

ANNEX 4: PRESENTATIONS FROM THEMATIC SESSION 1

Investigating high level corruption cases

Mr. Daniel Morar, Chief Prosecutor, National Anti-Corruption Directorate (DNA), Romania

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● ● ● | **Case 1 “Tender for medical equipment”**

Issues:

- Corruption in public procurement
- Bribery of foreign officials
- Abuse of functions against public interests
- MLA

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● ● ● | **Short History of the case**

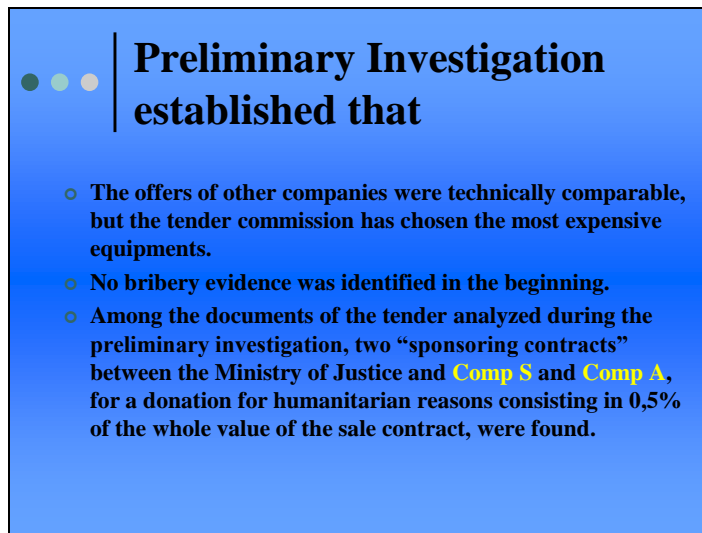
- **The Ministry of Justice of Romania has organized in 2001 a public tender in order to purchase medical equipment in value of about 20 million Euro for the hospitals of the National Administration of the Penitentiaries;**
- **Dr. X, a well known cardiologist -surgeon in Bucharest, was appointed president of the tender commission. He was, at the same time, a senator in the Romanian Parliament.**

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● ● ● | **Short History of the case**

- In the tendering procedure, famous producers in this field were eliminated.
- One Swiss company (**Comp S**) and one Austrian company (**Comp A**) were declared as winners.
- The medical equipment was received by the hospitals of the penitentiaries in period 2002 – 2003 and most of it was useless (reasons: no medical cases in that field, lack of specialized personal, existence of older equipments which needed lower costs of use and so on).
- The National Administration of Penitentiaries made an assessment of all this equipment and concluded that the value of the non used equipment was **3,4 million Euro.**

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Preliminary Investigation established that

- The offers of other companies were technically comparable, but the tender commission has chosen the most expensive equipments.
- No bribery evidence was identified in the beginning.
- Among the documents of the tender analyzed during the preliminary investigation, two “sponsoring contracts” between the Ministry of Justice and **Comp S** and **Comp A**, for a donation for humanitarian reasons consisting in 0,5% of the whole value of the sale contract, were found.

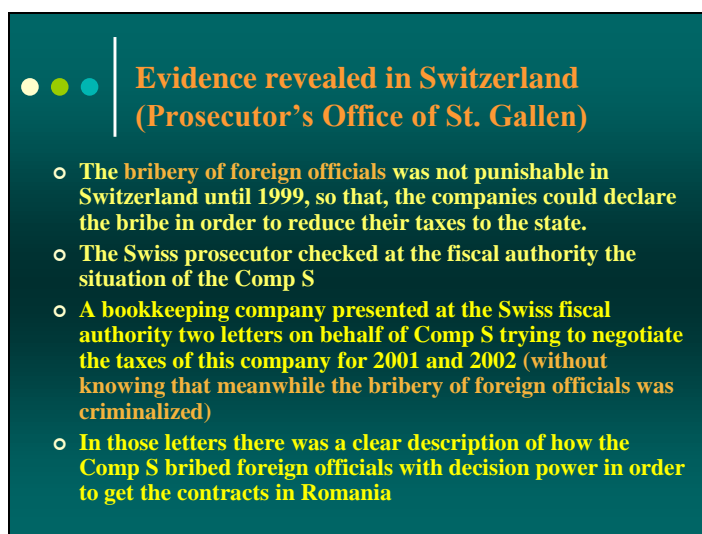
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International Mutual Legal Assistance
January 2006

- An International MLA request was addressed to the **Swiss Ministry of Justice** for the hearing of the directors of **Comp S**, related to the sponsoring contract and for obtaining of accountant documents from the company as well as fiscal evidence from the Swiss fiscal authorities.
- A similar request was addressed to the **Austrian Ministry of Justice** for the hearing of the director of **Comp A** and for obtaining the accountant and the fiscal evidence.
- A search was carried out at the premises of both companies by the Swiss and, respectively, by the Austrian authorities.

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**Evidence revealed in Switzerland
(Prosecutor’s Office of St. Gallen)**

- The bribery of foreign officials was not punishable in Switzerland until 1999, so that, the companies could declare the bribe in order to reduce their taxes to the state.
- The Swiss prosecutor checked at the fiscal authority the situation of the **Comp S**
- A bookkeeping company presented at the Swiss fiscal authority two letters on behalf of **Comp S** trying to negotiate the taxes of this company for 2001 and 2002 (without knowing that meanwhile the bribery of foreign officials was criminalized)
- In those letters there was a clear description of how the **Comp S** bribed foreign officials with decision power in order to get the contracts in Romania

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Evidence revealed in St. Gallen
Table attached to the letter seized from fiscal authority St. Gallen

Date	Sum USD	Receiver	Project	Duties/activities within the project
01.07.01	80,000.00	Dr. X	Weltbank I II III	<u>Obtaining plus points of our equipments in front of the tendering commission</u>
15.08.01	30,000.00	Mrs. Y	Weltbank I II III	<u>Speeding up the activity at Finance Ministry</u>
15.08.01	30,000.00	Dr. TU	Weltbank I II III	Training with the medics
15.08.01	30,000.00	Dr. OB	Weltbank I II III	Training with the medics
30.08.01	30,000.00	Dr. BU	Weltbank I II III	Tests in different hospitals
10.09.01	30,000.00	Dr. BO	Weltbank I II III	Course Austria for training of personal in RO
10.09.01	30,000.00	Dr. PO	Weltbank I II III	Course Austria for training of personal in RO
30.09.01	30,000.00	Mr eng. TA	Weltbank I II III	Installation training in different hospitals
30.09.01	30,000.00	Mr. CO	Weltbank I II III	Installation training
30.09.01	30,000.00	Mr. eng.TR	Weltbank I II III	Coordination with the medics of the hospitals for trainings
				Total USD 350,000.00

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MOJ (Ministry of Justice) Commissions

Date	Paid from	Sum	Currency	Sum in €	Observations
10.12.01	CC med	25'000.00	\$	28'409.00	Handed over
25.01.02	CC med	10'000.00	\$	11'364.00	Handed over to MM
Paid??	CC med	235'000.00	\$	267'045.00	Handed over to MM
08.03.02	CC med	5'000.	€	5'000.00	Received personally at Meil
18.04.02	CC med	20'000.00	\$	22'727.00	Handed over to MM
Printer	CC med	1'619.00	\$	1'840.00	Printer via Mrs. CP
03.05.02	CC med	250'000.00	\$	284'091.00	Invoice from AD LTD (cash order at UBS through Dr. X)
29.05.02	CC med	250'000.00	\$	284'091.00	Invoice from AD LTD (cash order at UBS through Dr. X)
12.06.02	CC med	50'000.00	€	50'000.00	From Dr. X issued account balanced (tel. Jemeta)
04.07.02	CC med	20'000.00	€	20'000.00	Stereo sound blasters Dr. X
24.06.02	CC med	1'545'433.00	€	1'545'433.00	Invoice from AD LTD (cash order at UBS through Dr. X)
02.10.02	CC med	1'500'000.00	€	1'500'000.00	Invoice from AD LTD (cash order at UBS through Dr. X)
16.09.02	CC med	50'000.00	€	50'000.00	Paid to Mrs. DE
16.09.02	CC med	17'000.00	\$	14'960.00	Paid to Mrs. DE
24.07.01	CC med	50'000.00	€	50'000.00	Hotel Bristol through MM cash
08.09.01	CC med	50'000.00	€	50'000.00	Handed over to MM
28.08.01	CC med	1'250.00	€	1'250.00	½ Travel costs
09.09.01	CC med	1'350.00	€	1'350.00	½ Travel costs
12.12.02	CC med	40'000.00	€	40'000.00	MM cash in Bucharest on 16.12.2002 to Dr. X
12.12.02	CC med	1'500.00	€	1'500.00	Travel costs flight tickets MM cash on 15.12.02
09.01.03	Via Beirut	500'000.00	€	500'000.00	Payment to AD LTD
				4'729'060.00	

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Invoice of AD Ltd for 250,000.00 USD on 1st of May 2002

AD LTD.
Tortola 01 May 2002
Project: Tender Justice Romania 2002
We allow us respectfully to present you our receipt for:

Total Sale support for Tender Justice Romania
USD 250,000.00

Payment conditions: after receiving the receipt

Bank Details: USB AG

8098 Zürich
Switzerland
UBSWCHZH80V

Swift: AD LTD
Beneficiary: XZFGSAKKA
Account No.: AGSKAJO
Ref. No.:

AD Ltd
Signature

P.O. Box XYZ – British Virgin Island

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Invoice of AD Ltd for 250,000.00 USD on 8th of May 2002	
AD LTD. Tortola 08 May2002 Project: <u>Tender Justice Romania 2002</u> We allow us respectfully to present you our receipt for:	
Total	<u>Sale support for Tender Justice Romania</u> <u>USD 250,000.00</u>
Payment conditions:	after receiving the receipt
Bank Details:	USB AG
	8098 Zürich Switzerland UBSWCHZH80V
Swift:	
Beneficiary:	<u>AD LTD</u>
Account No.:	XZFGSAKKA
Ref. No.:	AGSKAJ0
AD Ltd Signature	
P.O. Box XYZ – British Virgin Island	

