

AMERICAN CENTER FOR DEMOCRACY IN DEFENSE OF FREEDOM

The ACD report on Bulgaria's progress in the fight against corruption and organized crime

The American Center for Democracy and the Center for the Study of Corruption & the Rule of Law was invited by Prime Minister Sergei Stanishev to advise the Bulgarian Government on the urgent and most important challenge of fighting corruption and organized crime. A team of three experts arrived on May 22, 2008 for six days of meetings with senior officials and other relevant sources and organizations. The ACD appreciates the considerable cooperation it received while in Sofia.

The ACD Expert Team included:

Dr. RACHEL EHRENFELD, Director of the ACD, an expert on international corruption and money laundering, initiator of the International Integrity Standard (1999), author of "Funding Evil; How Terrorism is financed – and How to Stop It."

MR. JOHN FEATHERLY, a leading US expert on fighting drug trafficking, money laundering and corruption. Mr. Featherly led one of the U.S. government's most significant investigations and prosecutions of international money laundering – POLARCAP.

MR. CHRISTOPHER BRAHAM, a UK expert on the investigation of smuggling and customs crimes. He has extensive experience of corruption and financial investigations; was an official of the EC in the Eastern Europe and the Balkans.

Summary

The ACD experts have interviewed the top Bulgarian Government officials responsible for the fight against corruption and organized crime, including the Prime Minister, key

Cabinet Members, and directors of law enforcement agencies. They reviewed the situation in Bulgaria and the Government's detailed action plans.

The team also met with leading watchdog non-government organizations.

The ACD team was impressed by Prime Minister Sergei Stanishev and his Cabinet's genuine determination to reform Bulgaria's government. All acknowledge that fighting corruption is indispensable for Bulgaria's development.

The Prime Minister and his Cabinet are resolved to instill new norms of good governance and transparency throughout the entire Bulgarian public sector. They are committed to a continuing effort to fight corruption, misappropriation of funds and organized crime, and to ensure transparency and accountability. In fact, restructuring of relevant government agencies is underway, and several ministers and directors were forced to resign and are under investigation.

Bulgaria has made significant progress in establishing democratic governance, economic modernization and liberalization, criminal justice system, an independent judiciary, and fighting corruption.

The Stanishev Government is making genuine efforts to establish good governance. It is expediting the necessary reform of deep-rooted corrupt practices among law enforcement, as well as in the judicial system.

The Bulgarian Government's efforts to fight corruption and organized crime, include:

1. Eliminating the bribery of low level officials.

- The root of this problem is the existence 90,000 of underpaid government sector officials. With the average salary of 200 Euro/month. This low salary creates the temptation to demand bribes.
- To address this problem, the PM has already implemented reduction of five percent of the total number of government employees, and has ordered an additional ten percent. This will result in a smaller more efficient and better-paid government workforce.

2. Monitoring and investigating and preventing irregularities and lack of transparency in allocating state contracts, awarding public tenders and misappropriation of funds.

The Government has already taken the following steps:

- Establishing the new office responsible for coordination and control of EU fund. Mrs. Meglena Plugchieva, the former Ambassador to Germany as Deputy Prime Minister to manage this function.
- Established a new State Agency for National Security Security (SANS), which includes Financial and Economical Security General Directorate. This Directorate's responsibilities include investigations of all senior government officials and possible links to organized crime, money laundering, fraud and transnational organized crime activities. Its mandate includes the prevention of the misuse of EU funds; ensuring the integrity of the national fiscal system and Customs. It reports directly to the Council of Ministers. Its 3000 employees are highly skilled and experienced and substantially higher paid.
- Recently passed the Public Disclosure of Senior Public Officials Financial Interest Act.
- Introduced new legislation to prevent Conflict of Interest.
- The Ministry of Finance conducts internal audit of received EU funds.
- The Ministry of the Interior is currently re- reorganizing its Chief Directorate for Combating Organized Crime (CDCOC) and re-allocating new work for the investigating magistrates.
- The necessary legal changes in the Penal Procedure Code are due before July 2008, and the new structures will be established by the end of the year.
- In 2007 established an Inspectorate for the Judiciary to guarantee impartiality. It has already speeded up the conclusion of pending cases.

