Anti-Corruption Institutions: Activity Without Visible Results

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ANTI CORRUPTION FUND

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Contens

Summary 4

12 Introduction

14 Prosecuting high-level corruption

27 Prevention and Ascertainment of Conflicts of Interest

44 Recommendations

46 **Annex.** Results of the criminal prosecution of high-level corruption

Abbrevations

ACF
Anti-corruption Fund Foundation

AFIAPA
Anti-corruption and Forfeiture of Illegally Acquired Property Act

CAFIAP
Commission for Anti-corruption and the Forfeiture of Illegally Acquired Property

CC
Criminal Code

CFIAP
Commission for the Forfeiture of Illegally Acquired Property

CIPAA
Conflict of Interest Prevention and Ascertainment Act

CPACI
Commission for the Prevention and Ascertainment of Conflicts of Interest

CPC
Criminal Procedure Code

CSA
Civil Servants Act

CVM
Cooperation and Verification Mechanism

EC
European Commission

ECHR
European Convention on Human Rights and Fundamental Freedoms

FIAPFSA
Forfeiture of Illegally Acquired Property in Favor of the State Act

JA
Judiciary Act

NBCSSM
National Bureau for Control over Special Surveillance Means

PORB
Prosecutor's Office of the Republic of Bulgaria

PPA
Public Procurement Act

SANS
State Agency for National Security

SCC
Sofia City Court

SCtC
Supreme Court of Cassation

SJC
Supreme Judicial Council

SpCC
Specialized Criminal Court

SPOC
Supreme Prosecutor's Office of Cassation

SSM
Special Surveillance Means

Summary

This study marks the beginning of an annual independent civic monitoring of cases involving high-level corruption crimes (or allegations thereof). The monitoring consists of two parts: (1) an analysis of criminal proceedings at the trial or pre-trial phase; and (2) an assessment of CAFIAP's decisions on investigated conflict of interest cases. According to our assessment, which is based on specific facts considered in the context of particular criminal proceedings, the efforts to combat high-level corruption in the country are not merely unsatisfactory, but are rather unsettling. This study does not aim to provide an in-depth analysis of the normative, institutional, or political factors that promote or impede the counteraction of corruption. Instead, the report's objective is to bring clarity and transparency with respect to the work of the competent authorities on specific cases that are of great importance to the Bulgarian public.

01/
Prosecuting high-level corruption

The first part of the study focuses on analyzing "cases of high public interest" (40 in total), involving high-ranking public officials and spanning the period 2014 – 2019. The criteria for selecting the analyzed cases are the following (with the first criterion being the main one and the other two being secondary):

- 1) the (alleged) perpetrator is a public official who occupies a post of responsibility within an important institution in the legislative, executive or judicial branch, and the culpable act is carried out in the exercise of the official's public duties, irrespective of the caused damages; or
- 2) the (alleged) offense has resulted in severe consequences related to public interests, or has affected important public funds, even if the official does not occupy a post of responsibility; or
- 3) the (alleged) malfeasance is office is exceptionally culpable from a moral standpoint due to the manner of execution, the involved parties, the directly or indirectly affected vulnerable population groups, the pursued outcomes, etc. and thus has attracted serious attention in the country or abroad.

The temporal criterion applied is that the criminal proceedings/preliminary investigations should have been initiated, carried forward, or completed within the period 2014 – 2019.

The main conclusion of the performed analysis is that the efforts to combat high-level corruption in the past five years have not led to any effective punishment. Only **three of the 40** examined cases have resulted in **final convictions**. This percentage is significantly lower than the overall percentage of convictions achieved by PORB in the country. None of the examined final court verdicts were pronounced in 2018 and 2019. There are **no prison sentences** on all the reviewed cases, only suspended prison sentences. The convictions that have already entered into force were issued on cases that did not affect any interests, protected by law, to a greater degree than other cases within the same category.

There are seven final acquittals, issued primarily on cases where the **charges were unfounde**d, meaning that the indicted actions of the defendants were not considered criminal by the courts concerned. The completed cases have been processed within reasonable timelines at both phases of the criminal proceedings (pre-trial and trial).

Around one quarter of all the examined cases (11 out of 40) are still at the **pre-trial phase of proceedings, or their status remains unknown.** The criteria adopted by PORB for providing information to the public regarding the development of cases of high public interest are utterly unclear. The most inexplicable practice is to open cases with big press conferences and detailed press releases, and then shift to complete information blackout after a certain point.

Seven of the 11 cases mentioned above concern violations in the energy sector, of which five are related to the Belene Nuclear Power Plant project. The defendants on these cases are three ex-ministers (belonging to different political parties). The alleged damages to the state budget in all seven cases sum up to more than half a billion levs (BGN), a significant distinguishing factor from all other examined cases. In each of these seven cases, more than three years have passed since the pressing of charges at the pre-trial phase of the criminal proceedings; no information has been published about how the investigations have progressed throughout this period.

There are many factors that should be taken into account when assessing the work of the authorities in handling cases of high public interest, and there is not enough public information for a comprehensive analysis. However, it is important to note the following observations:

- In some of the carefully examined cases, the alleged perpetrators were charged at the pre-trial stage of proceedings **many years following the commission of the acts**, for which they were charged. Some individuals were charged after four or five years, others after nine or even more than 10, with no logical explanation or justification as far as criminal procedure is concerned. In addition, there is a pattern of **selective application of punitive sanctions.**
- With regards to the cases involving former ministers, it should be noted that the prosecution filed in court a total of seven cases against three ministers and two deputy ministers of the Council of Ministers, voted by the 43rd National Assembly (2014 – 2016); all five officials were nominated by the same political party. Three of the five officials were charged only days after having submitted their letters of resignation, and the other two were charged within a period of six months. To date, three of the seven cases have ended with a final acquittal, two have resulted in acquittals that are still subject to appeal, and the remaining two are still pending at first instance.
- The topical corruption cases that received high public attention in 2019 (such as ApartmentGate, Fake Guesthouses, War for Carcasses, etc.), were uncovered by the NGO sector and certain media, and not by the state anti-corruption authorities, despite the fact that the latter have much more resources and stronger administrative capacity.

More detailed information and analysis of all 40 cases can be found in the annex of the present study.

02/ Prevention and ascertainment of conflicts of interest

The second part of this study analyses the issues related to the prevention and ascertainment of conflicts of interest from an institutional point of view, focusing on the work of CAFIAP and the Chief Inspectorate of the Council of Ministers. The report concentrates on monitoring the legislative amendments and the activity of relevant institutions during 2019, using as a reference point the conclusions of the previous ACF report titled Anticorruption Institutions: Trends and Practices[1]. The presented case-studies related to conflicts of interest satisfy the following criteria: 1) the case is of public significance and has been given high publicity; 2) the case concerns high-ranking public officials in the central government; 3) the case was examined and decided by CAFIAP in 2019.

Even though the previous report of ACF identified a number of shortcomings in the legislative framework and the work of CAFIAP, no efforts were made in 2019 to remedy the following deficiencies:

- No guarantees were provided with respect to the independence of CAFIAP, including by adopting a different procedure for the election of its members which would involve not only the Parliament, but also other institutions (the President, the judiciary) or organizations (NGOs), thus ensuring a higher degree of transparency, political neutrality, and professionalism.
- The Commission's competence to employ SSM outside the scope of criminal proceedings (despite the lack of investigative functions) was not revisited.
- The decentralized approach to ascertaining conflicts of interest with respect to low-ranking public officials was not reconsidered.
- The critical remarks on the status of CAFIAP made by the European Commission in the report under the Cooperation and Verification Mechanism, published in October 2019, were not addressed.

Changes in CAFIAP's management

In 2019, the public image of CAFIAP was damaged further after its Chairman, Mr Plamen Georgiev, was investigated for failure to disclose information regarding owned property in his statement of property. The intervention of the Prime Minister in the case shed additional light on the political influence over the decision-making of institutions that should be independent by law. A vote for a new Chairman of CAFIAP was held in 2019. The election procedure once again suffered from a lack of competitive ideas, policies, and individuals, as well as from political influencing, lack of consensus, and lack of objective criteria for electing a candidate to the post.

Conflict of interest inspections

In 2019, CAFIAP conducted conflict of interest inspections and property inspections with regards to politicians of the ruling majority in the context of the ApartmentGate

1 / I. Pushkarova, A. Slavov, Anticorruption Institutions: Trends and Practices, Sofia: ACF, 2019, pp. 39-40: https://acf.bg/wp-content/uploads/2019/05/doklad_EN_web.pdf

investigation (concerning the purchase of apartments in luxury housing estates at preferential prices, several times lower than the market value of the properties) and the Fake Guesthouses investigation (related to the misappropriation of EU funds). The Commission did not identify any conflict of interest with respect to the persons inspected on the ApartmentGate cases, but these inspections were considered superficial and formalistic. Even though a conflict of interest was not ascertained, the political responsibility of the inspected parties was engaged owing to the publicity of the allegations. Thus, the Minister of Justice, the chairman of the parliamentary group of the ruling party, and several deputy ministers resigned from office.

The analysis of the conflict of interest cases decided in 2019 shows an increase in the effectiveness of processing such cases (162 in 2019 compared to 140 in 2018); however, the cases in which a conflict of interest has been identified are less compared to 2018 (14 cases in 2019 compared to 28 cases in 2018).

Conclusions

In 2019, CAFIAP continued to follow a formalistic approach in the ascertainment of conflicts of interest, which results in a failure to investigate all possible relationships that can lead to dependences and to exercising official duties under undue influence. The entire mechanism for fostering clientelist relationships that promote corrupt behavior and conflicts of interest cannot be exposed by conducting formalistic inspections.

The confidence of the public in institutions can be forged through the execution of comprehensive investigations in cases of alleged conflict of interest and corrupt behavior, and also through creating a public impression that the law applies equally to all individuals, irrespective of their economic, social or institutional status. Decisions of regulatory bodies (such as CAFIAP) that appear to give indulgences to certain individuals, while disproportionately repressing others based on selective application of the relevant legislation, are not effective in promoting a firm public perception of independent, professional and impartial administration of justice. Without ignoring certain achievements of CAFIAP, the identified problems should be addressed adequately.

03/
Recommendations

The present study does not focus on an in-depth examination of the many reasons and factors behind the ineffectiveness of combating high-level corruption in the country. Therefore, the recommendations summarized below do not relate to these necessary systemic reforms.

Transparency in combating high-level corruption

- **Developing criteria for corruption cases of high public interest:** The criteria should take into account the public status of the accused, as well as the material damages or other significant damages caused as a result of the criminal act. The application of such criteria will enable the monitoring and assessment of the most serious cases of alleged corrupt behavior that otherwise blur out in the statistical data on corruption in general.
- **Transparency with regards to the status of criminal proceedings on corruption cases of high public interest:** PORB should drastically increase the transparency of its actions on cases of high public interest, while taking heed of the presumption of innocence and the confidentiality of the pre-trial investigation proceedings. Once it has been established that releasing information to the public would not impede the investigation of the case or disproportionately affect the rights of the investigated parties, PORB should publish regular updates regarding the development of the case. This approach should not be adopted selectively, but should apply to all cases.

The proceedings for ascertaining conflicts of interest can be improved by undertaking the following steps:

- Guarantees should be created for the independence of CAFIAP, including by adopting a new procedure for electing members that would empower other institutions, besides the National Assembly, to

nominate or appoint members (such as the President or the supreme and appellate courts). The aim is to restrict the ruling majority's dominant influence on the composition of the body. In addition, a civil quota could also be introduced (whereby nominations would be made by public benefit organizations with a particular focus on counteracting corruption and upholding the rule of law). The election procedure should also ensure better guarantees for transparency, political neutrality, and professionalism.

- Practices of *comprehensive and rigorous investigation* and verification should be developed with reference to the categories of related persons – not only through simple checks of registers and databases, but also by assessing existing ties, relationships, and/or dependences. In addition, the definition of 'related parties' should be extended.
- An interdictory legal provision should be introduced, along the following lines: *high-ranking public officials shall be prohibited from obtaining, in their personal interest, any privileges, advantages, preferential treatment, property or services for prices below the respective market value, gifts, or other benefits on account of the occupied public office.*
- Sufficient legal guarantees should be provided against the unlawful use of SSM outside the scope of criminal proceedings, and the legal provisions prohibiting the disclosure of information acquired with the use of SSM should be clarified. This is of paramount importance for protecting against unjustified encroachment on the constitutional rights of individuals.
- The model of entrusting inspectorates within the meaning of Art. 46 and Art. 46a of the Public Administration Act, or special committees, with powers to administer conflict of interest cases involving lower-level public officials should be revisited. The current decentralized model applied to cases involving such officials leads to contradictory practices and abuse of power.

Introduction

In the past several decades, the efforts to combat high-level corruption in Bulgaria shifted between aspiring attempts to implement measures to uphold the rule of law and relapses into the long-standing political struggles for gaining or retaining power. A focused effort on developing a comprehensive and targeted policy for counteracting high-level corruption has never been present. Moreover, the soft anti-corruption instruments, such as property statements or conflict of interest declarations, were not implemented effectively.

The penal policy with respect to corruption crimes in the country is designed by two institutions of power: the political one and the judicial one (more specifically, the Prosecutor's Office). Many of the investigations of high-level corruption over the years have been the result of various agreements between the two institutions, or a tool for political maneuvering and promotion of economic interests. In the cases where there was no political stake, and the investigated party was not under the patronage of any of the two institutions, attempts were made to enforce the rule of law. However, in these cases, the aspiration to administer justice was hampered by the unreformed judicial system and penal policy, or by the lack of competence and expertize required for achieving the desired outcomes.

This study does not aim to provide an in-depth analysis of the normative, institutional, or political factors that promote or impede the counteraction of corruption. Many of the Anti-corruption Fund investigations target precisely those issues or dependences. By contrast, this report's objective is to bring clarity and transparency with respect to the work of the competent authorities on specific cases that are of great importance to the Bulgarian public.

The present study marks the beginning of an **annual independent civic monitoring** of cases involving high-level corruption crimes (or allegations thereof). The monitoring consists of two parts: (1) an analysis of criminal proceedings at the trial or pre-trial phase; and (2) an assessment of CAFIAP's decisions on investigated conflict of interest cases.

The goal of this annual monitoring is to systematize and add an analytical aspect, where possible and mainly with regards to completed criminal proceedings, to the public information already available about the examined cases. The idea is to present an objective picture of the effort to combat high-level corruption, based not only on statistics — as presented in the annual reports of public institutions — but also on the development and the end or intermediate results of reviewed specific criminal proceedings, pre-trial investigations, or CAFIAP decisions.

Furthermore, the conducted monitoring aims to compensate for the lack of transparency of the competent authorities. The latest Eurobarometer Corruption Report demonstrates that the Bulgarian public is in need of more transparency and confidence in institutions[2]. Bulgaria continues to "stay in the lead" with regards to certain negative indicators:

- The belief that crime can be committed with impunity in Bulgaria remains much higher than the average for the EU[3]: 39% of the Bulgarian citizens believe that reporting corruption crimes is pointless, as the perpetrators will never be punished[4].
- Only 9% of the Bulgarian citizens believe that reporting corruption crimes to the Prosecutor's Office can yield results, a ratio **three times lower** than the average for the EU (27%)[5]. On the other hand, the proportion of Bulgarian citizens who believe that it is more practical to report corruption crimes to the media than the authorities is twice higher (20%) than in other European states.
- Bulgaria is the country with the lowest proportion of citizens who believe that criminal prosecution is a successful deterrent to the commission of crimes by citizens[6].

Methodology and structure of the report

The two aspects of the monitoring study differ to an extent in terms of their methodology. While the monitoring of the criminal proceedings covers a period of five years (2014 – 2019), the monitoring of CAFIAP's work focuses on the cases processed in 2019. This divergence is necessary because the two types of proceedings have very different duration. The investigations and decisions of CAFIAP are usually completed within one year, whereas criminal proceedings on corruption cases typically go on for a period of around five years.

The cases analyzed in both parts of the study were selected based on similar criteria: (1) the publicity and public significance of the case; (2) whether the case concerns high-ranking public officials in the central government. At this stage, the monitoring has not covered any cases involving local authorities. One important difference in the criteria applied in the two parts of the study is that the criminal proceedings should only concern the actions of public figures exercised in their capacity of high-ranking officials. On the other hand, this requirement does not need to be satisfied by the conflict of interest cases, as they often focus precisely on examining the relationship between certain actions (such as the purchase of property at preferential prices) and the exercise of official duties by a high-ranking public official.

The present study is based on publicly-available information: court rulings, legislation and strategic documents, activity reports, impact assessments of implemented legislation, comparative review of institutional models and practices, and decisions of CAFIAP. In addition, a limited number of interviews were conducted with different categories of respondents in order to clarify certain circumstances and facts.

The report consists of two parts. The first part presents the general observations and conclusions of the analysis of 40 criminal cases. A more detailed analysis and assessment of each case can be found in the Annex. Results of the criminal prosecution of high-level corruption. The second part of the report contains certain general conclusions regarding the work of CAFIAP, as well as an analysis and assessment of eight conflict of interest cases.

2 / Eurobarometer (2020) Special Eurobarometer 502, https://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2247

3 / The average ratio for the EU is 30%, with only five countries doing worse than Bulgaria (Cyprus (53%), Greece (43%), Latvia (43%), Slovenia (41%), and Croatia (40%)).

4 / Supra note 1 at p. 122: Only two countries have lower confidence in their authorities, Slovenia (7%) and Latvia (8%)

5 / Supra note 1 at p. 129.

6 / Supra note 1 at p. 74.

I/

Prosecuting high-level corruption

— Andrey Yankulov,
attorney-at-law

The monitoring in the present report is based on 40 cases of high-level corruption crimes or allegations of corruption crimes, subject to penal action by the relevant state institutions. Therefore, the references to "corruption crimes" made in this text cover not just proven crimes where a final verdict has been issued, but also allegations that crimes have been committed which were not followed by subsequent criminal proceedings, or cases where proceedings are ongoing, have been terminated, or have concluded with an acquittal).

The analysis uses as a foundation the ACF report High-Level Corruption: An Analysis of Criminal Cases of High Public Interest, 2016 - 2018[7], published last year. As is mentioned in the article: "corruption offenses are not combined within a single section / chapter of the CC (codification). In a narrow sense, corruption offenses are limited to bribery[8], but in a more general sense they also include malfeasance in office[9], special cases of malfeasance in office (mostly involving self-interest motives), as well as individual offenses against the economy, against property, against justice, etc., codified in other parts of the CC."[10]

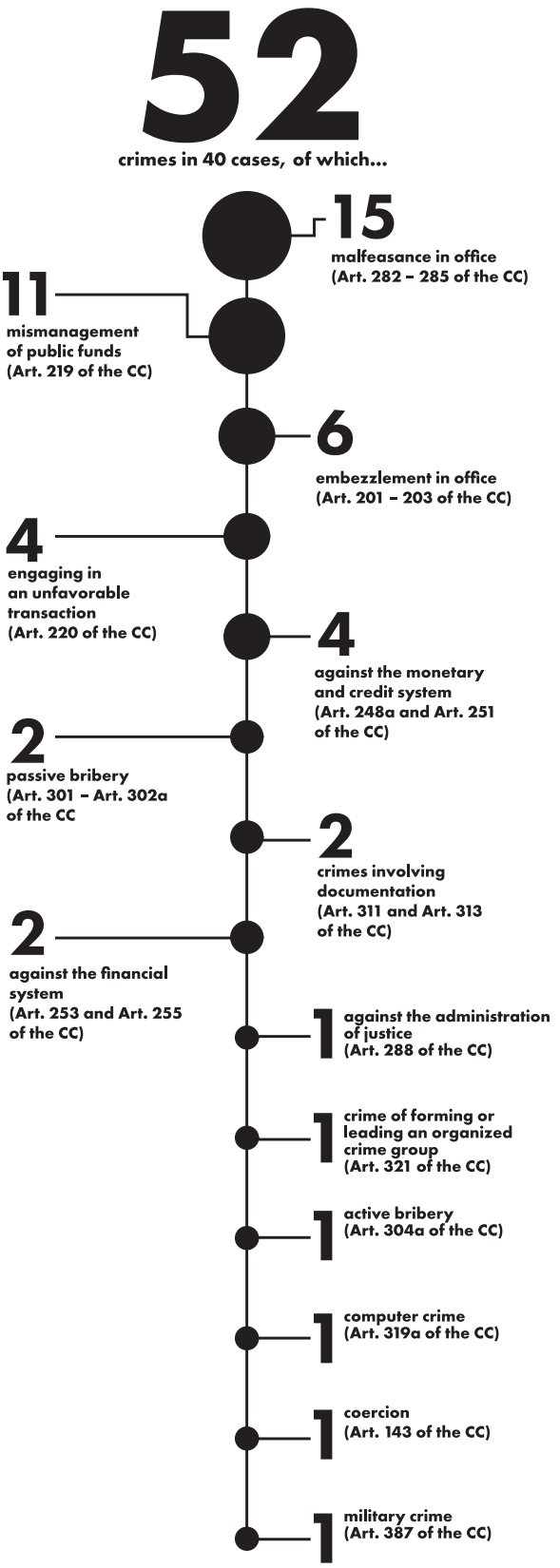
The present study is also based on the broad concept of corruption crimes within the framework outlined by the jurisdiction of the Specialized Criminal Court (SpCC) as per Art. 411a (1) of the Criminal Procedure Code (CPC) regarding the nature of the offense when it has been committed by a high-ranking public official, namely: core corruption offenses, embezzlement, fraud, mismanagement of property, credit offenses, money laundering, tax evasion, malfeasance in office, offenses against public administration, offenses against the administration of justice, and offenses involving documentation. The graph to the right presents a list of all the types of crimes committed in the 40 cases analysed.

The substantive law criteria for selecting the corruption crimes, analyzed in detail in the annex to this study, are the following (with the first criterion being the main one and the other two being secondary):

- 1) the (alleged) perpetrator is a public official who occupies a post of responsibility within an important institution in the legislative, executive or judicial branch, and the culpable act is carried out in the exercise of the official's public duties, irrespective of the caused damages;

or

- 2) the (alleged) offense has resulted in severe consequences related to public interests, or has



7 / I. Pushkarova and A. Slavov, Anticorruption Institutions: Trends and Practice. Sofia: ACF, 2019, pp. 8-23: https://acf.bg/wp-content/uploads/2019/05/doklad_EN_web.pdf
8 / Section IV, Chapter VIII, incl. economic bribery within the meaning of Art. 224, 225b, and 225c
9 / Section II, Chapter VIII
10 / Ibid at p. 9.

affected important public funds, even if the official does not occupy a post of responsibility;

or

- 3) the (alleged) malfeasance in office is exceptionally culpable from a moral standpoint due to the manner of execution, the involved parties, the directly or indirectly affected vulnerable population groups, the pursued outcomes, etc. and thus has attracted serious attention in the country or abroad.

The temporal criterion applied is that the criminal proceedings/preliminary investigations should have been initiated, carried forward, or completed within the period 2014 – 2019.

Considering the above-stated criteria, the sample of examined cases is representative of the manner of investigating high-level corruption crimes of considerable public significance.

