have been cases where MPs have been effectively sanctioned for breaches of the Conflict of Interest Act (by a court decision[30]), at least two experts said that in those cases the Committee members acted as mere clerks and not as law-makers. Indeed, for quite some time now the Committee has been performing tasks far removed from its core activities, while at the same time receiving and processing, as required by law, a huge amount of alerts of noncompliance from citizens. On the other hand,

[28] The Ethical Standards in the MP's Work Act (30 October 2002) http://www.parliament.bg/bills/39/254-01-99.pdf; The MP's Code of Ethics (16 March 2010) www.parliament.bg/pub/cW/238etichen_kodex.doc; Draft Act on the Public Nature of Lobbying http://www.parliament.bg/bg/bills/ID/8383

[29] Hristov, Ivo *"Deficits in Bulgarian Anti-Corruption Legislation and the Practice of its Implementation"* http://resources.transparency.bg/Materials.html?cat=153

[30] In July 2011, the Supreme Administrative Court (SAC) found two members of parliament, Dimiter Avramov (GERB) and Stoyan Gyuzelev (GERB) guilty of conflict of interest and imposed the minimum fine envisaged by law – BGN 5 000 (with the maximum fine being BGN 7 000), for proposing a "lobbyist amendment" to the Use of Agricultural Land Act.

during the Vertu Scandal, the committee turned out to be simply incapable of imposing any sanctions whatsoever, precisely due to the absence of a code of ethics to enforce.

It is entirely within the scope of authority of the National Assembly to overcome the existing regulatory deficit, a failing, which strongly and lastingly erodes the institutional capacity of Bulgaria's Parliament to ensure adequate representation of interest groups.

2.3. Anti-majoritism (i.e. the ability of Parliament to restrain majorities)

Consensus decisions or the qualified majority requirement are an exception rather than the rule in the National Assembly. Even during the period 2001-2009 – two successive terms characterised by political rejection of majoritism[31], decisions continued to be taken unilaterally, i.e. by the ruling majority, which was strongly opposed by the opposition. Counteracting corruption and organised crime, however, is a type of sectoral policy which achieves efficiency precisely through anti-majoritarian decisions.

In the case of Bulgaria, qualified parliamentary majorities usually refer exclusively to the need to amend the Constitution in order to resolve structural issues in the set-up of the judicial system. Although such amendments are relevant to combating OCPC, they bear no relation to the present analysis. What is relevant, however, is to what extent anti-majoritarian rules and procedures are introduced in the proceedings of standing committees, since these can restrict strong politization and party divisions in the anti-OCPC debate. The National Assembly has at least two specialised standing committees operating on the principle of parity, and both of them have a direct bearing on the anti-OCPC sector. Hence, it is particularly important to assess the ability of those committees to function effectively.

The analysis of the activity of the Anti-corruption, Conflict of Interest and Parliamentary Ethics Committee[32] reveals certain indications suggesting the formation of a stable trend towards a functional failure and it is appropriate to explore whether it has to do with the principle of anti-majoritism. For relatively extended periods of time the Committee operated with vacant seats and on two occasions the term of its rotating chairmanship remained unfinished. By studying several cases, we shall seek to establish if this functional failure stems not so much from the parity principle as from the limited number of seats on the committee – one for each party represented in parliament.

There is also a positive trend: the introduction of the integrity criteria. While for the remaining standing committees in Parliament, education, professional background or political experience are seen as the main criteria for membership, for this committee the members of the 41st National Assembly obviously apply ethical, rather than professional requirement standards. Moreover, parity increases the requirements applied to nominated MPs, and for the first time in the selection of members of parliamentary committees there are integrity requirements posed for the candidates and they are expected to publicly demonstrate that they qualify, since each party representative is a "one and only" nomination, and not "one of many".

The following are some examples of how these two trends collide. In the very constitution of the Committee in July 2009, led by such ethical standards,

[31] In the former, the "break-up of the bi-polar model" was proclaimed, and in the latter, a ruling three-party coalition was set up which enjoyed a majority of two-thirds.

[32] http://www.parliament.bg/bg/parliamentarycommittees/members/238

the majority in plenary did not grant its support to the DPS nomination[33]. As a result, DPS refused to put forward another nomination and for a period of eight months (between 29 July 2009 and 24 March 2010) the Committee worked as an incomplete body.[34] In late May 2011, the Committee had vacant seats again, due to the changed status of its rotating chair, Valentin Ivanov. Having left the ATAKA parliamentary group, Ivanov became non-attached and under the Rules of Procedure of the National Assembly had to leave the committee chairmanship. ATAKA's nomination Vollen Siderov was denied the support of the majority in plenary four times, again on allegations of drastic violations of ethical standards, which left the Committee not only with a vacant seat but with no chairman-in-office. The absence of a chairman brought its operations to a complete halt for at least one month, which forced the other four members to adopt new temporary rules of procedure.

