

Policy brief No.36/2020

–

Parliament oversight on anti-corruption in Bulgaria

Author: Daniela Mienva

–



The views expressed in this document do not necessarily reflect the views of the US National Endowment for Democracy and the Institute for Democracy "Societas Civilis" – Skopje.

Impressum

—

Title: Parliament oversight on anti-corruption
in Bulgaria

Author: Daniela Mienva

Publisher: Institute for Democracy
„Societas Civilis“ – Skopje

Design: Matea Londza Shumkovska

The publication can be downloaded for free at:

<https://idscs.org.mk/en/portfolio/parliament-oversight-on-anti-corruption-in-bulgaria/>

Parliament oversight on anti-corruption in Bulgaria

Daniela Mineva, Senior Analyst, Economic Program, Center for the Study of Democracy, Bulgaria

Introduction

Bulgaria has a well-developed institutional anti-corruption setup. Key bodies include the wide-ranging in powers Commission for Combating Corruption and Confiscation of Illegally Acquired Property, the Specialized Prosecution and the State Agency for National Security, the Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics at the Parliament, and the National Council for Anti-corruption Policies at the Council of Ministers.

The Bulgarian anti-corruption setup however lacks real checks and balances where each public institution is held accountable by another. Moreover, any performed checks are not based on an efficient risk-assessment methodology, posing questions if the Commission for Combating Corruption and Confiscation of Illegally Acquired Property is not

used for repression against political opponents, instead of investigating all concerned persons equally.

The implementation of the anti-corruption plans of ministries is assessed by government commissions, but rarely by independent experts or the civil society. In order to obtain unbiased overview of the state capture risks in the country or evaluate the efficiency of the anti-corruption policies and measures applied at the level of the individual public authority, it is important that the government bodies partner with the civil society sector. Thus, they could utilise its methodological and legal knowledge and apply assessment methodologies such as the State Capture Assessment Diagnostics (SCAD)¹ or the Monitoring of Anti-Corruption Policies Implementation (MACPI)².

¹ Center for the Study of Democracy, (2019). State Capture Assessment Diagnostics. Available at: <https://csd.bg/publications/publication/state-capture-assessment-diagnostics/>

² Center for the Study of Democracy, (2015). Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement. Available at: <https://csd.bg/publications/publication/monitoring-anti-corruption-in-europe-bridging-policy-evaluation-and-corruption-measurement/>

On 9 July 2020 a nation-wide protests were launched in Bulgaria, demanding change in the Government and the Prosecutor General. They were prompted by the wide-spread corruption, state capture and lack of rule of law mechanisms in the country. In particular, the citizens' dissatisfaction is directed towards ex- or current MPs turned oligarchs, and/or controlling the media, the business, the largest public procurements and even using state property as private residences. Although the protests initially did not seem to be prompted by a particular political party, the President and the opposition strongly supported them. On 21 July 2020, a no-confidence vote against the government was voted over a "failure in the anti-

corruption policy". The vote did not pass, with 124 votes against it, and 102 votes in its support. Still, 16 days after the start of the protests, five ministers were removed from office, however one of them was returned as the head of a different ministry.

It should be noted, that the opposition's support and placing corruption as a topic of debates during times of protests, could not be considered a systematic or comprehensive strategy for Parliamentary control or achieving good governance. Rather, it is a short-term tool for quickly gaining political support, as the non-confidence vote has shown.

1. National Assembly – the untapped potential for anti-corruption oversight

—

1.1. General observations

There is no evident and consistent drive for more anti-corruption efficiency delivered by the Parliament or individual MPs. The discussions in the National Assembly on the topic are usually formalistic (e.g. related to revisions of laws or election of anti-corruption bodies' members), and not focused on the actual results.

For example, the 2019 Annual Report on Commission for Combating Corruption and Confiscation of Illegally Acquired Property was accepted by the National Assembly in May 2019 with 131 positive votes out of 240³ without any major objections (besides some comments by the opposition).