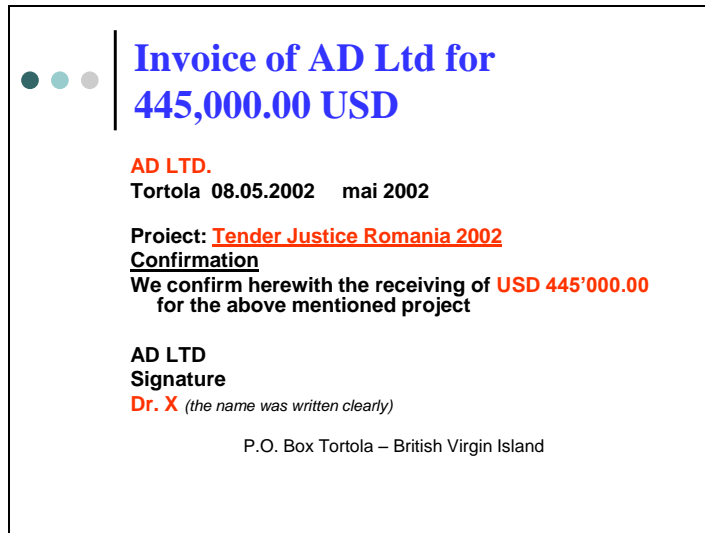
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Invoice of AD Ltd for 1,545,433.00 EUR	
AD LTD. Tortola 15 iunie 2002 Project: <u>Tender Justice Romania 2002</u> We allow us respectfully to present you our receipt for:	
Total	<u>Sale support for Tender Justice Romania</u> <u>EUR 1'545'433.00</u>
Payment conditions:	after receiving the receipt
Bank Details:	USB AG
	8098 Zürich Switzerland UBSWCHZH80V
Swift:	
Beneficiary:	<u>AD LTD</u>
Account No.:	XZFGSAKKA
Ref. No.:	AGDKKLSPS
AD Ltd Signature	
P.O. Box XYZ – British Virgin Island	

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Invoice of AD Ltd for 1,500,000.00 EUR	
AD LTD. Tortola 30 September 2002 Project: <u>Tender Justice Romania 2002</u> We allow us respectfully to present you our receipt for:	
Total	<u>Sale support for Tender Justice Romania</u> <u>EUR 1'500,000.00</u>
Payment conditions:	after receiving the invoice
Bank details:	USB AG
	Zürich, Switzerland
Swift:	UBSWCHZH80V
Beneficiary:	<u>AD LTD</u>
Account No.:	GSHSAIAOAJ
Referință:	AGAUAJ0QJ
AD Ltd Signature	
P.O. Box FEF– Tortola – British Virgin Island	

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**Invoice of AD Ltd for
445,000.00 USD**

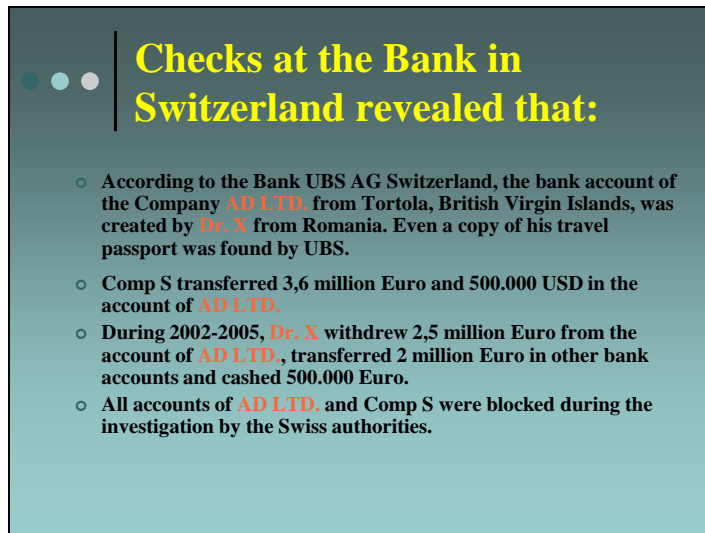
AD LTD.
Tortola 08.05.2002 mai 2002

Project: **Tender Justice Romania 2002**
Confirmation
We confirm herewith the receiving of **USD 445'000.00**
for the above mentioned project

AD LTD
Signature
Dr. X (the name was written clearly)

P.O. Box Tortola – British Virgin Island

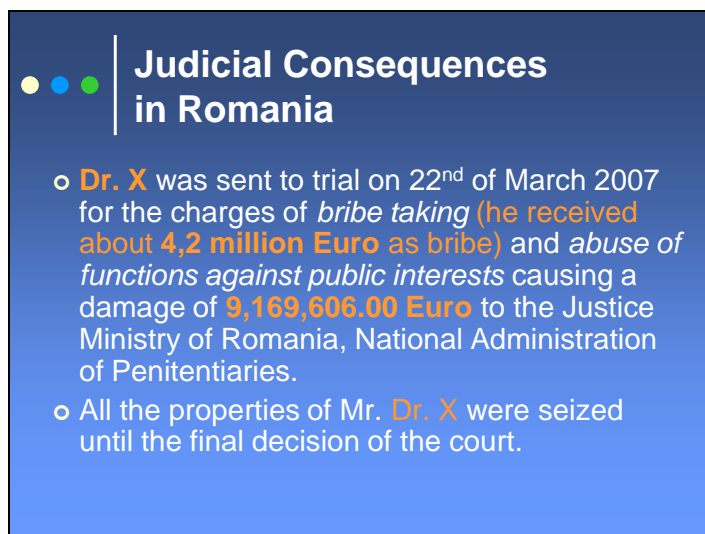
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**Checks at the Bank in
Switzerland revealed that:**

- According to the Bank UBS AG Switzerland, the bank account of the Company **AD LTD.**, from Tortola, British Virgin Islands, was created by **Dr. X** from Romania. Even a copy of his travel passport was found by UBS.
- Comp S transferred 3,6 million Euro and 500.000 USD in the account of **AD LTD.**
- During 2002-2005, **Dr. X** withdrew 2,5 million Euro from the account of **AD LTD.**, transferred 2 million Euro in other bank accounts and cashed 500.000 Euro.
- All accounts of **AD LTD.** and Comp S were blocked during the investigation by the Swiss authorities.

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**Judicial Consequences
in Romania**

- **Dr. X** was sent to trial on 22nd of March 2007 for the charges of *bribe taking* (he received about **4,2 million Euro** as bribe) and *abuse of functions against public interests* causing a damage of **9,169,606.00 Euro** to the Justice Ministry of Romania, National Administration of Penitentiaries.
- All the properties of Mr. **Dr. X** were seized until the final decision of the court.

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Case 2: The investigation and trial of MP's and ministers

Issues:

- the rules of immunity
- the legislation changes occurred during the investigation and trial

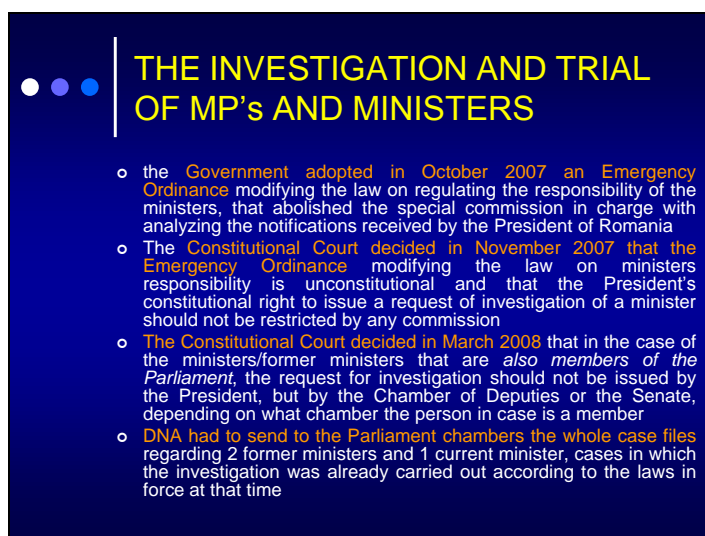
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THE INVESTIGATION AND TRIAL OF MP's AND MINISTERS

- The law regulating the responsibility of the Members of the Government stipulated in 2007 that the criminal investigation of the ministers can only be initiated at the request of the President of Romania, or of one of the Parliament's chambers
- the Constitutional Court decided in July 2007 that the immunity rules applicable to the investigation of the current ministers should be applied in the cases regarding the former ministers as well
- the High Court of Cassation and Justice decided that the above mentioned decision should benefit to the defendants that raised the exception

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THE INVESTIGATION AND TRIAL OF MP's AND MINISTERS

- the Government adopted in October 2007 an Emergency Ordinance modifying the law on regulating the responsibility of the ministers, that abolished the special commission in charge with analyzing the notifications received by the President of Romania
- The Constitutional Court decided in November 2007 that the Emergency Ordinance modifying the law on ministers responsibility is unconstitutional and that the President's constitutional right to issue a request of investigation of a minister should not be restricted by any commission
- The Constitutional Court decided in March 2008 that in the case of the ministers/former ministers that are also members of the Parliament, the request for investigation should not be issued by the President, but by the Chamber of Deputies or the Senate, depending on what chamber the person in case is a member
- DNA had to send to the Parliament chambers the whole case files regarding 2 former ministers and 1 current minister, cases in which the investigation was already carried out according to the laws in force at that time

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Slide 21 features a dark teal background with three colored circles (white, yellow, blue) on the left. The title 'Case 3 "Minister caught in the act"' is in red. Below it, the word 'Issues:' is in yellow, followed by three bullet points in yellow.

- Special investigation techniques
- Cooperation with the prosecution of the persons participating in the bribery scheme
- Immunity rules

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Slide 22 has a dark red background with three colored circles (white, yellow, red) on the left. The title 'Information resulted from another case' is in white. Below it, two bullet points in white describe the case details.