The second case of a term ending prematurely is that of the rotating chairmanship of Yane Yanev, which was cut short in December 2009, following the break-up of the RZS (*Order, Rule-of-Law, Justice*) parliamentary group. In and of itself, the premature termination of the term of the chair would not have caused any problems, had it not been for subsequent developments. Less than 18 months later, in July 2011, seven non-attached MPs were nominated for members of standing committees, two of them were elected and the election of the other five was postponed. According to media commentators, the elections were held in breach of the originally approved procedures and were organised by the GERB group as payment for the support of the non-attached MPs for the GERB government at the third non-confidence vote against the Borisov Government.[35]

In this case what matters is not the arbitrary breach of parliamentary procedures for the election and recall of committee members but the fact that the election of two non-attached MPs to seats in the standing committees completely delegitimizes the parity principle, since it is based on representation of parliamentary party factions.

This illustrates that so far anti-majoritism in the operation of standing committees is ensured through a dysfunctional model, which continues to diverge from the established parliamentary traditions of party nominations and party discipline. Parity not only leads to a temporary blockage in the functioning of the specialised Committee but it also, according to some experts, has a significant adverse effect on its work, since the limited number of committee members cannot provide adequate law-making resources.

Another factor which, for the time being, ensures the stability of the majoritarian model of decision-making is the negative public attitude concerning broad parliamentary support which was a distinctive and typical feature of the governance pattern of BSP, NDSV and DPS. The Stanishev Government made sure it would serve its full four-year term by forming a broad post-election coalition where party programmes and priorities receded to political pragmatism and situation-driven

[33] The DPS nomination was Delyan Peevski.

[34] It was not the first time that a parliamentary group had boycotted committee participation in order to reassert its position. In the previous legislature, this was also a strategy employed by the opposition which completely blocked the proceedings of the Committee for Oversight of SANS. The latter was established in November 2008 and for five months its membership consisted only of MPs from the ruling majority, with DSB (Democrats for Strong Bulgaria) and ODS (United Democratic Forces) refusing to nominate their representatives throughout the term of the 40th National Assembly.

[35] "GERB Paid Back Non-Attached MPs by Granting Them a Quota in Parliamentary Committees", in Sega Daily, 27 July 2011; "GERB Obtained 2 Seats for Non-Attached in Parliamentary Committees", in Trud Daily, 27 July 2011.

"challenges". The government enjoyed a parliamentary majority of two-thirds by which it managed to get approval for several constitutional amendments but also to delegitimize (compromise) for a long time consensus as a procedure for making effective and politically responsible government decisions[36].

Party-biased assessments of Stanishev's broad coalition government aside, it is useful to point to the following paradox. Characteristically, consensus models employ parliamentary procedures, which limit the possibilities available to *ad hoc* majorities. An analysis of the results of votes in plenary during the period 2005-2009 would show a growing role of *ad hoc* majorities. There is almost no decrease in the large number of amendments to already adopted draft acts, which has become a characteristic feature of Bulgarian parliamentarianism. In other words, it seems reasonable to conclude that the coalition model of government by the BSP, NDSV and DPS was pseudo-anti-majoritarian and its effect was to delegitimize the consensus model of decision-making, rather than generate and ensure basic consensus. This needs to be publicly discussed and thought through rationally in order to establish an authentic and effective model of parliamentary anti-majoritism.

2.4. Determination and autonomy (Efficient Decision-Making)

Self-sustainability and coherence (consistency and congruence) of legislative instruments are key features ensuring efficiency of parliamentary decisions. Equality among MPs is an underlying principle of parliamentary representation. However, in a situation of equality, by definition, the power to block decisions greatly exceeds the power to push decisions through to passage[37]. This often leads to a paralysis and inability of the legislative body to take decisions, or the so-called "agenda gridlock".

Perhaps it would be appropriate to start with the observation that the National Assembly has an annual programme for EU-related legislation but no legislative programme in the priority area of combating OCPC. Yet before we look for a strategy setting out not only priorities but also a coherence of the legislative process, it is worthwhile to stress that only parties (through their party discipline and their complex coalition relationships) can ensure determination and autonomy in parliamentary procedure. Without parties, majoritarian procedures would form unstable, *ad hoc* majorities, which would render the legislative process chaotic and unpredictable. Parties are the "gate-keepers" who keep the legislative agenda under control, by distributing posts and assigning priority tags to issues. Party discipline and the importance of parties in Parliaments of unconsolidated democracies are much weaker and consequently their legislative process is far less efficient.