The 40 cases are presented in the list on the next page:

#/	Name	Position	Status of the Proceedings
1 2	**Hristo Biserov – A** **Hristo Biserov – B**	Deputy Chairman of the Bulgarian National Assembly, 2009 – 2013	A - The criminal proceedings are terminated by the Prosecutor's Office B - The proceedings have been completed with an acquittal
3	**Simeon Dyankov**	Deputy Prime Minister and Minister of Finance, 2009 – 2013	The proceedings are at the trial stage
4	**Traycho Traykov**	Minister of Economy, Energy and Tourism, 2009 - 2012	The proceedings are at the trial stage
5 6	**Tsvetan Tsvetanov – A** **Tsvetan Tsvetanov – B**	Deputy Prime Minister and Minister of Interior, 2009 – 2013	A - The proceedings have been completed with an acquittal B - The proceedings have been completed with an acquittal
7	**Miroslav Naydenov**	Minister of Agriculture and Food, 2009 – 2013	The criminal proceedings are terminated by the Prosecutor's Office
8	**Delyan Dobrev**	Minister of Economy, Energy and Tourism, 2012 – 2013	The proceedings are at the pre-trial phase or at an unknown stage
9	**Rumen Ovcharov - A**	Minister of Economy and Energy, 2005 – 2007	The proceedings are at the pre-trial phase or at an unknown stage
10	**Petar Dimitrov**	Minister of Economy and Energy, 2007 – 2009	The proceedings are at the pre-trial phase or at an unknown stage
11 12	**Nikolay Nenchev - A** **Nikolay Nenchev - B**	Minister of Defense, 2014 – 2017	A - The proceedings have been completed with an acquittal B - The proceedings are at the trial stage
13	**Daniel Mitov**	Minister of Foreign Affairs, 2014 – 2017	The proceedings have been completed with an acquittal
14 15	**Hristo Angelichin - A** **Hristo Angelichin - B**	Deputy Minister of Foreign Affairs, 2014 – 2017	A - The proceedings are at the trial stage B - The proceedings have been completed with an acquittal
16	**Petar Moskov**	Minister of Health, 2014 – 2017	The proceedings are at the trial stage
17	**Adam Persenski**	Deputy Minister of Health, 2014 – 2017	The proceedings are at the trial stage
18	**Rumen Ovcharov - B**	Minister of Economy and Energy, 2005 – 2007	The proceedings are at the trial stage
19	**Anna Yaneva**	Deputy Minister of Economy and Energy, 2005 – 2007	The proceedings are at the trial stage
20	**Vladislav Goranov**	Minister of Finance, 2014 – 2017	The proceedings are at the pre-trial phase or at an unknown stage
21	**Veselin Pengezov**	President of the Military Court of Appeal, 2004 – 2009	The proceedings are at the trial stage
22	**Petko Petkov**	President of the Military Court of Appeal, 2009 - 2014	The proceedings are at the trial stage
23	**Vladimira Yaneva**	President of the Sofia City Court, 2011 – 2015	The proceedings have been completed with a conviction
24	**Rosen Zhelyazkov**	Gen. Secretary of the Council of Ministers, 2009 – 2013	The proceedings have been completed with an acquittal
25	**Angel Semerdzhiev**	Chairman of the State Energy and Water Regulatory Commission, 2009 - 2013	The proceedings are at the pre-trial phase or at an unknown stage
26	**Svetla Todorova**	Chairman of SEWRG, 2014 - 2015	The proceedings are at the pre-trial phase or at an unknown stage
27	**Stanimir Florov**	Director of the Chief Directorate for Combatting Organized Crime, 2009 - 2013	The criminal proceedings are terminated by the Prosecutor's Office
28 29	**Kircho Kirov - A** **Kircho Kirov - B**	Director of the National Intelligence Service (NIS), 2003 – 2012	A - The proceedings are at the trial stage B - The proceedings are at the trial stage
30	**Philip Zlatanov**	Chairman of the Commission for Prevention and Ascertainment of Conflicts of Interest, 2011 - 2013	The proceedings have been completed with a conviction
31	**Lyubomir Velkov**	CEO of NEK, 2005 - 2009	The proceedings are at the pre-trial phase or at an unknown stage
32	**Mardik Papazyan**	CEO of NEK, 2005 - 2009	The proceedings are at the pre-trial phase or at an unknown stage
33	**Rumen Simeonov**	Assistant Director at the Bank Supervision Department of BNB from 2007 to 2013	The proceedings are at the trial stage
34	**Tsvetan Gunev**	Assistant Director at the Bank Supervision Department of BNB from 2013 to 2014	The proceedings are at the trial stage
35	**Todor Kostadinov**	Director of the Internal Security Department at the MoI, 2013 - 2014	The proceedings have been completed with a conviction
36	**Pavel Aleksandrov**	Director of the Fund for Treatment of Children Abroad (FTCA), 2010 - 2015	The proceedings are at the pre-trial phase or at an unknown stage
37	**Lazar Lazarov**	Chairman of the Management Board of the Road Infrastructure Agency, 2014 – 2015	The proceedings are at the pre-trial phase or at an unknown stage
38	**Desislava Ivancheva**	Mayor of the Mladost District within the Sofia Municipality, 2016 – 2018	The proceedings are at the trial stage
39	**Petar Haralampiev**	Chairman of the State Agency for Bulgarians Abroad, 2017 – 2018	The proceedings are at the pre-trial phase or at an unknown stage
40	**Anton Ginev**	Director of the National Railway Infrastructure Company (NRIC), 2007 - 2009	The proceedings are at the trial stage

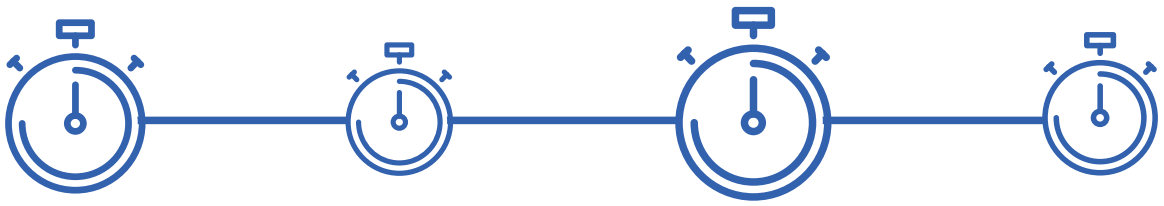
01. Completed cases

A brief first look at the examined cases subject to this study will reveal that **only a small portion of the cases – 7.5% (or three out of 40 cases) – have resulted in final guilty verdicts**[11]. In total, 10 criminal proceedings have been completed with final verdicts, seven of which are acquittals[12]. According to official data published in the annual report of the Prosecutor's Office of the Republic of Bulgaria (PORB) for 2018[13], 375 individuals have been convicted of corruption crimes, while 57 individuals have been acquitted thereof. Moreover, the ratio of convictions to acquittals for all processed cases is 96.5% to 3.5% (only slight differences have been cited for previous years).

Therefore, it can be concluded that as regards the high-level corruption crimes examined in the present study, the percentage of convictions achieved by the PORB is significantly lower not only compared to the overall percentage of convictions in the country, but also compared to the percentage of convictions of corruption crimes. On the other hand, the ratio of convictions in Bulgaria is extremely high compared to the ratios in countries with long-standing rule-of-law traditions. A clarification should be made at this point, however, that the standard of proof, established by the Bulgarian criminal procedures and practice, which a prosecutor needs to meet in order to file criminal charges, is in essence similar to the standard that a criminal court adheres to in order to pronounce a conviction (whether this is appropriate is a separate issue).

The three criminal cases that ended with final convictions are without a doubt of high public interest and against high-level officials within the ranks of the judicial and executive branches. However, neither one of these cases has resulted in considerable material harm or damages of other kind which could be qualified as posing a considerable public risk (two of the cases concerned the improper use of special surveillance means to monitor an information system, while the third one related to violations committed in the course of two conflict of interest proceedings). This is why the sanctions imposed have been lenient: two suspended sentences and an administrative fine, no prison sentences. Within 2018 and 2019, no criminal proceedings have been completed with final decisions being issued by the courts.

The summary analysis of the seven final acquittals shows that in a large percentage of the cases, the facts established in the course of the hearings were not disputed; however, the court issued a different legal assessment compared to the one proposed by the prosecution. This points to **wrongful application of the substantive law** by the prosecution: charges were filed on account of actions that **do not constitute crimes according to the law**, i.e., in most cases, there were no unexpected changes in the ratio of inculpatory versus exculpatory evidence, nor were there instances of different subjective interpretation of the presented evidence. In five[14] of the total of seven cases, the same decisions were issued at each successive court instance, while in only two[15] cases some of the court panels concluded that a crime had been committed, although the final outcome



3.1

years is the average timespan between the commission of the alleged corruption crimes and the filing of criminal charges in court

1.8

years is the average timespan between the filing of the final indictment (if the case was returned) and the issuing of a final verdict

3.4

years is the average timespan between the commission of the corruption crime and the issuing of a final verdict

2.5

years is the average duration of the trial phase for ongoing cases at this phase as of the end of 2019

providing the average duration of proceedings at the pre-trial stage would be speculative, as the exact moment when the investigation began is often unclear.

was an acquittal.

This means that, even if the most generous interpretation of the data regarding all completed criminal cases is applied, it is impossible to avoid the conclusions that:

- **the percentage of convictions is too low;**
- **the convictions were issued on cases that did not affect any interests, protected by law, to a greater degree than other cases within the same category;**
- **the acquittals were issued primarily on cases in which the pressed charges were unfounded from the outset.**

It can also be concluded that these cases were handled **within a reasonable deadline** at both stages of the proceedings (especially considering the long-standing formalism of Bulgarian criminal procedure) — on average, final verdicts were issued around three years and a half after the respective crimes had been committed, and the trial phase lasted on average a little over 18 months.

11 / Cases 25., 30., and 35. of the annex to this study
12 /Cases 2., 5., 6., 11., 13., 15., and 24.
13 / Available here: https://www.prb.bg/media/filer_public/77/40/7740438f-08a8-4970-abd8-0ad7a98a7b26/GD%202018%20PRB.pdf
14 / Cases 2., 5., 11., 13., and 24.
15 / Cases 6. and 15.

40
criminal cases

against **34** individuals for **52** crimes

27
ongoing proceedings or proceedings with unknown end results

13
completed

- **3** terminated at the pre-trial phase by prosecutors
- **7** acquittals
  - **1** due to lack of proof
  - **1** partly due to lack of proof and partly due to the indicted acts not fitting the definition of the alleged crimes
  - **5** the indicted acts did not fit the definition of the alleged crimes
- **3** convictions
  - **1** administrative sanction – fine
  - **2** suspended prison sentences

11
at the pre-trial phase or at an unknown stage

16
at the trial phase

- **8** at first instance (no verdicts yet)
  - **3** acquittals at lower instances
  - **8** at second or third instance (the first-instance judgment is appealed)
    - **5** convictions, or partial convictions and partial acquittals at lower instances

28
proceedings filed in court

7 of which were returned once or more times to the pre-trial stage with instructions to rectify serious procedural violations

02. Convictions of corruption crimes that became final in 2019 following an appeal before the Supreme Court of Cassation

A side note should be made at this point to consider decisions by the Supreme Court of Cassation (SCtC) issued in 2019, which are all systematically presented on the court's website[16]. None of these cases have been included in the list of 40 cases subject of this analysis, as they fail to meet the criteria outlined above. It is notable that the most common corruption cases heard at the SCtC last year concern the giving/offering of bribes to police officials (10 out of 28 cases), meaning that a great deal of the criminal cases reported by the court have not been carried out by public officials. There are three cases concerning officials (two tax inspectors and a policeman) who had requested/received bribes. The final convictions of public officials for corruption crimes, achieved by the public prosecution in 2019 following reviews by the SCtC, are seven: against a policeman for requesting/receiving a bribe (a suspended prison sentence); against a judge in the Radnevo District Court for committing document forgery (probation); against a prison warden in the Bobovdol Prison for malfeasance in office (suspended prison sentence); against the mayor of the village of Uzundzovo for crimes against electoral rights (suspended prison sentence); against the mayor of Dulovo Municipality for malfeasance in office (a five-year prison sentence); against a traffic policeman for committing document forgery (suspended prison sentence); against a tax inspector for requesting/receiving a bribe (suspended prison sentence).

03. Ongoing cases currently at the trial stage of proceedings

Regarding the examined cases where judgments have been issued, but proceedings are still ongoing (a total of eight cases), the ratio between convictions and acquittals is five[17] to three[18]. Four of the five guilty verdicts on these cases have resulted in custodial sentences (three sentences of imprisonment for a period over 10 years for serious cases of embezzlement and bribery), although these cases are still due to be heard at the final court instance.

The majority of acquittal cases which are yet to be heard at all instances seem to follow the same patterns as the cases, discussed above, where the acquittals were final — the most common reason for the non-guilty verdict was the fact that the court considered the charges, outlined in the indictment, unfounded (this was the case in two out of a total of three criminal proceedings; the motives of the court's judgment in the third case are not yet known).

The average duration of the pending criminal cases at the trial phase (a total of 18 criminal proceedings as of late 2019) is two and a half years and is not exceptional, considering the nature of the cases. Three cases[19], examined in two separate criminal proceedings, have been ongoing for over three years (one case against a defendant of considerable age and in poor health has been suspended).

16 / http://www.vks.bg/dela-za-korupcionni-prestaplenia-reshenia/2019.pdf
17 / Cases 21., 28., 29., 38., and 40.
18 / 12., 14., 22.
19 / Cases 21., 22., and 28.

04. Ongoing cases currently at the pre-trial stage of proceedings or with unknown development

It is notable that a considerable share of the ongoing cases — 11 cases[20] — are either at the pre-trial phase or their development is unknown.

Seven of the eleven cases mentioned above concern alleged malfeasance in the energy sector, perpetrated by seven different persons. Five had at various points in time worked on the project to build the new Belene Nuclear Power Station. Three former ministers (from different political parties)[21] and two former executive directors of the Natsionalna Elektricheska Kompania EAD (National Electrical Company)[22] have been accused at the pre-trial stage. The alleged damages to the public budget amount to more than BGN 500 mln., which makes these cases markedly different from the others subject to this study.

In all seven cases, the prosecution issued accusations against certain individuals at the pre-trial stage of criminal proceedings, and three years later (in some cases slightly more, in others — slightly less), **no further information has been published concerning the investigations**. In each of these cases, however, the prosecution has gone public about the accusations, and then followed up with three years of silence despite the high level of public interest, considering the high-level positions of the accused and the significant alleged damage to the budget. This three-year-long period of seeming inaction is notably long, even considering the factual and legal complexities of the cases. Since a decision had been made to accuse certain individuals, the prosecutors in charge would have gathered enough evidence pointing to these individuals' guilt, and the decisions regarding the course of the pre-trial proceedings (terminating an investigation or filing charges) should have been made a long time ago. Moreover, for all analyzed cases where indictments have been filed in court, it has taken on average around three years from the moment a corruption crime was committed (and not — as is the case with the proceedings with unknown development — from the moment when certain individuals were accused, which usually occurs at a much later stage) to the moment when the charges were filed in court.

Another one of the cases for which it is difficult to obtain information concerns a preliminary investigation (before the formal commencement of an investigation) with the goal of gathering information regarding a possible corruption crime committed by the current Minister of Finance, Vladislav Goranov[23]. The publicly known information is that the investigation began in November 2018. Since then, however, no official information about the case has been disclosed.

For the purposes of this study, we sent two requests to the Prosecutor General, asking for details about these cases and updates on their development, since this information is not publicly available. We received two formal replies by the Deputy Prosecutor General, stating that the required information was not within the remit of the Access to Public Information Act, and that the information could be disclosed by the relevant prosecutors in charge of the cases, as per the CPC. In our follow-up letter we explained in detail why we could not send personalized requests to the prosecutors in charge as per the CPC, since we do not know and have no way of finding out which prosecution office is handling each specific case, nor do we know the relevant case files. There was also no reaction to our appeal to the public prosecution to publish information about the development of these cases on the official website of the institution (once permission is obtained from the relevant prosecutors in charge), as has been the case, especially in the recent past, with many other investigations of high public interest. It becomes evident that what we have at hand is a double standard — following unknown criteria, the prosecution sometimes decides to provide regular and detailed information about certain proceedings, or to provide no information for others, or in some cases to provide regular updates in the beginning and then follow up with total information blackout.

Therefore, a clear conclusion can be made that the prosecution has remained inexplicably silent for a considerable period of time about the development of some of the studied cases involving alleged corruption crimes committed by current or former government ministers. Such behavior by the prosecution cannot be explained with the need to preserve the confidentiality of the investigations, since detailed information about the charges considered at the pre-trial phase of the Belene cases, for example, was made publicly available. It is not possible to find reasonable legal arguments for the subsequent information blackout.

20 / 8., 9., 10., 20., 25., 26., 31., 32., 36., 37., 39.
21 / 8., 9., 10.
22 / 31., 32.
23 / 20.

05. Cases in which the criminal proceedings have been protracted without good reason

In some of the examined cases the defendants were charged **many years after the commission of the alleged crimes.** In some cases, this happened four or five years later[24], in others — nine[25] or even ten years later[26]. The defendants on these cases are usually former government ministers, although this is not always the case (specific details about all of the proceedings are provided in the annex). The charges, filed when the individuals no longer held ministerial positions, usually referred to alleged violations in transactions with public assets, which caused harm to the state. The transactions were usually well-known at the time they were carried out or shortly after (one example are the proceedings against the former ministers Simeon Dyankov and Traycho Traykov)[27].

In other cases, charges were pressed in respect of the manner of execution of projects (for example, the proceedings against the former Presidents of the Military Court of Appeal)[28], or for other alleged violations constituting malfeasance in office (some of the proceedings against the former minister Tsvetan Tsvetanov)[29]. The essence of all of these violations does not allow for them to remain secret and to be uncovered much later as a result of an investigation by an anti-corruption agency or unit, or as a result of a report to the prosecution, revealing for the first time previously unknown information.

Such delays are utterly inexplicable in the context of criminal procedure. The factual and legal complexity of a case (when it does exist) can be a reasonable explanation for a certain amount of delay, but not over several years, especially in those cases deemed to be of high public interest, which tend to be prioritized by prosecutors and by specialized units. The lack of a logical explanation for such delays points to the fact that the answers lie elsewhere.

Regarding the charges against former ministers, it is notable that the public prosecution started investigations and later filed charges against three ministers (Nickolay Nenchev — defendant in two separate criminal proceedings[30], Daniel Mitov[31], and Dr. Petar Moskov)[32] and two deputy ministers (Hristo Angelichin — defendant in two separate proceedings[33] and Adam Persenski[34]) from the Council of Ministers voted by the 43rd National Assembly, all members of the same political organization. Of the five defendants, three were charged days after the resignation of the Government, while the other two — within six months of the resignation. Currently, out of the seven cases, three have ended with a final acquittal, two have ended with acquittals yet to be confirmed at the final instance, while two cases are being heard by first-instance courts.

24 / Case 3., 4., 6.
25 / Case 10., 19.
26 / Case 9., 18.
27 / Case 3. и 4.
28 / Case 21. и 22.
29 / Case 6.
30 / Case 11. и 12.
31 / Case 13.
32 / Case 16
33 / Case 14. и 15.
34 / Case 17.

06. The low effectiveness of prosecuting high-level corruption — summary

Seven of the 28 cases brought before a court by the prosecution have been returned by the respective courts to the pre-trial phase of proceedings at least once in order to rectify significant procedural violations concerning the right to defense. The total percentage of indictments returned by the courts in 2018 was considerably lower, namely 3.3%. Still, it is important to clarify that the cases analyzed in this study are more complex than usual, therefore the higher percentage is logical.

It is pertinent to remind the reader of an independent analysis of the structural and functional model of PORB[35], prepared by European prosecutors, which states that "the CPC's current provisions regarding indictments not only create hurdles for the effectiveness of the prosecution, but also — because of their length and formalism — lower the effectiveness of the criminal justice system as a whole. Compared to the requirements for indictments in other countries, those in Bulgaria require a large volume of unnecessary details." Changing the legislation or practice in order to achieve brevity, standardization, and clarity of indictments would benefit not only prosecutors and courts, but will also help defendants who act in good faith organize their defense, something that is currently potentially more difficult because of the length of indictments.

In conclusion, it should be highlighted **that the cases of alleged corruption, which were exposed in investigations by independent civic organizations and media, and which attracted significant popular attention in the past year (for example, Appartmentgate, Fake Guesthouses, War for Carcasses, etc.), were not initially detected by the public anti-corruption institutions.** All this despite the fact that the latter have greater resources and administrative capacity to handle publicly available information, compared to the non-governmental sector, in addition to being public authorities, which could also rely on special means of acquiring information.

To summarize the facts outlined above, **the efforts to combat high-level corruption, if evaluated through the prism of an analysis of specific criminal proceedings, are not only inadequate, but also represent a source of concern. What is notable is the low percentage of convictions.** If this is used as a benchmark for the success of public anti-corruption institutions, they could only improve on it going forward. In addition, it is perplexing how **criminal proceedings against certain persons are initiated years after the alleged crimes have been committed** and with no logical legal explanation of the significant time delays. Without any explanation, **proceedings can also be suspended for long periods of time.** The examples outlined in detail in the Annex, which clearly suggest **a degree of selectivity when it comes to decisions to initiate punitive actions**, are especially alarming[36]. The lack of willingness to enforce criminal law in an

35 / Available in Bulgarian here: https://www.prb.bg/media/filer_public/cf/64/cf64a9f1-b44b-49ca-9e98-77999c57adea/executive_summary_final_report_bg_20122016_in_bg.pdf
36 / Cases 2., 3., 6., and 11.

objective and equal manner constitutes a serious risk for the rule of law in the country.

Bulgaria *de facto* **lacks sufficient mechanisms for control** over the manner in which the public prosecution exercises its constitutional right — to initiate and conduct criminal proceedings. One form of control is exercised by the courts in deciding whether to uphold the prosecutors' indictments or to acquit the defendants. However, the decisions whether to initiate investigations or not, whom to investigate and charge and for what exactly, how long to conduct investigations, what kind of information (if at all) to disclose publicly and at what stages of the proceedings are all made by the prosecution. It is not possible to control how these decisions are taken, which, without a doubt, creates opportunities for abuses. It also turns out that the results of these decisions are inconsequential. A reminder is due here of the recommendations of the European prosecutors, authors of the analysis of the structural and functional model of PORB, who have very clearly pointed out "the real need for more effective procedures for accountability of the prosecution to the courts" and have also stressed the importance of making the prosecution more democratically accountable to society as a whole.

As mentioned in the monitoring report published by ACF last year[37], it has become the norm that the criminal proceedings related to cases of high public interest usually start off on a strong note in terms of media exposure at the time charges are pressed at the pre-trial phase. This is especially the case if there are also arrests. Even though this is the mere beginning of the criminal proceedings, the charges / arrest — and not the end result — become the focal point of media attention on a case. Gradually, the media interest dies off until it is almost completely gone.

And if such reactions on behalf of the general public are hardly surprising, **the lack of criticism within the ranks of the prosecution itself regarding these unsuccessful prosecutions or criminal proceedings with unknown outcomes is unsettling,** especially considering that the trajectories of these few cases (compared to the general volume of work handled by the prosecution), are very different than what usually happens during the course of so called "ordinary" criminal proceedings. What is also inexplicable is the lack of reaction from institutions, such as the Supreme Judicial Council (SJC) and the National Assembly which, after all, elects some of the members of the SJC and thus has some influence over the judiciary branch. Over time, this leads to multiplication of the same unsatisfactory results.

