Chapter VI

CURRENT LEGAL REGULATIONS - A BASIS FOR GENERATING CORRUPTION THROUGH DIFFERENT SOCIAL PRACTICES, LEGALLY GROUNDED

A. Kavrukova, D. Kyumyurdzhiev, B. Stankov

This survey is aimed at analysing the ways and degree in which the active material and procedural law, by regulating separate spheres of social relations, provides real ground for effecting corruption - both individual and group. Therefore the analysis of the legal framework should point out the extent to which the legislation ensures "an environment engendering corruption."

The research can be outlined in three basic aspects*:*

- Analysis of active legal regimes and their legalisation in general;
- Survey of the deficiencies in law - in what way the lack of legal regulations generates corruption;
- Juridical procedures and sanctions for limiting corruption.

Considering the multi-aspect scope of the survey and the objectives of the current summarised analytical estimate, we shall dwell on the following *basic groups of social relations*, which, under the respective juridical regulation, create prerequisites for corruption:

- Analysis of all types of special regimes based on issuing permits (licences), registration, concession;
- Analysis of the legal framework regarding privatisation as a form of disposing of state-owned and municipal property;
- Survey of legal regulations on taxation and customs, along with their proper implementation;
- The fight against corruption by the means of criminal law.

1. RESULTS FROM THE SURVEY OF ACTIVE REGULATIONS ON PERMIT, REGISTRATION AND CONCESSION REGIMES

The subject of this survey is all permit (licence), registration and concession regimes, regulated by law, which are now in force, with the objective of:

- Pointing out the essential characteristics and typical situations underlying the regime in question;
- Assessing their quantitative ratio on a legal basis;
- Analysing how far the specific regimes are socially justified, i.e. whether they display features rendering them as necessary and inevitable for the democratic processes in a legislative state, or whether due to their inept or irrelevant character, these regimes stimulate corruption;

• Outlining the framework of a discussion with an emphasis on the topic of generating ideas about improving and rationalising current licence regimes, enhancing their efficiency, or substituting them with other forms of regulation that are less controversial and more resistant to corruption.

1.1. General characteristics and functioning of licence regimes

The licence regimes represent the legal power and rights of the state empowered to impose its will for achieving a certain socially-bound result. They belong to the juridical tools through which the state performs its regulatory function towards various and lawful individual and collective relations within a society, governed by the rules of state. The licence regimes are likely to restrict seriously the opportunities for realising certain rights of individuals and legal persons. The social implication of this type of legal tool is based upon the fact that they serve for protecting other important rights of individuals and the society as a whole, stipulated by the Constitution and laws respectively.

Due to the dual character of the licence regime itself - *prohibitive* for the legal subjects that have not been granted a licence, and *liberal* for those who have such a permit - this regime cannot emerge and exist accidentally, but only as a strict and precise, legally- and constitutionally-bound activity, performed by state institutions. The regime consists of three basic types:

1.1.1. Registration regime

It is not supposed to gauge the expediency of certain activities. The institution issuing the individual administrative act functions within bound competence, i.e. it ascertains only the actual observance of all requirements and terms of law, and consequently issues the permit. Under precise legal regulations, this type of permit regime does not provide conditions for a wide range of activities regarded as corruption.

1.1.2. Permit regime:

Under this type of regime, the institution acts in a two-pronged mode within the terms of bound competence and operative independence - when providing evaluations of expediency. The practical experience shows that these types of regimes are most likely to generate corruption - due either to the intended evaluation by the institution issuing permits, or to the inaccurate legal framework of the regime. Therefore, the respective institution should be instructed precisely on the criteria and requirements for making such estimations, in line with the law, so that its actions are subject to subsequent control, which is supposed to be judicial.

1.1.3. Licence regime

The licence represents a permission or consent, given by the owner of a exclusive protected right to another person, who therefore becomes entitled to it. However, most of the laws treat the notion "licence" as a synonym of "permit". It is admissible in cases when the state concedes its exclusive rights, regulated by law, to other persons. Nevertheless, most of the legal regulations in which "licence" stands for "permit" lack such precision.