In identifying the party approach as a factor of parliamentary procedure efficiency, the first observation in the case of Bulgaria is that two of the four governments analysed in the past 12 years are formed by "new" parties. The term "a new party" in this case is a euphemism, since the institutionalisation

[36] Nevertheless, some experts believe that precisely because of the triple coalition formula and the broad parliamentary majority, it was possible to set up enquiry committees effectively and to exercise parliamentary oversight over political corruption. By way of example, those respondents cite the case of Roumen Petkov's resignation. In the opinion of others, that was precisely the heyday of corruption and organised crime, which had a considerable negative effect on the current parliament.

[37] Cox, Gary "The organisation of democratic legislatures" in: Weingast, Barry, and Donald Wittman, eds. The Oxford Handbook of Political Economy, Oxford University Press, 2005.

of parties always requires several decades and not several years. That is why, contrary to political correctness, it is appropriate to say that there has been a severe deficit of a party approach during the term in office of NDSV and GERB governments. This party approach deficit unequivocally generates a deficit of determination and autonomy of parliamentary decisions. Such a severe party approach deficit is characteristic of not only the two ruling new parties but also of the "new" formations of ATAKA and RZS.

Were we to apply the standard quantitative (temporal) criterion for party institutionalisation (several decades), it would become clear that the so-called traditional right-wing parties which emerged as SDS (Union of Democratic Forces) or on the basis of SDS also exhibit a party approach deficit. This also applies to DPS. The deficit stands out even more clearly when we apply the standard qualitative criterion of "de-personification" because both in DPS and in the parties from the Blue Coalition, the attitude to the personality of the dominating party leaders yields structure to the parties, unites and divides parliamentarians, much like the faction split in the Gaullist movement into "Giscardians" and "Anti-Giscardians".

The party approach deficit is most easily offset by developing clientelistic networks and organisational models. The high level of clientelism was registered a long time ago as a specific feature of all Bulgarian parties. Among countries included in the Democratic Accountability and Linkages Project[38], Bulgaria ranks amongst the countries with the highest level of clientelism. In 2009, when the survey was carried out, the clientelism index for the main parties[39] was as follows: DPS, with an average score as assessed unequivocally by all experts of 18.6 out of 20[40], followed by BSP with 17, followed by NDSV with 16.5, and GERB with 14.8. Traditional right-wing parties rely on clientelism to a much lesser extent, according to experts interviewed in the survey. SDS received 12.3, and DSB scored 10.4. The strong correlation between party clientelism and high levels of corruption and organised crime has been widely discussed. This "offsetting mechanism" of ensuring discipline in both parliamentary majorities and opposition, stands as the second factor generating helpless pluralism in the sector of combating OCPC.

In summary, the party approach deficit is the fundamental cause of Parliament's deficit of autonomy and efficiency in the area of combating OCPC, which in its turn leads to the helpless political pluralism in that sectoral policy. That is why it is not possible to make constructive recommendations to that end: for the time being, the Bulgarian Parliament is doomed to be failing in autonomy and determination, due to its deficit of a party approach.

Another substantial problem which all experts distinguish as the main weakness in autonomy and determination in the Parliament's policy in combating OCPC is the dominant role of the executive branch: it is exclusively through draft acts developed by the Council of Ministers that changes are made, yet again, in that sectoral policy. This is "business as usual" for the Bulgarian model of parliamentary governance, where the majoritarian (Westminster) model of government

[38] The database covers 85 countries, of which: 22 in the Americas, 14 in Asia and the Pacific Region, 18 post-Communist countries in Eastern and Central Europe, 16 West European democracies, and 15 countries in Africa and the Middle East. See Democratic Accountability and Linkages Project http://www.duke.edu/web/democracy/

[39] The average score of all parties surveyed is 12.2, with a standard deviation of 3.79.

[40] Under clientelism index b15.

is manifested in the predominant position of the executive branch over the legislative branch. It is hardly realistic or adequate to expect the introduction of even a *de minimis* level of checks and balances between the legislative and the executive branch, which is characteristic of consensus democracy. The unitary state and the unicameral parliament are the macro framework rendering such a project unfeasible. EU membership is the background factor, which had a very tangible contribution to the secondary power gain of the executive branch versus the legislative branch. Following the close of the accession period, in which the executive branch definitively dictated the legislative agenda, Bulgaria's effective membership in the EU yields additional strength to the authority of ministers and their capacity to set the legislative agenda of Parliament. Participation in the Council of the European Union has a visible effect on the legislative initiatives of the Minister of Finance, for example, and the participation of the Prime Minister in the European Council session almost every month significantly helps to create the impression that he is busy tackling strategic issues of pan-European import. A range of problems with the absorption of what is currently the main public resource for the country, European funds, further strengthens the centralisation of the decision-making process.