The ACD shares PM Stanishev's conviction that profound governance reforms are vital to Bulgaria's development. Clearly, there is a sincere commitment by the PM and his team to institute good governance.

To ensure Bulgaria's further development and stability the European Union (EU) should provide assistance and support for the Stanishev Government. Bulgaria would certainly benefit from the continuing flow of expert advice, constructive criticism, objective monitoring of its progress against EU blueprints.

Penalizing Bulgaria will undermine the progress already achieved. It is likely to destabilize the political and economic climate at a time when the Stanishev Government struggles to intensify and accelerate clean governance reforms.

In the experience of the ACD, PM Stanishev and his government are committed to winning the fight against corruption and organized crime. This level of commitment has not been encountered previously by the ACD.

The ACD is of the opinion that PM Stanishev and his government, with assistance and encouragement can develop good governance practices, and will continue to successfully fight corruption and organized crime. These efforts would assist Bulgaria to become a valued member of the EU.

The ACD interviewed the following:

Mr. Sergei STANISHEV – **Prime Minister of the Republic of Bulgaria**

Mrs. Miglena TACHEVA – **Minister of Justice**

Mr. Boris VELCHEV – **Attorney General**

Mr. Lazar GRUEV – **Supreme Court of Cassation, Chairman**

Mr. Plamen ORESHARSKI – **Minister of Finance**

Mr. Michail MIKOV – **Minister of Interior**

Mrs. Meglena PLUGCHIEVA, **Deputy Prime Minister in charge of coordination and control of EU funds.**

Mr. Asen ASENOV – **Customs Agency, Chairman** (was forced to resign on May 28, 2008)

Mr. Boiko VELIKOV, Chairman of the **Combating Corruption Committee, National Assembly**

Mr. Petko SERTOV – **National Security Agency (SANS), Chairman,**

Major Bulgarian NGOs monitoring the democratic process and corruption:

Mr. Georgi Stoychev- **Open Society Institute Sofia**, Executive Director

Mr. Lachezar Bogdanov- **Industry Watch**, Executive Director

Mrs. Svetla Konstantinova – **Institute for Market Economics**, Executive Director

DETAILED REPORT ON PROGRESS AND KEY ACD RECOMMEDATIONS:

1. ACD general observations of the Commitment of PM Stanishev and his Cabinet to fight corruption and Organized Crime.

- PM Stanishev and his Cabinet are encouraging the public to join the efforts to root out corruption and tackle serious crime. There are signs this strategy is working and that public opinion is with him.
- The PM will soon declare a national campaign to reinforce ethical code of conduct for the public sector, as well as a special curriculum in schools.
- The perception that the Stanishev Government is failing in its efforts against corruption and organized crime is often inflamed by the media and is not assisted by the current EU threats. Moreover, Bulgaria's corruption increased as a result of EU sanctions on Yugoslavia. Opposition to Stanishev is led by some local political and business operators nurtured by rumor, misperception and, innuendo.
- Bulgaria's new democracy is struggling as a result of lack of experience and conservative traditions rather than by criminally and corruption.
- Misappropriation of public sector funds (not EU's funds) has been a problem – but reform is visible.
- Organized crime is recognized as a problem. However, it does not seem to pose an imminent danger to the development of the Bulgarian economy and democracy, as manifested by the rapid growth of foreign investment and the rise in the standard of living.
- Bulgaria is fast developing; salaries up 10% since last year, unemployment is 6,5% down from 17% 5 years ago.
- GDP growth is 6,1% for 2007, PPP (per capita) is 11,800 USD.
- Introducing a flat tax (10%) resulted in minimizing the black market economy.