1.2. Correlation - permit, licence, registration and concession regimes on a legal basis

The survey of legal acts currently in force in the Republic of Bulgaria can be summarised as follows:

• 63 laws dwell on permit regimes, with some regulating several regimes each;

- 19 laws regulate licence regimes;

- 46 legal acts involve registration regimes;

- 4 laws envisage the adoption of concession regimes.

The analysis proves that the number of laws regarding permit (licence) regimes exceeds by almost twice the ones regulating registration regimes. Considering the above-mentioned distinction between the characteristics of the two main regimes, it is necessary to point out that most often the institution empowered to issue the permit is provided a greater operating independence in respect of evaluation. Current practices show that the regimes, regulated hereby, definitely create prerequisites for engendering corruption, for different reasons:

- The law states generally that a permit should be issued for a certain activity, without specifying its objective and basis and how to implement it; with the lack of clear-cut legal regulations, the institution itself faces a difficult situation by being constantly exposed to cases of corruption. The registration regimes where the institution acts under bound competence have different characteristics;

- Incomplete legal and inaccurate sub-judicial regulation, creating prerequisites for the institution issuing the permit either to act at random or refrain from conducting any activities or only in such engendering corruption pressure. It is usually due to the lack of precise objectives and principles underlying certain permit regimes, thus obstructing the sub-judicial activities for their implementation. As a result there are sub-judicial legal regulations stipulating terms which are hardly intended by the law;

- The regime being regulated involves an irrelevant procedure - complicated and awkward, not in line with the importance and dynamic nature of what it is supposed to regulate. Such a regime provides grounds for activities effected within shorter terms or not complying with its conditions, and therefore regarded as corruption;

- Inadequate organisation regarding the implementation of the permit regime under which, even with ideal regulation, the institution is unable to effect all ensuing responsibilities; therefore the regime cannot actually function or functions in a way engendering corruption;

- Commercial aspects are evident in applying the regime, due to the lack of discipline observed by the institution;

- Lack of a strict system for executing control which should function along with the permit regime, thus creating prerequisites for random activities, immobility or privatisation of the regime;

- Lack of coherence in the functions of institutions responsible for the permit regime, in regard to the respective legal and organisational framework.

1.3. Permit regime or alternate way of effecting regulation

The permit regimes are mostly a form of executing preventive or regular administrative control. Therefore their introduction should be clearly motivated in respect to the ultimate goal, or another means of regulation should be used that leads to the same result while being less elaborate, more economical and less rigorous for the state and individuals. This turns out a pressing issue, especially when the law does not stipulate in detail the functioning of the regime.

Being less complicated and easily comprehensible, *the registration regime* is preferable if it is accompanied by a precise legal framework. The mechanisms for control are also more easily applicable to this regime, since its essential characteristics exclude the opportunity for providing a subjective evaluation on behalf of the respective institution, i.e. the evaluation is not based on the idea of expediency, but only on principles in conformity with the law. Another legal tool, although not universally applicable due to its particular aspects, is *the concession regime*, which is outlined in detail by the law on concessions. Quite embarrassing is the fact that the procedure for granting rights through concession is envisaged in only four laws within the current effective legal framework of Bulgaria. Moreover, the final stage is logically supposed to include the signing of contracts on concessions, precisely outlining the rights and obligations of respective parties, which are subject to judicial control in case of subsequent noncompliance.

Choosing the most appropriate permit regime is not an easy task, so it cannot be solved at random. In any case, however, the regime should be regulated by law and in conformity either with the Constitution or the international contract standards which under a certain legal act has been adjusted to domestic law. At the same time, considering the economic and social aspects of the regime, it should correspond to the pragmatic side of real life. Being a form of restriction on human activities, the permit regimes must actually restrict the damaging and hazardous consequences, without obstructing enterprising initiatives aimed at social welfare.