In summary, although the model of Bulgaria's parliamentary democracy and its effective EU membership serve as two major external factors behind the dominant role played by the executive over the legislative branch, it is also the natural mechanism by which four successive governments have been offsetting the deficit of a party approach in the Bulgarian parliament, and that mechanism has a positive effect on the sector of combating OCPC.

2.5 Debating priorities and policies of public import

On the one hand, the presentation of arguments in support of alternative positions makes the public aware of the agenda and policy tasks which MPs set for themselves but, on the other hand, it draws the boundaries of publicly acceptable and publicly inacceptable programmes and policies. Parliamentary debate is a component of "deliberative democracy", a prototype for any public deliberation. It is in Parliament and through parliamentary debate that the generally accepted norms and values we call "political culture and traditions" are identified, and consensus on national priorities is reached, which is a characteristic of all representative democracies.

Debate provides the effective link between voters and their representatives. The main prerequisites for an efficient debate procedure include keeping record of deliberations, guaranteed public access to transcripts, and keeping records of votes. With the introduction of electronic access to the archives of plenary sessions and parliamentary committee meetings, and the regular provision of timely information about them and about the respective votes, these are a highly reliable indicator of the efficiency of the debate. For debates of particular importance (key debates), voters are guaranteed the possibility to follow the positions of their representatives in real time and there is open ballot by recorded vote. These parliamentary resources are being effectively used yet at the same time they can serve as a basis for an institutional breakthrough in combating OCPC.

More importantly, let us explore the individual and group attitudes generated by debates in the sector of combating OCPC and whether they are conducive to inefficient parliamentary action. Since most of the interviewed experts are politicians having many years of experience in the area of combating OCPC,

and practically all experts have key roles to play in the process of public opinion-making on anti-OCPC issues, attitudes registered by the interviews are symptomatic of the deficits currently present in the product of the public debate. Without any claims to being exhaustive, let us dwell on several attitudes, which have a pronounced eroding effect.

"People will always be corruptible, or 'the system generates corruption'": the assumption that corruption is inherent to the human condition, or that it is a systemic feature of societal organisation is widely spread. It excludes any assessment of integrity and the development of a procedural integrity index, which could show significant differences in two related institutions, for example, parliament and parties. This is a method, which has proved its efficiency both as a form of monitoring and as an instrument for designing anti-corruption strategies. In the EU, the international organisation *Transparency International* makes effective use of the instrument.

"Politicians do not have adequate knowledge; they are even unaware of the well-known models aimed at combating corruption and organised crime": the assumption is that effective policies in the area of combating OCPC can be made only by people who have worked in law enforcement and the judiciary. This is a cultural stereotype similar to the popular attitude that rule of law can be ensured only when lawyers take part in government, that an effective health policy and healthcare reform can be carried out only by doctors, that educational policy should only be reserved for teachers and academics, etc. Politically generated professionalism in the sector is often refuted by representatives of the judiciary and all criteria referring to institutional integrity are no more than empty talk.

"The problems of political corruption and combating organised crime are linked to "transitional politicians". As soon as that generation of politicians steps down, those problems will very easily be resolved". At this point, it is appropriate to refer to Machiavelli, who described transition as "a female time, when everything depends on the situation, the personal charm or artfulness of politicians. When people's behaviour is immoral and fickle, there are no laws or common rules and barely half of political events could be understood or explained. A time of great gains and great losses, when all join the ranks of a reformer's enemy – those who have benefited from the previous order, those who are benefitting from the present disorder and those who will benefit tomorrow". Such qualifications hardly apply only to people whose parliamentary career began prior to 2001.

"Corruption is a shameful fact and a stain on any party or coalition which its members and supporters should never mention." The Bulgarian political debate tradition commands silence in terms of any facts incriminating one's fellow party members or coalition partners in corruption. Even if anyone should venture to comment on "their own folk", this is perceived as hypocrisy, demagoguery or manipulation.

The cultural stereotypes listed above can be effectively changed only if they are constantly the focus of public debate. For now, the tendency in public debate is to entrench them, even play speculative games with them, rather than overcome them.

Failings of the Parliamentary Oversight of the Security Sector (2001–2011)

Stoycho P. Stoychev

1. Parliamentary oversight of the Security Sector in Bulgaria

Although combating OCPC managed to push down all other priorities in the agendas of Bulgarian institutions, and although the measures undertaken by the executive authorities can definitely be described as unsuccessful, the National Assembly remains surprisingly indifferent to the problem. This institutional apathy is most apparent in terms of parliamentary scrutiny of law enforcement authorities. The empiric material gathered in the course of our project revealed three main causes for the failing efficiency of parliamentary scrutiny of the security sector in Bulgaria.