According to the report:

³ Actualno.com, (28.05.2020). Одобрива доклад на КПКОНПИ, в който "Апартаментгейт" не се споменава. Available at: https://www.actualno.com/politics/odobriha-doklad-na-kpkonpi-v-kojto-apartamentgejt-ne-se-spomenava-news_1466599.html

⁴ Commission for Combating Corruption and Confiscation of Illegally Acquired Property, (2019). Report for 2019. Available at: <http://www.ciaf.government.bg/web/attachments/Page/56/3515/5e82f20046878.pdf>

- Only three of the 40 examined cases resulted in final convictions, with no prison sentences.
- There were only 14 confirmed and sanctioned with a fine cases of conflicts of interests in 2019, out of 166 received notices (signals).
- The confiscated illegally acquired property amounts to BGN 8,1 m (EUR 4,14 m).
- Out of 79 reviewed draft laws, corruption risks have been detected and recommendations for revisions were made in 18 of them⁴

This type of easy approval of reports on the anti-corruption results could be explained by the fact that the members of Commission are elected by the Parliament with simple majority (i.e. by the ruling party).

Another prominent example of some MPs attitudes towards corruption presents the highly criticized draft Law on Countering Corruption and Confiscation of Illegally Acquired Property submitted by the current Justice Minister and another MP. The (never adopted) changes suggested:

- the Commission for Combating Corruption and Confiscation of Illegally Acquired

Property to gain the power for mandatory summoning of physical persons. This is highly controversial in the context of the strictly administrative nature of the Commission.

- the abolition of the obligation of municipal councilors to submit asset declarations. This would greatly decrease the scope of the monitored public servants and provide possibilities of undetected corruption and conflict of interests.
- the threshold for declaring income obtained outside public service to be raised from BGN 1000 (EUR 511) to BGN 5000 (EUR 2553). This would increase the risk of various payments being concealed.
- civil confiscation is presented in a way, more similar to a criminal procedure, as it is leading to a sanction.
- the threshold of asset declaration discrepancies leading to checks by the Commission to be increased from BGN 5000 (EUR 2553) to BGN 10,000 (EUR 5107) (smaller discrepancies to be checked by the National Revenue Agency). Once again, such a change would decrease the scope of the Commission's controls⁵.

⁵ Draft Law on Countering Corruption and Confiscation of Illegally Acquired Property (17 December 2018). Available at: <https://www.parliament.bg/bills/44/854-01-90.pdf>

1.2. Corruption related questions asked by MPs at the National Assembly

The corruption related questions asked by MPs also seem to be rare. During two mandates of the National Assembly or five and half years, only 14 such questions were submitted for discussion (based on search in section "Questions" in the National Assembly official website). These were addressed mainly to the Deputy Prime Minister for Judicial Reform and Minister of Foreign Affairs (head of the National Council for Anti-corruption Policies); the Minister of Justice; the Prime Minister; Deputy Prime Minister for Coordination of European Policies and Institutional Affairs and several ministers. Four out of those questions were not answered, as they were not aligned with the rules of the National Assembly. One question was withdrawn. The **questions** posed issued, such as:

- The judicial reform and the fight against corruption remain under scrutiny from Brussels. What actions will be taken in order for Bulgaria not to receive negative reports under the Cooperation and Verification Mechanism (CVM), as well as to achieve the CVM's abolishment?
- What steps were undertaken to establish a National Mechanism for Monitoring the Fight against Corruption and Organized Crime, Judicial Reform and the Rule of Law?
- According to the report of the Center for Prevention and Combating Corruption and Organized Crime, there is lack of independence and capacity of the anti-corruption bodies. In that context, what measures have been undertaken to counter corruption?

Other questions related to the GRECO recommendations, specifics of the anti-corruption law, and the integrity checks performed in courts. The **answers** are usually limited to listing:

- Institutional changes (the setting up of a new anti-corruption body, in which all anti-corruption functions are concentrated, as well as the creation of inter-agency coordination teams);
- Legal changes (shortening the court procedures);
- Decreasing the personal contact with the public administration (by launching electronic services), etc.