1.4. Recommendations for improving the permit regimes

In order to be less exposed to corruption, the legislation on permit regimes should:

- Specify clearly the objectives and tasks of the permit regime;

- Be buttressed by the statements, principles and ideas of the Constitution;

- Stipulate the procedure, terms and prerequisites for approving or disapproving the issue of a permit;

- Regulate the procedure and the institution which is supposed to effect legal proceedings regarding cases when the consent or refusal for a permit is in nonconformity with the law, making sure the respective institution should be a judicial authority;

- Point out the problems which the Council of Ministers or another executive institution is entitled to solve to specify the procedure and terms for the issue of a permit or a subsequent refusal;

- Outline the limits of operative independence to be achieved by the executive authority when implementing the permit regime;

- Specify clearly the institution empowered to issue the individual administrative act of permission or refusal, as well as the organisational structure which is responsible for executing the respective regime;

- Determine the sanctions in case of violating or evading the regime by individuals and officials, as well as the procedures for their implementation and subsequent appeal;

- Stipulate the procedure for remedying the unlawful consequences with a lasting, hazardous or similar nature resulting from a violation or evasion of the permit regime;

- Guarantee the integration of the permit regime with other regulatory mechanisms;

- Take into consideration the specific features of the type of permit regime and envisage the effective legal mechanisms for restricting malpractice and corruption;

- Make sure that the sub-judicial legal regulations, attached to the law, observe the legal objectives and tasks, in order to avoid additional restrictions of rights or certain burdens not envisaged by the law.

- Moreover, the institution, having issued the administrative act, is supposed to apply the law precisely. The permit regime should be executed through an organisational structure empowered to issue the individual administrative act. The required prerequisites regarding the necessary equipment and staff will guarantee comfortable, prompt and efficient service, as well as providing the involved persons with clear and simplified examples, forms and exact instructions. For the purposes of its efficient functioning, there should be a relevant system for performing periodical surveys and evaluations of the permit regime. Therefore concrete steps must be undertaken concerning eventual corrections in certain aspects, and a well-organised, strict system for control, excluding the opportunities for evading legal regulations or its practical substitution with a parallel grey regime.

2. TRANSPARENCY OF THE LEGAL FRAMEWORK ON PRIVATISATION

The privatisation in Bulgaria is a process which has been a pressing, divisive issue in society for more than six years. Initially it involved its general outlines, models and programmes, and nowadays involves mostly specific problems faced both by the new owners of former state-owned and municipal enterprises, and authorities entitled to execute the actual transformation of state property into private hands.

This part of the survey discusses the Law on Transformation and Privatisation of State and Municipal Enterprises (LTPSME), the Rules of Procedure of the Privatisation Agency, the Regulation on Tenders and the Regulation on Competitions.

The LTPSME provides the legal definition of the notion “privatisation”, stipulates the status of participants in privatisation, the authorities responsible for effecting the transfer of property - from state to private, the projects under privatisation, and the subsequent specific procedures. Article 3 of the Law stipulates the entities respectively authorised to take decisions on privatisation - the Privatisation Agency, ministers of separate industrial branches, as well as the municipal councils, in regards to the municipal privatisation.

2.1. Prerogatives of the privatising body under article 3

The systematic treatment of provisions concerning the definition of “the privatising body”, indicates that in most cases the decision for privatisation is performed by a single agency, not a collective entity - the respective minister of an industrial sector or the executive director of the Privatisation Agency. The opportunity for taking a sole decision on privatisation does not necessarily create hazard. However, the overall regulation, outlining the competence of the privatising body, refers to the text in article 3, i.e. the entity, specified by art. 3, can exercise a wide scope of prerogatives:

- Assigning the evaluation of the project under privatisation, to be accepted by the respective body;

• Choosing the method for effecting privatisation, i.e. the actual procedure for transforming the state property into private represents the main prerogative of the body, according to article 3. At the same time, the law does not stipulate any criteria on selecting the method for privatisation. Under the active law, the body pursuant to art. 3 is provided complete "operative independence" in deciding the sale of a certain enterprise, which appears to be one of the most considerable deficiencies in the legal framework. Obviously, it is not an easy task to outline any preliminary clear-cut criteria on classification of enterprises to be privatised through tender, competition or negotiations. However, the respective grading can be based either on the financial state of enterprises or the predominant need for effecting innovations or investments.