- A businessman (Mr. B) used fraudulent means in order to obtain several public procurement contracts
- Tapped phone conversations of the businessman revealed that he was willing to offer up to 100,000 Euro to a former minister (Mr. FM) in order to win some public tenders

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Slide 23 has a dark blue background with three colored circles (white, blue, blue) on the left. The title 'Preliminary investigations revealed that:' is in yellow. Below it, four bullet points in white detail the investigation findings.

- FM called on the phone a current minister (Mr. CM) who was the head of the ministry coordinating the public institutions that organized the tenders and they established to meet
- FM asked the CM to influence public officials from the institutions under his subordination so that B's companies could win the public procurement contracts.
- FM gave CM 15.000 Euro, in an envelope
- B told FM that he was also willing to give CM a car (at the value of 65,000 Euro)

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Preliminary investigations revealed that:

- B was charged with buying of influence
- He agreed to cooperate with the prosecutors in order to benefit from reducing his punishment to a half
- He was wired by DNA police officers with audio and video tapping equipment, while he had a conversation with FM

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Preliminary investigations revealed that:

- FM explained B that he had given CM the 15,000 Euro for exerting his influence so that B's company wins the tender
- He also instructed B how to answer if questioned by the prosecutors

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Lifting of immunity, prosecution and indictment

- The prosecutors notified the President of Romania so that, according to the Constitution, he would request the criminal investigation of CM
- Based on the President's request, the prosecutors started the criminal investigation against CM, charged him and sent him to trial for the offence of *traffic of influence*
- B was sent to trial for *buying of influence* and FM for *complicity to buying of influence*

Investigation of complicated corruption cases in the Republic of Azerbaijan

**Dr. Kamran Aliyev, Director, Anti-corruption Department, Prosecutor's General Office,
Republic of Azerbaijan**

1. Following the ratification of the Council of Europe Criminal and Civil Law Conventions on Corruption and the United Nations Convention against Corruption, Azerbaijan adopted new anti-corruption legislation and also made some crucial amendments to other laws, including the Criminal Code and Code of Criminal Procedure. Recommendations made by experts from the Anti-corruption Network of the OECD and GRECO were very useful. We have implemented many of them and we are continuing this process. As a result, I am now able to say that our anti-corruption legislation has become stronger and more effective.

But it does not mean that we have solved all legislative issues, or that we do not have such problems in practice, or do not need to improve further the legislation. We are continuing the process of modernising our anti-corruption legislation using the recommendations given by the above-mentioned International Organisations, using the best practices from other countries and, of course, analysing our own difficulties and the mistakes in our everyday activity.

On 28 July 2007, the President of the Republic of Azerbaijan signed National Anti-Corruption Strategy "On Increasing Transparency and Fight Against Corruption" (2007-2011) which has a special section dedicated to improvements in the anti-corruption legislation. And I hope we will implement all the provisions of the Strategy.

Also after the ratification of the Council of Europe Criminal Law Convention in 2005 we have established Anti-Corruption Department at the Prosecutor General of the Republic of Azerbaijan, which is specialized in detection and investigation of corruption cases. Since its establishment and until 1 June 2008 we have successfully investigated and sent to court 127 cases indicting 251 persons, including 12 cases in 2005, 39 cases in 2006, 41 cases in 2007 and 35 cases only for the first 5 months of this year. Now there are 34 cases under investigation. As you can see, the number of cases investigated by the Anticorruption Department is growing, which means that our activity is becoming more effective and productive.

At the same time, I must note that the Anti-Corruption Department at the Prosecutor General is not the only department which is authorised to investigate corruption cases. We also have other investigation departments in the Prosecutor's General Office, which may investigate such cases. The main difference between the Anti-Corruption Department and other investigative bodies is that as a rule our department investigates more complicated cases.

Among successfully investigated and prosecuted corruption cases I would like to emphasize two cases: concerning the former Minister of the Economic Development and the former Minister of Health Protection. There were 19 defendants in these cases. Heads of departments, heads of private companies and other high ranking officials are among the convicted people.

Also we have successfully investigated corruption cases about two investigators from the Prosecutor's General Office, custom and tax officials, etc.

2. While analyzing the difficulties and challenges faced during the investigation and prosecution of above-mentioned and other corruption cases in the Republic of Azerbaijan, we

can speak about various issues and problems which arise in every case. But, as we have limited time, I will try to cover only some of them which, from my point of view, appear to be growing in importance.

Such problems can be divided into two categories:

- difficulties and problems which arise from shortcomings in legislation;
- difficulties and problems, which arise from the implementation of legislation.

It is not enough to fight corruption by only having strong and modern legislation. Simultaneously we have to implement all provisions of the law in more effective way.

Unfortunately today we can encounter some problems in our activity; one of them concerns the confiscation of illegally obtained property from the third parties. Following the recommendations of GRECO and the OECD, we have changed this part of the Criminal Code and it is much easier now to confiscate illegally obtained property.

According to our Criminal Code, confiscation is a supplementary punishment, which can be imposed by a court only if such a punishment is envisaged by the special article of the Criminal Code. But before the court trial, during the investigation, an investigator is able to seize illegally obtained property in order to ensure its confiscation. In order to arrest and confiscate such property an investigator and prosecutor have to prove that the property belongs to the defendant. If such property is not formally in the defendant's hands, it becomes a "headache" for the investigator and prosecutor. In this case the investigator and prosecutor have to prove that all contracts and other acts committed in order to formalise the rights to this property of the defendant's relatives or other associates, were unlawful. Otherwise, according to our legislation, it is not possible to seize and confiscate such property.

We do not usually have any problems if we have proved that the formal contracts were false and illegal in reality. In such situations we are able to seize the property and later to confiscate it without any hesitation. Moreover, such activities may be an independent subject of investigation and government officials can be punished, depending on the character and nature of their illegal action.

But sometimes we have situations in which people who obtained the property did not know of its origin and were not obliged to know about it, they are innocent (good faith) purchasers. Then the issue of what to do with such properties becomes more controversial.

Of course, from the point of view of fighting corruption, it is very important to confiscate the properties of both owners. However, we should not forget that it is also a citizens' fundamental right to have property, as guaranteed by the Constitution and the Civil Code. That is why such activity is sometimes interpreted by defence lawyers as a violation of the fundamental principles of law.

We do have some legal mechanisms to deal with such difficulties. I won't take your time today to describe every legal instrument envisaged in our law on these matters. I would just like to stress that we should analyze our legislation in this field again, learn the best practices and make some amendments to the criminal code and code of criminal procedure.

The other issue in our practice is the regulation of relationships between the participants in criminal proceedings. In other words, this is about what is done, and how, by an investigator and a prosecutor, on whom the burden of proof rests, in collecting all the necessary evidence for a case in compliance with rights of all participants in the criminal proceeding.

From our point of view, we should discuss the following typical situations which depend on the positions of the participants and which are often met in practice:

- situations in which victims and witnesses are trying to give biased or misleading information; they are trying to take the investigation in the wrong direction. For instance, sometimes participants tend to submit intentionally false information because they are involved in commission of crimes of corruption, or they have other unlawful interests in the results of the investigation (maybe to obtain some property, to avoid other kinds of responsibilities, e.g. administrative or civil);
- situations in which victims and witnesses avoid cooperation with the investigation bodies from the beginning of the investigation process because of security concerns (personal or security of their relatives);
- situations in which victims, witnesses or other participants do not believe or do not trust the investigation or the success of the case, they find the investigation pointless or useless because they don't trust the investigator or prosecutor personally.

Sometimes participants take a correct position towards the investigation process, but they change their position in the middle or at the end of the investigation process and try to avoid any contact or cooperation with the investigative bodies because their lawful demands are met by the other side, for instance by the suspect or defendant. Of course, it is a positive development that the lawful demands of victims are met, because this is one of the purposes of investigation. But we have to bear in mind that such a demand has to be lawful and also the methods used for satisfying such a demand have to be lawful, they shouldn't damage public or individual interests. And such circumstances can be used to mitigate, but not to annul, the responsibility of the defendant. Because in any investigation we have also to consider the public interest, first of all, of course, the function of deterrence.

We do not pretend to cover all situations, because in practice it is difficult to predict all possible circumstances. Moreover, we can sometimes meet situations where there are many different reasons for the misconduct of the participants and it is impossible to define which of them is the main and which is a supplementary cause.

As we have classified some possible situations, I will now try to describe some general recommendations which, from my point of view, would be useful for investigators and prosecutors in dealing with the challenges they may encounter in practice.

So, during the investigation, the investigator or prosecutor should:

- collect all necessary information about participants of the process, about their interests, their roles and opportunities for submitting useful information and evidence;
- try to learn what kind of false information may be given by participants and for what reason;
- learn the track records of the important participants, where they worked before, information about their past, including any personal information which can shed light on the event which has to be investigated;
- establish relationships between different participants in the investigation process, especially between the alleged defendants and victims, between the alleged defendants and witnesses and, if necessary, to establish relationships between the victims and witnesses;
- establish psychological contact with the participants, to earn their trust so they submit all necessary information and evidence promptly and without any hesitation;
- convince participants to cooperate with the investigative agency, to trust them and to give useful, correct and unbiased information;

- try to settle any points of controversy between different participants and avoid any unnecessary procedural action which could heighten tension;
- explain to them their rights and duties; provide them with special manuals describing their obligations;
- give notice to participants about criminal and other kinds of liability and their consequences if they try to submit wrong information in order to accuse somebody of committing offences or to free somebody from liability;
- provide them with instructions about measures which should be taken by them for personal security;
- undertake all necessary measures to ensure security of the participants and, if necessary, the security of their relatives.

In practice sometimes we have other problem connected with the security of the participants of the criminal proceeding. According to the Criminal Proceeding Code court trials, including the trials on corruption cases, have to be open and transparent, which means that everybody, including mass media, are able to attend the court hearings. And usually they do, especially if there is a court trial on complicated corruption case. Afterwards media publish articles about the court proceedings.