- Lack of convictions is often caused by incompetent detectives and prosecutors who lack experience. This is a direct consequence of the political decision in 1989, to fire 2,000 professional policemen and prosecutors and 1,400 magistrates after the collapse of Soviet system.
- Some high level arrests on corruption charges have been made.
- The ministers of Justice and the Interior have been recently replaced.
- Director General of the National Customs Agency, and two of his deputies were forced to resign and are under investigation.
- Motivational performance payments are already in place for Customs and will soon be instituted in other government offices.
- Bulgaria complies with EC requests; it closed down the duty free shops on EU borders as requested by the EC.
- Corruption incidents are down, but the EC fails to acknowledge that.
- Many legislative changes have taken place, and they are helping to change the public's attitude towards corruption.
- New legislation to prevent Conflict of Interest affecting the judiciary, local government and parliament was speedily adopted.
- Bulgaria's cooperation with other EU law enforcement authorities is excellent. For example, the number of Europol warrants executed is 2nd only to Germany.
- According to the NGO's the government's changes and initiatives are receiving public support.
- The Cabinet vigorously works to limit possibilities for corruption and to strengthen Judiciary. Constitutional amendments were adopted to strengthen the Judiciary.
- A new State Agency for National Security (SANS) was created.

2. Ministry of Justice.

Positives:

- Passed into law detailed legislation regarding Conflict of Interest;
- Prepares new legislation to combat corruption.
- Inspectorate for Judiciary was created in 2007 and it is producing good results to guarantee political impartiality.

ACD recommendations:

- Appointments in the judiciary should be based on competence.
- The outdated Penal Code, adopted 40 years ago, fails to recognize modern serious criminal activities. While there have been 50 changes - such as money laundering legislation, the Penal Code should be updated to include more robust assets recovery and proceeds of crime legislation.
- Need better definition between crimes and misdemeanors to lessen the overload and congestion of the courts system.
- Laws allowing adjournment should be stricter. Many high profile cases are suspended and never come to a conclusion due to the unsavory practice of physicians providing medical certificates regarding the incompetence of defendants and lawyers alike to continue with the trial.
- Establish a special court to prosecute serious crime.

3. Prosecutor General

Positives:

- Unfounded allegation of political interference with his office.
- Corrupt prosecutors have been prosecuted.
- PG office handled close to 50,000 cases during the last reporting period;
- 91% of cases finalized in less than 2 years; the remainder included some serious crime cases due to manipulation of the system by defendants and their lawyers. When necessary a new lawyer can be appointed.
- Improved international cooperation resulted in recent significant convictions.
- All cases of corruption brought to his office's attention are investigated.

ACD recommendations:

- Prosecution should have a special Unit for prosecuting corruption and serious crime.
- Judges should be empowered to require independent medical opinions if illness is used as an excuse for delay by defendants and their lawyers.
- Need tighter control over medical professionals who produce false medical reports.
- Money laundering legislation should include authority to seized property and proceeds of crime.
- Need better and earlier sharing of information and intelligence between the police and the PG's office.
- Resolution of the 560 experienced investigative magistrates which are currently under employed by the Ministry of the Interior. There are difficulties in their reallocation, but these can be solved.
- There is a need for a system to identify and promote good performance. Disciplinary measures need to be in place and enforced.

4. Supreme Court of Cassation

Positives:

- The Judiciary is independent, under no political pressure.
- The system is working but would be improved by training of magistrates and judges and better performance monitoring.
- Courts are overloaded but the system is functioning: just recently 39 football hooligans were convicted in 5 days.

ACD recommendations:

- Address the problem of Lingering Justice.

5. Ministry of Finance

Positives:

- Over-performed IMF expectations.
- Has no complains from the public and the revenue collection is up.

ACD recommendations:

- The Finance Minster should establish a Special Inspectorate to all revenue collecting agencies; Customs, Internal Tax collection, and Social Security.
- Need to conduct unannounced limited audits for the allocation of EU funds .