37 / I. Pushkarova, A. Slavov, Anticorruption Institutions: Trends and Practices, Sofia: ACF, 2019: https://acf.bg/wp-content/uploads/2019/05/doklad_EN_web.pdf

II/

Prevention and Ascertainment of Conflicts of Interest

— Assoc. Prof. Atanas Slavov, PhD

This report analyses the issues related to the prevention and ascertainment of conflicts of interest from an institutional point of view, focusing on the work of CAFIAP and the Chief Inspectorate of the Council of Ministers. The report concentrates on monitoring the legislative amendments and the activity of relevant institutions during 2019, using as a reference point the conclusions of the previous ACF report titled Anticorruption Institutions: Trends and Practices. [38]

01. Condition assessment: the risks and challenges remain

Even though the previous report of ACF identified a number of shortcomings in the legislative framework and the work of CAFIAP, no efforts were made in 2019 to remedy the following deficiencies:

- No guarantees were provided with respect to the independence of CAFIAP, including by adopting a different procedure for the election of its members which would involve not only the Parliament, but also other institutions (the President, the judiciary) or organizations (NGOs), thus ensuring a higher degree of transparency, political neutrality, and professionalism.
- The Commission's competence to employ SSM outside the scope of criminal proceedings (despite the lack of investigative functions) was not revisited.
- The decentralized approach to ascertaining conflicts of interest with respect to low-ranking public officials was not reconsidered.
- The critical remarks on the status of CAFIAP made by the European Commission in the report under the Cooperation and Verification Mechanism, published in October 2019, were not addressed.
- There have been no positive amendments to the legislative framework in 2019. Therefore, the recommendations related to providing guarantees for the political independence of the body and ensuring

38 / I. Pushkarova, A. Slavov, Anticorruption Institutions: Trends and Practices, Sofia: ACF, 2019, pp. 39-40: https://acf.bg/wp-content/uploads/2019/05/doklad_EN_web.pdf
39 / 2019 Annual Activity Report of CAFIAP: http://www.ciaf.government.bg/web/attachments/Page/56/3515/5e82f20046878.pdf
CAFIAP's 2019 Annual Activity Report contains information regarding the cases investigated by the Commission and the ascertained conflicts of interest. The Commission unit responsible for conducting investigations and ascertaining the existence of a conflict of interest involving high-ranking public officials, or the lack thereof, is the Conflict of Interest Specialized Department. The investigations involve collection and analysis of documents and other evidence, on the basis of which draft decisions are prepared and sent for approval to the Commission Members.
40 / Anti-corruption Institutions: Trends and Practices, p. 33.

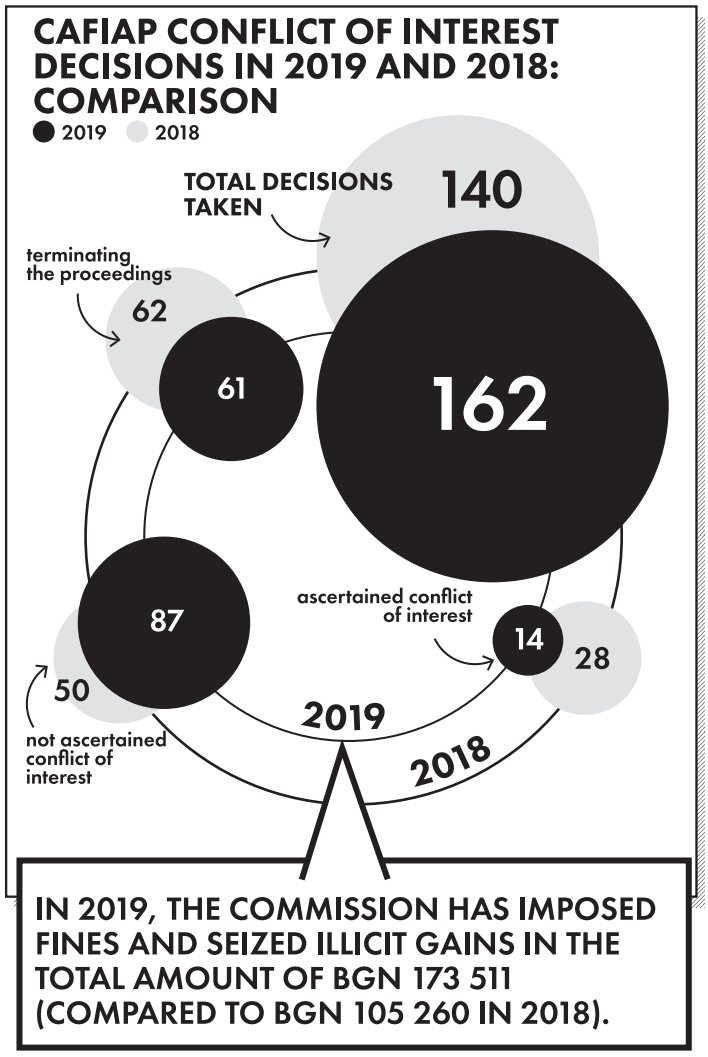
the effectiveness of its work remain relevant.

Despite its negative public image and the lack of positive legislative amendments, CAFIAP has reported an increased level of effectiveness in its 2019 Annual Activity Report [39].

According to the data in the report, the Conflict of Interest Specialized Department within the Commission initiated conflict of interest proceedings in 166 cases brought to its attention in 2019. For comparison, from the date of entry into force of AFIAPA (23 January 2018) to 31 December 2018, a total of 119 proceedings were initiated. Therefore, 47 cases more were investigated in 2019 compared to 2018.

According to the published data, in 2019, CAFIAP adopted 22 decisions more than in 2018. The SAC upheld six decisions of CAFIAP that ascertained the existence of a conflict of interest, and revoked two decisions. For comparison, in 2018, the SAC upheld three decisions and did not revoke any.

There has been no significant progress since 2018 with regards to the investigation of conflicts of interest. However, there has been an improvement on the results achieved by CPACI. For most of its term, CPACI was incapacitated and maintained a negative public image due to: 1) the removal from office and prosecution of its Chairman, and; 2) the inability to form the required majority for adopting decisions. As a result, in 2017, CPACI adopted only 69 decisions, ascertaining a conflict of interest in as little as four cases, bearing in mind that the scope of investigated persons was much larger at that time (it included all public administration officials). [40]



02. CAFIAP: new management, old problems

The previous ACF report emphasized the lack of sufficient guarantees for CAFIAP's independence in light of the fact that all of its members are elected by Parliament with simple majority. The European Commission also discussed the shortcomings of the adopted composition model in two consecutive reports under the Cooperation and Verification Mechanism. The Commission stressed that the anti-corruption institutions in Bulgaria should earn the confidence of the public by building a reputation of professionalism in the exercise of their functions and independence from external influence. It is essential for this process of consolidating the public trust that the procedures for appointing/electing management personnel do not raise issues of external influence or dependences. In addition, the European Commission pointed out that the procedure for electing CAFIAP members, completed in the beginning of 2018, was controversial as it was based on the model of simple majority in the National Assembly, which is conducive to political influence. [41]

There were changes in CAFIAP's management in 2019, caused by public assertions that its Chairman, Mr Plamen Georgiev, failed to declare all the property he owned. As a result of the initiated property inspection, Georgiev took indefinite leave, following the publicly-given instructions of the Prime Minister[42]. The reason lay in identified discrepancies between the reported information and circumstances (declared in the statement of property under AFIAPA), and the content of certain property deeds on the Land Register, brought to surface by different independent media. The case was also referred for inspection to the competent authorities by ACF and other non-governmental organizations. Based on the revealed facts, the Prosecutor General ordered an inspection, the result of which remained unknown[43]. However, this development did not impede the career advancement of Georgiev who is now a member of the diplomatic corps.

At the end of July 2019, Mr Georgiev submitted his resignation from office, which was accepted by the National

Assembly on 31 July 2019[44]. After being re-appointed as a prosecutor for a brief period, the ex-Chairman was offered a new post in the diplomatic corps; in October 2019, Georgiev was appointed as Consul General in Valencia (Spain)[45].

With a view to ascertaining all relevant facts and engaging the responsibility of CAFIAP's Chairman, in April 2019, ACF submitted a statement to the National Assembly (in particular to the Committee on Anti-corruption, Conflicts of Interest, and Parliamentary Ethics and the Committee on Interaction with NGOs and Complaints from Citizens). ACF proposed that parliamentary control should be exercised in accordance with Art. 17 of the Anti-corruption and Forfeiture of Illegally Acquired Property Act (AFIAPA). In case of identified violations, ACF suggested invoking the procedure for removal from office[46].

The main problem identified by ACF's experts is a significant discrepancy between the facts in the submitted statement of property (regarding the surface area and purchasing price of an apartment and a garage) and the information in the property deed (concerning the surface area and tax assessment of that same property). There is also a stark difference between the paid price and the actual market value of the property. ACF avers that there are sufficient grounds for conducting an independent comprehensive inspection of Mr Georgiev's property.

Given his legal functions, CAFIAP's Chairman should meet the highest standards of ethics and professionalism. AFIAPA stipulates demanding requirements for holding the office of Chairman of CAFIAP: "The Chairman of the Commission shall be a Bulgarian citizen who possesses strong professional and moral values, a higher degree in law, and no less than 10 years of legal experience" (Art. 8, par. 2 of AFIAPA). By failing to declare complete information regarding executed deals in real estate property, Mr Georgiev caused harm to the state budget (in the form of unpaid fees and taxes). Together with the failure to fulfil his legal obligation to submit a complete and correct statement of property under Art. 35 of AFIAPA, this constituted an irrefutable violation of the requirement for strong professional and ethical values.

Furthermore, AFIAPA stipulates that the National Assembly should exercise supervision over the work of the Commission, and that the Commission members should be obliged to appear before the National Assembly and provide information upon receiving a request to this effect (Art. 17 of AFIAPA). This mechanism for public accountability and control has never been used. In addition, the Rules on the Organization and Activities of the National Assembly (ROANA) provide that the National Assembly can require any institution, in whose composition it is involved, to submit activity reports of various nature, provided that a proposal to this effect has been issued by the relevant permanent parliamentary committee or by one-fifth of all MPs (Art. 92, par. 1 of ROANA).

In its statement, ACF invited the National Assembly to resort to its constitutional and legal powers to exercise control over the work of the Commission and its Chairman, including with respect to whether the inspection of the Chairman's property was performed in accordance with the requirements for independence, objectivity, and neutrality. In case it is identified that the Chairman or another member of the Commission is guilty of a serious violation or of systemic failure to perform official duties, the National Assembly is legally empowered to remove them from office (Art. 11, par. 4 AFIAPA).

As a result of the conducted inspections and following the requirements posed by the Prime Minister for assuming

41 / Report on the Progress in Bulgaria under the Cooperation and Verification Mechanism (COM(2019) 498 final), 22.10.2019, p. 10: https://ec.europa.eu/info/sites/info/files/progress-report-bulgaria-2019-com-2019-498_en.pdf
42 / https://www.mediapool.bg/apartamentgeit-borisov-ottegli-shefa-na-kpkonpi-i-sprya-zlaten-vek-news291784.html
43 / Prosecutor's Office of the Republic of Bulgaria: "The Prosecutor General, Mr Sotir Tsatsarov, ordered the Supreme Prosecutor's Office of Cassation to conduct inspections based on the media publications regarding real estate properties acquired by Pl. Georgiev – Chairman of CAFIAP" (04.04.2019): https://www.prb.bg/bg/news/aktualno/glavnijat-prokuror-sotir-cacarov-razporedi-na--249
P. Paunova, "No major cataclysms. How the ApartmentGate inspection will come to an inglorious end." (5.12.2019): https://www.svobodnaevropa.bg/a/30307830.html
44 / https://parliament.bg/bg/desision/ID/157123
45 / https://www.mfa.bg/embassies/spaingk/1042
46 / https://acf.bg/bg/komisiyata-za-borba-s-koruptsiyata-konfl/

office as General Consul in Valencia, Mr Plamen Georgiev took action to remove the illegal construction on the terrace that he had appropriated as part of his apartment (when, in reality, the terrace should be part of the common areas of the building)[47].

After Mr Georgiev was removed from office, a procedure for nominating and electing a new Chairman was initiated. In confirmation of the expectations, it was announced that the new candidate for the post would be the then Prosecutor General, Sotir Tsatsarov, whose term was ending in 2020, thus allowing him to take Georgiev's vacated role. Mr Tsatsarov's candidacy was announced in the National Assembly by MPs of the ruling majority, while at the same time, he attended meetings with the parliamentary groups of the political parties that supported him. This process of holding preliminary meetings and consultations involving discussions on the ruling strategy and the undertaking of certain commitments is of entirely political nature. However, at the time Mr Tsatsarov was still acting Prosecutor General – a post that demands political neutrality. The issue with the politicization of the choice of Chairman and members of CAFIAP was highlighted by ACF in the previous annual report, as well as in the statements submitted to Parliament in the course of the procedure for enacting the AFIAPA.

In order to ensure the appearance of competition, another candidate was involved in the race for becoming Chairman of CAFIAP – Mr Simeon Naydenov, nominated by the parliamentary group of the Volya party. However, the statements of the main political parties (excluding the Bulgarian Socialist Party – BSP – who were in opposition) clearly showed that Tsatsarov was undoubtedly the front runner.

The candidates had their hearings before the Committee on Anti-corruption, Conflicts of Interest, and Parliamentary Ethics on 3 December 2019. Even though the law allows representatives of civil society organizations to pose questions and make statements at these hearings, ACF and a group of other organizations publicly waived this right, stating that the choice was predetermined[48]. The statement of the organizations stressed the lack of real competition and transparency of the procedure for electing a new CAFIAP Chairman, and expressed concerns about political influence and behind-the-scenes negotiations. Furthermore, the organizations noted the absence of professional and public debates regarding the status of the Commission, despite the clear recommendations for necessary reforms (including reforms of the procedure for electing management personnel and of the procedures for ascertainment of conflicts of interest and forfeiture of illegally acquired property).

Despite the criticism from civil society, on 11 December 2019, Sotir Tsatsarov was elected Chairman of CAFIAP with a qualified majority of 165 votes[49]. The following parliamentary groups voted in his favor – GERB, United Patriots, MRF, Volya, and part of BSP (27 MPs in spite of the party's decision not to vote) – as well as five independents.

47 / https://btvnovinite.bg/bulgaria/kraj-plamen-georgiev-sabarja-terasata.html
48 / Common statement of five non-governmental organizations regarding the procedure for electing a Chairman of the Commission for Anti-corruption and the Forfeiture of Illegally Acquired Property (CAFIAP), 2.12.2019: https://acf.bg/bg/1561-2/
49 / Decision for electing a Chairman of the Commission for Anti-corruption and the Forfeiture of Illegally Acquired Property: https://parliament.bg/bg/desision/ID/157268

03. ApartmentGate: the property of the power-holders and the conflicts of interest

ApartmentGate is an investigation, published in March 2019 by ACF and Radio Free Europe (RFE), which revealed information about high-ranking public officials purchasing luxury properties for prices well under their market value. This is in clear contravention of traditional commercial practices[50].

The investigation provoked a strong public reaction and led to the resignations of a number of high-ranking officials, including the Minister of Justice (Mrs Tsetska Tsatcheva), the Chairman of GERB's parliamentary group (Mr Tsvetan Tsvetanov), the Deputy Minister for Sport (Mrs Vanya Koleva), the Deputy Minister of Energy (Mr Krasimir Parvanov), and the Chairman of CAFIAP (Mr Plamen Georgiev).

Following the investigation, a number of media outlets made use of the Land Register (the main source of information for ACF and RFE's investigation) to verify the property status of other high-ranking officials. This resulted in a new wave of resignations (ex., of Alexander Manolev – Deputy Minister of Economy and Board Member of State Fund Agriculture). Furthermore, the ethical and legal issues raised by the ApartmentGate investigation were widely discussed during the campaigning for the 2019 European Parliament elections.

Immediately after the investigation was published, the Prosecutor's Office ordered CAFIAP to examine the stated facts. ACF submitted reports on the case to CAFIAP, the National Revenue Agency (NRA), and two parliamentary committees. On 19 June 2019, after issuing a series of decisions, CAFIAP terminated the conflict of interest proceedings, concluding that there were no violations of the rules on prevention and ascertainment of conflicts of interest.

The majority of CAFIAP's decisions affirm the "sustainable" practice of conducting mediocre and on-the-surface investigations (criticized in ACF's 2018 report). Following an analysis of the decisions, ACF's legal team identified the following significant shortcomings:

- The conducted investigation has completely ignored the unjust enrichment hypothesis, i.e., there has been no expert assessment of the market value of the acquired/swapped properties. This is against the background of established discrepancies of about 300-350% between purchasing prices and market value (as reported by the sales department of the selling firm itself).
- CAFIAP has adopted a fragmented analytical approach – the published facts have not been examined in their entirety, but in isolation, with the aim to justify a lack of connection and personal interest. The cases have been investigated only in the context of the construction of the Zlaten Vek skyscraper, wrongfully assuming that this is the only hypothesis that can result in proving relationships, dependences, and personal interests of public officials. In reality, the support for the construction through legislative amendments is just one of the reasons, for which the public officials were given preferential prices[51]. The Commission should have examined the terms of the concluded transactions, looking for dependences and private interests that can be realized in the future (such as providing political support, relaxing administrative and regulatory regimes, and fostering relationships of clientelism).
- In all decisions taken on 19 June 2019, CAFIAP ascertained that there was no conflict of interest, because "there was no identified personal interest."
- All of the decisions lack a thorough discussion of the source of funds of the investigated parties; CAFIAP was satisfied with taking statements from the high-ranking public officials regarding the source of their funds. On the basis of the decisions, it can be concluded that no action was taken to verify the provided statements.

50 / ACF: "Bulgarian Politicians Acquire Luxury Properties on the Cheap" (19.03.2019): https://acf.bg/bg/kak-politicite-pridobivat-evtini-imoti/

51 / On 25 January 2017, Parliament passed an amendment of Art. 153, par. 2 of the Spatial Planning Act (SPA) that extended the time period for completing the construction of Category I and II objects from 5 to 10 years. In accordance with § 58 of the Transitional and Final Provisions of SPA, the new legislation does not apply to ongoing proceedings for issuing construction permits. Even though the construction of the Zlaten Vek skyscraper falls in the latter hypothesis, the leading firm, Arteks, requested a time period extension, citing the new provision. The amended provision, applicable in Arteks' case, required a new legal compliance assessment and the payment of a considerable fee to the state budget.

CAFIAP's decision to dismiss the conflict of interest claim in the case of **Tsvetan Tsvetanov**[52]

The Commission conducted a detailed examination of Mr Tsvetanov's participation in the vote to amend the SPA on 25 January 2017. It reached a conclusion that he voted "in favor" of the proposal (citing the published record of registrations and votes during Parliament's plenary session).

Mr Tsvetanov was involved in a transfer-of-ownership transaction – he swapped two apartments with a total surface area of 192.76 sq. m. and two parking spots for a luxury apartment with a surface area of 239.90 sq. m., equipped with a private lift and an adjacent anteroom, as well as with a garage of 42 sq. m. (property of the owners of Arteks Engineering).

Mr Tsvetanov paid only BGN 100 000 on top, which corresponds to the difference in the tax assessments of the swapped properties, at least on paper (the tax assessment of Arteks' properties is BGN 386 654.40 and the tax assessment of Tsvetanov and his wife's properties is BGN 287 438). In this regard, the Commission investigated whether Mr Tsvetanov was related to the owners of Arteks, which would be an indication for a conflict of interest. CAFIAP concluded that Mr Tsvetanov and Arterks Engineering were not related parties within the meaning of the law, and neither were Mr Tsvetanov and any of the Arteks shareholders.

According to CAFIAP, the lack of relationship points to a lack of personal interest, and the latter should be present in order to establish a conflict of interest case. The Commission further held that there was no dependence on Mr Tsvetanov, as no relationships of hierarchical subordination were found.

The legal issues surrounding this transaction relate to the facts declared before the notary and to the payment of reduced taxes and fees. All taxes and fees on the transaction were calculated on the basis of the tax assessment of the more expensive property, which was BGN 386 654.40.

According to an analysis by ACF's team, the real market value of the acquired property is considerably higher than the sum of the market value of Tsvetanov's properties and the additional BGN 100 000 paid[53]. The selling price negotiated with Tsvetanov is three to four times lower than the market value of the apartments in the same building (which is around EUR 2640 per sq. m including VAT according to unofficial information from the sales department of Arteks; according to the CEO of Arteks, the price can go up to EUR 3000 per sq. m for the luxury apartments). The transaction was extremely favorable for Mr Tsvetanov; however, it also resulted in considerable harm to the state budget (circa BGN 200 000 in unpaid VAT and local taxes according to ACF's calculations)[54].

Despite having the necessary resources to ascertain the above-stated facts — including by formally appointing experts to assess the value of the properties — CAFIAP reached its conclusions without a comprehensive investigation of all possible power relations and dependences. One of the hypotheses of related parties according to the law — *natural and legal persons, with which the public official has a relationship of political or economic dependence that can give rise to justified concerns regarding the official's objectivity and impartiality* (§ 1, item 15 of the Additional Provisions of CAFIAP) — requires a more rigorous examination of the possible relationships of influence.

First, purchasing properties for prices *several times lower than the market value* could put the buyer into a relationship of dependence, capable of compromising his objectivity and impartiality. The forging of relationships of clientelism does not necessarily stem from the existence of a formal *relationship of hierarchical subordination*, which is what the Commission has held.

Second, CAFIAP investigated Tsvetan Tsvetanov

52 / Decision No. PC-8639-19-031 of 19.06.2019
53 / https://acf.bg/bg/kazusat-apartamentgeyt/
54 / https://acf.bg/bg/bg-akf-izprashta-proverka-za-zamenki-na-imoti/

in his capacity of MP, but not in his capacity of chairman of a parliamentary group, chairman of a parliamentary committee, and deputy chairman of a ruling political party. As Deputy Chairman of GERB, Tsvetanov had the possibility to exert *formal and informal influence* on all officials that were politically elected or appointed with the support of GERB in Parliament. This includes a number of persons concerned with the business activities of construction firms, who were in *a direct political and hierarchical relationship of dependence* on the Deputy Chairmen of GERB (the Mayor of Sofia, district mayors, and Ministers and Deputy Ministers of MRDPW who are directly in charge of the institutions regulating the business activities of Arteks).

The approach adopted by CAFIAP is too formalistic and inadequate for preventing and sanctioning the development of politico-economic dependences.

The fact that the Commission could not even check the records of parliamentary votes accurately attests to the quality of the conducted investigation. As evident, Mrs Tsatcheva did not vote for the proposed amendment to the legislation (§ 33 of the Bill to Amend the SPA), but only for the transitional provision (§ 58) that cannot be applied retroactively[57].

In the cases described above, high-ranking public officials received *preferential and advantageous treatment*, which resulted in unjust enrichment of *large proportions*. The acquisition of apartments for prices that have been proven lower than the market value of comparable properties of similar size and location can be classified as obtaining a privilege or gift (i.e., the difference between the purchasing price and the market value of the properties), directly connected with the public official's position of influence in legislative or executive institutions.

Since the law (AFIAPA) is aimed at the prevention of corruption and conflicts of interest[58], the obtaining of a direct material benefit from dealings with private parties on the basis of the occupied position of power should be prohibited (even if official duties were not

CAFIAP's decision to dismiss the conflict of interest claim in the case of **Tsetska Tsatcheva**[55]

The decision is partially based on a submitted preliminary contract for purchasing property off-plan and before the frame stage of construction has been completed, which justifies the low price according to CAFIAP. However, the cited terms of the contract make it clear that the price of 600 EUR/sq. m., quoted on the property deed, does not apply to the frame stage of construction – up until the issuing of Certificate No. 14 – but to the issuing of Certificate No. 15 which marks the *completion of construction.* An additional price has been foreseen for any finishing works following the issuing of Certificate No. 15. The final price of the transaction is formed by adding the two amounts together (the amount stated on the property deed, EUR 138 000, and the amount for the finishing works, EUR 110 400) to arrive at a total of EUR 248 400 for a total built-up area of 233 sq. m. This translates to only EUR 1066 per sq. m. of built-up area[56].

