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Bulgaria: Civil Society Report

by Transparency International Bulgaria

An input to the UNCAC Implementation Review Mechanism: First year of review of UNCAC chapters III and IV

-Executive Summary-

This is the executive summary of a Transparency International Bulgaria report¹ that reviews Bulgaria's implementation and enforcement of selected articles in UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of Bulgaria covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

At first sight, the implementation of the UNCAC has been relatively successful, as evidenced by government steps to amend existing legislation to bring national laws into compliance with the UNCAC. However, deficiencies still need to be addressed. Moreover, enforcement of these laws has been less than satisfactory in practice.

Assessment of the review process

Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Bulgaria.

Table 1 Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	No
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published on line or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report	Positive indications

Availability of information

Accessing information on corruption-related crimes is very challenging for citizens and civil society organisations in Bulgaria. This is mainly because there is incomplete data and a lack of uniformity and co-ordination due to the different criteria used by governmental institutions in

¹ The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its author is Diana Kovatcheva, Transparency International Bulgaria. The final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

collecting and analysing these statistics.² As a result of these discrepancies, it is difficult to measure the effectiveness of anti-corruption programmes.

This report is based on information obtained from a number of governmental institutions and civil society organisations, among 20 organisations that were contacted with a questionnaire.³ These included the Supreme Court of Cassation, the National Prosecution Office, the Ministry of Justice, the Association of Prosecutors in Bulgaria and the CSO Access to Information Programme. In addition to information from the questionnaire responses, this report also reflects TI-Bulgaria's independent research and analysis of laws, regulations and other materials.

Findings on implementation and enforcement of UNCAC

At first glance, Bulgaria's national legislation implements all mandatory provisions of the UNCAC assessed in this report. However, the legal framework does not provide for criminal liability of legal persons or adequately provide a framework for illicit enrichment, neither of which is mandatory but would be desirable.

The poor enforcement of national legislation regarding corruption-related crimes is cause for great concern. The main shortcomings in the enforcement system are the lack of complete and reliable data on corruption-related cases; the low level of independence of investigators, prosecutors and judges from political pressure; the complete lack of enforcement of the liability of legal persons (companies); and the lack of an effective witness protection programme and mutual assistance framework.

Recommendations for priority actions

Bulgaria needs to undertake several high-priority reforms, including the following:

1. Pay immediate attention to the liability of legal persons, especially considering that enforcement efforts of the current legal regime have been minimal.

Although Bulgaria has adopted legislation consistent with the requirements of UNCAC Article 26, there is little evidence of enforcement of this new regime. While the National Prosecution Office is currently working on the enforcement of LAOS Article 83, it should be more active in doing so. In addition, it is widely agreed that a new, more effective law should be adopted. In Bulgaria, corporations are "frequent vehicles for the payment of bribes", and "the use of elaborate financial structures and accounting techniques to conceal the nature of transactions is commonplace."⁴ Thus, it is especially important that Bulgarian legislation adequately addresses this problem.

Moreover, Bulgaria should amend the LAOS to make all investigative tools available for the prosecution of natural person also available for the prosecution of legal persons, and allocate sufficient resources for their prosecution. Bulgaria should also clarify which court has

² The data in the statistics on corruption-related cases and crimes provided by the various governmental institutions approached varied significantly due to the criteria they use (e.g. statistics from the National Prosecution Office, the Supreme Court of Cassation differ significantly as evident from the Parallel Review Questionnaire from January 2011). Although approached, the Supreme Judicial Council did not provide information on statistics, despite their obligation according to Article 377 of the Judicial System Act (amend. – SG 33/09) to collect judicial statistics. Based on the information received by the other institutions (National Prosecution Office, Supreme Court of Cassation and the Ministry of Justice) during the process of preparing the reports TI Bulgaria brought the differences in the tables in compliance with the requirements of the questionnaires based on the data from the National Prosecution Office and the Ministry of Justice. For more details see Section III B of the report (key issues related to enforcement).

³ The agencies are the Supreme Court of Cassation, National Prosecution Office, Ministry of Justice, Supreme Judicial Council, Supreme Bar Council, Union of Judges in Bulgaria, Association of Prosecutors in Bulgaria, Union of Jurists, Bulgarian Centre for Non-Profit Law, Journalists against Corruption Club, Open Society Institute, Risk Monitor, Centre for Liberal Strategies, Programme Access to Information, Bulgarian Centre for Gender Research, Confederation of Employers and Industrialists in Bulgaria, Bulgarian Business Leaders Forum, Bulgarian Industrial Association, Bulgarian Chamber of Commerce and the Bulgarian Institute for Legal Initiatives.

⁴ Mark Pieth, Lucinda A. Low, Peter J. Cullen, *The Convention on Combating Bribery: A Commentary* 6 (OECD, 2006); available at: www.oecd.org/dataoecd/27/34/39200754.pdf

jurisdiction to hear such cases.⁵ In addition, Bulgaria should provide adequate training for judges, prosecutors and law enforcement on the new provisions for liability of legal persons and corporate investigations, in order to increase awareness of the law and ensure its proper enforcement. These changes are necessary for the successful investigation, prosecution and sanctioning of legal persons in Bulgaria.

2. Improve the witness protection mechanism through more efficient implementation of the existing legal framework.

As suggested by the Association of Prosecutors in Bulgaria, there is a need to improve the practical application of the witness protection mechanism so that it actually protects victims and witnesses involved in corruption proceedings. The protection of witnesses and victims is not effective, which may discourage them from participating in corruption-related cases. Experts and reporting persons are also not adequately protected. Moreover, national legislation should provide for the protection of whistleblowers in the private sector. Current provisions on the protection of whistleblowers are limited to the public sector and subject to extremely poor implementation.

3. Improve the current enforcement mechanism needs to be improved.

Ensuring the independence of investigators, prosecutors and judges is crucial in combating corruption. In addition, establishing a unified database on case statistics would ensure a meaningful review of the process of implementing and enforcing legislation on corruption-related cases. Other ways to strengthen the capacity of law enforcement institutions include ensuring better coordination between prosecution and investigation agencies, and providing adequate resources and training to judges, prosecutors and investigators.

4. In addition it is recommended to include introduce legislation on illicit enrichment and to improve inter-institutional coordination mechanisms on mutual legal assistance.

The full Transparency International Bulgaria review report can be found at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>

⁵ Id. at 13.