There is obviously an exception to the rule, when court hearings may be not open, but in practice it is very rare. For example, during prosecution of the case about the former Minister of Health Protection and other high-ranking officials of this ministry, journalists attending the court trial published articles in different newspapers every day. Usually they described evidence, including statements made by important witnesses and victims. On the one hand, in such situations, it was getting difficult for us to invite other witnesses and victims to the trial and convince them to submit correct and objective information, because they could have serious problems in terms of security. On the other hand, the next witnesses and victims were able to read statements made by the previous witnesses and victims, which sometimes could prevent them from being impartial. As a prosecutor, I had an opportunity only to try convincing them not to do it. But, unfortunately, it was not enough to solve the problem.

There are other problems during investigation and prosecution of complicated corruption cases which have to be dealt with. In our everyday work we are trying to solve them and we will continue doing it.

Investigation of complex corruption cases in Bulgaria – diversion of property by a public official

Mrs. Tanya Nedkova, District Prosecutor, Bulgaria

I. Case study

Criminal code:

General part – Art. 26, Art. 93 – explanation of “official” and “continuing crime”;

Special part – Chapter 5, Section 3, Art. 201, 202, 203; Chapter 6, Section 1, Art. 219, Section 2, Art. 282;

Regulations for selling by auction, management of state property, bookkeeping

During the years since the start of transition in the former socialist economies of Europe and Central Asia, few issues have risen as rapidly in visibility as corruption. Reforms in the early 1990s were focused on macroeconomic stabilisation, price and trade liberalisation, privatisation, and establishment of the legal foundations of a market economy. Institutional reforms to ensure accountability, transparency, and public sector effectiveness often took a back seat. But while corruption was barely mentioned in the beginning of the 1990s, by the end of the decade it had come to be recognised as a central challenge to the progress in many countries in the region. Corruption has been an important issue in the discussions surrounding EU enlargement, has figured prominently in political campaigns, and has been a key concern of citizens, businesses, and international organisations. Leading reformers have in turn paid greater attention to governance issues generally and corruption in particular in recent years.

The investigation of crimes, committed by public officials in different spheres of the economy, when the management of state property is assigned to them, requires co-ordination between the investigative bodies and the financial control authorities.

Important parts of the initial stage of the investigation include:

- Detailed financial audit of the accounting documents of the enterprise;
- Determining the established organisation of the management;
- Determining distribution of functions and responsibilities among the officials involved;
- Information about contracts and different contracting parties.

The particular example is a criminal case launched against a director of a public enterprise, which is a sole producer in its area. The investigation started based on the conclusions of the financial audit carried out by the governmental financial inspection and covered a two-year period. The enterprise was registered as a sole company with limited liability, based on the state property, under the Bulgarian Trade Law and later it was transformed into a public limited company with public partnership.

Here we must point that it is necessary for the investigating authorities to review all changes in the legal status of the company, because it is of great importance for identifying the persons responsible for making managerial decisions during different periods, which are the subject of the investigation. The core business, that is the production process itself, must be known,

because in accordance with it different deals, which are the subject of the investigation, were made.

The defendant in the case, who is the manager of the company, received authorities to manage according to the contract for managing by the Minister of Industry. According to this contract, obligations of the manager included specific authorities, which outline the scope for evaluation of activity of the defendant in the context of the criminal law criteria - criminal activity or omission in his capacity of a manager of public property.

In this case the official was obliged to manage and take care of the property of the company with the care of a good proprietor, to organise the management of the company by determining its inner managerial and organisational structure, and to approve the entire regulative framework of the company in accordance with the current legislation, to sell real estate and possessions only through auction, if the sale is not done between public companies, and to inform in due time the principal – the Ministry of Industry, about that.

The defendant, violating his obligations according to the contract for management and relevant regulations and exceeding his rights, concluded contracts with private companies to sell property of the company, using his own discretion to determine the price of the sold materials. Regarding some companies the prices were lower than the market ones or prices at which those materials were initially bought or accounted in the warehouses of the company.

According to the contracts, concluded by the manager with certain private companies, the company bought at unjustifiably high prices materials already used by it in the production process and processed additionally by these private companies. As a result the public company suffered damages, the total amount of which was almost 14 million not-denominated BGN. The private companies were therefore favoured illegally.

During the period of his management the defendant did not take necessary organisational steps to manage and control the production process and the sale of goods, to ensure proper and legal book-keeping of the accounting documentation, to effectively protect and manage the company's property. Because of the lack of regulations, orders and other documents in this area shortage of material reserves in the amount of almost 3 million not-denominated BGN was detected during the financial audit.

A great part of this shortage was incorrectly accounted at the expense of the financial result of the company. Thus profits for the corresponding accounting year were decreased and less tax to the state was paid.

As a result of the inactivity of the official and his improper managing, running and preserving the entrusted property it was possible (again under the provisions of the contracts with a private company) to take from the territory of the plant certain amount of production scrap, which was sold in foreign countries. The part of value of this scrap was paid to the company by the private trade companies at exceptionally low prices. Immediately after that quantities exceeding these in the accounting documents for the sale of the company were exported by the private company at much higher price. The sales to the private companies were made without an auction.

To buy materials, necessary for the company's production process, the manager signed a contract to receive hard currency credit of more than 1 million USD. Necessary materials were bought from a foreign company.

After receiving the supply materials the manager concluded a contract with a private company to sell scrap but instead of the waste materials he sold those materials that were previously supplied from the foreign company and paid for with credit money. The price of the sale to the private company was many times lower and an auction was not carried out.

This brief exposition of the main facts of the case outlines the broad range of actions of the investigation, which are necessary to prove the criminal activity of the official. As it was stated, the first point was to establish the defendant's scope of powers in his capacity as a public official according to the criteria provided for in the General Section of the Criminal Code. In the course of investigation it is necessary to collect registered accounting documents – invoices, consignment notes, and bills of entry.

A great part of the investigating activities were focused on finding and inspecting all contracts and checking relevant documents in the private companies, which were favoured; collecting bank and customs documents. Many people were interrogated as witnesses.

According to Bulgarian legislation the conclusions of the financial audit are not a direct proof for the amount of damages caused. Because of this during the investigation of such type it is of great importance to appoint and execute forensic financial-economic examination, during which the assigned experts make full review of the accounting records in the financial documents. This is how the amount of damages caused is established.

Usually the preparation of the conclusion of experts takes a long time and often it is necessary to conduct an additional examination or second expertise. When the case involves documents it is necessary to verify them by forensic methods for authenticity and authorship.

The greatest difficulty in the investigation of crimes in the economic sphere, in my opinion, is caused by the need to establish applicable legal rules regarding the financial activity, because after 1990 Bulgaria saw an intensive process of change, abolishment and creation of new regulations – laws, regulations, statutes and instructions.

A serious difficulty for such an investigation is the missing documents – money orders, invoices or registration documents for materials at the warehouses of the company.

The indictment in the described criminal case included charges of four different offences according to the Criminal Code, and each of them was a crime in continuation, i.e. it consisted of several criminal acts of one and the same kind. The first count was *misappropriation* (Article 203 of the Criminal code) - that in capacity of an official the defendant misappropriated money, property of the company in the total amount of 7 million non-denominated BGN. It is a particularly serious crime, and the diversion of property was in exceptionally large amount.

It entailed commission of a criminal breach of trust, as a separate crime according to Article 282 of the Criminal Code, in violation of his duties with the purpose of providing the third party with an advantage. According to the Bulgarian Criminal Code a penalty from 10 to 20 years of imprisonment is provided, confiscation of the entire property or part of the property of the guilty person and revocation of the right to occupy certain state or public positions.

The defendant was also charged with a general property offence, namely that he deliberately failed to ensure proper management, administration, handling and preservation of the entrusted property, which caused damages of an exceptionally large scale – a crime according to Article 219 of the Criminal Code.

These criminal acts are in line with the requirement of criminalisation under Article 17 – Embezzlement, misappropriation or other diversion of property by a public official and Article 19 - Abuse of functions of the United Nations Convention against Corruption.

As a conclusion it must be emphasised that counteraction and investigation of corruption cases require special training, specialisation of the investigative bodies, co-operation among law enforcement authorities, and also support and the intolerance of the whole society.

Various measures are taken to control corruption – establishment of clear and legal rules, transparency of public procedures, improvement of the management in the public sector, establishment of specialised authorities to control corruption, etc.

Hardly anyone can think that corruption can be opposed only through the means of punitive repression. Criminal law is only one tool available to the state in this aspect. However, if the necessary prevention measures are not taken, seeking penal responsibility is doomed to be an inefficient counteraction measure.

It is of utmost importance to create such a legal environment that to the greatest extent possible would remove conditions and reasons for the existence of the corruption phenomenon. However, as long as the Prosecution’s competence is primarily to take measures related to seeking criminal accountability for corruption crimes, we shall do our best and be persistent in our efforts.

II. Anti-corruption legislation in Bulgaria

1. General principles and fundamental rules

According to Article 4, paragraph 1, of the Constitution of the Republic of Bulgaria, “[t]he Republic of Bulgaria shall be a law-governed state. It shall be governed by the Constitution and the laws of the country”.

Therefore, the legal frame that determines the essential principles and defines the organisational relationships within the judicial system branch concerning competent authorities and legal instruments to fight corruption consists of:

- The Constitution, as the supreme law of the state, which provisions has a direct application and defines general principles and fundamental rules of the judiciary.
- The Judicial System Act, as an organisational law that regulates in a more precise manner the structure of the judicial authorities, their statute, competence and tasks.
- The Criminal Procedure Code that determines the order under which the penal procedures shall be carried out and prescribes detailed regulation of the tasks, functions, organisational relationships and volume of legal capacity, duties and responsibilities of the competent judicial authorities.

The analysis and interpretation of the provisions of these legal instruments reveals the completeness of legal instruments concerning the fight against corruption, which exist in the legislation of the Republic of Bulgaria.

According to the classification of “corruption crimes” that exists in the Bulgarian legislation and the doctrine, the ones that have a major role are the following.