The Commission considered the amendment to the SPA (the so-called Arteks Amendment) that the construction firm cannot benefit from, as it is not applied retroactively. However, the firm invoked precisely this amendment as a justification for extending the validity of the obtained construction permit. CAFIAP did not establish the existence of a *personal interest at the moment when public authority was exercised*. The conclusion that there was no personal interest was based on the lack of relationship between the investigated persons, on the one hand, and the ownership and management of the selling firm, on another.

CAFIAP did not identify a conflict of interest in this case.

55 / Decision No. PC-8639-2-19-036 of 19.06.2019

56 / A comparative market analysis by ACF shows that similar properties in the same region sell at twice higher prices: https://acf.bg/bg/antikoruptsionnata-komisiya-i-apartamentgeit/

57 / Official record of the votes on the Bill to Amend the SPA that took place in the National Assembly on 25 January 2017: https://www.parliament.bg/pub/StenD/20170131093902iv250117.pdf

58 / Art. 2, par. 2 of AFIAPA: "to guarantee that high-ranking public officials exercise their duties or competences in an honest and respectful manner in accordance with the Constitution and the laws of the country."

exercised with that motivation). In the described cases, the conduct of the public officials is reproachable, as the formally declared parameters of the executed transactions and the commercially irrational behavior of Arteks raise concerns about the existence of non-transparent relationships with certain high-ranking officials of the ruling majority.

Making false statements in official documents, such as the declarations submitted to a notary upon sealing a property transaction, is a violation in itself (or even a crime in the most serious cases). In view of the facts identified in the case-studies, there are two possible alternatives: 1) the persons in question made false or incomplete statements in an official document regarding the actual prices of the performed property transactions, thus causing harm to the state budget; or 2) if it is accepted that the submitted statements correspond to reality, then the persons are guilty of obtaining *a material benefit in connection with their position of power* (preferential prices falling far below the market value), which would not have been obtained if they did not occupy the respective position; the preferential treatment itself can be considered a form of *immaterial benefit* within the meaning of the law.

The first hypothesis involves a violation of tax legislation, consisting in a failure to pay the taxes due on the actual price of the transaction, thereby harming the state budget (VAT) and the local budget (local taxes). In the second hypothesis, there is a *conflict of interest*, as the high-ranking public official obtained a considerable benefit – both material and immaterial (i.e., lower purchasing price and preferential treatment) – solely on account of occupying a particular public office.

The main questions that the relevant institutions should address are related to ascertaining the actual prices of the cited transactions, i.e., which of the following two scenarios took place:

- the actual price paid was much less than what has been stated in the property deeds or
- the property deeds reflect the actual price of the transactions and the persons in question received "gifts" and preferential treatment due to the public posts they occupied.

In case that the second scenario is the correct one, this would raise the question of what expectations a private firm could have had in order to sell properties to politicians of the ruling majority *for prices below market value,* thereby throwing away the chance to make a considerable profit. It can be surmised that the firm's aim was to develop a clientelist network in order to secure political protection for its activities and initiate a practice of exchanging favors. Other explanations revolve around trading in influence, money laundering and other corrupt behavior, and forging dependences with leading politicians. The competent authorities failed to identify the reasons behind Arteks' decision to offer preferential conditions on the examined transactions.

The decisions of CAFIAP conclude that there was no conflict of interest in the described cases based on a restrictive interpretation and application of the law. This should not be the end point of such an investigation. The *personal interest* of the investigated high-ranking public officials was *proven and realized,* and the preferential treatment relates to the broader context of clientelism and political protectionism of favored businesses. Clientelism leads to placing politicians in dependence, making it likely that their future actions will be dictated by private interests.

04. Conflict of interest proceedings in other cases

As a result of the public attention generated from ApartmentGate, CAFIAP received a number of reports on high-ranking public officials purchasing or using luxury properties.

One of the reported cases concerned the construction of a guest house with EU funds that was later used by the Deputy Minister of Economy, Mr Alexander Manolev. Manolev was investigated for exerting influence on regulatory bodies in his capacity of Board Member of State Fund Agriculture.

CAFIAP's approach in this case deserves special attention, as the Commission reached a conclusion that there was a conflict of interest on the basis of a mere *assumption* that Manolev exerted influence over the regulatory bodies. CAFIAP did not examine any specific evidence or actions of Manolev, but instead relied on the presumption that the high-ranking official in question took advantage of being in a position to exert influence. This relaxed approach to establishing the main ground for CAFIAP's decision is in contrast with the typical formalistic approach undertaken by the Commission on other cases.

In April 2019, the Prosecutor's Office initiated criminal proceedings against Manolev and Ana Dimitrova for misappropriation of European funds[60]. The first court hearing took place in January 2020 in the Blagoevgrad Regional Court.

CAFIAP's decision identifying a conflict of interest in the case of **Alexander Manolev**[59]

In the period prior to his appointment to public office, the Deputy Minister of Economy and Board Member of State Fund Agriculture, Alexander Manolev, had a private business of his own. In 2013, in the context of his entrepreneurial activity, he granted a right of superficies in favor of ET Agrotreid – Ana Dimitrova (ET), specifically for the construction of a residential building – guest house with a pool and fence – on his own land in the region of the Sandanski town. In 2015, through his own firm, Manolev gave the superficiary a loan in the amount of BGN 700 000 for the construction of the guest house. At the same time, ET applied for a financial grant under Measure 311 – Diversification into non-agricultural activities – of the Rural Development Programme 2007 – 2013. In October 2014, State Fund Agriculture and ET signed a financial aid agreement for the amount of BGN 391 000. The price for constructing the guest house was BGN 681 000. In April 2016, ET authorized Alexander Manolev to represent them before various institutions and organizations, sign various contracts, manage finances, etc.

CAFIAP reached a conclusion that during the period of occupying the office of Board Member of State Fund Agriculture (from 5 May 2017 to 18 April 2019), Alexander Manolev was in a position to exert influence on all structures and units of State Fund Agriculture. The greater part of that period coincides with the five-year period for monitoring the execution of the financial aid agreement concluded with ET.

CAFIAP held that, in his capacity of Board Member of State Fund Agriculture, Manolev *used the power of his office to exert influence on the persons* responsible for the monitoring. This was done in the private interest of a related party, ET Agrotreid – Ana Dimitrova, in violation of Art. 7, par. 2 of CIPAA /repealed/, respectively Art. 57 of AFIAPA. Citing the informal nature of the influence exerted on officials and institutions in the exercise of their supervisory functions, the Commission held that there was a conflict of interest in the case. The related party, ET, obtained the benefit of escaping sanctions due to the lack of adequate supervision. Mr Manolev was fined BGN 10 000.

59 / Decision No. PC-10473-19-063 of 10 October 2019
60 / https://www.segabg.com/node/65400

CAFIAP's decision to dismiss the conflict of interest claim in the case of **Vladislav Goranov**[62]

The Commission was alerted that Vladislav Goranov lives free of charge in an apartment (with a built-up area of 180 sq. m.), located in the Este Complex in Sofia. The apartment had been given to Goranov by his godfather, Ivan Sariev, and is owned by the godfather's wife, Snezhana Sarieva. At the same time, the son of Ivan Sariev, Hristo Sariev, is an official in the Ministry of Finance (MoF). The case was referred for inspection to the Commission in connection with preliminary investigation No. 14403/2018 of the Supreme Prosecutor's Office of Cassation.

In his statement to the Commission, Gorvanov claimed that he had been using the apartment since 2012 and that he had declared this fact in his statement of property, submitted to CAFIAP in 2018. He claimed that the apartment was given to him by his godfather, Ivan Sariev, but that he paid all the living expenses himself: utility bills, taxes, and fees. Goranov further stated that he met Sariev in 2001 when the latter was a department director at MoF and that eventually their acquaintance developed into friendship. Later on, Sariev became his godfather and godfather of his two sons. Goranov explained that the reason for using the luxury apartment was the strong earthquake of May 2012, which scared his wife and children, and prompted the family to change residence.

CAFIAP did not identify any violations with the appointment of Hristo Sariev, who is Ivan Sariev's son, as Junior Expert (he was appointed by order of the Minister in February 2015 and discharged in December 2015), concluding that all requirements for the position were met and that he never received preferential treatment during his employment. CAFIAP held that Goranov had exercised official duties, but in the absence of a personal interest, or that of related parties. With regards to Hristo Sariev's participation in a public procurement committee (in May 2015), CAFIAP did not identify any connection between the bidders on the procurement order and Sariev's parents.

The Commission did not find that Ivan Sariev, Snezhana Sarieva, or any firm that the two are involved in took part in procurement orders commissioned by the Ministry of Finance.

The Commission did not consider that Goranov, Ivan Sariev and the latter's family were related parties within the meaning of §1, item 1 of the Additional Provisions of CIPAA / repealed/, respectively §1, item 15 of AFIAPA).

CAFIAP did not identify a conflict of interest in this case.

Another important case that caught the public attention involved the Minister of Finance, Vladislav Goranov, who lives free of charge in a luxury apartment owned by his godfather, Ivan Sariev, who is a prominent businessman in the country[61].

CAFIAP's approach to this case was once again *formalistic*, as it did not investigate in detail whether there were p*olitical and economic dependences* that could compromise the Minister's objective and impartial exercise of duties. As long as he lives free of charge in a luxury apartment, located within an enclosed complex, Goranov has *a considerable personal interest* in maintaining good relations with Sariev and his family. This is sufficient motivation to employ Hristo Sariev at the Ministry of Finance, which was effected *in the absence of a competitive recruitment procedure.* Goranov's *personal interest,* consisting in the exemption from paying rent, translates to tens of thousands per year (for a period of seven years, Goranov must have saved around BGN 200 000).

Another unanswered question of a more procedural nature concerns the connection between the conflict of interest investigation, initiated following a report of the Director of the Anti-corruption Department, and the Prosecutor's Office investigation of a committed corruption crime. The case was referred to the Commission with allegations of corrupt conduct (a crime) that should arguably be examined with the full arsenal of a criminal investigation. In the end, it was transformed into a conflict of interest investigation (an administrative violation) that concluded with finding no violations.

61 / It is public information that Ivan Sariev is a Sovereign Grand Commander of the Supreme Council of the Ancient and Accepted Scottish Right of Freemasonry in Bulgaria, possessing the highest 33rd degree of freemasonry. He is also A Grand Master Mason of the United Grand Lodge of Bulgaria: https://bulgariaanalytica.org/2018/07/29/sas-svetlina-ot-dupka-rusia-i-turcia-masoni/
https://www.capital.bg/politika_i_ikonomika/imena/stroitel_na_kapitalizma/2015/11/30/3353702_stroitel_na_kapitalizma_ivan_sariev/
62 / Decision No. PC-16757-19-015 of 20 February 2019

CAFIAP's decision to dismiss the conflict of interest claim in the case of **Lozan Panov**[63]

The case was opened on the basis of a report containing allegations of unjust enrichment through abuse of office on the part of Lozan Panov – President of the SCtC. The report further alleged that Panov violated the SJC's requirements for high moral values of the representatives of the judiciary, and that he judged cases in the SCtC that involved parties related to him. In essence, it was claimed that he is related to the owner of Arteks, Arch. Plamen Miryanov, who is his best man. In addition, Panov's wife owns a property purchased from Arteks.

Upon conducting an inspection, CAFIAP established that the apartment where Panov's family lives (a 4-bedroom apartment of 172 sq. m.) was purchased from his wife's company in 2013, well before the couple were married and before Panov became President of the SCtC. The couple married in February 2015, almost two years after the purchase of the apartment.

The Commission only investigated Panov in his capacity of Member of the SJC, since the exercise of authority by judges and the President of the SCtC is overseen by the Inspectorate to the SJC. CAFIAP held that Panov and the owners of Arteks are not related parties within the meaning of the law, and that Panov had not exercised power in pursuit of a personal interest.

CAFIAP did not identify a conflict of interest in this case.

The group of cases submitted to CAFIAP with conflict of interest allegations also included a report against the President of the Supreme Court of Cassation, Lozan Panov.

CAFIAP's decision on this case is indisputable, both with respect to the facts and the law. The analysis of the facts submitted in the report to CAFIAP against Panov unequivocally leads to the conclusion reached by the Commission. The allegations put forward in the report can be defined as tendentious, manipulative, and seeking to harm the reputation of the SCtC President by wrongfully associating his public image with the ApartmentGate scandal.

63 /Decision No. PC-221-19-034 of 19 June 2019

CAFIAP's decision to dismiss the conflict of interest claim in the case of **Rumen Radev**[64]

The case was opened on the basis of a report containing allegations for conflict of interest and unjust enrichment though abuse of office on the part of Gen. Rumen Radev in this capacity of Commander of the Air Forces (in the period 30 June 2014 – 10 August 2016). The report concerns the employment of his current wife, before they were married, on two public posts, one of which should be assumed by a military, rather than a civil person. Furthermore, it is claimed that Mr Radev lived in public housing, owned by the Ministry of Defense, in violation of the law.

In the course of the investigation, CAFIAP ascertained that some of the claims were not actionable, as the three-year time period for their submission had passed. The Commission established that Radev exercised official duties in the period November 2014 – March 2016 by signing annexes to a labor agreement and issuing respective orders. In this regard, the last exercise of power took place at the end of March 2016, that is more than three years before the CAFIAP investigation was initiated. CAFIAP concluded that "the expiration of the three-year time period is a procedural obstacle to reviewing the received report and a justification for terminating the conflict of interest proceedings against Rumen Radev in his capacity of Commander of the Air Forces in the period 30 June 2014 – 10 August 2016."

CAFIAP also analyzed several orders, issued in the period April-May 2016, which represent an exercise of official duties with respect to the future spouse of Gen. Radev. The Commission reached the conclusion that the couple had not been related parties at the time, as they had not married yet, and an inspection of the Population Register showed that they "had not lived at the same address or had children during the investigated period." Therefore, Gen. Radev had not exercised official duties in pursuit of a personal interest (of his own or of a related party) during the investigated period.

CAFIAP did not identify a conflict of interest in this case.

CAFIAP also examined a report against President Rumen Radev in his previous capacity of Commander of the Air Forces.

CAFIAP's decision on Gen. Radev's case was not appealed by the Prosecutor's Office and entered into force in 2019. The report against the President should be examined against the broader civil and political background. In the past two years (2018 – 2020), the President repeatedly expressed a firm opinion that the high-level corruption in political circles should be investigated more actively. He criticized the selective approach of the anti-corruption authorities, as well as the exertion of political influence during the procedures for electing a new Prosecutor General and members of CAFIAP[65]. The direct offensive launched by the Prosecutor General against the President in the beginning of 2020[66] and the announcement of the President's intention to initiate constitutional reform of the procedure for electing a Prosecutor General[67] are the two events that defined the political dynamics in the first quarter of the year.

64 / Decision No. PC-252-19-050 of 31 July 2019
65 / https://www.president.bg/news5228/darzhavniyat-glava-izborat-na-glaven-prokuror-e-akt-s-visoka-obshtestvena-znachimost-i-nachinat-na-negovoto-provezhdane-tryabva-da-sazdava-doverie-v-obshtestvoto-a-ne-da-porazhda-samneniya.html (7.11. 2019)
66 / On 28 January, the Prosecutor's Office took active part in this smear campaign by disclosing conversations between the President and the acting Commander of the Air Forces, Gen. Stoykov, recorded with the use of SSM. The conversations concerned the investigation of the President by CAFIAP, and the idea behind their disclosure was to imply that a serious offence had been committed, which could lead to impeachment proceedings.
"The Prosecutor's Office released recordings involving the President" (29 January 2020): https://www.bnt.bg/bg/a/prokuraturata-pusna-zapisi-svrzani-s-prezidenta
67 / https://www.president.bg/news5306/rumen-radev-badeshti-izmeneniya-v-konstitutsiyata-tryabva-da-garantirat-nezavisimost-efektivnost-i-operativnost-na-balgarskiya-sad-i-prokuratura.html

CAFIAP's decision to uphold the conflict of interest claim in the case of **Petyo Ivanov**[68]

The case began with a report against Petyo Ivanov in his capacity of Board Member and CEO of Bulgarian Energy Holding EAD (BEH), and his capacity of Board Member of Bulgargaz EAD.

The report claims that in his capacity of Board Member (BM) of BEH EAD, Petyo Ivanov took part in a meeting on 7 August 2018, on which he voted in favor of appointing himself as BM of Bulgargaz EAD, thereby violating the law and causing a conflict of interest.

Upon conducting an investigation, CAFIAP established that Ivanov had violated the law (Act. 56 of AFIAPA). In his capacity of a high-ranking public official – BM and CEO of BEH EAD – he exercised official duties in pursuit of his personal interest by voting in favor of his election/re-election as BM of Bulgargaz EAD, as well as by voting in favor of accepting the 2018 financial report and the 2018 activity report of Bulgargaz EAD. The Commission further held that he also exercised official duties *in pursuit of his personal interest by entering into a contract with himself*, thereby violating Art. 58 of AFIAPA.

According to CAFIAP, Ivanov should have *recused himself* from exercising specific official duties upon identifying the existence of a personal interest and should have notified the appointment body about his interest.

The Commission held that through the exercise of official duties Ivanov obtained *an immaterial benefit – vote, support, and influence in his favor*. It further held that there was also a material benefit, consisting in the possibility *to receive income in the form of money* as BM of Bulgargaz EAD. In the latter capacity, Ivanov was entitled to remuneration under his management contract, to an additional potential remuneration in the form of royalty, as well as to a share of the profits of Bulgargaz EAD, determined following the approval of the financial and activity reports of the company.

CAFIAP upheld the conflict of interest claim in the case, ordered the seizure of funds obtained from remunerations, and imposed the envisaged fines.

The case of Petyo Ivanov – Board Member and CEO of Bulgarian Energy Holding EAD – concerns certain controversial practices surrounding the appointment of senior management officials in state-owned enterprises, as well as the procurement of considerable benefits on the basis of such appointments

68 / Decision No. PC-583-18-057 of 18 September 2019

05. Chief Inspectorate of the Council of Ministers

The Chief Inspectorate monitors the observance of the compatibility requirements for holding public office in the Council of Ministers (CoM). It also supervises the ascertainment of conflicts of interest with respect to persons under § 2, item 1 of the Additional Provisions of AFIAPA, who are appointed/elected by the Council of Ministers or the Prime Minister. The Chief Inspectorate has reported performed inspections with respect to 72 declarations for incompatibility concerning newly appointed CoM administration officials or members of the political cabinet. The Chief Inspectorate has not received any conflict of interest reports regarding public officials under its purview[69].

The Chief Inspectorate has further reported that the National Council on Anti-corruption Policies (NCAP) convened for one session in 2019, which was attended by the Head of the Chief Inspectorate.

Although NCAP has been conferred important functions, related to the strategic planning and coordination of policies and measures in the sphere of counteraction and prevention of corruption, it appears that the body is struggling to summon the necessary political decisiveness for achieving meaningful results. Despite the many relevant cases in 2019 and the public expectations for combatting corruption and clientelism in the highest echelons of power, the body did not undertake any specific measures for resolving the pressing issues. On the contrary, one of the Council Members – Alexander Manolev – has been found in breach of conflict of interest legislation and is currently being prosecuted for misappropriation of EU funds.

The effectiveness and transparency of NCAP can be further assessed in light of the fact that, in April 2020, the body's website does not contain any information regarding recent activity. There are no published activity reports for 2018 and 2019, and part of the published information is not accessible[70].

69 /Annual Activity Report of the Chief Inspectorate for 2019: https://anticorruption.government.bg/downloads/--2020-02-22-11-08-58--doklad-gi-2019.pdf
70 / https://anticorruption.government.bg/content.aspx?p=14

06. Conclusions

In 2019, CAFIAP continued to follow a formalistic approach in the ascertainment of conflicts of interest, which results in a failure to investigate all possible relationships, thus leading to dependences and exercise of official duties under undue influence. Conducting inspections on public registers and other databases is not sufficient for exposing the entire mechanism of fostering clientelist relationships that promote corrupt behavior and conflicts of interest. The unwarranted preferential treatment of high-ranking public officials by businesses, which results in material and immaterial benefits for the former, should be analyzed more comprehensively. The confidence of the public in institutions can be forged not only through the execution of comprehensive investigations in cases of alleged conflict of interest and corrupt behavior, but also through demonstrating that the law applies equally to all individuals, irrespective of their economic, social or institutional status. Decisions of regulatory bodies (incl. CAFIAP) that appear to give indulgences to certain individuals, while disproportionately repressing others based on selective application of the relevant legislation, are not effective in promoting a firm public perception of independent, professional and impartial administration of justice. Without ignoring certain achievements of CAFIAP, the identified problems should be addressed adequately.

III/ Recommendations

The present study does not focus on an in-depth examination of the many reasons and factors behind the ineffectiveness of combating high-level corruption in the country. In the past years, a great number of analyses and reports led to the development of a new Strategy for Judicial Reform, together with the accompanying roadmaps[71], as well as a new Penal Policy Concept[72]. At the same time, the reforms and their concomitant issues were subjected to criticism and recommendations by the European Commission (under the Cooperation and Verification Mechanism[73] and the European Semester[74], and probably the trend will continue under the future rule of law mechanism), as well as the Council of Europe[75]. While endorsing the need for systemic reforms in the areas of justice administration and anti-corruption, the present study will confine to recommendations that will allow the Bulgarian public to monitor and assess the achieved results more effectively.

Transparency in combating high-level corruption

- **Developing criteria for corruption cases of high public interest:** Currently, the annual reports of PORB include a section on proceedings of significant public interest, which accommodates corruption crimes, organized crime, human trafficking, drug trafficking, money laundering, etc.[76] The pre-trial criminal proceedings of this category are over 20 000 per year for the entire country, 3000 of which relate to corruption crimes. The present study puts forward a set of criteria — that can be further developed and implemented — for narrowing down the cases to those that are truly of high public interest. The future criteria should take into account the *public status* of the accused, as well as the *material damages* or other significant damages caused as a result of the criminal act. The application of such criteria will enable the monitoring and assessment of the most serious cases of alleged corrupt behavior that otherwise blur out in the statistical data on corruption in general.
- **Transparency with regards to the status of criminal proceedings on corruption cases of high public interest:** PORB should drastically increase the transparency of its actions on cases of high public interest, while taking heed of the presumption of innocence and the confidentiality of the pre-trial investigation proceedings. Once it has been established that releasing information to the public would not impede the investigation of the case or disproportionately affect the rights of the investigated parties, PORB should publish regular updates regarding the development of the case. This approach should not be adopted selectively, but should apply to all cases. As a bare minimum, PORB should provide the public with information regarding: (1) the stage of the pre-trial proceedings; (2) the reasons behind any delay in the completion of the pre-trial phase of proceedings; (3) decisions to press charges or file an indictment, as well as decisions to terminate or suspend the criminal proceedings. After the criminal proceedings have ended, either with a decision of the prosecutor at the pre-trial phase or with a ruling at the trial phase, the public should be informed about the motives behind the final decision.