1.1 Lack of in-depth understanding of the essence of parliamentary scrutiny and its role in parliamentary practice

The analysis of the group discourse of the interviewed experts indicates that Bulgarian parliamentarians perceive scrutiny mostly as referring to asking questions within the regular Friday "parliamentary oversight" procedure, setting up inquiry commissions, or as actions involved in seizing judiciary authorities, mainly the prosecution. The formalisation of parliamentary scrutiny into a special session, held once a week, means that the rest of the time (or roughly 4/5 of the overall time), parliamentarians are busy doing other things which they obviously find to be of greater significance and political priority. At the same time, the share of questions raised in those sessions which deal with countering organised crime and political corruption is minimal, despite the fact that this is the most persistent criticism addressed at the functioning of government institutions in this country. This problem can be explained by the subordination position (as described earlier) of parliamentary majority *vis-à-vis* the executive branch, and the understanding shared by parliamentarians that their role boils down to representing the people in principle through making law (mostly, at the initiative of the executive branch) the implementation of which is the business of the government, the administration and the judiciary system in the broadest sense of the word.

1.2 Failings in the adequate institutionalisation of parliamentary scrutiny

Parliamentary committees are seen mostly as sections where MPs with relatively similar areas of expertise get together to discuss draft acts. Scrutiny work by parliamentary committees is minimal, but that is perceived as logical since there is a special plenary session dedicated to that.

1.3 The budget procedure as a scrutiny instrument remains unused

No attention is paid to the scrutiny possibilities offered by the budget procedure. At first sight, this is surprising because for a long time countries with a lasting democratic tradition have been using the budget as the most powerful checks-and-balances instrument to oversee the executive branch. In that instrument, parliament has a mechanism for setting goals for the executive, identifying the means to achieve such goals, and checking the effectiveness of actions in the use of those means to achieve the set goals. In the Bulgarian context, however, this instrument for oversight of public policies is not applied. The main reason for that is the overall logic of Bulgarian governance and the historic budgeting principle, which is to cover expenditure and not to fund targeted policies that have clearly measureable outcomes. This logic turns the debates on tax legislation and the budget into disputes over the concrete allocations of funds, and not into a debate on the objectives of public policies and their results, a debate which is a prerequisite for effective parliamentary oversight through the budget.

1.4 Poor efficiency of parliamentary scrutiny from 2001 till 2009

The above-mentioned prerequisites, coupled with the large parliamentary majorities in the 39th and particularly in the 40th National Assembly, explain the poor efficiency of parliamentary scrutiny in the period 2001-2009. In the 41st National Assembly, the parliamentary scrutiny system in the Bulgarian security sector exhibits a positive development, although it is too early to talk about full efficiency. On the one hand, this term began with a minority government, which predetermines the bigger weight to be carried by Parliament in inter-institutional relations. On the other hand, the State Agency for National Security Act, which came into force in 2008 as the first attempt to regulate the security services, provides legal grounds for a systematic and institutionalised scrutiny in this area, although a predominant number of the interviewed experts interpreted the adoption of the Act as a move in the internecine struggle within BSP, aiming to isolate the then Minister of the Interior Roumen Petkov. The scrutiny mechanism envisaged in the Act started to function in real terms at the beginning of the term of the 41st National Assembly. Until then, there was no legal basis for specialised oversight and general scrutiny was performed mostly by the Committee for Home Security and Public Order.

Evidence of the lack of effective institutionalisation of scrutiny in the 39th and the 40th National Assembly can be found in the various weights carried by that function under the various Committee chairmanships. Throughout the entire term of the 39th National Assembly, the Committee for Home Security and Public Order was chaired by Vladimir Donchev. The available data, which have been summarised in Table 1, indicates that in that period the Committee held approximately 30 meetings per month, and work on draft acts exceeded its oversight activity by a factor of 4. From the start of the term of the 40th National Assembly in August 2005 until January 2008, the Committee was chaired by Nikolai Svinarov. During that period, oversight work in the Committee registered a tangible increase, and in 2007 the number of meetings dealing with oversight activities almost equalled the number of meetings where draft acts were discussed. This ratio was retained under the chairmanship of Mincho Spasov, from February 2008 until June 2009. With the start of the term of the 41th National Assembly when the Committee chairmanship went to Atanas Atanassov, the oversight activity went down again. These dynamics can be explained by the fact that Vladimir Donchev was a representative of NDSV, the main party in the ruling coalition in

the 39th National Assembly, while Atanas Atanassov was a representative of the ruling party in the 41st National Assembly.

When the ruling majority has a monopoly on setting the Committee agenda, and the chairman and the sectoral minister belong to one and the same party, it is logical that oversight activities tend to drop down to the minimum level. Although Nikolai Svinarov and Mincho Spasov also represented the ruling coalition during the term of the 40th National Assembly, they were not nominated by the main party in that coalition, which made them more independent of the executive government, particularly as the sectoral minister was not from their party.