PENAL CODE

Prom. SG. 26/2 Apr 1968, corr. SG. 29/12 Apr 1968; last amend. SG. 88/4 Nov 2005

Chapter Five

CRIMES AGAINST THE PROPERTY (Title, amend., SG 10/93)

Section III

Misappropriation

Art. 201. (Suppl., SG 28/82; amend., SG 10/93; suppl., SG 50/95: Decision No 19 of the Constitutional Court - SG 97/95)

An official who misappropriates another's money, possessions or other valuables, delivered to him as such or entrusted to him for keeping or managing, shall be punished for misappropriation in public office by imprisonment of up to eight years, whereas the court can rule confiscation of up to half of the property of the culprit and deprive him of rights according to art. 37, item 6 and 7.

Art. 202.

(1) The punishment for misappropriation in public office shall be imprisonment of one to ten years:

1. if, in order to facilitate it, another crime has been committed as well, for which the law does not stipulate a more serious punishment;

2. (Amend., SG 28/82) if it has been committed by two or more persons who have conspired in advance.

(2) The punishment for misappropriation in public office shall be imprisonment of three to fifteen years:

1. (Amend., SG 92/02) if it is of a large size,

2. (Amend., SG 92/02) if it represents a dangerous recidivism, or

3. (New, SG 92/02) if the misappropriated resources are funds belonging to the European Union or submitted by the European Union to the Bulgarian state.

(3) (Suppl., SG 28/82; Amend., SG 92/02) In the cases of the preceding paragraphs the court shall deprive the culprit of rights according to art. 37, item 6 and 7. The court can also order confiscation under para. 1 up to half, and under para 2 - of a part or of the entire property of the culprit, and in the cases of para 2, item 2 it shall rule probation for a period of up to five years.

Art. 203.

(1) (Amend., SG 89/86) The punishment for misappropriation in public office of a particularly large size, representing a particularly serious case, shall be imprisonment of ten to thirty years.

(2) (Amend., SG 92/02) The court shall order confiscation of the whole or a part of the property of the culprit and shall deprive him of the rights according to art. 37, para 1 item 6 and 7.

Art. 204.

In minor cases of misappropriation in public office the punishment shall be:

- a) (Amend., SG 28/82; SG 10/93; amend., SG 92/02) under art. 201 - imprisonment of up to one year or corrective labour, or a fine of one hundred to three hundred levs;
- b) under art. 202, para 1 - imprisonment of up to two years or corrective labour.

Art. 205.

(1) If the misappropriated money, possessions or valuables are deposited or replaced until the conclusion of the court investigation in the first instance court the punishment shall be:

- 1. (Amend., SG 28/82) in the cases under art. 201 - imprisonment of up to five years;
- 2. (Amend., SG 28/82) in the cases under art. 202, para 1 - imprisonment of one to seven years;
- 3. in the cases under art. 202, para 2 - imprisonment of three to ten years;
- 4. (Amend., SG 28/82; SG 89/86) in the cases under art. 203 - imprisonment of eight to twenty years;
- 5. (Amend., SG 28/82; SG 10/93; amend., SG 92/02) in the cases under art. 204, letter "a" - corrective labour or a fine of one hundred to three hundred levs;
- 6. in the cases under art. 204, letter "b" - imprisonment of up to six months or corrective labour.

(2) (Suppl., SG 28/82) In the cases of item 2, 3 and 4 of the preceding para the court shall also rule revoking of rights according to art. 37, item 6 and 7, as in the cases of item 3 it can rule confiscation of up to one second of the property of the culprit, and in the cases of item 4 it shall rule confiscation of a part or of the whole property.

Chapter Six
OFFENCES AGAINST THE ECONOMY

Section I
GENERAL PROPERTY OFFENCES

Art. 225b. (New, SG 28/82)

(1) (Amend., SG 10/93; amend., SG 92/02) Who receives property benefit which is not due for performed work or provided service, unless the act represents a more serious crime, shall be punished by imprisonment of up to two years and by a fine of one hundred to three hundred levs.

(2) If the act under the preceding para is committed again or the benefit is large in size the punishment shall be imprisonment of up to three years.

(3) (Amend., SG 10/93; amend., SG 92/02) In minor cases under para 1 the punishment shall be a fine of one hundred to three hundred levs, imposed through administrative channels.

(4) The subject of the crime shall be seized in favour of the state.

Art. 225c. (New, SG 92/02)

(1) Who, in fulfilment of a job for a corporate body or sole entrepreneur, requests or receives a gift or whatever benefit which is not due, or accepts an offer or promise for a gift or benefit in order to fulfil or not fulfil an act in violation of his obligations in carrying out trading activity, shall be punished by imprisonment of up to five years or by a fine of up to twenty thousand levs.

(2) Who, in carrying out trading activity, offers or gives a gift or whatever benefit to a

person working for a corporate body or sole entrepreneur in order to fulfil or not fulfil an act in violation of his obligations, shall be punished by imprisonment of up to three years or by a fine of up to fifteen thousand levs.

(3) The punishments under the preceding paras shall also be imposed when, by a consent of the person under para 1, the gift or the benefit has been offered, promised or given to some one else.

(4) (amend., SG 26/04) Who mediates some of the acts under the preceding paras, unless the act does not constitute a more severe crime, shall be punished by imprisonment of up to one year or a fine of up to five thousand levs.

(5) The subject of the crime shall be seized in favour of the state, and if it is missing or expropriated, its equivalence shall be awarded.

Chapter Eight
OFFENCES AGAINST THE ACTIVITY OF
STATE BODIES, PUBLIC ORGANISATIONS AND
PERSONS PERFORMING PUBLIC DUTIES
(Title amend. SG 43/05, in Force from 1st of September 2005)

Section II
Criminal Breach of Trust

Art. 282.

(1) (Amend., SG 28/82) An official who violates or does not fulfil his official duties, or exceeds his authority or rights with the purpose of obtaining for himself or for another benefit or to cause somebody else damage which can cause major harmful damages, shall be punished by imprisonment of up to five years, whereas the court can also rule revoking of rights according to art. 37, item 6, or corrective labour.

(2) (Amend. and suppl., SG 89/86) If the act has caused substantial consequences or it has been committed by a person who occupies an important official position the punishment shall be imprisonment of one to eight years, whereas the court can also rule revoking of rights according to art. 37, item 6.

(3) (New, SG 89/86) The punishment for particularly grave cases under the preceding para shall be imprisonment of three to ten years, whereas the court shall also rule revoking of right according to art. 37, item 6.

(4) (New, SG 62/97) The punishment under para 3 shall also be imposed to an official who has committed the offence with the participation of a person according to art. 142, para 2, item 6 and 8.

(5) (New, SG 21/00) If the act under the preceding paras is related to exercising control over the production, processing, storing, trade in the country, the import, export, transit and accountancy of narcotic substances and precursors the punishment shall be imprisonment of up to ten years under para 1 and three to fifteen years under para 2.

Art. 282a. (New, SG 62/97)

An official who, in the presence of the conditions stipulated by a normative act, necessary for issuance of special permit for carrying out certain activity, refuses or delays its issuance beyond the law determined terms shall be punished by imprisonment of up to three years, a fine of up to five hundred levs and revoking of right according to art. 37, para 1, item 7.

Art. 283. (Amend., SG 26/73, SG 28/82)

An official who uses his official position in order to provide for himself or for

somebody else unlawful benefit shall be punished by imprisonment of up to three years.

Art. 283a. (New, SG 62/97)

If the offences under art. 282 and 283 are related to the privatisation, sale, renting or leasing, as well as the inclusion in trade companies of state, municipal and cooperative property, as well as property of corporate bodies the punishment shall be:

1. under art. 282 - imprisonment of three to ten years, a fine of three to five thousand levs and revoking rights according to art.37, para 1, item 6 and 7;

2. under art. 283 - imprisonment of one to three years, a fine of one thousand to three thousand levs and revoking rights according to art. 37, para 1, item 6 and 7.

Section IV

Bribery

Passive Bribery:

Art. 301.

(1) (Amend., SG 51/00; Amend., SG 92/02) An official who requests or accepts a gift or any other benefit whatsoever, which is not due, in order to perform or not an act on business or because he has or has not performed such an activity shall be punished for bribery by imprisonment of up to six years and a fine of up to five thousand levs.

(2) (Amend., SG 51/00; Amend., SG 92/02) If the official has committed some of the acts under para 1 in order to offend or because he has offended his office, if this offence does not represent a crime, the punishment shall be imprisonment of up to eight years and a fine of up to ten thousand levs.

(3) (Amend., SG 95/75; SG 51/00; Amend., SG 92/02) If the official has committed some of the acts under para 1 in order to commit or because he has committed another crime related to his office, the punishment shall be imprisonment of up to ten years and a fine of up to fifteen thousand levs.

(4) (Amend., SG 89/86) In the cases under the preceding paras the court shall also rule revoking of right according to art. 37, item 6 and 7.

(5) (New, SG 92/02) The punishment under para 1 shall also be imposed on a foreign official who requests or accepts bribery or accepts an offer or a promise for bribery.

Art. 302.

For a bribery made:

1. (Suppl., SG 92/02) by a person who occupies a responsible official position, including a judge, member of the jury, prosecutor or investigator;

2. through extortion through embezzlement;

3. (amend., SG 28/82) repeatedly and

4. in large size, the punishment shall be:

a) (suppl., SG 89/86; amend., SG 51/00; Suppl., SG 92/02) in the cases of art. 301, para 1 and 2 - imprisonment of three to ten years, a fine of up to twenty thousand levs and revoking of rights according to art. 37, item 6 and 7;

b) (amend., SG 89/86; Suppl., SG 92/02) in the cases of art. 301, para 3 - imprisonment of three to fifteen years, a fine of up to twenty five thousand levs and confiscation of up to one seconds of the property of the culprit, whereas the court shall also rule revoking of rights according to art. 37, item 6 and 7.

Art. 302a.