• The body, pursuant to article 3, is able to alter essential indicators of its decisions concerning privatisation - for example, it can cancel the announced procedure on privatisation, change the accepted stages of privatisation (from tender to negotiations with potential buyers) or the number of shares (interests) on offer.

• The lack of opportunity for executing judicial control upon the above mentioned prerogatives of the responsible body, whereas there are not any legal regulations regarding both the criteria on choosing the actual privatisation scheme and protection against subsequent alterations in the decision having been already accepted;

• Opportunities for a wide-ranging implementation of the privatisation scheme, underlain by certain by-laws, without legal regulations, especially as regards the separate stages representing one of the most frequent ways for property transformation - negotiations with potential buyers. The existing internal regulations (decided by and referring to a certain entity), respectively issued by the Privatisation Agency, can partially solve the problem of the lack of criteria for choosing the best offer, ensuring the required transparency and the possibility for controlling the expediency and correctness of the decision.

2.2. By-laws (regulation on tenders and competitions) stipulating rights which, by definition, should be legally regulated

Notwithstanding the acting legal regulations and practice, there are certain by-laws concerning rights which by definition should be postulated by law. Their provisions account for the following negative practical consequences:

• The privatising body can reject all competitive applications without explanation, and such an action cannot be contested by the participants in the competition;

• Legal opportunities for protection against shady practices in the process of organising and executing the tender or competition are granted only to participants, excluding persons who have not been given access to the tender in nonconformity with the law.

• The body, pursuant to article 3, is entitled to execute an internal competition, irrespective of the clash of interests. When there are parallel bids for purchase on behalf of two groups of individuals, it is empowered to stipulate on its own the terms of competition and the criteria on evaluation of offers;

• The entity under article 3 is free to decide whether to grant a permit to a legal person possessing 50 or more percent of state or municipal shares, to conclude a transaction concerning the right of use of certain tangible or intangible assets or its subsequent concession, if the total value of all assets being subject to such transactions within the current year exceeds 5% of the balance-sheet

value of tangible assets for the preceding year. The legal regulation does not clarify the cases in which the limitation is effective - provided the value (price) of transactions exceeds 5% of the balance-sheet value of tangible assets, or respectively the overall value of projects subject to such transactions.

3. PRECONDITIONS FOR CORRUPTION IN TAX AND DUTY LEGISLATION

Tax and duty obligations of physical and judicial persons by nature transfer property rights in favour of the state in order to execute its specific objectives and responsibilities. As they are burdening in character, tax and duty obligations should be specifically set. This principle exists in the Constitution of the Republic of Bulgaria, article 60, para. 2, and so it does in the philosophy of tax and duty legislation. The legislative application is assigned to the respective state administration, which functions under the conditions of *confined competence*, i.e. the state office does not decide to create certain obligations to the state, but only determines an obligation that is already existing and established by the regulations in force. All deviations in legislation from the principle of confined competence may become a serious factor in corruption and for legal violation in determining the tax and duty obligations. Considering the great importance of taxes and duties for the economic behaviour and results of legal entities, prerequisites for corruption are to a great extent in a position to distort law and order and the economic purpose of taxes and duties on the whole.

Another important factor for the proper application of tax and duty laws is the *procedural order* of applying material tax and duty regulations. Each possibility to violate this order because of the lack of the sanction or responsibility on behalf of the state office, each oversight in procedural legislature may become a major prerequisite for corruption in the application of the law.