1.5 Contribution of the specialised parliamentary committees

In the case of the 41st National Assembly however, there is yet another significant factor in play. Several specialised parliamentary committees were set up with the main function of overseeing the security sector. This leads to a differentiation in tasks and a lesser involvement of the Home Security Committee in oversight activities. Although the oversight of the activities of the Interior Ministry, which is a key instrument in combating OCPC, remains within the remit of that particular committee, the specialisation and institutionalisation of parliamentary scrutiny in the sector take their first steps in the specialised committees.

According to the publicly accessible database of the National Assembly[41], the organisational structure of the 39th National Assembly did not include any specialised committee or subcommittee to deal with scrutiny of the security sector as its priority task. In the 40th National Assembly, two specialised subcommittees were established: a Standing Subcommittee for Oversight of the Work of Security Services and Public Order Services, and a Subcommittee of the Defence Committee which was tasked with parliamentary scrutiny of the activities of the National Intelligence Service, the National Protection Service and the Military Information Service of the Ministry of Defence. The former comprised ten members, and the latter consisted of three MPs. There is no publicly accessible, institutional information about the activities of these two permanent subcommittees. According to the available records, they did not meet at all and did not perform any activities. The situation with the Standing Committee for Oversight of SANS which was set up at the end of the term of the 40th National Assembly is identical (Table 1).

The mechanisms for specialised parliamentary scrutiny in the security sector became functional only in the 41st National Assembly. In addition to the traditional Committee for Home Security and Public Order, the following standing bodies were set up in the 41st National Assembly: Committee for Oversight of SANS, and a Subcommittee of the Legal Affairs Committee, which performs the parliamentary oversight and monitoring provided for in Article 34b of the Special Investigating Techniques (SIT) Act, and Article 261b of the Electronic Communications Act. The Subcommittee for Parliamentary Oversight of the Activities of the National Intelligence Service (NIS), the National Protection Service (NPS) and the MoD Military Information Service (MoDMIS) set up during the previous parliamentary term is also retained.

[41] www.parliament.bg visited on 25 June 2011.

Table 1.
Work done by the specialised parliamentary committees (2003-2011)

	Committee	*Meetings*		*On Draft acts*	*On Over-sight*
		Total	*ave/mo*		
2003	Committee for Home Security and Public Order	15	3	11	5
2004	Committee for Home Security and Public Order	30	3	26	6
2005	Committee for Home Security and Public Order	28	2	22	3
2006	Committee for Home Security and Public Order	32	3	22	10
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2007	Committee for Home Security and Public Order	23	2	13	10
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2008	Committee for Home Security and Public Order	40	3	25	21
	Committee for Oversight of SANS	-	-	-	-
	Subcommittee for Oversight of NIS, NPS and MoDMIS	-	-	-	-
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2009	Committee for Home Security and Public Order	34	3	25	11
	Committee for Oversight of SANS	15	3	4	11
	Subcommittee for Oversight of NIS, NPS and MoDMIS	0	0	0	0
	Subcommittee for Oversight of the Use of SIT	-	-	-	-
	Subcommittee for Oversight of the Work of Security Services and Public Order Services	-	-	-	-
2010	Committee for Home Security and Public Order	36	3	25	7
	Committee for Oversight of SANS	22	2	4	20
	Subcommittee for Oversight of NIS, NPS and MoDMIS	0	0	0	0
	Subcommittee for Oversight of the Use of SIT	15	2	0	14
2011	Committee for Home Security and Public Order	16	3	13	3
	Committee for Oversight of SANS	6	1	2	6
	Subcommittee for Oversight of NIS, NPS and MoDMIS	4	1	0	4
	Subcommittee for Oversight of the Use of SIT	4	1	0	3

Source: www.parliament.bg visited on 25 June 2011. The 2003 data refers to one-month periods from July to December. The 2011 data covers January to June.

The data shown in Table 1 demonstrates that the main function of the Committee for Home Security and Public Order in the 41st National Assembly is to work on draft acts within its sector. The Committee has been quite active. From the beginning of the term until the end of Q2 of 2011, it held 69 meetings, or an average of 3 meetings per month. In 52 of these meetings, it discussed a number of draft acts. At the same time, only 11 meetings dealt with parliamentary oversight activities. The ratio between law-making activities and oversight activities is almost 5:1 in favour of the latter.