(New, SG 89/86; Suppl., SG 92/02) For a bribe of particularly large size, representing a particularly serious case, the punishment shall be imprisonment of ten to thirty years, a fine

of up to thirty thousand levs, confiscation of the whole or a part of the property of the culprit and revoking of rights according to art. 37, item 6 and 7.

Art. 303.

(Amend., SG 92/02) According to the differences under the preceding Art.s the official and the foreign official shall also be punished when the gift or the benefit has been offered, promised or given to another by his consent.

Active Bribery:

Art. 304.

(Amend., SG 92/02) (1) Who offers, promises or gives a gift or any other benefit whatsoever to an official in order to fulfil or not an activity related to his office, or because he has fulfilled or not such activity, shall be punished by imprisonment of up to six years and a fine of up to five thousand levs.

(2) If, in connection with the bribery, the official has violated his official obligations the punishment shall be imprisonment of up to eight years and a fine of up to seven thousand levs, where this offence does not constitute a more severe crime.

(3) The punishment under para 1 shall also be imposed to those who offer, promise or give a bribe to a foreign official.

Art. 304a.

(New, SG 51/00; Amend., SG 92/02) Who offers, promises or gives a bribe to an official occupying a responsible position, including to a judge, a member of the jury, a prosecutor or an investigator shall be punished by imprisonment of up to ten years and a fine of up to fifteen thousand levs.

Passive Bribery by a private person /not an official/:

Art. 304b.

(New, SG 92/02) (1) Who requests or accepts a gift or whatever benefit which is not due, or accepts an offer or a promise of a gift or benefit, in order to exert influence in taking a decision by an official or by a foreign official related to his office, shall be punished by imprisonment of up to six years or a fine of up to five thousand levs.

Active Bribery by a private person /not an official/:

(2) Who offers, promises or gives a gift or whatever benefit which is not due to a person maintaining that he can exert influence according to para 1 shall be punished by imprisonment of up to three years or a fine of up to three thousand levs.

Art. 305.

(Amend., SG 92/02) (1) The punishments for bribery under the preceding Art.s shall also be imposed on an arbitrator or an expert, appointed by a court, establishment, enterprise or organisation, if he commits such acts in connection with his assigned task, as well as on those who offers, promises or gives such a bribe.

(2) The punishments for bribery under the preceding Art.s shall also be imposed on a defender or a client when they commit such acts in order to help settlement in favour of the opposite party or to the detriment of the client a criminal or civil case, as well as on the one who offers, promises and gives such a bribe.

Mediation of bribery:

Art. 305a.

(New, SG 28/82; Amend., SG 92/02) Who mediates the commitment of some of the acts under the preceding paras, unless the act represents a more severe crime, shall be punished by imprisonment of up to three years and a fine of up to five thousand levs.

Art. 306.

(Amend., SG 92/02) Not punished shall be the one who has offered, promised or given a bribe if he has been blackmailed by the official, the arbitrator or by the expert to do that or if he has informed the authorities immediately and voluntarily.

Provocation of bribery:

Art. 307.

(Amend., SG 51/00) Who intentionally creates circumstances or conditions in order to provoke offering, giving or receiving of a bribe with a purpose of doing harm to those who gives or receives the bribe shall be punished for provoking a bribe by imprisonment of up to three years.

Art. 307a.

(New, SG 28/82; Amend., SG 92/02) The subject of the crime under this section shall be seized in favour of the state, and if it is missing its equivalence shall be adjudicated.

2. Legal instruments and relevant legislative acts:

By signing the Accession Treaty in 2005, Bulgaria has joined the European Union on 1 January 2007 and has become a Member State, incorporating the considerable volume of legitimate rights and obligations to follow.

An essential obligation that results from the Bulgarian accession to the EU is the harmonisation of domestic legislation with the EU laws, as well as co-operation between the local judicial authorities in criminal matters and the relevant organisational structures within the Union itself. More precisely meeting the specific requirements of the principles and good practices of mutual legal assistance and strengthening the development further on.

As a result of this process, a number of legislative measures have been undertaken by the Bulgarian authorities, regarding the sophistication and harmonization of the domestic anti-corruption legislation to the requirements of the European Union *aquis communautaire*. These include:

Law on the Audit Office

Published in the State Gazette as follows: SG № 109 -12/18/01 Modifications: SG № 45 – 04/30/02; SG № 31 – 04/04/03; SG № 38 – 05/11/04; SG № 34- 04/19/05; SG №105 – 12/29/05; SG № 24 – 03/21/06; SG № 27 – 03/31/06; SG № 33 – 04/21/06; SG №37 – 05/05/06.

This law regulates the audit of public finances by the Bulgarian National Audit Office, which is an independent body auditing the State Budget, the budget of the State social insurances, the

budget of the National Health Insurance Fund, the municipal budgets and other budgets, adopted by the Parliament.

The Audit Office inspects public expenditures covered by the central budget as well as by extra-budgetary funds, the management of the national debt, the incomes from privatisation and concession and also their re-distribution and spending, the financial reports of the local authorities, the financial activities of the political parties, etc.

Law on the State Financial Inspection

Published in the State Gazette as follows: SG №33 – 04/21/06, modified: SG №52 – 07/21/06.

This law regulates the protection of public financial interest exercised by the State Financial Inspection Agency. The Agency inspects observation of the legal acts regulating fiscal and economic activity as well as accounts of State-financed bodies; State-owned enterprises; trading societies with a part of State or municipality-owned capital, legal persons whose debts are guaranteed with State or municipal property; persons who benefit from financial support from the State or municipal budgetary funds; extra-budgetary funds or accounts; on the basis of international treaties or EU programs; persons who benefit from financial support of the State-owned enterprises as far as the spending of the funds is concerned.

Administrative Procedure Code

Published in the State Gazette as follows: SG № 30 – 04/11/2006, in vigor since July 12, 2006.

This code provides the conditions for submission of complaints and other reports to the administrative or other public authorities concerning corruption, abuse of power, mismanagement of public property, as well as other illegal or non-suitable action (or inaction) of administrative bodies and officials, which harm legitimate public or private interests or rights.

Law on the Administration

Published in the State Gazette as follows: SG № 130 – 11/05/98, modified: SG № 69 – 08/25/2006.

The 1998 Law thoroughly described the structure of the administration, the distribution of prerogatives among different bodies of the Executive and principles of their functioning. The recent amendments concerning the reform in the public administration aimed to achieve the construction of an independent as well as professional administration. The amendments also aimed at the establishment of a specialised body – Inspectorate General within the Administration of the Council of Ministers, subordinated directly to the Prime Minister. This body is entitled to verify reported cases of corruption in bodies within the Executive or committed by State Officials. The results are than reported to the Prime Minister.

Law on the Civil Service

Published in the State Gazette as follows: SG № 67 – 07/27/99, in force since August 27, 1999, last modifications: SG № 30 – 04/11/06.

The law defines the criteria to obtain the status of a State Employee, the procedures of appointing and dismissing State Employees. The law intends this way to interrupt bureaucratic continuity and the tradition of political appointments.

Law on Access to Public Information

Published in the State Gazette as follows: SG № 55 – 07/07/00, last modifications: SG № 59 – 07/21/06.

The law was adopted in 2000 as a part of a set of regulations aiming at further democratisation of the State machine and the building of a transparent administration. It is important to note that, while the access to information concerning public institutions has been granted by the Constitution (Art. 41, &2) it was in fact heavily restricted until the adoption of this law. The most important purpose of the Access to Public Information Law is to provide a basis on which citizens may obtain information in order to participate in the process of evaluating policies.

Regulations on the Structure and Activity of the Ombudsman (modified: SG № 45 – 05/31/05)

Provides basis for the reports of corruption to be kept on special record.

Law on the Measures against Money Laundering

Prom. SG. 85/24 Jul 1998, amend. SG. 1/2 Jan 2001, amend. SG. 31/4 Apr 2003, amend. SG. 103/23 Dec 2005, amend. SG. 105/29 Dec 2005, amend. SG. 30/11 Apr 2006

Law on the Measures against Financing Terrorism

Prom. SG. 16/18 Feb 2003, amend. SG. 31/4 Apr 2003, amend. SG. 19/1 Mar 2005

Law on the Divestment in Favour of the State of the Property Acquired from Criminal Activity

Prom. SG. 19/1 Mar 2005, amend. SG. 86/28 Oct 2005, amend. SG. 105/29 Dec 2005

Law on Transparency of Property of Persons Occupying High State Positions

Prom. SG. 38/9 May 2000, amend. SG. 28/19 Mar 2002, amend. SG. 74/30 Jul 2002, amend. SG. 8/28 Jan 2003, amend. SG. 38/11 May 2004, amend. SG. 105/29 Dec 2005, amend. SG. 38/9 May 2006

Law on the Special Intelligence Devices

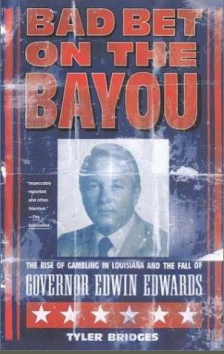
Prom. SG. 95/21 Oct 1997, suppl. SG. 70/6 Aug 1999, amend. SG. 49/16 Jun 2000, amend. SG. 17/21 Feb 2003, amend. SG. 86/28 Oct 2005, amend. SG. 45/2 Jun 2006, amend. SG. 82/10 Oct 2006, amend. SG. 109/20 Dec 2007

Presentation on the US experience of prosecuting high-level corruption

Mr. Peter Strasser, Prosecutor, USA

Slide 1

In the great and unique local tradition of Earl and Huey Long, Edwin Edwards once implored voters, "Return me to office, or there won't be anything left to steal." They did.



- Edwards was known as the "Cajun Prince," a silver-haired scamp, unapologetic gambler and womanizer with as much charm as color. In the 16 years he was Louisiana's governor, he dodged two dozen (24) criminal investigations.
- In 1985, Governor Edwards, along with six relatives and associates, was indicted on federal fraud and racketeering charges over a scheme whereby hospital and nursing home contracts controlled by Edwards' friends received preferential treatment. He took none of it seriously; once he even arrived at the courthouse in a horse-drawn buggy. He was acquitted.