3.1. Deviations from the principle of confined competence

Tax and duty legislation is divided among numerous acts and regulations - the VAT Act, Corporate Income Taxation Act, Customs Act, Regulations for the Customs Act Application, Regulations on Customs Control over Goods Crossing the State Border of the Republic of Bulgaria, Council of Ministers Decree N 39/1996 on customs taxation value of imported goods, Customs Tariffs, etc. It should be pointed out that, with a few exceptions, tax and duty legislation strictly observes the principle of confined competence of tax and customs administration in applying material tax and duty legal norms. There are some exceptions as in article 5, para. 4 of the transitional and final provisions of the VAT Act, art. 8 of the Corporate Income Taxation act, and art. 15, para. 3, p. 1 of the Corporate Income Taxation Act, in which the term “market price” is insufficiently defined, and so are the order and procedure of determining the market price for tax purposes, providing the possibility for the price to be determined by the taxation office at its own discretion. Particularly striking is the deviation from the principle of confined competence in art. 20, p. 4 of the Corporate Income Taxation Act. As to art. 18 of the Regulations on Customs Control Over Goods, the subject of provision-granting is left to the judgement of the respective customs authorities, without any settled restrictions or procedures.

A major problem arises in regard to the interpretation and application of acts. It refers not so much to the normative contents, but to the personnel classification, labor organisation, equipment, remuneration of state officials, etc. This is the point of the basic legislative drawbacks in regard to the prerequisites for yielding informal relations between the administration and taxpayers, i.e. for corruption in one form or another.

3.2. Drawbacks in the process of determining tax obligations and appeals

The tax process is resolved in detail by the Taxation Procedure Act. It regulates the authority of the tax administration and the conditions in the process, as well as the assistance taxpayers are obliged to provide. There are, however, some drawbacks in the legal regulations too.

3.2.1. Taxability

This subject faces the following problems:

- The lack of sufficient protection for tax-liable persons against the tax administration and the individual administrative acts that determine their tax obligations. Appeal procedures (i.e. protection) against the Municipal Tax Administration and the provisions are settled by Art. 23-26 of the Taxation Procedure Act, which follow the general order for appealing individual administrative acts before a higher administrative institution, and consequently before the court. A controversial question is whether there is a need at all for administrative appeal, as the main interest of taxpayers filing an appeal is going through procedures in the most rapid way. Major drawbacks of appeals are the complicated procedures, disregard of deadlines, and lack of sanctions for incompetent officials. This impossibility for expedient processing of administrative procedures may essentially create informal relations between the taxpayer and the administration;

- Lack of clear and precise criteria and rules for the tax registration of trade and public entities, which is also valid for their customs registration and re-registration;

- The question of reimbursements for overpaid or undue sums collected by the tax administration as a prerequisite for corruption, as a result of a lack of terms for making the necessary taxation revision, and thus placing the taxpayer in a position of direct financial dependence on the administrative actions.

3.2.2. Customs administration

The problems with custom duties are very much the same. Customs administration proceedings may be appealed before customs management, which means, just like in the tax process, that without the resolution of the head of the customs administration, a court process cannot be started. Everything said for the taxation process is absolutely valid for the appeals process against proceedings of the customs authorities. Article 89, para. 1 of the Regulations for Customs Act Application illegally deprives the interested legal entities of the right of protection by declaring as final the resolution of the head of the customs administration, which contradicts Art. 120 of the Constitution and Resolution N 21/1995 of the Constitutional Court.

3.3. **Legal gaps and unsettled issues**

A major issue concerning the activities of the tax administration, which could be a prerequisite for corruption, is the lack of legal regulations for issuing certificates for tax obligations and other state receipts to taxpayers, which greatly affects their activities. It becomes necessary to regulate the procedure for issuing such certificates and other documents from the tax administration, including the introduction of certain fees for services performed by the state authority, terms (including for quicker processing) for issuing documents, etc.

4. FIGHT AGAINST CORRUPTION BY CRIMINAL LEGISLATIVE PROVISIONS

4.1. Defining the term "corruption"

The Criminal Code does not define the term "corruption". This makes it difficult to outline the frame of the crime. The definitions of corruption are moreover theoretical attempts that contain legal and purely sociological elements.