6. Ministry of Interior

Positives:

- Minister Mikov plans to create a smaller, smarter police force, higher paid (police gets 200 E/month) and establish differentiated payment to stimulate high performance and integrity
- Creation and empowerment of the Department of Internal Police Security, which is called to prevent corruption among law enforcement officers.
- Minister Mikov is rapidly reorganizing the Chief Directorate for Combating Organized Crime (CDCOC) and purged several who were implicated in corruption and leaking information to criminals.
- Mikov plans to establish a Special Control department over investigations.
- The Minister has introduced a HOT LINE to report on cases of corruption in the police force, and will expand it to include all public officials.
- Mikov plans to speed up computerization of the police force (some officers still don't have PCs); computerize the data base and classified documents to prevent leaks, improve and speed up investigations.
- Big cities will now have 24/7 teams of prosecutors and police
- Improved interaction between Investigation and Prosecution.
- Recent enforcement activities resulted in successful seizure of amphetamine producing labs in Sofia.
- Successful joint police ops with Europol against drug-trafficking and human trafficking
- An often quoted figure “150 contract killings” from 2000 to 2006 does not reflect reality: in fact, there were about 10 high-profile killings.
- The Border Police is attempting to stop non-Bulgarians criminals entering the country from Russia, Ukraine, Romania and the Western Balkans.

- Corruption is often related to big established and respectable companies (often foreign investors (Siemens case) who want to optimize their revenues through bribing officials) rather than to organized crime (racketeering, gambling, drug-dealing, prostitution).
- 560 Investigative Magistrates are seriously underemployed and they will be given international assignments (mutual legal assistance), and completion of the uncompleted cases (there are thousands of unresolved cases closed because of the stature of limitation)
- Overlaps with new NS Agency will insure mutual control and no cover-ups.
- 2 years experience as a regular detective is needed. 5 years experience should be required to be appointed to an Organized Crimes unit.

ACD recommendations:

- Need more undercover operations.
- Need better control over pharmacies, chemical labs to prevent illegal drug producing.
- The package of measures is required to deal more effectively with corruption and organized crime but these are not threats endangering the fabric of Bulgarian society and the country's political and economic development.
- Crime statistics should be collected annually to reflect the specific types of crime and in particular, crime statistics dealing with contract killing should include details.

7. Deputy Prime Minister in charge of coordination and control of EU funds

Mrs. Meglena Plugchieva is efficiently developing and coordinating new safeguards to control EU funds.

Mrs. Plugchieva contributes to the PM's efforts to launch a national campaign against corruption.

8. Customs Agency

Its Chairman, Mr. Asenov claimed to comply with the Arusha Declaration on dealing with corruption of its Customs officers, which includes declarations of assets, and disallows involvement in any form of business. It also demands regular random rotation of staff, etc.

While it is clear is that Bulgarian Customs is familiar with the Arusha Convention and have made significant progress in the anti-corruption measures applicable to the staff, it is regrettable that such measures were not successful or even applied at the senior levels.

Joining the EU and abolishing the internal frontiers and customs agencies on Bulgaria's EU borders have significantly changed the responsibilities of the Customs Agency. Although the agency no longer in charge of investigations, stricter supervision is necessary. Since 2006 Customs no longer investigate customs offences. The role of Customs is to detect and to hand the case over to the public prosecutor and the police.

The main areas of activity are fighting the contraband and illegal drug trafficking through the non-EU borders. The Customs Agency has made some progress in these areas and seizures are up.

Customs claimed to have introduced a strict code of conduct: it undertook internal checks on officers annually on an ad hoc basis, on a targeted basis and anonymously.

A whistle-blower system, a Hot-Line and a web-site encouraging complaints were introduced, and each officer can be easily identified by a visual name badge.

ACD recommendations:

- The Customs Director appointment be decided by an independent committee co-chaired by the Ministers of Finance and Interior, and the Chairman of the National Security Agency
- Higher salaries to replace the current bonus system would help reduce corruption and retention of staff
- There is need for regular, unannounced audits.
- Need harsher penalties and public identification of corrupt officials.