Slide 2



15 Licenses; 43 Applicants



The River Boat
casino

Slide 3



Slide 4

Six Methods to a Successful Investigation and Prosecution

- 1. Gather Intelligence: Informants or Victims
- 2. Record Conversations (body and wiretap)
- 3. Undercover Operation
- 4. Go Public with Search & then follow the \$\$
- 5. Criminal Insiders – Plea Bargain/Immunity
- 6. Prosecute Entire Group: Racketeering & Money Laundering; Freeze Assets

Slide 5

Wire in Edwin's Office: \$20,000

"Make sure that everybody involved is careful about how that's passed out."

The image is a black and white surveillance camera still. It shows a person wearing a white shirt and dark pants, sitting on the floor in a room. The person appears to be looking at something on the floor. In the background, there is a desk with a computer monitor. A timestamp in the upper left corner of the image reads '3-24-97 11:17:05'. The scene is dimly lit, typical of an office at night.

Slide 6

Undercover Operation: \$100,000 in FBI Money

- CI tells Cecil (bag man): “Will bring 100 heifers – 25 for you, and 75 for the big boy.”
- (recording).
- Edwards tells CI at Restaurant: “Cecil is my friend. My friends make money. That’s fine with me, but the reason I’m not in jail today is because I don’t get involved. (recording).

Slide 7

Search: \$1 million cash seized



Slide 8

Edwards' ledgers analyzed: He spent more cash than he reported, expert says.

EDWARDS' NET WORTH: \$5.7 MILLION

A net worth statement compiled by Edwin Edwards in November 1996 was introduced as evidence in the former governor's federal racketeering trial. The statement, which was made for estate planning purposes, was seized April 23, 1997 by FBI agents.

Real estate	Value
12 in Country Club of Louisiana	\$1 million
300 acres tract in Pearl River County, Miss.	\$1 million
Half interest in condominium in London, Md.	\$250,000
Timber Creek development in Vaik, Colo.	\$250,000
Developmental Phosphate development in Gulf Shores, Ala.	\$250,000
Half interest in 174 acres in Attouline Parish	\$150,000
Third interest in Phelan, Miss.	\$150,000

Investments

Municipal bonds	\$1,740,000
280 (gas and electrical) mortgages in Acadiana, Louisiana, West Baton Rouge and East Baton Rouge parishes	\$10,000

Cash

Cash on hand and in banks: \$150,000

Household items

Furniture and other personal items: \$150,000

Automobiles


Chrysler car, 1996	\$25,000
Mercedes sedan, 1996	\$40,000
Chrysler Sedan, 1993	\$25,000

Loans made to others by Edwards

Loan to undisclosed recipient secured by Sandy Villa Condominium in Vaik, Colo.	\$291,300
Loan to undisclosed recipient	\$500,000
Charles Andrews loan at 10 percent interest	\$100,000
Office loan to Edwards' son, David Edwards	\$100,000
House loan to Edwards' son, David Edwards	\$100,000
Half share in undisclosed loan	\$90,000
Coyle Berry loan at 10 percent interest	\$80,000
Small share in undisclosed loan at 10 percent interest	\$60,000
Half share in Flat City Building Corp. loan	\$40,000
Michael Edwards' loan	\$40,000
Kevin McCullister, et. al. loan	\$40,000
Kevin Duffins loan at 10 percent interest	\$40,000
Charles Williams loan	\$15,750

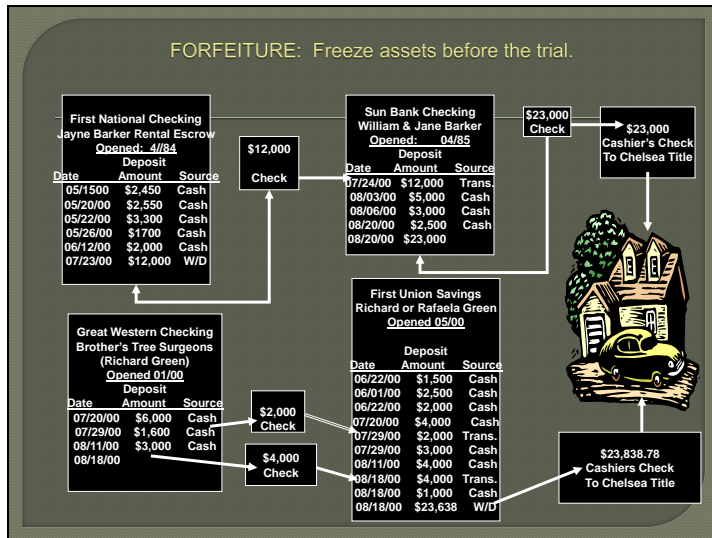
Liabilities

Loan for 40 in Country Club of Louisiana	\$250,000
Money reserved to pay income taxes	\$100,000




- Don Semesky, an IRS agent and forensic accountant, testified that Edwards' precise handwritten ledger books left a "paper trail" of gambling winnings and cash payments. His cash spending from 1985 to 1996 substantially outpaced the cash income he reported in tax filings and in his personal ledgers. "He's an excellent bookkeeper. He's very detailed. He's very methodical." Edwards spent nearly \$1.6 million in cash from 1994 through the end of 1996, which is far more than the \$850,000 in cash receipts and holdings that he recorded in the same period.

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ROBERT GUIDRY

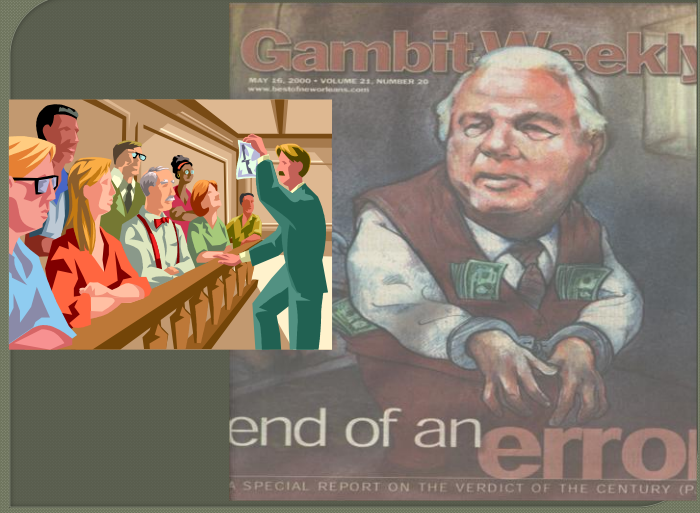


CHARGES: Edwards' friend and former Treasure Chest owner pleaded guilty Oct. 16 to a felony conspiracy charge and affirmed under oath that he made more than \$1.4 million in payoffs to be split between Edwin Edwards, Stephen Edwards and former gubernatorial aide Andrew Martin.

ROBERT GUIDRY, a well connected off-shore supply boat company owner, testified - per a plea bargain agreement - that he passed \$1.5 million to Governor Edwin Edwards for obtaining a license for a river boat. Guidry, a long time Edwards friend, said the cash - \$100,000 per month - was hidden under frozen ducks and left in garbage bins.

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Gambit Weekly
MAY 16, 2000 - VOLUME 23, NUMBER 20
www.bucksforworld.com

end of an **error**
A SPECIAL REPORT ON THE VERDICT OF THE CENTURY (P.

Recovery of stolen Assets - challenges and practical solutions

Mr. Daniel Thelesklaf, Executive Director, Basel Institute on Governance

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Recovery of Stolen Assets - Challenges and practical solutions

Daniel Thelesklaf
OECD Anti-Corruption Network, Tbilisi, June 2008

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Asset Recovery

Political Leader	Country	Estimated stolen assets (\$ billion)	Average annual GDP (\$ billion)
Mohamed Suharto (1967-98)	Indonesia	15 to 35	86.6
Ferdinand Marcos (1972-86)	Philippines	5 to 10	23.9
Mobutu Sese Seko (1965-97)	Zaire	5	8.8
Sani Abacha (1993-98)	Nigeria	2 to 5	27.1
S. Milosevic (1989-2000)	Serbia/Yugoslavia	1	12.7
J.-Claude Duvalier (1971-97)	Haiti	0.3 to 0.8	1.2
Alberto Fujimori (1990-2000)	Peru	06	44.5
Pavlo Lazarenko (1996-97)	Ukraine	0.114 to 0.2	46.7
Arnoldo Alemán (1997-2000)	Nicaragua	0.1	3.4
Joseph Estrada (1998-2001)	Philippines	0.07 to 0.08	77.6

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Asset Recovery Process

5 Steps:

1. Identification of cases - How to initiate cases?
2. Tracing – How and where do we find the assets?
3. Freezing – What shall we do to block the assets?
4. Confiscation/Forfeiture – What does the requested and requesting state need to do to change ownership?
5. Repatriation – How best return the money?