According to the definition of the Council of Europe in the programme for the fight against corruption, the term should be regarded as "bribery or any other deeds involving persons from the state or private sector, whose obligations, derived from their positions as state officials, employees in the private sector, independent agents or any of the kind, are not observed in order to receive illegal benefits of any kind for their own or other persons". This definition allows treatment of the phenomenon in all its aspects, which could be further reduced to two elements - concentration of power and malfeasance of power/ benefit derivations.

4.1.1. Concentration of power

Power is the focus of corruption. It is a peculiar commodity, the price of which corresponds to its public importance. As such it is offered and demanded by the citizens, even in cases of rights guaranteed by the Constitution and the law. The concentration of more authority in the hands of officials, especially when it is exercised exclusively, makes citizens dependent to a large extent on these persons, which is a precondition for spreading corruption.

With the amendment in Art. 93, para. 1, b."b" of the Criminal Code in 1993 and 1997, Bulgaria is ahead of many other countries, defining as an official person the one-man trade entity, the private notary and the assistant notary. Introducing criminal liability for corruption in the private sector is familiar only in Sweden, Denmark, the USA and the Netherlands.

4.1.2. Power malfeasance / benefit derivations

Power is entrusted to a single person or a group of people by an act or a labour contract. Malfeasance exists in or due to the execution of an activity as a rule in the management of sectors such as economy and finance, administration, law and private business. Malfeasance of authority is executed in order to derive personal or corporate benefits.

Benefits can accrue not just in the form of money or goods. Misuse of authority may aim at gaining political and public prestige, which in the end give access to more benefits. Malfeasance of authority includes misuse of power. Power is exercised by executing more authority.

Corruption may refer to a single deed or to an entire system of corruption. This approach helps to overcome the extremely limited understanding of corruption as a crime related only to bribery, instead regarding it in a wider scope of crimes involving graft. Such an approach may give grounds for new amendments to the Criminal Code.

4.2. Crimes related to corruption

4.2.1. Condition and dynamics of bribery

Bribery is the basic form of corruption. Its various hypotheses are regulated in Art. 301-307 of the Criminal Code. From the comparatively legal aspect, bribery is undoubtedly a crime, as it is

covered in all criminal law systems. Traditionally, the Bulgarian legislator considers as a crime both passive and active bribery.

In the period 1991-1997 in Bulgaria the police registered 600 cases of bribery, an annual average of 86. Courts have sanctioned 92 acts of bribery committed by 99 persons - an annual average of 13 crimes and 14 convicted persons. In 1992, when the highest level of conventional criminality was reached, with 224,196 registered crimes, the police registered only 59 briberies. After the new considerable increase of criminality in 1997, the number of registered briberies was 122, and those sanctioned by court, 13. Bribery cannot be related to a certain age group. Activity is noticed among all indictable persons, regardless of age. An average of 90% are men, and as for the educational index 70-72% have secondary or university education, because such education leads to government postings and hence the opportunity to receive bribes.

Surveys under the programme of the UN Interregional Crime Research Institute (UNICRI, Rome), conducted in 1996 and 1997 in 20 countries in Central and Eastern Europe, and the Russian Federation, Kyrgyzstan and Mongolia, place Bulgaria third in the growth of bribery after Kyrgyzstan and Georgia. Among Balkan countries Bulgaria is first.

4.2.2. Condition and dynamics of job-related crimes

Another crime related to corruption is the job-related crime: an act of an official which violates or does not observe the official obligations or exceeds the power or rights, in order to derive benefits or cause someone harm, or is likely to cause harmful outcomes.

Crimes pursuant to Art. 282-285 of the Criminal Code increased after 1991 and were stable in the period 1992-1995, and after that reach the level above 2000 in 1996 and 1997. Surveys confirm that these crimes are more frequent among the intellectual classes. An average of 50% of those involved in such cases have a university education and 42-43% have secondary education. About 60% are between the age of 40-60. Women make up 28% of those indicted in registered crimes. At an annual average of 1670 crimes, only an average of 49 are sanctioned. The proportion is 34:1, which shows the extremely insufficient activity on the part of the court in the execution of penalties against those who are indicted for such crimes. The problem of the ineffective intervention of criminal justice bodies is most strikingly noted in the period of highest criminality in the country after 1992.