The number of sentenced high-level officials or confirmed cases of conflicts of interests are rarely commented on. Moreover, questions by MPs related to concrete cases of corruption allegations, e.g. in Executive Agency "Automobile administration" or the in the National Science Fund – were never answered, as they were considered against the rules of the National Assembly. This once again points towards the avoidance of real-life problems, and the preference to discuss the anti-corruption measures in general terms. The observed MPs behavior, supported by multiple investigative media articles and CSOs report, point out that the lack of Parliamentary pressure for more efficiency in the anti-corruption bodies is not the laws' imperfections but rather the **deeply rooted state capture**.

2. Control applied by the Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics

The Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics, comprised of MPs, holds regular three-monthly hearings, in order for the Commission for Combating Corruption and Confiscation of Illegally Acquired Property to report on its activity. This provides an excellent opportunity for oversights and posing of questions by the MPs, and to a much lesser extent - for placing pressure for more efficient anti-corruption investigations. The latter is due to the fact that the Commission for Combating Corruption and Confiscation of Illegally Acquired Property operates with relatively small staff (54 work positions, out of which 25 free as of May 2020), while it receives thousands of signals and prosecution statements per year (e.g. 1200 for January-August 2019⁶). In addition it faces technical issues in storing and assessing the value of the confiscated property, and requests from the MPs

to support various legal changes (e.g. related to the utilisation of the confiscated assets).

The Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics discussed and approved the 2019 Annual Report of the Commission for Combating Corruption and Confiscation of Illegally Acquired Property on 22 May 2020, before it is presented in the National Assembly. The report from the meeting comprises mainly a summary of the 2019 Annual Report, mentioning very briefly the recommendations provided by the MPs on the need of legislative changes, the possibilities of new territorial structure of the Commission for Combating Corruption, the relevance and efficiency of the methodology of declaring and checking assets and conflicts of interests, the cooperation with other institutions, the staff availability challenges, etc⁷.

⁶ Hearing of the members of the Commission for Combating Corruption and Confiscation of Illegally Acquired Property on the grounds of art. 8a, para. 1 of the Internal Rules for the activity of the Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics, (19 September 2019). Available at: <https://www.parliament.bg/bg/parliamentarycommittees/members/2594/steno/ID/5720>

⁷ Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics. Statement №053-22-2/22.05.20202. Available at: <https://www.parliament.bg/bg/parliamentarycommittees/members/2594/reports/ID/11351>