Improving the effectiveness of preventing conflicts of interest

- Guarantees should be created for the independence of CAFIAP, including by adopting a new procedure for electing members that would empower other institutions, besides the National Assembly, to nominate or appoint members (such as the President or the supreme and appellate courts). The aim is to restrict the ruling majority's dominant influence on the composition of the body. In addition, a civil quota could also be introduced (whereby nominations would be made by public benefit organizations with a particular focus on counteracting corruption and upholding the rule of law). The election procedure should also ensure better guarantees for transparency, political neutrality, and professionalism.
- Practices of *comprehensive and rigorous investigation* and verification should be developed with reference to the categories of related persons – not only through simple checks of registers and databases, but also by assessing existing ties, relationships, and/or dependences. In addition, the definition of 'related parties' should be extended.
- An interdictory legal provision should be introduced, along the following lines: *high-ranking public officials shall be prohibited from obtaining, in their personal interest, any privileges, advantages, preferential treatment, property or services for prices below the respective market value, gifts, or other benefits on account of the occupied public office.* An exception can only be made in cases of publicly announced promotional prices and discounts, which are not connected with the officials' professional capacity, as well as when the gifts are of reasonable scale. It could further be provided that this rule shall apply for *a period of one year* following the official's resignation,

71 / http://www.strategy.bg/StrategicDocuments/View.aspx?Id=957
72 / http://strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=4946
73 / Вж както доклади по мониторинговия механизъм, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en;
74 / https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0501
75 / https://www.venice.coe.int/webforms/documents/?country=6&year=all
76 / https://www.prb.bg/media/filer_public/77/40/7740438f-08a8-4970-abd8-0ad7a98a7b26/GD%202018%20PRB.pdf – стр. 55 и сл.

unless otherwise stipulated in other legislation.

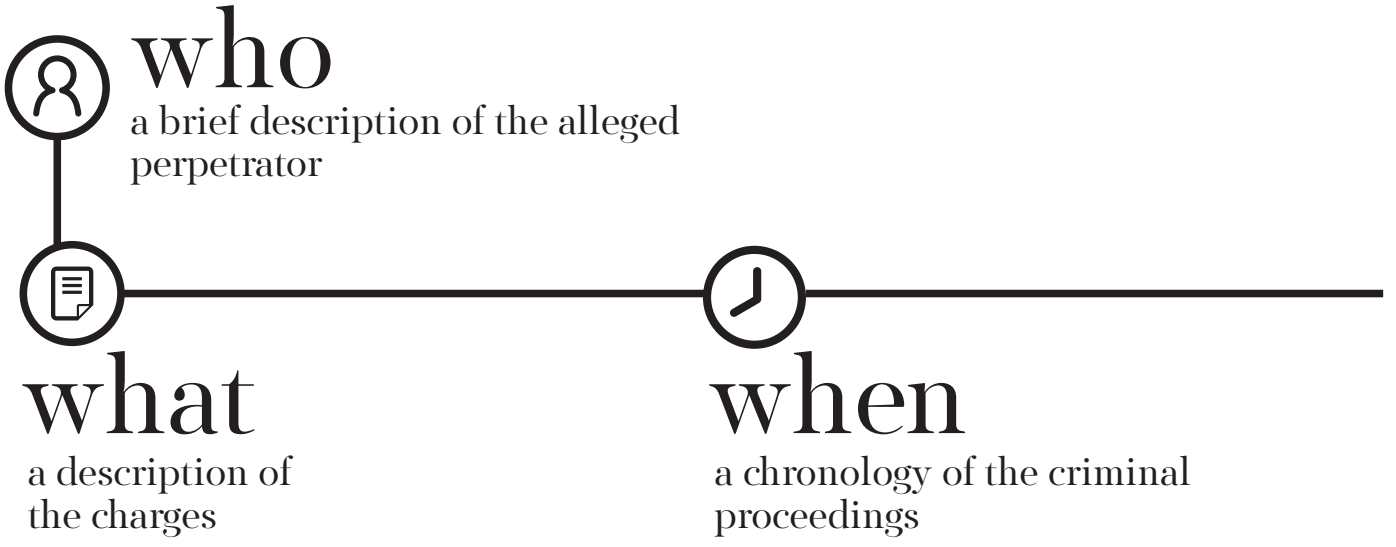
- Sufficient legal guarantees should be provided against the unlawful use of SSM outside the scope of criminal proceedings, and the legal provisions prohibiting the disclosure of information acquired with the use of SSM should be clarified. This is of paramount importance for protecting against unjustified encroachment on the constitutional rights of individuals.
- The model of entrusting inspectorates within the meaning of Art. 46 and Art. 46a of the Public Administration Act, or special committees, with powers to administer conflict of interest cases involving lower-level public officials should be revisited. The current decentralized model applied to cases involving such officials leads to contradictory practices and abuse of power.
- The National Council on Anti-corruption Policies should be transformed into an effective institution, responsible for the strategic planning and coordination of policies and measures related to the prevention and counteraction of corruption.

Annex

Results of the criminal prosecution of high-level corruption

— Andrey Yankulov,
attorney-at-law

All the cases in this annex are structured in the following identical manner:



why

a summary of
the key issues

conclusion

a brief analysis of
the completed cases

Sources of information:

The descriptions of all case facts are based on information from public sources: court rulings available on the webpages of the relevant courts, indictments on cases at the trial stage, press releases by the Prosecutor's Office, and media publications. The charges have mostly been presented in their authentic form, notwithstanding certain minor redactions and simplifications aimed at making them more digestible for the general public.

The cases have been divided into the following categories:

- cases concerning officials in the legislature and the government: items 1. – 20.
- cases concerning representatives of the judiciary: items 21. – 23.
- cases concerning other officials in the executive and in local government: 24. – 40.

case 01/

HRISTO BISEROV / A

Deputy Chairman of the Bulgarian National Assembly, 2009 – 2013, from the Movement for Rights and Freedoms

What

charged for carrying out financial transactions with assets (USD 314,529 and EUR 117,192) which he knew or suspected were acquired through criminal activities in the period 13 December 2012 – 21 February 2013. Biserov was charged with committing a continuing crime under Art. 253, par. 1 & Art.26, par.1 of the CC (money laundering);

When

Charges were pressed in November 2013 — In February 2016, the Sofia City Prosecution Office (SCPO) terminated the criminal proceedings.

заключение

According to media publications, the investigation of the Sofia City Prosecution Office continued for more than two years at which point Biserov's defense has filed a plea with the SCC to instruct the prosecution to file an indictment, initiating a court hearing (as per Ch. 26 of the CPC, the 2016 version). The prosecution informed the court that the criminal proceedings have been terminated. The SCPO has not provided any public information about the termination of the proceedings, neither has it shared a copy of the decision to terminate for the purposes of this study. Details of the decision remain unknown.

защо

No detailed information is available.

77 / The same argument has been supported by the Supreme Prosecutor's Office of Cassation (SPOC) when applying methodological oversight on implementation of the law.
78 / For example, in 2013, the audit office discovered inconsistencies in the declarations of 152 individuals who are obligated to publicly declare their assets: https://econ.bg/

case 02/

HRISTO BISEROV / B

Deputy Chairman of the Bulgarian National Assembly, 2009 – 2013, from the Movement for Rights and Freedoms

what

charged for tax evasion: In 2013, he avoided paying income tax of considerable proportions, amounting to BGN 18,965.49 for the period 1 January 2012 – 31 December 2012. Biserov was charged under Art. 255, par. 3 and par. 1, item 2, scenario 2 of the CC (tax evasion);

- In 2013, Biserov violated the provisions of a law and a promulgated ordinance of the Bulgarian National Bank regarding the obligation to declare foreign currency transactions. Biserov failed to declare a large transaction, worth BGN 700,960.63 — a crime under Art. 251, par. 1 and under Art. 26, par. 1 of the CC (currency crime);
- In 2013, in his capacity as member of the National Assembly, he hid information in his written assets declaration to the Bulgarian National Audit Office. Such declarations are required of specific individuals holding high-level public posts. Biserov failed to mention that he owned money in US dollars and Euro in Swiss bank accounts — a crime under Art. 313, par.1 of the CC (documentation crime).

when

Charges were pressed in 2013 — bill of indictment filed in May 2015 by the SCPO in the Sofia City Court (SCC) (the bill was returned by the court for prosecutors to rectify procedural violations) — bill of indictment filed by the SCPO in the SCC in July 2015 — acquittal by the SCC in December 2015 — the acquittal was upheld by the Sofia Court of Appeal (SCA) in July 2016 — the acquittal was upheld by the SCtC in December 2016.

conclusion

Two of the three charges are unfounded, while the tax fraud charge — unproved. The need to circumvent the banking secrecy defense has been clear for the prosecution, too, since they sent requests for legal assistance to Switzerland on two occasions. Considering the lack of cooperation, it remains unclear how else some of the claims could be proven in the course of the trial phase and, eventually, they remained unproven.

why

The proceedings were initiated on the basis of information from the State Agency for National Security about three currency transfers, amounting to EUR 82,515.39, USD314,568.11 and EUR 82,515.39, ordered by the defendant from accounts in Swiss banks to accounts in another European country, belonging to his son. All three courts accepted that the tax crime charge (the only point of contention throughout the course of the proceedings) was not supported by evidence — the prosecution had accepted the conclusions in a tax audit, estimating the value of the owed unreported tax, without questioning them, however, these conclusions could not be accepted as evidence by the criminal court. As the proceedings went on, it was only possible to prove that the defendant authorized the transfers from the bank accounts, but not that he was the owner of the accounts (and respectively the owner of the funds in those accounts). Therefore, the court decided that it was not proven that the sums transferred by the defendant were part of his taxable income. The lack of evidence about the actual owner of the accounts and the movement of funds in and out of them was due to the refusal of the Swiss authorities to disclose any information on the grounds of banking secrecy. The Swiss authorities refused to cooperate despite two requests for legal assistance sent to them in the course of the pre-trial proceedings. The SCC decided to reject the charge of violating a law and a promulgated ordinance of the Bulgarian National Bank regarding the obligation to declare foreign currency transactions (the facts established in the course of the trial proceedings confirm the lack of obligation to issue a declaration; in addition, according to new legislation such declarations need only be made when the transactions involve countries outside of the European Union). The charge of declaring false information to the Bulgarian National Audit Office was also rejected. The first verdict of the court was accepted by the Sofia City Prosecution Office which did not dispute this part of the acquittal. The second verdict was accepted by the Appellate Prosecution Office Sofia (APO Sofia) which did not dispute this part of the acquittal issued by the Sofia Court of Appeal. Regarding the declaration to the audit office, the court maintained that the objective of the declaration was not to prove the facts outlined in it — as is the requirement for proving the alleged crime — but solely to provide information about the assets of its author[77]. In addition, every year, such discrepancies are being discovered in many declarations (often due to mistakes, considering the large volume of information that needs to be declared), but charges under Art. 313 of the CC have been rare [78].

case 03/

SIMEON DYANKOV

Deputy Prime Minister and Minister of Finance, 2009 – 2013, together with the defendant under item 4 and four other defendants

what

charged with malfeasance in office in relation to a privatization deal:

The alleged crime was committed in collaboration with I.G.P. within the period March 2010 – 27 December 2011 when Dyankov was serving as Deputy Prime Minister and Minister of Finance and was also overseeing the Privatization and Post-Privatization Control Agency. Dyankov was charged for misusing the authority given to him under the Public Administration Act and the Rules on the Structure of the Ministry of Finance in an attempt to help another party — Bulbrokers EAD — receive a benefit of BGN 1,276,618.85 in terms of payment for services rendered as an investment intermediary on a transaction involving the purchasing of shares from the capital of EVN Bulgaria Elektrorazpredelenie AD on behalf of the client EVN AG, based in Austria. Dyankov allegedly committed the violation when he verbally directed the Executive Director of the Privatization and Post-Privatization Control Agency, E.L.K., to assign the conducting of a privatization assessment for the privatization of the government's share in EVN Bulgaria Elektrorazpredelenie AD (33%) to the investment intermediary Bulbrokers EAD, instead of to a licensed assessor in accordance with the Privatization and Post-Privatization Control Act. Dyankov thus prevented E.L.K. from exercising the above-described powers with regards to the auction sale via the Bulgarian Stock Exchange, thus causing harm to the public budget equal to BGN 7,457,553.82. This sum is the difference between the fair minimal price of a share, which should have been BGN 1,777.48, and the average price of BGN 1,682.64 during public auctions which took place on four days in December 2011. The difference was allegedly due to the fact that the chosen investment intermediary lowered the initial asking price per share. Dyankov was charged under Art. 283a par.1; Art. 282, par. 2 and par. 1; and Art. 20, par. 2 and par. 1 of the CC.

when

Dyankov was charged in January 2017 — the SCPO filed the bill of indictment in the SCC in August 2017 — in October 2017, the bill was returned so that procedural violations could be rectified — the bill of indictment was filed with the Specialized Criminal Court (SpCC) in December 2017 — in March 2018, the bill was returned because of procedural violations — bill of indictment filed with the SpCC in October 2018 — case pending.

why

Dyankov was charged more than five years after the alleged crime was committed, considering that the details of the privatization deal have been publicly known. The alleged violation is inciting another person, the Executive Director of the Privatization and Post-Privatization Control Agency, to violate the law by assigning the evaluation of the privatization deal to an investment intermediary rather than a licensed assessor. The alleged harm has resulted from directing the Executive Director to act in this manner and he was not considered a defendant, but a witness in the proceedings. According to prosecutors, the incitement happened on an unknown date within a significant period of about a year and nine months. Therefore, it can be concluded that proof and facts about the alleged violation are missing. The bill of indictment was filed three times because of procedural violations, identified by the SCC and the SpCC.

conclusion

The proceedings are still pending.

case 04/

TRAYCHO TRAYKOV

Minister of Economy, Energy and Tourism, 2009 - 2012 together with the defendant under item 3 and four other defendants

what

when

charged with intentional mismanagement of public funds:

Between 8 December 2011 – 27 December 2011, as Minister of Economy, Energy and Tourism (MEET), and in his capacity of representative of the State as a shareholder in EVN Bulgaria Elektrorazpredelenie AD, he failed to exercise due care in the management of public assets when implementing public policy in the energy sector, despite his obligations under the Rules on the Structure of the MEET and the Rules on Exercising the State's Shareholder Rights in State-Owned Enterprises. Traykov allegedly handled the sale of the State's shares in EVN Bulgaria Elektrorazpredelenie AD in a manner detrimental to the public interest. He did this when he allowed for the sale of the 33% State shares to be carried out by the Privatization and Post-Privatization Control Agency (PPCA) without ensuring the proper implementation of energy sector policies and failing to defend the public interest in terms of achieving a profitable sale. Traykov also apparently ignored the sale conditions set out in the Energy Companies Privatization Strategy. This resulted in losses for the state, amounting to BGN 31,639,704 — the difference between the sale price in 2004 of the majority stake of 67 %, outlined in a contract between EVN AG Austria and the PPCA, and the average price achieved during an auction via the Bulgarian Stock Exchange which took place on four consecutive days in December 2011. This price was BGN 1,682.64 per share and it was apparently achieved because the minimum asking price had been set at BGN 1,373.92 due to failure to take into account the Energy Companies Privatization Strategy. The offense is intentional, it does not contain elements of a more serious crime, the case is especially serious and the subsequent harm is of considerable proportions — a crime under Art. 219, par. 4, par. 3, and par. 1 of the CC

Traykov was charged in January 2017 — the SCPO filed a bill of indictment with the SCC in August 2017 — the case was returned due to procedural violations in October 2017 — the SCPO brought charges before the Specialized Criminal Court in December 2017 — the case was returned due to procedural violations in March 2018 — the Specialized Prosecution brought charges before the SpCC in October 2018 — the case is pending.

why

Traykov was charged more than five years after the alleged crime was committed, considering that the details of the deal have been publicly known. The alleged harm to the public budget has been calculated as the difference between what the state received in 2011 and the sum which could have been generated via the sale of the remaining 33% shares in the company if the sale price had been similar to the average sale price in 2004 when 67% of the shares of the company were sold. Aside from the innovative approach in comparing transactions carried out in different periods, just on the basis of sale price, the "mismanagement of public funds" crime involves the presence of damage, destruction or squandering of assets, or other damage of similar scale. So far, these damages have been interpreted in terms of actually incurred losses both in the legal theory[79] and in the practice[80]. The bill of indictment was filed by the prosecution three times due to procedural violations pointed out by the courts.

conclusion

The proceedings are pending.

79 / Girginov, A., Criminal Law in the Republic of Bulgaria. Special Part, Sofia: Sofi – P, pp. 291-292

80 / Judgment No 511 of 1 December 2008 of the SCtC on case No 518/2008, 2ndCriminal Division; Judgment No 473 of 23 November 2009 of the SCtC on case No 519/2009, 2nd Criminal Division, Judgment No 196 of 30 March 2010 of the SCtC on case No 110/2010, 3rd Criminal Division, CC

case 05 /

TSVETAN TSVETANOV / A

Deputy Prime Minister and Minister of Interior, 2009 – 2013

what

charged for embezzling BGN 50,569.28 from the budget of the Ministry of Interior. The alleged violation took place on two occasions in the period 23 December 2011 – 29 February 2012 when Tsvetanov was serving as Minister of Interior and was under obligation to manage the Ministry's budget. To facilitate this violation, the defendant committed another alleged offense by issuing two orders in violation of the Ministry of Interior Act in a bid to help O.T., a high-ranking ministry official, obtain end-of-service benefits amounting to BGN 50,569.28. The sum was paid to O.T. when he left office, to the detriment of the Ministry's budget. The violation is classified as embezzlement under Art. 202, par. 2, item 1 and par. 1, item 1; Art. 201; Art. 282, par. 2, scenario 1 and 2 and par. 1; and Art. 26, par. 1 of the CC. (embezzlement);

when

Tsvetanov was charged in 2013 — the SCPO filed a bill of indictment in February 2014 — the SCC issues an acquittal in May 2014 — upheld by the Sofia Court of Appeal in February 2015 — upheld by the SCtC in October 2015.

conclusion

The charges were unfounded. The defendant was charged with issuing orders in violation of legal provisions; it was objectively proven that this never happened.

why

The facts have been established clearly — it has been shown without a doubt that the defendant issued orders to terminate the employment of his subordinate and approved his right to end-of-service benefits, amounting to BGN 50,569.28, despite the fact that the employee in question was a charged in a criminal investigation. However, the legal assessment of the court at each of the three instances differed from the one maintained by the prosecution — namely, that the issuing of orders was not a violation of the provisions of the Ministry of Interior Act relevant at that time. According to the courts, those provisions meant that defendants in criminal proceedings could not gain employment at the Ministry of Interior, however, they did not mean employees under investigation were losing their right to end-of-service benefits when leaving the Ministry.

case 06/

TSVETAN TSVETANOV / B

Deputy Prime Minister and Minister of Interior, 2009 – 2013

what

charged in a second separate proceeding[81] for obstructing the course of justice with regards to proceedings against three individuals in the period 26 August 2009 – 18 September 2009 while he was in office. Tsvetanov refused to observe his obligations under Art. 16, par. 1 of the Special Surveillance Means Act (SSMA) and Art. 175, par. 2 of the CPC, stipulating an obligation to issue a written order for the use of SSM to investigate the above-mentioned individuals and thus obstructed the process of collecting evidence in criminal investigations. Tsvetanov was charged under Art. 288 and Art. 26, par. 1 of the CC (special form of harbouring a person).

when

Tsvetanov was charged in 2013 — the SCPO filed a bill of indictment in July 2013 — the SCC issued a guilty verdict with a four-year prison sentence, effective as of May 2015 — the verdict was confirmed by the Sofia Court of Appeal in January 2015 — in June 2015, the SCtC overruled the decision citing procedural violations by the appellate court — acquittal by the Sofia Court of Appeal in September 2015 — the SCtC upheld the acquittal in January 2016.

conclusion

The legal basis of the case is far from straightforward, which is evident from the different judgments issued by the different court panels concerned. It should be noted that the proceedings against Tsvetanov started four years after the alleged violations. Meanwhile, the nature of the alleged crime makes it hard to believe an investigation into it would require such a long period of time. On the contrary, the refusal to approve the use of SSM in the course of a specific investigation — which was later pointed as the reason for this investigation's failure — was immediately known to the prosecutors handling the investigation. It remains unclear why the criminal proceedings against the minister were not initiated immediately, but instead — years later. In addition, during the course of the proceedings other former ministers of the interior publicly stated that they had also refused to approve the use of SSM, yet it is not known that these individuals were investigated by the prosecution at any point before or after making such statements[82].

why

The facts relevant to the case are sufficiently clear — the court accepted that, in his capacity as Minister of Interior, the defendant refused to order the use of SSM, following six requests by the General Secretary of the Ministry, concerning three individuals. Tsvetanov refused to allow the use of SSM with the explanation that there was a risk of revealing the modus operandi, i.e., there was a risk that third parties would become aware of the use of SSM which could hamper an investigation against the director of a regional directorate of the Ministry. According to the prosecution, the testimony given by the General Secretary of the Ministry during the course of the proceedings, that he was the one to encourage the defendant, should not be accepted without questions, since the General Secretary did not share this information during his initial interrogation. The legal assessment by the different courts which heard the case, however, was radically different. While the SCC and the Sofia Court of Appeal initially found that the charges were legally grounded, the second panel of the appellate court and the SCtC decided the opposite, although they based their decisions on slightly different arguments. The Sofia Court of Appeal decided that the charges were unfounded objectively (because the defendant, in his capacity as Minister of Interior, allowing the use of SSM was not carrying out punitive actions and could not be the subject of a crime under Art. 288 of the CC), as well as subjectively (because there was no special intent to free the persons from punitive actions, which would have constituted a crime). The SCtC criticized the first conclusion, accepting the opposite — that the charges were objectively grounded — but accepted the second conclusion. According to the court panels concerned, in order for special intent to be proven to exist, evidence should have been submitted in the course of the proceedings of direct links or links via intermediaries (personal, official or business relationships or dependences) between the defendant and the three individuals, whose surveillance via special means he refused to authorize. The presence of such relationships or links was, however, not proven.

81 / A/N: there was also a third charge for failure to exercise control over subordinate officials who had committed a military crime. The proceedings were confidential and ended with an acquittal at the first instance; the verdict was not appealed by the prosecution.