4.2.3. Other crimes related to corruption

Briberies and job-related crimes do not exhaust all the aspects of the Criminal Code acts. The definition of the term “corruption” allows for the crossing of the narrow borders of the traditional understanding of the crime, thus of all corrupt acts. The tendency is to expand the scope by reforming the legal assessment of an act, executed by an official person for derivation of benefits, regardless of whom it is derived for.

Qualifying these crimes as an act of corruption by officials will make more criminal acts become subjects of the specific state policy for the fight against corruption, including the sanctions policy. Contemporary views on the role of criminal justice in the control over corruption are reduced to intensified repression by increasing the sanctions for crimes according to the Criminal Code and combining them with severe economic sanctions. The problem lies in confiscation as a penalty and the dismissal of criminal charges.

4.3. Sentences for crimes related to corruption

The sentencing practice of courts definitely does not correspond to the wide growth of corruption as a phenomenon and the severity of the crimes in particular. In practice proving crimes of corruption in court is not an easy task. Acquittals are a frequent part of the activity of the court.

4.3.1. The inert character of corruption

The actual measure of corruption cannot be assessed by statistical methods. More than many other types, these crimes remain undetected, and transgressors remain unpunished. This peculiarity of crimes of corruption, bribery in particular, explain their reproduction to an extent of turning corruption into a way of living.

The survey on victims of crimes conducted in Bulgaria in 1997 under UNICRI confirms that only 2.6% of the victims informed the police or another competent authority of the fact that they had been forced to offer bribes. With the strengthening of organised criminality, corruption will expand. Corruption is the preferred instrument of contemporary crime organisations, which substitute it for violence and physical elimination of non-cooperative persons is used only as a last resort.

4.3.2. Character of sanctions

Despite everything else, punishments are liberal. For the period 1991-1997, 25% of those sentenced to imprisonment for bribery were given up to 6 months in jail, 52.5% were sentenced from 6 months to 1 year, and 21.3% for 1 to 3 years. In 1991 only one person was sentenced to imprisonment of up to 5 years. Some of the convicted - 16 persons - were handed a fine. The practice is similar with the sanctioning of job-related crimes. In the seven years since 1991, less severe sentences prevail. Fines were given to 12.1% of all sentenced for crimes pursuant to Art. 282-285 of the Criminal Code, 16.3% were sentenced to reformatory labour. Of those sentenced to imprisonment, 16.6% were given a sentence of up to 6 months, 26.3% from 6 months to 1 year, 27% from 1 to 3 years, and for 1.7%, from 3 to 5 years. The greater part of those sentenced to imprisonment were actually set free on probation.

4.3.3. The procedures of discovering, investigating and sanctioning crimes, and witness protection

The hidden nature of bribes and other crimes connected with corruption and the difficulty to prove them in the penalty phase, including due to fear of out-of-court repressions, require development of procedural rules for discovering and investigating the crimes. By the amendments of the Penalty Procedural Code of 1997 and its connection with the Act on Special Intelligence Devices there is created a system for effective counteraction to crimes of corruption. The use of Special Intelligence Devices (SID) like electronic eavesdropping, digital tracking, recording etc., and the use of such evidence in the prosecution, overcomes many of the limitations met in the past that hindered the discovery of corruption. At the same time, judges entitled to give permission for using SID report that very often indeed after such permission is received, the police are not able to produce the necessary evidence in court.

Instructions for the cooperation between the interior ministry structures, the prosecution and the court was adopted in 1998 for implementing the *protection of witnesses* under article 97a and producing and storing of evidence under article 111, item 2 and article 191, item 2 of the Penalty Procedure Code. Protection of witnesses, imposed by the amendments in the Penalty Procedure Code of 1997, is a new procedure for gathering evidence for serious crimes, including corruption. The experience of the district court in Vratsa in using that procedure faced evident obstacles due to

the danger of identifying the witness, despite the measures taken for his security and anonymity. Specialists are skeptical about the possibility of initiating procedures commonly used in some of the developed countries. The skepticism comes from the difficulties for implementing the protection of witnesses on such a small territory, like Bulgaria, facing also the financial difficulties of the state administration.