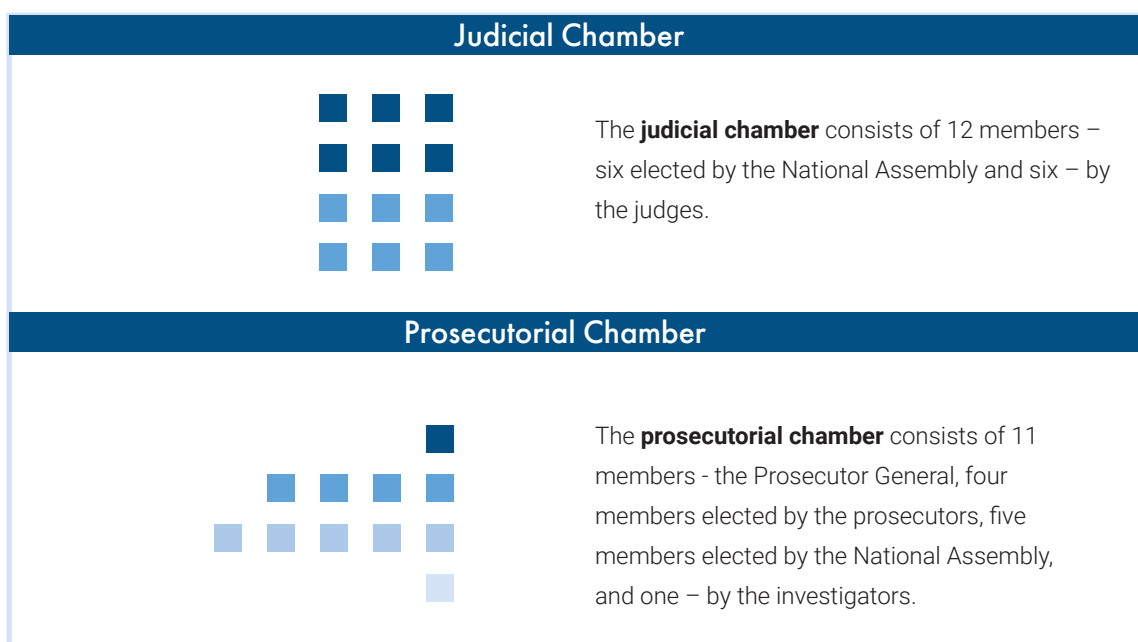
3. Prosecution

Even if perfectly efficient system for inspection and detection of high-level corruption and conflicts of interests existed, the final results in terms of sanctioning could only be achieved by the prosecution. The principle of “independence” of the prosecution in Bulgaria however is distorted. For many years the civil society is leading debates and stressing on the need to place accountability rules of the so-called "big three" - the chairman of the Supreme Court of Cassation, the chairman of the Supreme Administrative Court and the Chief Prosecutor.

In addition, the Supreme Judicial Council, mandated to ensure the judiciary's independence,

is separated into judicial and prosecutorial chambers. However the members elected by judges usually do not prevail over parliament appointees in the judicial chamber, compromising the judicial independence. Political appointees end up equal in number to those elected by prosecutors in the prosecutorial chamber, thus keeping Prosecutor General's decisive vote and unlimited powers intact⁸. In the current institutional setup, **Parliamentary oversight** over the work of the prosecution could not lead to anti-corruption results. This is especially true regarding the high-level public servants, protected by the MPs who in turn elect the prosecutorial chamber.

Box 1. Supreme Judicial Council election procedure



Source: Law on the Judiciary 2007, amended 12.06.2018. Available at: <http://www.vss.justice.bg/page/view/1267>

⁸ Center for the Study of Democracy, (2016). State Capture Unplugged: Countering Administrative and Political Corruption in Bulgaria. Available at: <https://csd.bg/publications/publication/state-capture-unplugged-countering-administrative-and-political-corruption-in-bulgaria/>

A series of iconic scandals observed in Bulgaria in the recent years and the low success rate of the high-profile lawsuits against high-ranking politicians and businessmen (despite thousands of pages of indictments) confirm that there are unregulated ties between them and certain members of the judiciary.

At the same time, the potential decrease of the **unlimited powers of the Prosecutor General** have been permanently excluded from any legislative changes. These powers also facilitate and even openly legitimise the criminal connections. For example:

- The change in the jurisdiction leading to high-profile corruption cases to be investigated by specialised prosecutors who are directly accountable to the Prosecutor General.
- The creation of the over-powerful Commission for Combating Corruption and Confiscation of Illegally Acquired Property, incorporating functions and staff of three previously inefficient structures

The first urgent steps needed are to limit the ability of the Prosecutor General to put pressure on individual magistrates and politicians and to set up an independent body to prosecute high-level corruption headed by a prosecutor who is not subordinate to the Prosecutor General, but rather elected by a special commission nominated by the legislative, executive and judicial powers and accountable to them.⁹

As of July 2020, the latest available annual report of the Specialised Prosecution is from 2017, and it covers the period 2012-2017.

The corruption-related cases are mentioned briefly and inconsistently. The situation is similar regarding the 2019 Annual Report of the Supreme Judicial Council¹⁰, presented to the National Assembly. As such, the annual reports of the judiciary and prosecution bodies cannot provide a sufficient source of information on their anti-corruption activity, and hence – basis for Parliamentary or civil society oversight.