82 / Examples are available here: https://www.24chasa.bg/novini/article/4591893

case 07/

MIROSLAV NAYDENOV

Minister of Agriculture and Food,
2009 – 2013

what

charged with active bribery, coercion, malfeasance in office:

- In October 2010, Naydenov promised a bribe amounting to BGN 200,000 to S.S., a high-ranking public official, holding the post Executive Director of State Fund Agriculture. The bribe was offered in exchange for S.S. signing payment orders, authorizing the return of value added tax (VAT) to two private companies, contracted under the Program for Distribution of Food from Intervention Stocks to Persons in Need for 2010. He was charged under Art. 304a of the CC.
- On 2 November 2010, in his capacity as Minister of Agriculture, Naydenov coerced S.S. (then Executive Director of State Fund Agriculture) to sign an already prepared report to the Inspectorate of the SPOC, complaining about systematic pressure and threats issued by K.I., the former Executive Director of the Fund, and K.T., a prosecutor at the SCPO. Naydenov had allegedly abused his office — a crime under Art. 143, par. 1 of the CC.
- In March 2010, in his capacity as minister, Naydenov used his position to obtain illegal benefits for Y.N. (owner and director of CHEH – Yosif Novosad OOD), namely — the awarding of a contract to deliver food items under the Program for Distribution of Food from Intervention Stocks to Persons in Need for 2010, managed by the State Fund Agriculture — a crime under Art. 283 of the CC.

when

the SCPO charged Naydenov in March 2013 — the proceedings were terminated by the SCPO in February 2015.

why

According to information provided by the SCPO to the media, the criminal proceedings were terminated due to lack of evidence since the main witness against Naydenov, former Executive Director of State Fund Agriculture, S.S., "did not provide enough clear and detailed facts to support the charges against Naydenov."

conclusion

The prosecution terminated the criminal proceedings almost two years after Naydenov was charged, which could have given him the right to ask that the charges were heard in court (under chapter 26 of the CPC, 2015 version). The prosecution did not provide a copy of the decision to terminate the proceedings for the purposes of this study. The detailed reasons why the proceedings were terminated remain unclear.

case 08/

DELYAN DOBREV

Minister of Economy, Energy and Tourism, 2012 – 2013

what

charged with intentional mismanagement of public funds:

As Minister of the Economy, Energy and Tourism, he failed to implement government energy policy in accordance with decisions of the Council of Ministers and the Bulgarian National Assembly. Despite his rights and obligations, Dobrev failed to take any measures to implement Council of Ministers Decision 250/28.03.2012, tabled and voted by him personally, to terminate the construction of the Belene Nuclear Power Plant. As a result, the State continued to make payments to the company hired to design the nuclear power plant and damages amounting to EUR 4,561,697.27 were incurred to Natsionalna Elektricheska Kompania (NEK) EAD. The damage was of considerable proportions and the violation was especially serious — crime under Art. 219, par.4, par. 3 and par. 2 of the CC.

when

Dobrev was charged by the SCPO in November 2016 — the criminal proceedings are at the pre-trial phase and are still ongoing.

why

the prosecution has not provided a copy of the decision to charge Dobrev, nor any information on the course of the investigation, for the purposes of this study. It has been more than three years since Dobrev was charged and the reasons why the proceedings have stalled remain unknown.

conclusion

the proceedings are still pending.

case 09/

RUMEN OVCHAROV / A

**Minister of Economy and Energy,
2005 – 2007**

what

charged with intentional mismanagement of public funds:

At the end of November 2006, in his capacity as Minister and Principal of NEK EAD, Ovcharov failed to observe his duties under the Energy Act, the Rules on the Structure of the Ministry of Economy and Energy, and the Rules on Exercising the State's Shareholder Rights in State-Owned Enterprises. In particular, Ovcharov failed to exercise enough control over the work of the Executive Directors of NEK EAD, Lyubomir Velkov and Mardik Papazyan when signing an agreement for the construction of the Belene Nuclear Power Plant with the Russian company Atomstroyeksport AD. According to the agreement, the company was tasked with creating the full conceptual design for the facility and the terms of reference for the power plant's units, etc., however, no final contract was signed for the design, delivery, building, and placing of service of units 1 and 2 of the power plant. This caused significant damage amounting to EUR 193,189,000 — the fee charged by the Russian company. Ovcharov's actions do not contain elements of a more serious crime and represent an especially serious violation — crime under Art. 219, par. 4, par. 3 and par. 2 of the CC.

when

Ovcharov was charged by the SCPO in November 2016 — the proceedings are currently at the pre-trial phase and are ongoing.

why

The prosecution has not provided a copy of the decision to charge Ovcharov, nor any information on the course of the investigation, for the purposes of this study. It has been more than three years since Ovcharov was charged and the reasons why the proceedings have stalled remain unknown. It is notable that Ovcharov was charged more than ten years after committing the alleged crime which consists of actions with regards to a well-known project. Therefore, there has been no need to engage in an investigation of a complex criminal scheme — something which could have explained the significant time delay.

conclusion

The proceedings are ongoing.

case 10/

PETAR DIMITROV

Minister of Economy and Energy, 2007 – 2009, together with the defendants under items 31 and 32

what

charged with intentional mismanagement of public funds:

On an unidentified date, in the period January 2007 – 13 December 2007, in his capacity as representative of the sole owner of the capital of the Ministry of Economy in NEK EAD, he deliberately failed to exercise sufficient control over the work of Lyubomir Velkov and Mardik Papazyan, Executive Directors of NEK EAD and persons responsible for managing its public property, when they signed a framework agreement for the delivery of equipment for the Belene Nuclear Power Plant. This led to significant damages worth EUR 77,172,475 and the defendant's actions represent an especially serious crime. He was charged under Art. 219, par. 4, par. 3 and par. 2 of the CC.

when

Dimitrov was charged by the SCPO in October 2016 — the proceedings are ongoing and are currently at the pre-trial phase.

why

The prosecution has not provided a copy of the decision to charge Dimitrov, nor any information on the course of the investigation, for the purposes of this study. It has been more than three years since he was charged and the reasons why the proceedings have stalled remain unknown. It is notable that Dimitrov was charged more than nine years after committing the alleged crime which concerns actions with regards to a well-known deal. Therefore, there was no need to engage in an investigation of a complex criminal scheme — something which could have explained the significant time delay.

conclusion

the proceedings are still pending.

case 11/

NIKOLAY NENCHEV / A

Minister of Defense,
2014 – 2017

what

charged because in the period 19 December 2014 – 26 January 2015, in his capacity as Minister of Defense, he deliberately allowed a subordinate, V.L.T., the director of a directorate at the Ministry, to commit misconduct in public office, a crime under Art. 282, par. 3, par. 2 and par. 1; and Art. 20, par. 2 of the CC. Nenchev was charged under Art. 285 of the CC (intentional failure to prevent a crime).

There is another defendant in the proceedings — V.L.T. He was charged because, in the period 19 December 2014 – 26 January 2015, in his capacity as director of a directorate at the Ministry of Defense, he awarded a public procurement contract for the delivery of clothing for the military, ignoring his obligations under the Public Procurement Act (PPA). V.L.T was complicit with the abettor Nikolay Nenchev and committed the act in order to remain in office after, on 15 December 2014, Nenchev suggested he be removed from office under provisions of the Public Administration Act. The violation provided benefits to Intendantsko Obsluzhvane EAD and caused harm to the Ministry of Defense — damages worth BGN 259,773.78. The offense is classified as an especially serious case. V.L.T. was charged under Art.282, par. 3, par. 2 and par. 1; and Art. 20, par. 2 of the CC.

when

Nenchev was charged in November 2016 — charges were filed by the Sofia District Military Prosecution before the Sofia Military Court in December 2016 — acquittal by the Sofia Military Court in June 2017 — acquittal upheld by the Military Court of Appeal in December 2017 — acquittal upheld by the SCtC in April 2018.

conclusion

There was no delay in the course of the proceedings. The three court instances decided that the charges against Nenchev were unfounded, something which was accepted by the prosecutor of the Supreme Prosecutor's Office of Cassation, who did not support the thesis of the Military Appellate Prosecutor's Office, when he pleaded in front of the SCtC. It should be noted that any public official with subordinates who happen to commit abuse of office could hypothetically be charged under Art. 285 of the CC. Despite this, investigations based on this legal text are rare and the case law — limited, even during the time of the communist regime. Traditionally, such proceedings are considered unorthodox in the legal practice.

why

The courts accepted unanimously that the defendant V.L.T. did not violate his obligations as a representative of the awarding party under the PPA, therefore the prosecution's charges of misconduct in public office were unfounded. Since the actions of V.L.T. did not constitute a crime it was not possible to charge his superior as an accessory (Nenchev was initially charged with incitement but in the course of the proceedings his charges were amended to intentional failure to prevent a crime), since assistance to a crime requires a crime to have been committed in the first place. In addition to deciding that V.L.T. had not violated the PPA, all three instances of the court questioned the prosecution's approach in estimating the harm suffered the Ministry of Defense. The estimate was made by calculating the difference between the prices quoted by the company, which ranked first but then withdrew in the course of the tender procedure, and the prices quoted by the company which ranked second and was awarded the contract. Following the withdrawal of the company which was ranked first, the tender committee produced a new ranking and awarded the contract to the company which had submitted the most attractive price offer. Indeed, the chosen offer was more expensive for the Ministry of Defense, but only in comparison with an offer which was objectively no longer on the table, following the withdrawal of the candidate which initially offered the lowest price. In conclusion, the court decided that Nenchev did not demand that his subordinates ignore their obligations as per the PPA, neither did he pressure them, nor try to influence them. This was clearly established by the evidence gathered in the course of the proceedings (the prosecutor who pleaded the case in front of the first-instance court obviously agreed there was no incitement because he amended the charges to failure to prevent a crime).

case 12/

NIKOLAY NENCHEV / B

Minister of Defense,
2014 – 2017

what

charged because in the period 7 November 2014 – 29 March 2016, failing to perform his professional duties, in violation of the Defense and Armed Forces Act, he did not approve an investment cost proposal for the maintenance and delivery of spare parts for MiG-29 jet fighter aircraft and thus did not ensure the aviation safety and airworthiness of military planes of the Bulgarian Air Force. The offense was committed so that harm could be caused to the Russian company AO RSK MIG, and thus, significant harm was also caused to the Bulgarian Armed Forces — the number of flying hours of jet fighter pilots in the Bulgarian Air Force went down to 33 hours per year, compared to the NATO standard of 180 hours per year and a minim of at least 80 hours per year. This led to increased risk of serious aviation accidents due to lack of practice — crime under Art. 282, par. 3, par. 2 and par. 1; and Art. 26, par.1 of the CC (malfeasance in office).

when

Nenchev was charged in November 2016 — charges were filed by the SCPO in the SCC in January 2017 — the SCC issued an acquittal in July 2019 — the case is pending before the Sofia Court of Appeal on appeal from the prosecution.

conclusion

The proceedings are still pending.

why

According to the prosecution, the Ministry of Defense and AO R.M. signed two contracts for the extension of the operational life of two RD-33 engines by 50 hours each and for the repair of two RD-33 engines and other spare parts for MiG-29 fighter jets. The contract was worth EUR 3,773,000 (BGN 7,388,666). Instead of taking steps to implement the agreed repairs, Nenchev told his deputy, Desislava Yosifova, to lock the contract in his safety deposit box with the goal of ensuring that AO RSK MIG does not carry out the repair works. The arguments in the only judicial decision published to date have not been published. However, when the acquittal was announced in court, the president of the court panel presented some of the arguments, stating that in the course of the proceedings it had become evident that the Bulgarian Air Force suffered from systemic lack of financing which had caused the reduction in the number of pilots' flight hours and the lack of preparedness, which the prosecution had tried to present as an outcome of Nenchev's actions. In addition, the minister participated actively in the signing of a contract to repair the above-mentioned jet planes in Poland at a cost of EUR 1.23 mln. — a much more attractive proposition compared to the deal with the Russian company. The president of the court panel added that the decision to reduce the level of military cooperation with Russia had been political and taken by the Government as a consequence of the annexation of the Crimean Peninsula by Russia.

case 13/

DANIEL MITOV

Minister of Foreign Affairs, 2014 – 2017, together with the defendant under item 15

what

charged with malfeasance in office:

In the period 15 January 2016 – 22 July 2016, in his capacity as Minister of Foreign Affairs, he committed two acts (constituting a continuing crime) in violation of his professional obligations under the PPA. Instead of organizing competitive tendering under the PPA, he signed two contracts with the Ministry of Agriculture and Food. This was done in order to procure a benefit for a third party, the private company United Travel Agency EOOD, to the detriment of the Ministry of Foreign Affairs which suffered damages, estimated at BGN 494,458.03. The funds were unduly paid since United Travel Agency EOOD did not adhere to the price list included in the public procurement contract it had signed with the ministry. Mitov was charged under Art. 282, par. 2 and 1; and art. 26, par. 1 of the CC.

when

Mitov was charged in May 2017 — the SCPO filed the charges with the SpCC in December 2017 — the SpCC issued an acquittal in October 2018 — the acquittal was upheld by the Specialized Criminal Court of Appeal in June 2019 — the acquittal was upheld by the SCtC in April 2020.

why

During the proceedings before the first-instance court, the prosecution reduced Mitov's charges from malfeasance in office to abuse of trust (and retracted the continuing crime qualification), claiming he knowingly caused harm to assets that he was supposed to be managing. The facts of the case were also modified. Mitov was held responsible for delaying a tender procedure: the public procurement tender was announced on 28 December 2015, while a contract for the same service under an earlier tender procedure was expiring on 31 December 2015. In a bid to ensure employees could travel abroad, the Ministry of Foreign Affairs signed two agreements with the Ministry of Agriculture and Food. This led to BGN 494,458.03 being unduly paid to the private company, contracted by the Ministry of Agriculture and Food, which did not adhere to the price list it had originally quoted. The first-instance court found that the Ministry of Foreign Affairs should have taken advantage of the reduced rates which the company, United Travel Agency EOOD, had made available to the Ministry of Agriculture and Food. This did not happen, and the Ministry of Foreign Affairs paid more than they should have. However, the ministry raised the issue with the private company and was reimbursed on 24 January 2017 and 9 February 2017, with the private company even paying BGN 613.49 more than the undue payment of BGN 494,458.03. The first -instance court decided that the facts of the case did not prove that Mitov intentionally delayed the public tender in violation of the PPA. According to the court, the complex coordination procedure, the presence of gaps in the documentation, and the issuing of an order of the Deputy Minister of Foreign Affairs, Hristo Angelichin, to oversee departments responsible for this kind of activity, all weakened the argument of the prosecution that Mitov had acted with intent. The appellate court confirmed the acquittal, although with different arguments. According to the decision, in his capacity as minister, Mitov had not been given control over ministry assets so could not have caused harm to those assets by acting in a certain way or by failing to act — which is required for abuse of trust charges to stand. According to the court, the prosecutor who argued the case at the first instance amended the charges against the defendant and thus made them unfounded. The representative of the SPOC did not maintain the appeal before the SCtC. The SCtC upheld the motives of the appellate court in principle, finding that the Minister could not be convicted of abuse of trust on the basis of an omission to act, when the nature of the crime requires positive conduct. The court further held that Mitov had not acted against the interests of the Ministry of Foreign Affairs (MFA).

conclusion

The criminal proceedings were completed within a reasonable timeline. The acquittal is based on the conclusion that the defendant's actions objectively did not constitute a crime, which has also been accepted by the prosecution at the final court instance. In reality, the MFA did not incur any damages: when the private company was notified of their failure to offer the MFA the discount that was previously given to the Ministry of Agriculture and Food, the company reimbursed the MFA for the additional amount paid.

case 14/

HRISTO ANGELICHIN / A

Deputy Minister of Foreign Affairs,
2014 – 2017

what

charged with failing to exercise sufficient control, within the period 17 November 2016 – 1 December 2016, in his capacity as Deputy Minister of Foreign Affairs, over the work of subordinates L.M., D.I., and M.S., directors of directorates at the Ministry. The three directors did not make the necessary provisions for the timely delivery of automatic telephone exchanges to Bulgaria's overseas diplomatic missions, nor did they sign a written contract with performance guarantees with the company B. EOOD. Consultations with experts about the market prices of this type of equipment and services were not carried out either. Consequently, the prices offered by B. EOOD were significantly higher than market rates, which caused damages worth EUR 214,709 (BGN 419,934.29) — the equivalent of the amount paid by all overseas missions — to the Ministry of Foreign Affairs. Angelichin was charged under Art. 219, par. 2 of the CC (mismanagement of public funds).

when

Angelichin was charged in May 2017 — the SCPO brought the charges before the SpCC in February 2018 — in October 2018, the SpCC sentenced Angelichin to a two-year suspended prison term with four years of probation and a fine of BGN 5,000 — in April 2019, the Specialized Criminal Court of Appeal issued an acquittal — the case is pending before the SCtC on appeal from the prosecution.

conclusion

The proceedings are still pending.

why

The first-instance court held that a violation of the PPA had occurred when, instead of organizing a public procurement for the delivery of automatic telephone exchanges to the overseas diplomatic missions, the task was divided into 12 parts. Thus, each of the 12 diplomatic missions, rather than the Ministry of Foreign Affairs, became awarding parties, bringing down the value of each order below the threshold required for competitive tendering under the PPA. The court agreed with the prosecution that the defendant failed to exercise sufficient control over his subordinates, which lead to the above-mentioned damages, equal to the payments made to B. EOOD. The appellate court agreed with the facts but not with the legal conclusions of the first-instance court. According to the court, for the charges to be founded, firstly, Angelichin should have violated legal obligations delegated to him by the minister, including control specifically over the above-mentioned subordinates and, secondly, these subordinates should have committed a specific crime — not simply reproachable acts — which the defendant allowed because of negligence. Thirdly, there should have been a direct causal link between the lack of control and the incurred damages. The Specialized Criminal Court of Appeal (SpCCA) ruled that neither of the above conditions were met, therefore the actions of the defendant were not criminal. The defendant had not been delegated specific obligations, the prosecution did not point to specific crimes committed by the defendant's subordinates, nor was there a causal link between the defendant's behavior and the damages suffered by the ministry. With regards to the damages, it was later established that the sum which the ministry had paid to B. EOOD was later urgently reimbursed.

case 15/

HRISTO ANGELICHIN / B

Deputy Minister of Foreign Affairs,
2014 – 2017, together with the defendant under item 13

what

charged with failing to exercise sufficient control, within the period 15 January 2016 – 22 July 2016, over the work of A.V.V. — Director of the Property Management and Logistical Supply Directorate — the Public Procurement Department, as well as Acting Secretary General of the Ministry of Foreign Affairs, who were all responsible for the management of public assets. Angelichin committed two violations (constituting a continuing crime), in his capacity as Deputy Minister of Foreign Affairs, despite an order from the Minister of Foreign Affairs asking him to oversee the work of the Budgeting and Finance Directorate and the Property Management and Logistical Supply Directorate. This caused significant damages to the ministry, amounting to BGN 494,458.03 — a sum paid under two agreements between the Ministry of Foreign Affairs and the Ministry of Agriculture and Food. Angelichin was charged under Art.219, par. 2 and par. 1; and Art. 26, par. 1 of the CC (mismanagement of public funds).

when

Angelichin was charged in May 2017 — the SCPO brought the charges before the SpCC in December 2017 — the SpCC sentenced Angelichin to four years in prison and fined him BGN 4,000 — In June 2019, the Specialized Criminal Court of Appeal issued an acquittal — the acquittal was upheld by the SCtC in April 2020.

conclusion

The criminal proceedings were completed within a reasonable timeline. The acquittal is based on the conclusion that the defendant's actions objectively did not constitute a crime, which has also been accepted by the prosecution at the final court instance. In reality, the MFA did not incur any damages: when the private company was notified of their failure to offer the MFA the discount that was previously given to the Ministry of Agriculture and Food, the company reimbursed the MFA for the additional amount paid.

why

The SpCC ruled that the charges against the defendant had a legal grounding. According to the first-instance court, the Directors of the Finance Directorate and the Property Management Directorate should have taken the appropriate actions to implement the two agreements in order to ensure access to plane tickets for all ministry employees travelling on business in the country and abroad. They should have created an implementation plan and should have tasked a specific official (different than the point of contact person mentioned in the agreements) to monitor how the agreements were being implemented and, specifically, to make sure that the services provided by Y.T.E EOOD to the Ministry of Foreign Affairs were charged at the same rates as the ones agreed between the private company and the Ministry of Agriculture and Food. The first-instance court decided that there was a causal link between the damages suffered by the Ministry of Foreign Affairs, the failure of the public officials to act and exercise the necessary control, and the lack of action by the defendant in terms of overseeing his subordinates. The SpCCA, however, ruled that the defendant's lack of action was not enough for the criminal charges to stand because the minister's order contained general requirements for oversight of subordinates, rather than specific directions mentioning individuals. According to the court, there was no element of guilt in the failure to comply with general orders, since these orders did not contain specific rules of action. According to Art. 2 of the Law on Normative Acts, an order is not a normative act and the failure to comply with it is not sufficient for initiating criminal proceedings for mismanagement of public funds. The SCtC stated that failure to exercise supervisory functions could lead to liability for malfeasance in office, even in cases where the functions were not conferred by means of a normative act. However, in the present case the ministerial order did not in fact specify particular obligations to exercise control over the work activities of the employees of the two Directorates. It did not specify such obligations with respect to the two Directors either, and no reference was made to their duties associated with the management, allocation, and accounting of public funds. Therefore, Art. 219, par. 2 of the CC is applicable in the case, and the defendant's actions objectively do not constitute a crime.

case 16/

PETAR MOSKOV

Minister of Health, 2014 – 2017, together with the defendant under item 17 and three other defendants

what

when

charged with malfeasance in office, entering into an unfavorable transaction, and intentional mismanagement of public funds:

On 9 July 2015, in his capacity of Minister of Health, together with the accessory Deputy Minister Adam Persenski, Moskov violated and failed to exercise his official duties under the Health Act, the Medicinal Products in Human Medicine Act, and the Rules on the Structure of the Ministry of Health (MoH). In particular, Moskov accepted 100 000 doses of a pentavalent combination vaccine for children, produced in the Republic of Turkey, and 100 000 doses of Hepatitis B vaccine, produced in the Republic of Korea. The use of both vaccines is prohibited in the Republic of Bulgaria. The motivation behind Moskov's actions was to procure a benefit for a third party, namely Turkey's Ministry of Health /consisting in the receipt of a donation of 5 000 000 doses of tuberculosis vaccine in order to help fulfil Turkey's immunization schedule/. Moskov's actions resulted in considerable negative consequences for the MoH: pecuniary damages in the amount of BGN 325 233.87 — for paid VAT, customs and transportation services; and non-pecuniary damages, consisting in harming the MoH's reputation, preventing effective government control of the policies concerning the use of drugs, and provoking distrust in the public with respect to the vaccination of children. The case was considered especially serious and Moskov was charged under Art. 282, par. 3, par. 2, and par. 1; and Art. 20, par. 2 and 1 of the CC.

On 27 November 2015, in his capacity of Minister of Health and together with Deputy Minister Adam Persenski, Moskov aided and abetted the principal perpetrator L.A.D. — Manager of Bul Bio NTZPB EOOD — to enter into an unfavorable transaction. In particular, Moskov used his ministerial power to sign an agreement for the donation of BCG vaccines with L.A.D. This resulted in damages of considerable proportions to Bul Bio NTZPB EOOD, amounting to BGN 427 788.31 /the value of 5 million doses of tuberculosis vaccine, coupled with insurance and transportation expenses/. Moskov was charged under Art. 220, par. 1; and Art. 20, par. 4 and par. 1 of the CC.