4.3.4. Possibilities for abuse of office in the Penalty Procedure

A number of regulations in the Penalty Procedural Code create possibilities for abuse of office and corruption in the legal power - the investigation, the prosecution and the court. These powers are within the unilateral powers of magistrates:

- prosecution
- refusal to start an investigation
- canceling a prosecution on different grounds
- acquittal
- re-opening an investigation
- imposing or amending the measures of arrest
- extraditing criminals to another state
- activities on implementing the verdicts, etc.

4.3.5. Implementing verdicts

The execution of the sentence for imprisonment also creates possibilities for corruption. The agents of such a crime might be the magistrates who are entitled to execute the verdict, or entitled to execute the control over the prisons, or persons from the prison administration. The biggest risks are in:

- Implementing the sentence, including delay of execution (by a judge or a prosecutor)
- Respecting the rights of the imprisoned, procedures for release on bail, amnesty, etc.
- Medical treatment or issuing medical certificates before the qualified bodies
- Cancellation of punishment
- Release from prison

4.4. Limiting corruption by means of the Criminal Code

The existing Penalty Procedural Code has been created as a procedural means for punishment of conventional crimes at the end of 1989 political system. In many respects it continues the use of inadequate procedures. At the same time, the frequency of legislative intervention after 1990 led to a considerable worsening of the procedural law. Amendments and applications are often made for the sake of amendment itself, not taking into account the system of regulations relevant to the

philosophy of the penalty jurisdiction. It all results in a violation of the internal logic of the law. Aiming at or through democratisation of the Penalty Procedural Code, some major principles and established institutions of the Penalty Code are affected, and hence the activities of the investigation are practically blocked. The need for a new Penalty Procedure Code is frequently realised, instead of the partial amendments and applications. Considerable amendments are needed in the Penalty Code as well.

4.4.1. Amendments to the Penalty Code

For implementing the aims of the fight against corruption, there is a need for executing the following major amendments in the Penalty Code:

- Defining the notion of corruption;

- Introducing amendments in the sanctions for corruption and the crimes connected with this through increase of the minimum and maximum punishments, relevant to the contemporary penalty policy;

- Coordination of imprisonment with additional punishments - confiscation of property and deprivation of rights for professional fulfillment, including confiscation of property of a third person profiting illegally by the doer of the corrupt deed with the aim of concealing the deed, or depriving magistrates sentenced for corruption of the right to execute activities in the legal system for a period of time or forever;

- Development of the institution of fines as a punishment - including huge amounts of fines and the possibility of imprisonment if the fine is not paid;

- Regulating new penalty categories, such as "trade of power" etc.;

- Imposing penalty responsibilities for legal bodies (the corporative penalty)

4.4.2. Amendments in the Penalty Procedural Code and the Act for Execution of Penalties

Future amendments in the Penalty Procedural Code should be directed to the following goals:

- Development and improvement of the system for protection of witnesses and use of the SID;

- Procedural guarantees for the proper use of SID and legal control over the evidence gathered;

- Limitation of powers that can be implemented unilaterally and legal formation of the team principle of action in cases concerned with the rights of the defendant;

- Legal control over acts hindering the investigation or a public lawsuit - refusal to start investigation, cancellation of investigation or acquittal, restarting the investigation process;

- Finding alternative procedures providing for the swiftness and efficiency of the trial; strengthening the discretionary powers of the prosecution and the court, together with the necessary control;

- Rotation of magistrates working in teams at high corruption risk, as well as working in the spheres of permit regimes, registrations, licensing, etc.

The amendments to the Penalty Procedural Code and the Penalty Code should be in compliance with the ready-for-adoption Penalty Legal Convention Against Corruption by the Council of Ministers of the CE.