In the period under review, the Committee for Oversight of SANS (COSANS) met 43 times and at 10 of its meetings it discussed draft acts, while in 37 meetings it carried out various oversight activities. A particular feature of this committee is that it is composed on the basis of the parity principle and includes one representative from each parliamentary group and it is chaired on a rotating basis by each of its members, with the exception of the representative of the largest parliamentary group. This model of organising the committee has a number of positive aspects, but it also generates certain problems. One such problem is weak leadership, which is a negative consequence of having a rotating chairmanship. The Committee was most active in the beginning, during the chairmanship of Ivan Kostov (23 meetings). Its activity slowed down under its next chairman Volen Siderov (14 meetings), and under the third, Kamen Kostadinov (with 6 meetings over six months), meetings became a rarity.

The Subcommittee for Oversight of the Use of Special Investigating Techniques, which was set up in 2010, held 19 meetings, 17 of which dwelled on matters of parliamentary scrutiny. At the same time, the Subcommittee has not discussed a single draft act. Similarly to COSANS, this committee is designed on the basis of parity and has a rotating chairmanship. The other specialised subcommittee had no activity whatsoever in 2009 and 2010. In 2011, it held 4 meetings, 3 of which were dedicated to parliamentary scrutiny. The Committee has not discussed any draft acts.

1.6 Conclusions

Several key conclusions can be drawn from the review of the performance of these parliamentary committees.

1.6.1 Real oversight is exercised in the presence of a clear mandate assigned by law.

Committees which are actively engaged in parliamentary scrutiny are so by way of complying with obligations prescribed by a special law (the SANS Act and the SIT Act). Where there is no such legal prescription and, therefore, Parliament has the initiative and not the obligation, oversight is, instead, a practice of formalities and neither the overseen, nor the overseers expect to achieve any real result.

1.6.2 Specialised parliamentary oversight appeared only as late as at the end of 2009.

The Committee for Home Security and Public Order has always had predominantly legislative functions. Oversight activities carried out by this Committee involve no more than discussing the annual reports of various executive bodies, which are required by law to produce such reports. It is noteworthy that, where the Committee chairman and the interior minister are representatives of different parties, oversight activities have a significantly larger share in proceedings. Unfortunately, the number of empirical observations on this issue are not sufficiently high enough to allow for valid generalisations. Of the remaining three committees, two can be described as active (this is due to the fact that they have been set up under concrete legal provisions and have a clear mandate). The case of the Subcommittee for Oversight of NIS, NPS and MoDMIS is quite different. Currently, the activities of the services it is supposed to oversee remain secret and outside any legal regulation. Practically, this poses substantial difficulties in the performance of adequate parliamentary scrutiny.

1.6.3 Role of parity-based composition and rotating chairmanship

The principles of parity-based composition and rotating representation, on which two of the actively functioning specialised committees are based, enhance the institutionalisation of effective parliamentary scrutiny of the security sector. They ensure that decision-making is free from any domination on the part of the parliamentary majority and that there is no monopoly on agenda-setting. At the same time, the rotation of chairmanship, in its present form, is conducive to weak leadership. It does not allow the committee to elaborate a comprehensive action programme and measures, which results in a lack of activity.

1.6.4 Limited scope of specialised oversight

The scope of specialised parliamentary oversight is limited. It refers only to the work of SANS. The remaining services are subject to scrutiny only in case they employ special investigating techniques.[42]

1.6.5 Lack of internal parliamentary know-how

Parliamentary committees are not supported by any specialised administration consisting of experts who could produce adequate expertise and assessments. Currently, committees rely primarily on the expertise of the very agencies they oversee.

1.6.6 No use made of the budgetary oversight mechanism

The current practice in the adoption of the state budget does not involve any active participation by Parliament. On the contrary, the executive branch carries out the budget planning and it is extremely easy for them to push their budget draft act through, which gives them a free hand to act completely at their discretion, and above all, at the discretion of the minister of finance. This is a problem for the Bulgarian parliamentary system in general but in the security sector its consequences are even graver. Since a large part of the activities of security agencies is secret, their behaviour can be subject to scrutiny almost exclusively through the budget funds they are granted in order to carry them out.

2. Vision and development

In addition to its specific oversight activities, Parliament has the possibility to take an active part in the strategic planning process in the sector and could even be a key player in it because the identification of general guidelines in the area of security calls not only for strictly specialised, technical knowledge and classified information but a political vision as well. This enables parliaments to be active and useful in the discussion and adoption of the overall security policy, various strategic and reference framework documents such as strategies concerning national security, combating organised crime, corruption, etc. At the same time, being the most representative of authorities and the principal in terms of public spending, the parliamentary institution can make use of the budget mechanisms to determine the course of security policies. As in any other sectoral policy, the active participation of Parliament in the strategic planning and budgeting in the security sector equips it with this valuable instrument in the process of ex-post control.

[42] For more on the specifics of oversight of the performance of SANS by the parliamentary committee, see Monitoring of State Agency for National Security 2010. Sofia: RiskMonitor.