In the period 20 June 2016 – 1 July 2016, in his capacity of Minister of Health and despite his duties as Principal of Bul Bio NTZPB EOOD (state-owned enterprise), Moskov failed to exercise control over the work of two subordinates responsible for the management of public funds, namely the Director and Director ad interim of Bul Bio NTZPB EOOD, L.A.D. and R.V.A., respectively. In particular, Moskov failed to exact economic, financial, and accounting information related to the production of vaccines by the enterprise. He further failed to supervise the Director, perform inspections or appoint officials to perform inspections. As a result, the enterprise incurred significant damages, amounting to BGN 110 003.46, representing expenses for the production and storage of TETADIF vaccine by Bul Bio NTZPB EOOD without the requisite permission of the Bulgarian Drug Agency. Moskov's actions constituted an especially serious crime and led to damages of considerable proportions. He was charged under Art. 219, par. 4 and par. 2 of the CC.

charged in November 2016 — charges brought in the SpCC by the SpPO in March 2018 — the case is pending before the SpCC.

why

So far, the criminal proceedings have been conducted within reasonable timelines considering the factual and legal complexity of the case, the number of defendants, and the nature of the alleged crimes. It should be noted that the first charge against Moskov is for violating and failing to exercise official ministerial duties by accepting doses of a pentavalent combination vaccine for children and Hepatitis B vaccine from the Republic of Turkey, both vaccines banned for use in Bulgaria. However, in order to satisfy the requirement of intent, it is claimed that by donating 5 000 000 doses of Bulgarian-produced tuberculosis vaccine, the defendant intended to procure a benefit for Turkey's Ministry of Health. It is stated in the charges that the value of the vaccines given by Turkey to Bulgaria is BGN 1 725 040, whereas the value of the vaccines given by Bulgaria to Turkey is BGN 427 788. Therefore, Turkey made a much bigger donation than the one it received. On another hand, the pecuniary damages partially consist in the payment of VAT to the state budget. The second charge is formulated using an innovative approach; the defendant Moskov is charged with aiding and abetting the crime of entering into an unfavorable transaction (donation agreement, in this case), by signing the donation agreement on behalf of the receiving party, while it is claimed that the donating party was the one that incurred damages. In essence, it is asserted that a state-owned enterprise incurred damages by donating its own property to a ministry.

conclusion

The proceedings are still pending.

case 17/

ADAM PERSENSKI

Deputy Minister of Health, 2014 – 2017, together with the defendant under item 16 and three other defendants

what

charged with malfeasance in office and entering into an unfavorable transaction:

On 9 July 2015, in his capacity of Deputy Minister of Health, Persenski aided and abetted the principal perpetrator, Petar Moskov, to violate his official duties under the Health Act, the Medicinal Products in Human Medicine Act, and the Rules on the Structure of the Ministry of Health (MoH). In particular, Persenski organized meetings with representatives of the Republic of Turkey, took part in working groups, submitted reports, etc., thus enabling Moskov to accept 100 000 doses of pentavalent combination vaccine for children, produced in Turkey, and 100 000 doses of Hepatitis B vaccine, produced in the Republic of Korea. The use of both vaccines is prohibited in the Republic of Bulgaria. The motivation behind Persenski's actions was to procure a benefit for a third party, namely Turkey's Ministry of Health /consisting in the receipt of a donation of 5 000 000 doses of tuberculosis vaccine in order to help fulfil Turkey's immunization schedule/. Persenski's actions resulted in considerable negative consequences for the MoH: pecuniary damages in the amount of BGN 325 233.87 — for paid VAT, customs and transportation services; and non-pecuniary damages, consisting in harming the MoH's reputation, preventing effective government control of the policies concerning the use of drugs, and provoking distrust in the public with respect to the vaccination of children. The case was considered especially serious and Persenski was charged under Art. 282, par. 3, par. 2, and par. 1; and Art. 20, par. 4 and 1 of the CC.
On 27 November 2015, in his capacity of Deputy Minister of Health and together with Petar Moskov, Persenski aided and abetted the principal perpetrator L.A.D. — Manager of Bul Bio NTZPB EOOD — to enter into an unfavorable transaction for the donation of vaccines. In particular, Persenski orally ordered the Head of the Department of Regulatory Legislation and Public Procurement in Health to draft the donation agreement for the vaccines. The agreement was then signed by Persenski and other ministerial officials, after which Persenski told his secretary to call the Manager of Bul Bio NTZPB EOOD, L.A.D., and give him the signed agreement, saying the following: "Deputy Minister Persenski left this agreement for you to sign. He said that everything was fine and that there would not be any problems." Persenski's actions resulted in damages of considerable proportions to Bul Bio NTZPB EOOD, amounting to BGN 427 788.31 /the value of 5 million doses of tuberculosis vaccine, coupled with insurance and transportation expenses/. Persenski was charged under Art. 220, par. 1; and Art. 20, par. 3, par. 4 and par. 1 of the CC.

when

charged November 2016 — charges brought in the SpCC by the SpPO in March 2018 — the case is pending before the SpCC.

why

So far, the criminal proceedings have been conducted within reasonable timelines considering the factual and legal complexity of the case, the number of defendants, and the nature of the alleged crimes. The observations expressed in item 16 concerning the intended benefit from the first crime and the damage caused with the second crime are equally applicable in this case.

conclusion

The proceedings are still pending.

case 18/

RUMEN OVCHAROV / B

Minister of Economy and Energy, 2005 – 2007, together with the defendant under item 19 and one other defendant

what

charged with intentional mismanagement of public funds (this is one of the finished cases):

In the period 25 May 2006 – 18 July 2007, Ovcharov was Minister of Economy and Energy, and in this capacity, he was responsible for exercising the government's rights as a sole shareholder in Mini Bobov Dol EAD. In violation of his obligations under the Rules on the Structure of the Ministry of Economy and Energy (RSMEE) and the Rules on Exercising the State's Shareholder Rights in State-Owned Enterprises (RPESSRSOE), Ovcharov intentionally did not exercise sufficient supervision over the work of P.S.E. — Board Member and CEO of Mini Bobov Dol EAD — and the work of Anna Yaneva — Deputy Minister of MEE — in relation to the negotiation, conclusion, and execution of a contract (dated 9 June 2006) for lending assets of Mini Bobov Dol EAD to Oranovo EOOD. Ovcharov's criminal act (consisting of three omissions to act, jointly constituting a continuing crime) caused damages of considerable proportions to Mini Bobov Dol EAD — BGN 24 455 475.80. The criminal act did not fit the characteristics of the more severe form of the alleged crime, but was considered an especially serious case due to the transfer of Mini Bobov Dol EAD's exclusive rights to mine, transport, and sell coal, to O. EOOD. The transfer of rights was in violation of the Underground Resources Act and the Concessions Act. Mini Bobov Dol EAD went into insolvency. Ovcharov was charged under par. 4, 3, and 2 of Art. 219, and under Art. 26, par. 1 of the CC.

when

Charged in October 2017 — the SCPO brought charges before the SpCC in March 2018 — the case was returned due to procedural violations in April 2018 — the SpPO brought charges before the SpCC in April 2019 — the case is still pending before the SpCC.

why

The defendant, Ovcharov, was brought to court almost 11 years after committing the specified crimes, related to the lending of assets of Mini Bobov Dol EAD to Oranovo EOOD, even though the nature of the crimes does not justify their delayed detection by the investigation authorities. After the SpCC returned the case to the SpPO with instructions to rectify the identified procedural violations, the alleged damages were amended from BGN 9 mil. to BGN 24 mil. The prosecution took one year to bring the case to court for a second time. The total amount of damages reflects the sum of the damages caused by the three omissions to act, altogether constituting the continuing crime: BGN 977 063.10 representing the difference in value between the coal sold by Oranovo EOOD in the examined period, and the acquired coal for prices determined in an annex to the loan agreement; BGN 19 293 323.82 representing the sum of the unpaid rent due under an annex to the loan agreement, and the unpaid utility bills for the period 10 June 2006 – 7 June 2007; BGN 4 185 088.78 representing the sum of the unpaid rent due under an annex to the loan agreement, and the utility bills for the period 8 June 2007 – 3 September 2008. The crime "mismanagement of public funds" requires the damage, destruction or squandering of existing property, or other significant damages of a similar nature that have been interpreted to only include actual incurred losses both in the theory and in the practice (see 4.).

conclusion

The proceedings are still pending.

case 19/

ANNA YANEVA

Deputy Minister of Economy and Energy, 2005 – 2007, together with the defendant under item 18 and one other defendant

what

charged with intentional mismanagement of public funds:

In the period 10 June 2006 – 18 March 2009, Yaneva was Deputy Minister of Economy and Energy, responsible for the organization, management and supervision of the activities of the Ministry's Corporate Management and Restructuring Department. By means of explicit orders, she was tasked with the management and accounting of public property. In violation of her obligations under the RSMEE and under two orders of the Minister, Yaneva intentionally failed to exercise sufficient control over the work of P.S.E. — Board Member and CEO of Mini Bobov Dol EAD — in relation to the execution of a contract for lending assets of Mini Bobov Dol EAD to Oranovo EOOD, dated 9 June 2006. Yaneva's criminal act (consisting of three omissions to act, jointly constituting a continuing crime) caused damages of considerable proportions to Mini Bobov Dol EAD — BGN 28 174 082.08. The criminal act did not fit the characteristics of the more severe form of the alleged crime, but was considered an especially serious case due to the transfer of Mini Bobov Dol EAD's exclusive rights to mine, transport, and sell coal, to Oranovo EOOD. The transfer of rights was in violation of the Underground Resources Act and the Concessions Act. Mini Bobov Dol EAD went into insolvency. Yaneva was charged under par. 4, 3, and 2 of Art. 219, and under Art. 26, par. 1 of the CC.

when

Charged in December 2018 — the SpPO brought charges before the SpCC in April 2019 — the case is still pending before the SpCC.

why

Yaneva was brought to court almost 10 years after committing the specified crimes, related to the lending of assets of Mini Bobov Dol EAD to Oranovo EOOD, even though the nature of the crimes does not justify their delayed detection by the investigation authorities. The amount of incurred damages — BGN 28 mil. — was formed in a similar manner to the one described in item 18. The discussion on the mismanagement of public funds is also relevant to this case.

conclusion

The proceedings are still pending.

case 20/

VLADISLAV GORANOV

Minister of Finance,
2014 – 2017

what

investigated for malfeasance in office.

when

commissioned by the SPOC in November 2018 — status unclear.

why

the investigation was initiated as a result of media publications stating that his family has been living free of charge in an apartment, owned by his godfather, since 2012. The publications are based on data from Goranov's statement of property. The Prosecutor's Office has not published any information regarding the outcome of the investigation to date.

conclusion

the Prosecutor's Office has not provided any information on the case, despite the requests made to this effect for the purposes of the present study.

case 21/

VESELIN PENGEZOV

President of the Military Court of Appeal, 2004 – 2009, together with the defendant under item 22 and other defendants

what

when

charged on account of the following:

1. in the period 28 October 2008 – 9 June 2009, in his capacity of President of the Military Court of Appeal, respectively a procuring party in government procurement, Pengezov failed to exercise his official duties in accordance with the PPA. In particular, he did not announce and conduct a procurement order for the following activities: "Creating a conceptual design of an Information system and its synchronization with national documents" and "Implementing an Information system and testing it in Pleven and Sofia" in the context of the project "Information system promoting the transparency of military courts," financed under Operational Programme Administrative Capacity. Instead, on 9 January 2009, Pengezov concluded direct contracts with E.N.S., R.M.D., A.P.Y. /D./, S.P.N., K.L.S., L.K.S., V.A.K. and P. M.T. for these activities. Pengezov's actions resulted in serious damages to the Military Court of Appeal. On 17 December 2012, the management head of Operational Programme Administrative Capacity imposed a financial penalty on the court in the amount of BGN 733 456.56 — 100% of the funds provided under the project — due to established irregularities with the project /allegations of fraud/. Pengezov committed a crime under Art. 387, par. 2 and par. 1 of the CC (malfeasance in office).
2. in the period 9 June 2009 – 19 October 2009, Pengezov aided and abetted Col. Petko Petkov — then President of the Military Court of Appeal (MCA) — in embezzling MCA funds of considerable proportions, amounting to BGN 42 217. Pengezov's role in the crime consisted in making a fictitious contract dated 15 January 2009 between the MCA and the person G.I.T. for developing a "Module integration system for the Information system." He thus facilitated Petkov in expending MCA funds in pursuit of a foreign personal interest — a continuing crime of embezzlement — in the period 19 October 2009 – 21 October 2009. Pengezov was charged under Art. 202, par. 2, item 1; Art. 201; Art. 26, par. 1; Art. 20, par. 4 and par. 1 of the CC (embezzlement).
3. Pengezov, together with V.T.D. and P.S.G., A.N.M., L.K.S., aided and abetted Col. Petko Petkov — President and representative of the Military Court of Appeal — in submitting false statements within a Final Technical Report to the Operational Programme Administrative Capacity Department at the Ministry of Finance, the managing authority of Operational Programme Administrative Capacity. Pengezov's criminal act consisted in producing — outside of the scope of his official duties as President of the Sofia Court of Appeal — 29 documents containing false statements, specifically that they were signed on the date stated within and by Pengezov in his capacity of President of the Military Court of Appeal. The 29 documents were created in the period 8 July 2009 – end of September 2009, and Petkov submitted the false report on 26 November 2009. Pengezov's criminal actions were directed at procuring funds for the Military Court of Appeal that were provided to the Bulgarian government by the European Union under Operational Programme Administrative Capacity, and specifically for the project "Information system promoting the transparency of military courts." Pengezov was charged under Art. 248a, par. 3, item 2, scenario 1 and Art. 20, par. 4 and par. 3 of the CC (submitting false statements in order to obtain funds).

Investigation in 2010 — charged in April 2014 — charges brought before the SCC in July 2015 — partially convicted/acquitted by the SCC in June 2019 (one year suspended imprisonment with three years of probation) — the verdict was appealed by both sides, but the motives are not prepared yet and the case has not proceeded to the second-instance court.

why

The defendant was found guilty of the first charge and sentenced to probation. He was found innocent of the second charge and guilty of the third but incurred no punishment due to the expiration of the relevant time period for prosecution. The court's motives for the verdict have not been published yet, even though it was pronounced in June 2019. The length of the criminal proceedings in this case is noteworthy. First, the nature of the committed crimes (related to obtaining funds under an EU programme) suggests that the circumstances surrounding the alleged procedural violations were identified during the first audit of the project execution. Moreover, the text of the charges states that a financial penalty in the amount of the entire budget for the project was already imposed in 2012 owing to suspicions of fraud. Despite that, the defendant was only charged at the pre-trial phase of proceedings in 2014. The proceedings before the first-instance court carried on for a long period — circa 4 years — with many court sessions, every month. More than 10 years after the crimes were committed, the proceedings before the second-instance court have not yet begun.

conclusion

The proceedings are still pending.

case 22/

PETKO PETKOV

President of the Military Court of Appeal, 2009 - 2014, together with the defendant under item 21 and other defendants

what

charged on account of the following:

1. In the period 19 October 2009 – 21 October 2009, in his capacity of President of the Military Court of Appeal (MCA), together with the accessory Lieutenant Veselin Pengezov, Petkov embezzled MCA funds of considerable proportions — BGN 42 217. Petkov expended the funds in the pursuit of a foreign personal interest by making two payments to the bank account of the person G.I.T. He was charged under Art. 202, par. 2, item 1; Art. 201; Art. 26, par. 1; Art. 20, par. 2 and par. 1 of the CC (embezzlement).
2. On 26 November 2009, in complicity with the accessories: Lieutenant Veselin Pengezov, Col. V.T.D., P.S.G., A.N.M., and L.K.S., in his capacity of President of MCA, Petkov submitted false statements to the Operational Programme Administrative Capacity Department at the Ministry of Finance, the managing authority of Operational Programme Administrative Capacity. His actions were directed at procuring funds for the Military Court of Appeal that were provided to the Bulgarian government by the European Union under Operational Programme Administrative Capacity, and specifically for the project "Information system promoting the transparency of military courts." In the Final Technical Report, necessary for the completion of the project and signed by Petkov in his capacity of MCA President, Petkov made false statements that public procurement orders had been conducted in the course of the project. He was charged under Art. 248a, par. 3, item 2, sentence 1 and Art. 20, par. 2 and par. 1 of the CC (submitting false statements in order to obtain funds).
3. False statements concerning conducted public procurement orders for the Project Management activity were included in interim technical reports and a letter, submitted on 19 July 2009, 7 October 2009, and 26 October 2009, and accompanied with requests for payment — this constitutes a crime under Art. 248a, par. 3 and par. 2, item 1; Art. 20, par. 2 and par. 1 of the CC (submitting false statements in order to obtain funds).

when

Investigation in 2010 — charged in April 2014 — charges brought before the SCC in July 2015 — acquitted by the SSC in June 2019 — the verdict was appealed by both sides, but the motives are not prepared yet and the case has not proceeded to the second-instance court.

why

The defendant was found innocent of the first and third charges; he was found guilty of the second charge but incurred no punishment due to the expiration of the relevant time period for prosecution. The arguments put forward in item 21 concerning the length of the criminal proceedings and the late pressing of charges apply equally here.

conclusion

The proceedings are still pending.

case 23/

VLADIMIRA YANEVA

President of the Sofia City Court, 2011 – 2015, together with the defendant under item 35

what

charged with violating the procedure for obtaining a permission to use SSM:

on 25 March 2014, in her capacity of President of the SCC competent to issue permissions to use SSM, Yaneva violated the SSMA by allowing the use of SSM with respect to the Automated Information System "Central Police Register" for a period of 120 days starting from 30 March 2014. Thus, Yaneva exceeded the maximum 6-month period for using SSM, provided by law, as she had already given a number of permissions to use SSM before. She was charged under Art. 284c of the CC.

when

Charged in 2015 — brought to court by the SCPO in July 2015 — convicted by the SCC (one year suspended imprisonment with three years of probation) in January 2016 — modified by the SCA in January 2017 (added fine of BGN 1000) — upheld by the SCtC in April 2017.

why

The permissions to use SSM, signed by the defendant, constitute written evidence attesting to the fact that the defendant committed a violation of the SSMA by permitting the use of SSM on the same party for a period exceeding the 6-month period provided by law. The main argument of the courts is that following the third request for a new permission to use SSM dated 28 January 2014 /owing to the gap in time from the expiration of the previous permission on 15 January 2014, a new permission had to be requested/, the defendant issued a permission to continue the use of SSM. Conversely, following the fourth request dated 25 March 2014, the defendant issued a new permission to use SSM, instead of issuing a permission to continue the previous use of SSM /as was requested/. Thus, the defendant failed to adequately address the requests and consider the information recorded in the file registry, which proves she was aware that she had already issued permissions to use SSM on the same party — AIS CPR — in the past.

conclusion

The arguments of the prosecution were accepted by all the courts concerned. The criminal proceedings were initiated soon after the commission of the crime, and both phases of the proceedings were completed within a reasonable timeline.

case 24/

ROSEN ZHELYAZKOV

Gen. Secretary of the Council of Ministers (CoM), 2009 – 2013

what

charged with malfeasance in office:

In the period 27 April 2013 – 12 May 2013, in his capacity of a public official occupying a post of high responsibility, Zhelyazkov failed to fulfil his official duties, consisting in organizing and supervising the work of the Administration of the Council of Ministers of the Republic of Bulgaria. With the aim to procure a benefit for a private company, he failed to exercise control over the work of the employees in the Administrative and Regional Coordination Department at the CoM related to the performance of a contract between CoM and the said private company. It is alleged that Zhelyazkov: omitted to exercise appropriate control over the quantity of issued voting papers and the manipulations of the technological waste; failed to ensure proper accounting of the number of valid voting papers and the login of every paper; and failed to ensure the storage of the wasted papers in a restricted access room in the print house until the end of the elections. This resulted in a benefit for the private company, consisting in saving the costs for organizational and production activities that should have been conducted in accordance with the specified obligations. By contrast, the case provoked negative public reactions, as many Bulgarians lost confidence in the elections and in the proper functioning of the institutions in the country. Zhelyazkov was charged under Art. 282, par. 2 and par. 1 of the CC.

when

Charged in 2013 — brought to court by the SCPO in December 2013 — case returned by the SCC for rectifying committed procedural violations in February 2014 — brought to court by the SCPO for the second time in April 2014 — acquitted by SCC in April 2015.

why

The criminal proceedings were initiated on the basis of a report, received on 10 May 2013, for intended manipulations of the upcoming general elections, consisting in the printing of additional voting papers in the print house of the private company commissioned to prepare the papers for the ballot. During the inspection of the premises, carried out on the same day, the authorities revealed a number of isolated storehouses that contained batches of unfolded voting papers, wrapped in stretch foil, as well as boxes with folded voting papers that were "damaged and had visible tear defects." Eventually, charges were pressed only against the Gen. Secretary of the CoM, and not for manipulating the elections. The court held that neither the employees in the Administrative and Regional Coordination Department at the CoM failed to fulfil their obligations under the contract between the CoM and the printing company, nor did the defendant omit to act in accordance with his duties related to preparation of the elections. To the contrary, the court found that the defendant had exercised the necessary level of control at all stages of all the activities of the said department related to the preparation of the elections, and was even notified about the progress through interim reports. The court further established that all the printed papers were accurately accounted for, arranged in boxes with appropriate labels reflecting the number of usable voting papers, and stored in a restricted access area with video surveillance until delivered to the CoM. The requirement to store the technological waste in a restricted access area in the print house until the end of the elections was also observed. This is confirmed by the accepted performance of the contract and the lack of complaints to the contractor. In conclusion, the court stated that "the loss of confidence in the elections and in the proper functioning of the institutions on the part of a considerable portion of the Bulgarian citizens," claimed by the prosecution, cannot be linked to the conduct of the defendant, but are "connected with the ensuing actions of the media and the overall disinformation of the public, caused in part by imprecise political statements."

conclusion

The charges were unfounded from the beginning, as they were based on violations of official duties that were objectively never committed. The allegations that the defendant aimed to procure a benefit for the contractor company, consisting in saved costs for organizational and production activities, and that he caused negative public reactions, turned out to be entirely false. Eventually, this was realized by the prosecution, as the acquittal was not appealed.

case 25/

ANGEL SEMERDZHIEV

Chairman of the State Energy and Water Regulatory Commission (SEWRG), 2009 - 2013, together with the defendant under item 26

what

charged with malfeasance in office:

On 20 January 2011, Overgas Inc AD filed a complaint with the SEWRG against Bulgartransgaz EAD for refusing to provide access to the gas distribution network and to the Chiren Underground Gas Depository (UGD Chiren). The regulatory body is obliged to consider complaints and provide a response within two months. In the period 1 February 2011 – 30 March 2011, Angel Semerdzhiev failed to perform his official duties and did not undertake any action with respect to the received complaint, despite his obligation to submit the case for a closed hearing by the Commission. In addition, Semerdhiev violated his official duties by failing to exercise control regarding Bulgartransgaz EAD's observance of the conditions and procedure for providing access to the gas distribution network, established with the Rules on Providing Access to the Gas Transportation and/or Distribution Networks, adopted by the SEWRG on 15 May 2007. This could have resulted in harmful consequences, such as financial damage and destabilization of the functions of Bulgarian Energy Holding EAD and Bulgartransgaz EAD, compromising the financial and economic security of the energy system, and threatening the country's national security. Semerdzhiev was charged under Art. 282, par. 2 and par. 1 of the CC.

when

investigation in April 2017 — charged by the SCPO in June 2017 — the criminal proceedings have not ended, and the case is currently either at the pre-trial stage or has been terminated at an unknown stage.

why

the prosecution did not provide a copy of the charges against Semerdzhiev for the purposes of the present study, nor did they disclose information concerning the course of the investigation. Nearly three years have passed since the charges were pressed; it remains unclear why the proceedings have not progressed.

conclusion

there is no evidence that the proceedings were terminated

case 26/

SVETLA TODOROVA

Chairman of SEWRG, 2014 - 2015, together with the defendant under item 25

what

charged with malfeasance in office.

In the period 19 December 2014 – 1 April 2015, Todorova failed to call a session of the SEWRG and to initiate proceedings for amending the prices for distribution of natural gas and for supply of natural gas by end suppliers. In addition, she instigated the annulment of a SEWRG decision of 1 April 2014 that reduced the prices for transportation of natural gas along the gas distribution network and the prices offered to end consumers, previously set with a SEWRG decision of 26 October 2009. Todorova's actions were aimed at procuring a benefit for private companies and could have resulted in harmful consequences for the end consumers of natural gas, who would have to pay more than the actual prices for the service. Todorova was charged under Art. 282, par. 2 and par. 1 of the CC.

when

investigation in April 2017 — charged by the SCPO in June 2017 — the criminal proceedings have not ended and the case is currently either at the pre-trial stage or has been terminated at an unknown stage.

why

the prosecution did not provide a copy of the charges against Todorova for the purposes of the present study, nor did they disclose information concerning the course of the investigation. Nearly three years have passed since the charges were pressed; it remains unclear why the proceedings have not progressed.

conclusion

there is no evidence that the proceedings were terminated.

case 27/

STANIMIR FLOROV

Director of the Chief Directorate for Combatting Organized Crime (CDCOC), 2009 - 2013

what

investigated for bribery.