Conclusions

Based on the practical examples presented above, several conclusions regarding the untapped potential of the Parliamentary oversight and the role of the civil society could be made:

- There is a need to establish a system, where the three branches of power (legislative, executive and judiciary) balance each other and ensure the rule of law. This not entirely the case with the current institutional setup, where at least half of the members of the Supreme Judicial Council are elected by the National Assembly; the Commission for Combating Corruption and Confiscation of Illegally Acquired Property is elected by the Parliament with simple majority; and the Prosecutor General cannot be investigated.
- The Parliamentary oversight on the corruption counter-measures should be strengthened, which could be achieved within the framework of the existing procedures and mechanisms.

In particular, the topic should be discussed in more open and non-formalistic manner both in the plenary hall of the National Assembly, as well as during the meetings of the Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics. The MPs should place more pressure for results and efficiency on the Commission for Combating Corruption and Confiscation of Illegally Acquired Property, and the Prosecution. The topic of the high-level corruption should not be avoided during these discussions, not should the anti-corruption bodies be used for oppression (e.g. against political opponents, business competitors of politically protected companies, etc.).

- The civil society, investigative journalists and business community could have a large role in breaking the unholy alliance between the political and business world. They could initiate civil suits, post investigative stories, and direct the attention to the most urgent issues and cases. Last, but not least, they could suggest procedural and legislative changes that could decrease the corruption and state capture risks in lobbyist laws.

⁹ Center for the Study of Democracy, (2019). The Prosecutor General: Six Years Later. Available at: <https://csd.bg/publications/publication/the-prosecutor-general-six-years-later/>

¹⁰ Supreme Judicial Council, 2019 Annual Report. Available at: <http://www.vss.justice.bg/root/f/upload/27/doklad-vss-2019.pdf>

Annex 1. List of corruption related questions asked by MPs

Political party affiliation of the MP asking the questions (party type and share of the votes)	Addressed to	Date	Status
--	--------------	------	--------

44rd National Assembly (since April 2017)

Left wing (opposition) 27.93% share of the votes	Deputy Prime Minister for Judicial Reform and Minister of Foreign Affairs (head of the National Council for Anti-corruption Policies)	28/05/2020	Question answered
Left wing (opposition) 27.93% share of the votes	Deputy Prime Minister for Judicial Reform and Minister of Foreign Affairs (head of the National Council for Anti-corruption Policies)	26/05/2020	Question answered
Left wing (opposition) 27.93% share of the votes	Minister of Justice	10/12/2019	Question answered
Nationalistic (Cabinet with the ruling party) 9.31% share of the votes	Minister of Justice	27/06/2017	Question withdrawn
Left wing (opposition) 27.93% share of the votes	Deputy Prime Minister for Judicial Reform and Minister of Foreign Affairs (head of the National Council for Anti-corruption Policies)	06/06/2017	Question answered
Left wing (opposition) 27.93% share of the votes	Prime Minister	31/05/2017	Not aligned with the rules of the National Assembly

43rd National Assembly (October 2014-January 2017)

Social democratic (part of the ruling Coalition up to 18 May 2016) 4.15% share of the votes	Minister of Education and Science	21/07/2015	Not aligned with the rules of the National Assembly
Center-right (Part of the ruling Coalition) 8.89% share of the votes	Minister of Justice	09/06/2015	Question answered
Center-right (Part of the ruling Coalition) 8.89% share of the votes	Center-right (Part of the ruling Coalition) 8.89% share of the votes	27/05/2015	Question answered
Nationalistic (Supporting the ruling Coalition) 7.28% share of the votes	Minister of Transport, Information Technology and Communications	15/05/2015	Not aligned with the rules of the National Assembly
Right-center conservative pro-European party (Ruling party) 32.67% share of the votes	Minister of justice	14/05/2015	Question answered
Nationalistic (Supporting the ruling Coalition) 7.28% share of the votes	Minister of Transport, Information Technology and Communications	05/05/2015	Not aligned with the rules of the National Assembly
Right-center conservative pro-European party (Ruling party) 32.67% share of the votes	Minister of Agriculture and Food	09/04/2015	Question answered
Nationalistic (opposition) 4.52% share of the votes	Minister of Finance	31/03/2015	Question answered