- More specialists should be recruited.
- Customs officers need better and continuing training.
- There is a need for a public campaign to encourage whistle blowers about corruption in Customs.

9. Combating Corruption Committee, National Assembly

Positives:

- Openness, transparency and publicity: all materials are available to the public except for the classified material.
- On 28 occasions it has led the anti-corruption legislation: e.g., conflict of interest, procurement in the public areas.
- 18 issues have been the subject of Parliamentary oversight.
- All are matters of broad public interest: e.g., vat frauds, absorption of the EU funds, illegal construction and trade in real estate.
- 1200 reports (“signals”/allegations) have been received from the public regarding the possible corruption by officials and every one was checked and acted upon: 350 out of them have been sent to Prosecution, and out of them there were 58 trials and 36 convictions.
- 130 prosecutions for corruption are in the course of investigation.
- There have been many significant cases: e.g., conviction and imprisonment of the executive director of the fisheries agency.

Necessary reforms have been identified by the Anti-Corruption Committee of the National Assembly:

Examples:

- The need for the Customs Agency to have improved financial declarations from its employees.
- Need more control over the Supreme Council.
- Need more investigation techniques.
- Loopholes in the law need to be closed: e.g., the penal procedure code – need specially targeted laws, such as a Gambling Act.

10. State Agency for National Security (SANS)

Positives (operations already in progress):

- The Cabinet has given to SANS an extraordinary authority to target high-level corruption.
- SANS has the authority to scrutinize 7,000 top Bulgarian officials in all branches of power (from the President and PM of the country to heads of magistrates, judges and Parliament members) to track any signs of corruption or the conflict of interest. (A computerized database on these 7,000 officials has been created and data on personal assets, property and income is being put inside and investigated).
- Prevention and analysis of the spheres of governmental and business activities which are prone to corruption are the goals of SANS.
- Any unusual delays or rejection of corruption and organized crime related cases by prosecutors and investigative magistrates are referred to SANS.
- SANS is addressing corruption in magistrates.
- SANS investigation into Customs corruption led to the dismissal of the Director of the agency and his two deputies.

- Infiltration into the organized crime webs and gathering of intelligence allows SANS being pro-active: to act (and prevent crime) rather than re-act to the already committed crime.
- International cooperation and joint actions with Europol are extensive.
- Bulgarian leaders of organized crime are pursued and investigated by SANS even outside the borders of Bulgaria: their foreign properties and accounts are being investigated and seized with the help of foreign law enforcement.
- Organized crime's operations and financial channels were identified and disrupted.
- Progress of SANS serves as an excellent deterrent against corruption and organized crime: prevention of corruption is regarded by SANS leadership as its major task.
- Regarding the misappropriation of the EU funds, SANS has seconded a high ranking officer to work with the DPM in charge of coordination and control of EU funds on investigations into companies receiving EU funds and companies, and to re-examine companies which have already received EU funds.

ACD recommendations:

- SANS technical capability and sensitive equipment has to be constantly updated to optimize the unit's effectiveness.
- There is a need for continued government support and resources are to be given to SANS to realize its obvious potential.
- SANS needs to adopt a better Witness Protection Program (WPP) and petition the legislative branch to remove the legal obstacles, which prevent full exploitation of WPP.
- Some outdated Penal Code articles create obstacles for SANS and need to be amended. Minor cases/misdemeanors do not need to be investigated. There needs to be a re-categorization of crime.

- Greater disciplinary rules and implementation mechanism is required in the court system to curtail the constant disruption and delays caused mostly by defendants' lawyers.

ACD Conclusions:

Penalizing Bulgaria will undermine the progress already achieved. It is likely to destabilize the political and economic climate at a time when the Stanishev Government struggles to intensify and accelerate clean governance reforms.

The ACD is of the opinion that PM Stanishev and his government, with assistance and encouragement can develop good governance practices, and will continue to successfully fight corruption and organized crime. A successful Bulgaria would add value to the EU and also help stabilize the region.