Florov was investigated for receiving a bribe of considerable proportions. The case was considered an especially serious one and Florov was charged under Art. 302a of the CC. There are no other known details about the case.

when

investigation by the SCPO in April 2013 — criminal proceedings terminated by the SCPO in January 2016.

why

the SCPO has not shared any information concerning the subject of the investigation or the motives behind its termination.

conclusion

the prosecution did not provide a copy of the decision to terminate the criminal proceedings for the purposes of the present study. The motives remain unknown.

case 28/

KIRCHO KIROV / A

Director of the National Intelligence Service (NIS), 2003 – 2012

what

charged because in the period 1 January 2007 – 31 December 2011, in his capacity of Director of NIS, Kirov embezzled NIS funds under his supervision, using the employee J. Z.G. who acted unknowingly. Kirov embezzled levs (BGN), euros (EUR), dollars (USD), and pounds (GBP) in the total amount of BGN 4 720 196.53. In order to facilitate the embezzlement, Kirov committed a second crime that merits an even more serious punishment — under Art. 311, par. 1 and Art. 26, par. 1 of the CC. To elaborate, in the period 1 January 2007 – 31 December 2011, in the course of his official duties, Kirov once again used the employee J.Z.G., this time to create official documents — 252 advance receipts and 889 advance financial reports — that contained false statements (that the amounts stated therein were necessary operational expenses and were spent in accordance with the relevant procedures). Kirov intended to submit the documents to the Accounting Department of NIS. The embezzlement of funds was of considerable proportions and was considered an especially serious case. Kirov was charged with committing a continuing crime under Art. 203, par. 1; Art. 202, par. 1, item 1; Art. 201; and Art. 26, par. 1 of the CC.

when

charges brought before the Sofia Military Court (SMC) in July 2013 — convicted by the SMC in August 2015 (10 years imprisonment, partial confiscation of property, deprivation of the right to practice a particular profession for 15 years) — modified by the Military Court of Appeal (MCA) in May 2016 (amended the verdict to a lesser form of embezzlement that excludes the document forgery, repealed the part of the verdict establishing that the crime was committed through the use of another person, reduced the punishment to deprivation of professional rights for 13 years) — repealed by the SCtC and returned to the MCA in November 2016 (owing to procedural violations at the second-instance phase) — the verdict of the first-instance court was modified for a second time in July 2018 (the verdict was amended to a lesser form of embezzlement that excludes the document forgery, repealed the part of the verdict establishing that the crime was committed through the use of another person, reduced the punishment to deprivation of professional rights to 13 years) — the case is still pending before the SCtC on appeal from both sides, temporarily suspended due to illness of the defendant.

why

The defendant was found guilty by the first-instance court two years after being brought to court, but following that, the case has been tossed between the MCA and the SCtC for the better part of five years. Both panels of MCA that have heard the case so far amended the verdict to a lesser crime but did not reduce the period of imprisonment. On the other hand, they reduced the period of professional rights deprivation, which cannot exceed the period of imprisonment by more than three years. The SCtC repealed the MCA judgment and returned the case for re-trial, holding that the appellate court rejected the defendant's statements on the charges lightly, without making proper references to the circumstances of the case. The defendant had claimed that he had expended the funds in the public interest, not in a personal one, and according to the SCtC, these claims were not verified and considered during the first hearing of the case at the second instance. During the second hearing of the case before the SCtC, the proceedings were suspended due to an illness of the defendant. The latter's presence in court is not required, but he has the right to be present.

conclusion

The proceedings are still pending.

case 29/

KIRCHO KIROV / B

Director of the National Intelligence Service (NIS), 2003 – 2012

what

charged because in the period 2007 – 2011, in his capacity of Director of NIS and in conspiracy with his subordinate, D.I.L., Kirov embezzled NIS funds in EUR and USD, amounting to BGN 5 1000 000. In order to facilitate the embezzlement, Kirov committed another crime that merits a greater punishment — document forgery. Kirov was charged with committing a continuing crime of considerable proportions under Art. 203, par. 1; Art. 202, par. 1, item 2; Art. 202, par. 1, item 1; Art. 201; and Art. 26, par. 1 of the CC.

when

(the case is confidential) charged in June 2016 — charges brought before the SMC at the beginning of 2017 — convicted by the SMC in January 2018 (15 years imprisonment, confiscation of half of owned property) — the verdict was appealed before the MCA and the case has remained there since May 2018 without any further information about its progress; probably also suspended due to illness of the defendant.

why

The charges relate to embezzlement of funds, claimed to have been used for payments to six Bulgarian intelligence agents around the world. However, it is claimed that the work of the agents, paid for with the funds in question, had been terminated in 1999. Nevertheless, an amount equivalent to over five million levs (BGN) was taken out in their names.

conclusion

The proceedings are still pending.

case 30/

PHILIP ZLATANOV

Chairman of the Commission for Prevention and Ascertainment of Conflicts of Interest, 2011 - 2013

what

charged with malfeasance in office:

in the period 21 September 2012 – 9 July 2013, in his capacity of a public official occupying a post of high responsibility, Zlatanov intentionally failed to perform his official duties in order to procure a benefit for a third party and cause harm to a third party that could result in serious consequences:

- Zlatanov failed to perform his official duties under the Conflict of Interest Prevention and Ascertainment Act and under the Rules on the Organization and Activities of the Commission for Prevention and Ascertainment of Conflicts of Interest (CPACI). In particular, Zlatanov prevented from publishing and kept the original three copies of one specific decision of the Commission in order to procure a benefit for a third party — the President of the Republic of Bulgaria (the benefit consisted in concealing from the public that the President had been investigated by the Commission upon a report against him, and that the Commission terminated the investigation instead of make a decision on its merits);
- in the period 4 October 2012 – 1 April 2013, Zlatanov failed to perform his official duties under the Conflict of Interest Prevention and Ascertainment Act and under the Administrative Procedure Code. In particular, he failed to deliver one specific decision of the Commission, together with the two dissenting opinions of two Members, to the concerned party D.R., thus causing her harm (in that she was prevented from appealing the decision within the relevant time period, and from defending her good reputation in society).

Both cases could have resulted in harmful consequences for the CPACI, consisting in loss of public confidence in its authority, effectiveness, and independence as a body entrusted with identifying conflicts of interest with respect to public officials. Zlatanov was charged under Art. 282, par. 2, clause 2 and par. 1, clause 2; and Art. 26, par. 1 of the CC.

when

Charged in 2014 — charges brought in court by the SCPO in February 2014 — convicted by the SCC in April 2014 (sentenced to three years and six months imprisonment, and deprivation of the right to assume managerial and elected office for five years) — verdict upheld by the SCA in December 2014 — modified by the SCtC in October 2015 (reduced the imprisonment to three years and introduced probation for 5 years).

why

The factual circumstances of the case have been established consistently by the courts at all three instances on the basis of the great amount of submitted evidence and despite the disappearance of the defendant's original notebook from the body of evidence. According to the court panels, the objective truth was established using a complex of other sources of evidence, including an expert assessment of the handwriting in the notebook. The legal conclusions of the court panels, drawn on the basis of the facts, are also in accord.

conclusion

The arguments of the prosecution were accepted by the court panels at all three instances. The criminal proceedings were initiated shortly after the crime was committed, and both of its phases were completed within a reasonable timeline.

case 31 & 32/

LYUBOMIR VELKOV & MARDIK PAPAZYAN

CEOs of NEK, 2005 - 2009,
together with the defendant under item 10

what

charged with jointly entering into an unfavorable transaction:

- on 28 November 2007, acting jointly as CEOs of Natsionalna Elektritcheska Kompania EAD (NEK EAD), the defendants entered into an unfavorable transaction with the head of the unlisted company Atomstroyexport in the Russian Federation, namely a Framework Agreement for the supply of equipment from the Belene Nuclear Power Plant in Bulgaria in exchange for EUR 205 million. This resulted in damages for NEK EAD in the amount of EUR 77 172 475, thus constituting an especially serious case. Both CEOs were charged under Art. 220, par. 2 and par. 1; and Art. 20, par. 2 and par. 1 of the CC.

when

charged by the SCPO in October 2016 — the criminal proceedings are still at the pre-trial phase to this date.

why

the prosecution did not provide copies of the charges against Velkov and Papazyan for the purposes of the present study, nor did they disclose any information regarding the course of the investigation. The charges against the defendants were pressed more than three years ago, and the reasons why the proceedings have not moved forward remain unknown. It should be noted that the defendants were charged nine years after having committed the alleged crimes that concern transactions with well-known parameters, i.e., there was no complex crime scheme to reveal, which would have justified the incurred delays.

conclusion

the proceedings are still pending.

case 33 & 34/

RUMEN SIMEONOV & TSVETAN GUNEV

Assistant Directors at the Bank Supervision Department of BNB from 2007 to 2013 and from 2013 to 2014, together with 16 other defendants

what

Charged separately with malfeasance in office — a crime under Art. 282, par. 3, par. 2, and par. 1 of the CC — for violating or failing to perform their official duties related to the supervision of Corporate Commercial Bank AD (CCB AD), specified in various legislative acts, among which the Bulgarian National Bank Act and the Credit Institutions Act. Simeonov and Gunev did this in order to procure a benefit for a third party /the shareholders of CCB AD/; their actions resulted in serious damages to the banking system.

when

Charged in June 2014 — charges brought before the SpCC by the SpPO in July 2017 — the case has remained at first instance since then.

why

This is a case of great complexity, as it involves a large number of defendants, witnesses, and expert opinions, as well as a lot of other documentation. The subject of the case is the conduct of the alleged defendants that led to the bankruptcy of CCB AD, caused harm to many of the bank's stakeholders, and posed challenges to the banking system as a whole. According to the prosecution, as regards the supervision of CCB AD, the officials responsible for the bank's functioning and the implementation of supervisory measures — the Assistant Managers in charge of BNB's Bank Supervision Department — violated or failed to perform their official duties related to the identification of poor banking practices, and to the implementation of adequate supervisory measures. According to the prosecution, the supervision of CCB AD was carried out only on paper, while in reality, the identified violations were concealed by the officials in charge of the inspections, and the officials in charge of implementing supervisory measures — the defendants — simply refrained from fulfilling their official duties.

The prosecution believes that "the main problem with the supervision of BNB was the failure to identify and regulate, through supervisory measures and recommendations, the corrupt practice of giving out credit loans to related parties, which was indulged in to such an extent that the loans became a mere cover for the appropriation of public funds for private use and possession."

Given the file volume and the legal complexity of the case, it cannot be expected to end in the near future.

conclusion

the proceedings are still pending.

case 35/

TODOR KOSTADINOV

Director of the Internal Security Department at the MoI, 2013 - 2014, together with the defendant under item 23

what

charged with:

- in the period 12 September 2013 – 25 March 2014, Kostadinov worked as a public official — Director of the Internal Security Department at the MoI. On 12 September 2013, 12 November 2013, 28 January 2014, and 25 March 2014, in the course of exercising his official duties, Kostadinov created six official documents containing false statements /two requests to use SSM, two requests to continue the use of SSM with respect to the Automated Information System "Central Police Register," and two reports attached to a request to use SSM/. Kostadinov's aim was to submit these documents to the President of the SCC, Vladimira Yaneva, as evidence for the circumstances claimed therein. He was charged under Art. 311, par. 1 and Art. 26, par. 1 of the CC (creating false documentation).
- on 12 November 2013, Kostadinov used an office computer to enter the domain of the MoI; using the password of the system administrator of the Department of Control over the Informational and Administrative Activities at the MoI regional unit in Shumen, the defendant accessed computer data within the Integrated Regional Police System – Shumen. In particular, he initiated an inquiry into an individual, based on the individual's personal identification number, without obtaining the necessary permission from the Head of the Department of Informational Systems – Communication and Informational Systems Unit at the MoI. Thus, Kostadinov accessed personal data whose confidentiality is protected under the Personal Data Protection Act. He was charged under Art. 319a, par. 4 and par. 1 of the CC (computer crime).

when

Charged in 2015 — charges brought in court by the SCPO in July 2015 — exempted from criminal liability on the basis Art. 78a of the CC with a verdict of the SCC (imposed administrative penalty in the form of a BGN 3000 fine) in January 2016 — verdict upheld by the SCA in that regard in January 2017.

why

Kostadinov was found innocent of committing a crime involving document manipulation at both court instances but was found guilty of unlawfully accessing a computer system. However, he was exempted from criminal liability, and instead incurred an administrative penalty in the form of a fine (since the committed crime merits a minor punishment, there were no unrecovered pecuniary damages, and the defendant had no prior convictions).

conclusion

The criminal proceedings were initiated shortly after the commission of the crimes, and both phases of the proceedings were completed within a reasonable timeline.

case 36/

PAVEL ALEKSANDROV

Director of the Fund for Treatment of Children Abroad (FTCA), 2010 - 2015

what

charged, together with three other FTCA employees, with conspiring to misappropriate and unlawfully expend FTCA funds /for sending doctors from various hospitals on business trips, where they would participate in international seminars or accompany sick children; for entering into contracts with a company to assist the treatment of children abroad, without conducting the required public procurement orders, as a result of which the company was paid BGN 223 252 from the FTCA budget in 2014 and BGN 230 096 in 2015, and the payments continued even after the Ministry of Health had ordered their termination due to violations of PPA; for financing a two-year-long English and German learning course for FTCA employees, given that the job requirements for their posts included knowledge of these languages/. Aleksandrov was also charged with transferring FTCA debt, owed to the National Health Insurance Fund, and with crimes committed in office. That is all the available information regarding the charges.

when

charged in April 2016 — charges brought before the SpCC by the SpPO in August 2017 — case returned to the SpPO to rectify committed procedural violations in August 2017 — charges brought before the SpCC for the second time in March 2018 — case returned to the SpPO to rectify committed procedural violations in April 2018 — there is no further information regarding the progress of the case.

why

the prosecution did not provide a copy of the charges against Aleksandrov for the purposes of the present study, nor did they disclose any other information regarding the course of the proceedings. After the case was returned to the pre-trial phase two times for clarifying ambiguities and inconsistencies in the charges, there has been no further information regarding the status of the criminal proceedings.

conclusion

there is no evidence that the proceedings have been terminated.

case 37/

LAZAR LAZAROV

Chairman of the Management Board of the Road Infrastructure Agency (RIA), 2014 – 2015, together with two other RIA officials

what

charged with intentional mismanagement of public funds:

- in the period 7 August 2014 – 17 February 2015, in his capacity of Chairman of the RIA Management Board, Lazarov intentionally did not exercise sufficient care in performing his duties related to the construction of the Maritsa Highway. This resulted in damages of considerable proportions to the Ministry of Transport and Information Technology, amounting to BGN 30 813 647. The case was considered especially serious and Lazarov was charged under Art. 219, par. 4, par. 3, and par. 1 of the CC.

when

investigation in September 2016 — charged in June 2017 — charges brought before the SpCC by the SpPO in April 2018 — case transferred to the SCC on jurisdictional grounds — returned to the SCPO in November 2018 for rectification of committed procedural violations — charges brought before the SCC by the SCPO in June 2019 — case returned to the SCPO in January 2020 for rectification of committed procedural violations — there is no further information regarding the progress of the proceedings.

why

The alleged crime is related to the financing of additional construction works on a segment of the Maritsa Highway. In a nutshell, the charges contain allegations that the defendant failed to commission an inspection of the documentation, submitted by the executing company in support of the need to perform additional construction works that would require additional financing. Thus, he failed to identify that there was in fact no need for additional works, and no basis for additional financing, respectively, causing harm to the state budget. The case was returned to the SCPO for rectification of inconsistencies and ambiguities in the charges, and there is no further information regarding its status. There is no evidence of the case being brought back to court and examined on its merits, even though it has been more than three years and a half since the investigation proceedings were initiated.

conclusion

there is no evidence that the proceedings have been terminated.

case 38/

DESISLAVA IVANCHEVA

Mayor of the Mladost District within the Sofia Municipality, 2016 – 2018, together with several other defendants

what

charged with receiving a bribe:

In the period 16 March – 17 April 2018, in her capacity of an official occupying a post of high responsibility — Mayor of Mladost District, Sofia Municipality — and in complicity with two accessories, Ivancheva requested an undue gift, namely the amount of EUR 500 000, equaling BGN 977 915, to be paid in several instalments. Ivancheva also accepted an undue gift — the amount of EUR 70 000, equaling BGN 136 908.10 — as the first instalment of the requested gift. The gift was requested from and subsequently provided by A.V., CEO of Vaklin Group OOD and Vaklin Group – Kambanite OOD; the defendant requested the gift in exchange for performing her official duties, in particular her obligations in the context of the administrative procedures for authorizing construction within the district: to announce the order of the Chief Architect of Sofia Municipality, then refer the case back to the Chief Architect and perform her ensuing obligations: to publish the issued construction permit, to open a construction site, to issue the necessary construction papers, and to issue a building use permit. The bribe was of considerable proportions, constituted an especially serious crime, and was requested through extortion and abuse of office. The defendant told the witness V. that if the requested gift was not provided, she would not proceed with issuing the required construction papers. Ivancheva was charged with committing three criminal acts, jointly constituting a continuing crime, under Art. 302a; Art. 302, par. 1 and 2; Art. 301, par. 1, clause 1 and 2; Art. 26, par. 1; and Art. 20, par. 2 and par. 1 of the CC.

when

Investigation in April 2018 — charges brought in court by the SpPO in August 2018 — convicted by the SpCC in April 2019 (sentenced to 20 years imprisonment, a fine in the amount of BGN 10 000, deprivation of rights for a period of 20 years, and partial confiscation of property) — the case is pending before the SpCCA as of June 2019 on appeal from both parties.

why

The defendant was found guilty by the first-instance court only for the crime of requesting a gift, but not for actually receiving the gift. Furthermore, the first-instance court held that the case did not fit the characteristics of a continuing crime. However, these observations did not affect the legal qualification of the defendant's actions. The defendant was convicted of receiving a bribe of considerable proportions, constituting an especially serious crime, and procured through extortion and abuse of office, which is the most severe form of passive bribery. The pre-trial investigative proceedings and the proceedings before the first-instance court were conducted without any delay and within a very short timeline given the complexity of case. To date, the proceedings before the appellate court have also been conducted within a reasonable timeline.

conclusion

The proceedings are still pending.

case 39/

PETAR HARALAMPIEV

Chairman of the State Agency for Bulgarians Abroad, 2017 – 2018

what

charged with leading an organized crime group that engages in bribery and other crimes involving the obtaining of undue benefits in return for issuing certificates of Bulgarian origin to citizens of Moldova, Ukraine, and North Macedonia. This is all the available information regarding the charges.

when

charged in October 2018 — there is no further information regarding the status of the pre-trial investigation proceedings.

why

the Prosecutor's Office did not provide copies of the charges against Haralampiev for the purposes of the present study, nor did they disclose any information regarding the course of the investigation.

conclusion

there is no evidence that the proceedings have ended.

case 40/

ANTON GINEV[83]

Director of the National Railway Infrastructure Company (NRIC), 2007 - 2009, together with two other defendants, one of whom has also occupied a senior public office, but his alleged criminal conduct was considered unrelated to his professional capacity

what

charged with:

In the period 22 October 2007 – 6 September 2009, in his capacity of a public official (CEO of NRIC), Ginev intentionally did not exercise due care with respect to the management and preservation of property, entrusted to him following the signing and execution of three contracts between NRIC (as a principal) and three private companies (as contractors). This resulted in damages to NRIC of considerable proportions (BGN 4 240 356.46), and the case was considered an especially serious one. Ginev was charged with committing two criminal acts, constituting a continuing crime, under Art. 219, par. 4, par. 3, and par. 1; and Art. 26, par. 1 of the CC.

when

Investigation in June 2016 — charges brought before the SCC by the SCPO in January 2017 — convicted by the SCC in March 2019 (11 months imprisonment and deprivation of rights for 3 years) — modified by the SCA (to 2 years of imprisonment) May 2020.

why

The first-instance court held that the defendants I. and Ginev were acquainted, which was the reason why the latter facilitated the participation of companies — represented by various persons, but in reality owned by I. — in public procurement orders for repair works on sections of the railway infrastructure. Ginev also ensured the success of their bids and their appointment as contractors for the assigned activities. The two main benefitting companies were T. EOOD and E. EOOD; they were usually assigned "appropriate" tasks, allowing them to receive the funds allocated by NRIC for the respective activities without performing the actual work. Alternatively, it was arranged that the companies would conduct the activities using NRIC resources, but the relevant documentation will show that they used resources of their own. According to the court, Ginev selected the Ruse railway station and a railroad section between the Morunitsa and Byala stations (on main rail track IV) as suitable sites. The procurement orders conducted by Ginev had a predetermined outcome (regardless of the decision of the respective procurement commission), as all participating companies were owned by the same person — the defendant I. After that, the agreed commitments were not fulfilled, and any construction works were carried out with the resources of NRIC. However, NRIC made all payments under the signed contracts. The first-instance court acquitted Ginev with regards to certain amounts and actions specified in the charges — he was convicted of causing damages in the amount of BGN 2 015 590.77, instead of the alleged BGN 4 240 356,46 — but the legal qualification of the crime remained unchanged. It should be noted that Ginev was charged almost seven years after having committed the specified crime, which is a very long period. The proceedings before the first-instance court were completed within a period of two years that can be considered reasonable given the complexity of the case. The second instance agreed with the first instance's legal conclusions, only increasing the amount of the imprisonment sentence.

conclusion

The proceedings are still pending.

83 / At the time when the charges were pressed Anton Ginev was Deputy Minister of Transport, Information Technology and Communications.

Outcomes of investigations on cases referred to the authorities by ACF

APARTMENTGATE 2019

the Prosecutor's Office ordered investigations with respect to Tsvetan Tsvetanov; the Minister of Tourism, Nikolina Angelkova; the ex-Minister of Justice, Tsetska Tsatcheva; the ex-Deputy Minister of Sport, Vanya Koleva; the ex-Deputy Minister of Energy, Krasimir Parvanov; the MP, Vezhdi Rashidov; and the ex-Chairman of CAFIAP, Plamen Georgiev. The outcome of the investigations remains unknown, with the exception of the investigation of Tsvetan Tsvetanov which has resulted in two decisions to not initiate pre-trial criminal proceedings, dated November 2019 and May 2020.

"WAR FOR CARCASSES" 2019

the Prosecutor' Office ordered an investigation of the Bulgarian Food Safety Agency; the outcome of the investigation remains unknown.

authors

Andrey Yankulov is a practicing defence lawyer. For over a decade, he served as a public prosecutor at the Sofia District Prosecution Office and the Sofia City Prosecution Office, where he was responsible for investigating and supervising investigations of high-impact crimes (drugs, firearms, fraud), the execution of sentences as well as cooperation with international criminal law enforcement bodies. He left the public prosecution in Novemeber 2019. Mr. Yankulov has also served as Deputy Minister of Justice (2014-2016), leading the government's policy in the area of execution of sentences and penitentiary services. He was also responsible for international cooperation with a focus on human rights with organizations such as the Council of Europe, the European Court of Human Rights, and non-governmental organisations. He has served as Deputy Minister of Interior (2014).

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The Anti-Corruption Fund is an independent, expert-led non-governmental organization, which investigates cases of alleged corruption, misuse of public funds, and conflict of interest among public officials in Bulgaria. Our research adheres to the highest legal, professional, and ethical standards. We aim to assist public authorities and journalists in investigating and prosecuting corruption-related violations. The goal of our work is to help address systemic factors leading to high corruption levels, and to raise public awareness about the existing mechanisms to counteract corruption.

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