Source: Website of the National Assembly. Section Parliamentary control – Questions. Only questions including the word “corruption” in their title are listed. Available at: https://www.parliament.bg/bg/topical_nature

Annex 2. Public bodies with anti-corruption functions

Public bodies with anti-corruption functions	Directly accountable to
Prosecution, including: a) Prosecutor General b) Specialised prosecution c) National Investigation Service	Independent
Commission for Combating Corruption and Confiscation of Illegally Acquired Property	National Assembly
Commission for Combating Corruption, Conflict of Interest and Parliamentary Ethics	National Assembly
National Council for Anti-corruption Policies	Council of Ministers
State Agency for National Security (SANS)	Council of Ministers
Inspectorate General	Prime Minister
Directorate for the Protection of the European Union's Financial Interests (AFCOS)	Ministry of Interior
'Audit of EU Funds' Executive Agency	Ministry of Finance
Public Financial Inspection Agency	Ministry of Finance
Public Procurement Agency	Ministry of Finance
Inspectorate to the Supreme Judicial Council	Supreme Judicial Council
Inspectorates	Prime Minister; ministers; state agencies; structures to the National Assembly

Source: Websites of the listed public authorities.

For the project

Anti-Corruption Talk in Parliament is a project aimed at strengthening the oversight role of lawmakers in the fight against corruption. The project is funded by the US National Endowment for Democracy.

Link

Link to the publication:

<https://idscs.org.mk/en/portfolio/parliament-oversight-on-anti-corruption-in-bulgaria/>

Information for IDSCS

IDSCS is a think tank organization that investigates the development of good governance, the rule of law and the European integration of North Macedonia. IDSCS has a mission to support civic engagement in decision-making and to strengthen participatory political culture. By strengthening libertarian values, IDSCS contributes to coexistence between differences.

Contact information for IDSCS

Address: Miroslav Krlezha no. 52/1 /2,
1000 Skopje

Phone:/ Fax: +389 2 3094 760,

e-mail: contact@idscs.org.mk

Information about the author

Daniela Mineva has 17 years of experience with EU and other donors financed projects. She has participated in initiatives, related to anti-corruption, EU integration and Cohesion funds, informal economy and undeclared work, innovation policy, corporate governance, as well as the development of a number of national S&T policy related documents. She was ERAWATCH country correspondent for the period 2009-2012. In 2009 she participated in the projects "Contribution of policies at the regional level to the realisation of the European Research Area" and "European Observatory of Research-Active Universities and National Public Research Funding Agencies". Since 2010 she has worked on the Regional Innovation Monitor project and on the project "Delivering Policy Analysis on the Performance of Cohesion Policy 2007-2013", with a focus on innovation, energy efficiency and RES, financed by DG Regional Policy. In 2012-2013 Ms Mineva participated in two projects related to the development of the Smart Specialisation Strategy

for Bulgaria. Since November 2012 she is involved in the Civil Society for Good Governance and Anti-Corruption in Southeast Europe: Capacity Building for Monitoring, Advocacy and Awareness Raising (SELDI), funded by DG NEAR. The SELDI initiative (www.seldi.net) includes 34 CSOs partners and 5 anticorruption agencies from the Western Balkans, aiming to contribute to a dynamic civil society in the region, capable of participating in public debate and influencing policy and decision-making process in the area of anti-corruption and good governance. Since 2016 she is also implementing a Service Contract to Support the European Platform tackling undeclared work, which analyses the possibilities for collaboration between public bodies and social partners from different European countries in tackling undeclared work, irregular migration, social securities and tax fraud, social dumping, etc. Ms Mineva implements State Capture Estimation and Monitoring of Anticorruption Policies at the Sectoral level (SceMaps) (<https://scemaps.eu>) since 2019.

Policy brief No.36/2020

-

**Parliament oversight on
anti-corruption in
Bulgaria**

Author: Daniela Mienva

-

September 2020