2.1 Institutionalisation

In order to be effective, parliamentary scrutiny of the security sector should, first and foremost, be institutionalised as an element of the overall institutional set-up in this priority area.

2.1.1 Legal regulation

This requires, above all, a legal regulation of the sector and of the mechanisms relating to the identification of objectives to be addressed by these public policies, their implementation, and their routine public scrutiny through the parliamentary process. Unless this basic prerequisite is there, it is impossible to implement the concept of public scrutiny. It is only possible in clearly regulated areas. The lack of regulation, whether explicit or conventional, means that the areas in question are not public in nature and cannot possibly be subject to public scrutiny.

2.1.2 Stability

The second precondition for the institutionalisation of scrutiny is the stability of the respective regulative mechanisms. That is why it is appropriate to make it difficult to make changes to the scrutiny functions of Parliament *vis-à-vis* the security sector. Generally, this is done by including such provisions in the text of the Constitution. An alternative solution is to regulate scrutiny in a law, which can only be amended by a qualified parliamentary majority (for example, by three-quarters of all votes). However, it is preferable to put these provisions in the Constitution because it usually implies judicial review for compliance.

2.1.3 Parliamentary specialisation

The third precondition refers to parliamentary specialisation, by setting up a standing committee/committees for that purpose and providing it with adequate administrative and expert staff. To avoid duplication of functions and the problems arising from inefficient coordination, it would be appropriate to place supervision with a single standing subcommittee of the Home Security Committee. This would enable a narrower specialisation of its members and more effective coordination in their work.

2.1.4 Balanced representation

To ensure broad representation in the exercise of scrutiny, it is necessary to take some special structural decisions concerning the constitution of such a subcommittee. Firstly, there should be parity between the representatives of the ruling majority and the opposition because a predominance of the ruling majority would largely make the existence of oversight mechanisms pointless. On the other hand, a predominance of the opposition holds the risk of politicizing oversight and of useless hair-splitting, which could end up incapacitating the special services. Although a balance in the composition of committees also holds certain risks, such as the risk of a gridlock between majority and opposition and hence a blockage of the oversight mechanism, it would foster political dialogue and efforts to reach consensus.

The requirement to take committee decisions by consensus is another instrument to achieve greater representation in exercising oversight of the sector. It can also be used as an offsetting mechanism in committees structured on the basis of proportionality or another non-parity principle. Another important precondition for wide representation in oversight is the existence of mechanisms to prevent monopolization of the committee agenda-setting and its decision-making

procedure. Such mechanisms include rotating or collegiate chairmanship, which guarantees a relatively equal access for all committee members to agenda-setting.

2.2 Scope

To be effective, parliamentary scrutiny ought to cover the entire security sector. This means that all government agencies, services and other entities involved with security matters should be subject to scrutiny. To ensure the comprehensiveness of scope, it is necessary to introduce a binding requirement to provide information and send an authorized representative of each agency or service when their presence is requested by the sectoral parliamentary committee. If such an obligation is legally binding only for the sectoral minister, the scope of scrutiny would not be comprehensive.

2.3 Budget control

As already noted on several occasions, one of the most powerful instruments in the hands of the legislative branch is participation in the discussion of the draft budget and oversight of its adoption and implementation. By controlling the implementation of the budgets of the respective agencies and services, Parliament can oversee the efficient performance of their functions and the achievement of the set goals. To have effective budget control, it is necessary above all to have Parliament play an active role in setting the goals and objectives for the sector and in the budgeting process for its activities. Under the very real threat of having their operational budget cut in case their performance is unsatisfactory, agencies and services would have a strong incentive to be more responsible and efficient in carrying out their duties, including those relating to transparency and accountability in their activities.

2.4 Administrative and expert capacity

Effective oversight in the security sector assumes that the committee exercising oversight ought to have specialised expertise and access to classified information. Usually, MPs are political figures who do not have any specific experience in the security sector. At the same time, the limited length of their term of office does not afford them the time to specialise. That is why, in carrying out their oversight functions, committees rely on two main sources of expertise: representatives of the agencies they oversee and external experts. The classified nature of the information being handled precludes its full disclosure to external experts. That is why the committees cannot rely on fully adequate, independent expertise. However, this puts the oversight committees in an unfavourable dependency in terms of information and expertise from the entities they must oversee.

To overcome this problem, it is necessary to set up specialised administrations to support the oversight committees, staffed with former employees of the special services who enjoy public trust and have extensive professional experience, as well as other experts with substantial practical experience in the sector. Also, there should be guarantees that such administrative units would be stable in time and would not be subject to dramatic changes in terms of organisational structure and personnel with every change of the ruling majority. In this way Parliament would acquire autonomy in terms of expertise, which enhances the adequacy of parliamentary scrutiny.

ISBN 978 954 2914 12 9