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Step 1: Identification of cases

Challenges:

- ✓ How to initiate cases?
- ✓ Lack of expertise/capacity/technology
- ✓ Hurdles to commencing an investigation (high level of proof)
- ✓ Political or judicial impediments
- ✓ Suspect(s) absent or dead

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Step 1: Identification of cases

Possible solutions to the challenges:

- ✓ Early intervention via banks, STRs, PEP regulation
- ✓ Case management tools
- ✓ On site supervision of financial institutions
- ✓ Civil law initiatives
- ✓ Capacity building and training
- ✓ Short term provision and financing of relevant expertise

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Step 2: Tracing

Challenges:

- ✓ Speed of search and seizure
- ✓ Ability of local law enforcement to act
- ✓ Case management
- ✓ Casual findings/spontaneous disclosure
- ✓ Internal and Administrative seizures
- ✓ Problem of fishing expedition

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Step 2: Tracing

Possible solutions to the challenges:

- ✓ Private sector awareness
- ✓ Bank internal blockage
- ✓ Provisional seizure within 24 hours
- ✓ Administrative seizure
- ✓ Strengthen civil law provisions to freeze assets
- ✓ Capacity building and training, in particular in forensic investigation and analytical techniques

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Step 3: Freezing

Challenges:

- ✓ Problems of non-treaty/bilateral based requests
- ✓ Informal/formal requests
- ✓ Lack of capacity/expertise in the central authorities
- ✓ Substantive or political impediments
- ✓ Delay
- ✓ Mutual Legal Assistance – seized for the victim?
- ✓ Evidential considerations both in requested and requesting state

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Step 3: Freezing

Possible solutions to the challenges:

- ✓ Use of UNCAC and other international conventions to facilitate MLA where bilateral treaty is non-existent
- ✓ Use of regional arrangements such as ADB/OECD, Eurojust
- ✓ Capacity building and training
- ✓ Mechanisms for enhanced and regular (formal and informal) consultations, including Egmont network

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Step 4: Confiscation / Forfeiture

Challenges:

- ✓ Confiscation *in rem* / Objective forfeiture
- ✓ Civil forfeiture
- ✓ Value or object related confiscation
- ✓ Burden of proof
- ✓ Knowledge gap
- ✓ Costs involved
- ✓ Ability of local courts
- ✓ Political exigencies

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Step 4: Confiscation / Forfeiture

Possible solutions to the challenges:

- ✓ Requested country – Reversal of burden of proof
- ✓ Civil law vs. common law
- ✓ Mechanisms for enhanced and regular (formal and informal) consultations
- ✓ Awareness raising and increased capacity of competent authorities
- ✓ Requesting country – Development assistance / capacity building and training

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Step 5: Repatriation

Challenges:

- ✓ Early release (escrow account)
- ✓ Transparency

Possible solutions:

- ✓ Civil law / common law
- ✓ Greater dialogue between recipient and victim countries

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Summary:

Political will and institutional capacities are essential components for success in any asset recovery case!

To increase institutional capacities, countries (especially countries in transition) need:

- Specific, tailor made Asset Recovery training for law enforcement agencies, MLA specialists and FIU staff;
- Hands on assistance in AR cases
- Case management systems and
- Mechanisms to exchange relevant information on financial transactions.

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International Centre for Asset Recovery (ICAR)

- Established 2006, Part of the Basel Institute on Governance
- *Hands-on* assistance in detecting, confiscating and repatriating stolen assets
- Seed funding: Swiss Agency for Development and Cooperation (SDC), Principality of Liechtenstein, UK Department for International Development (DFID)
- Hands-on training, mentoring, Information platforms



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Thank you for your attention

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**Use of Anti-Money Laundering Tools for Anti-Corruption Purposes and WB/UNODC
StAR Initiative**

Mr. Klaudio Stroligo, Senior Financial Sector Specialist, World Bank


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**Anti-Corruption Network for Eastern
Europe and Central Asia**
7th General Meeting
Tbilisi, 25-27 June 2008



**USE OF ANTI-MONEY LAUNDERING
TOOLS FOR ANTI-CORRUPTION
PURPOSES &
WB/UNODC StAR INITIATIVE**

Klaudio Stroligo
WORLD BANK
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OUTLINE

- **WB Project on the Work of the AC agencies and the Use of the AML tools for AC purposes**
 - *Introduction*
 - *Results of the Survey*
 - *Conclusions/Recommendations*
- **WB/UNODC StAR Initiative**

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INTRODUCTION OF THE WB PROJECT

- **Project started in May 2007**
- **Draft Report prepared in March 2008**
- **Project objectives:**
 - to examine the link between ML and corruption
 - to provide and outline of how countries have sought to use AML tools to combat corruption
- **Questionnaire was sent to 15 national AC agencies; 13 responses received**

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INTRODUCTION OF THE WB PROJECT

- **Project/Report covers six topics:**
- **Legal and institutional framework of the anti-corruption system**
- AML regime
- Training programs
- Collaboration with other institutions
- **Exchange of information**
- **AML tools to combat corruption**

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AC agencies by type

	Number	%
Multipurpose	7	54%
Law enforcement	4	31%
Preventive/Policy	2	15%

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AC agencies by geographical location

	Number	%
Africa&Middle East	2	15%
Asia&Pacific	3	23%
Europe&Euroasia	8	62%

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AC agencies by size

	Number	%
Large	3	23%
Medium	2	15%
Small	8	62%

- Large: >500 staff
- Medium: 100-500 staff
- Small: <100 staff

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OVERVIEW OF RESULTS
Legal and Institutional Framework

- Comprehensive anti-money laundering and anti-corruption regimes have been set up in all 13 countries.
- All 13 countries have established the FIUs.
- Corruption offences are predicate offences for money laundering in all 13 countries.

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OVERVIEW OF RESULTS

Legal and Institutional Framework

- 4 AC agencies (31%) considered that the AML laws/regulations are important in combating corruption and only 4 AC agencies (31%) listed the FIUs among the bodies that play a significant role in the fight against corruption.
- Only one FIU is taking part in the work of the AC multidisciplinary commissions/bodies (5 such bodies exist).
- 4 AC agencies are part of the governing/ supervisory boards/national task forces, which determines AML policies or strategies with regard to operational or non-operational matters of the FIUs (6 such bodies exist). 9

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OVERVIEW OF RESULTS

Legal and Institutional Framework

- 6 AC agencies (48%; 4 multipurpose, 2 law enforcement) stated that they play an important role in combating ML. In most cases, these AC agencies receive files from the FIUs if they discover a suspicion of ML connected with or facilitated by corruption.

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OVERVIEW OF RESULTS

Exchange of Information between AC agencies and FIUs

- 6 FIUs (46%) are empowered to request confidential data from the AC agencies.
- 8 AC agencies (62%) are empowered to request confidential data from the FIUs.
- Only in 4 countries (31%), with one LE and 3 multipurpose AC agencies, both the FIUs and the AC agencies have the right to request confidential information from each other.

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Type of information the AC agencies receive or may request from the FIUs

Type of information	Number of AC agencies		
	Receive only	Request only	Receive&Request
Suspicious transaction reports	1	3	6
Unusual transaction reports	2	3	2
Cash transaction reports	1	3	3
FIU analytical report	2	1	4
FIU annual report	5	1	2
Other confidential information	2	3	3

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OVERVIEW OF RESULTS
Exchange of Information between AC agencies and FIUs

- **Frequency of receiving/requesting information from FIUs:**
 - Every month: 5 AC agencies (38%)
 - Every 3 months: 1 AC agency (8%)
 - On ad hoc basis: 3 AC agencies (23%)
 - More than once every month: 1 AC agency (8%)
 - No info received/requested: 3 AC agencies (23%)

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OVERVIEW OF RESULTS
Exchange of Information between AC agencies and FIUs

- **Conditions/Limitations regarding the use of information received from the FIUs:**
 - Limitations apply: 7 AC agencies (54%)
 - No limitations exist: 3 AC agencies (23%, LE type)
 - No info received/requested: 3 AC agencies (23%)

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AML tools to prevent, detect or investigate corruption		
AML Tools	Number of AC agencies	%
Criminalisation of money laundering	11	85%
Criminalisation of self-laundering	11	85%
Postponement of ML suspicious transactions	10	77%
Freezing, seizure and confiscation of proceeds from corruption	11	85%
The inclusion of DNFBP among AML reporting entities	9	69%
Customer due diligence	9	69%
Record keeping	10	77%
Reporting of ML STRs to the FIU	10	77%
Reporting of cash transactions to the FIU	9	69%
Monitoring the physical cross-border transportation of cash and bearer negotiable instruments	10	77%
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AML tools to prevent, detect or investigate corruption		
AML Tools	Number of AC agencies	%
Prohibition of keeping anonymous accounts	10	77%
Prohibition of entering or continuing the operation of shell banks	9	69%
Introducing fit and proper criteria for owners and managers of financial institutions	9	69%
Transparency of legal persons and arrangements	10	77%
National co-operation on AML issues between FIUs, police, customs authorities, judicial authorities and supervisory bodies	11	85%
International co-operation on AML issues between FIUs, police, customs authorities, judicial authorities and supervisory bodies	11	85%
Other	2	15%

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CONCLUSIONS & RECOMMENDATIONS	
<ul style="list-style-type: none"> • Data regarding the importance of the AML legislation in combating corruption are disputable: <ul style="list-style-type: none"> - <i>only 4 AC agencies recognised the AML laws/regulations as important legislative tools in the fight against corruption,</i> - <i>the vast majority of AC agencies (between 9 to 11 AC agencies) pointed out the high importance of almost all the AML tools in combating corruption.</i> • While the FIUs are crucial in detecting ML, only in few countries they are perceived as important bodies in the fight against corruption. 	
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**CONCLUSIONS &
RECOMMENDATIONS**

- The relationship between the AC agencies and the AML bodies tends to be less formal, however in the majority of cases it is still governed by the law, regulations and/or MOUs.
- As regards the exchange of information between the AC agencies and the FIUs the AC agencies are usually “a stronger partner”, since more AC agencies have access to the FIUs confidential information than *vice versa*.
- In practice both agencies exchange information quite frequently, yet certain conditions apply regarding the further use of information/documents.
- Signing the MOUs, joint trainings and/or appointing the liaison officers might be considered as possible tools for building or strengthening the confidence between both agencies.

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**CONCLUSIONS &
RECOMMENDATIONS**

- The AML component should be included in the anti-corruption training programmes containing the repressive and the preventive elements of the AML system.
- Members of the FIUs could be involved in the execution of such programmes and should be among those that receive the anti-corruption training.
- The anti-corruption training should be provided to financial organisations and other AML reporting entities with the aim to prevent the staff of these entities to be involved in corruption and to better detect laundering of proceeds from corruption offences.
- Where the AML and/or AC governing/supervisory bodies are in place, the AC agencies and the FIUs should become members of these bodies.

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**Stolen Asset Recovery (StAR)
Initiative**



- Launched in Washington by the World Bank and UNODC on 17 September 2007 to:

- *Help countries recover assets*
- *Promote legal and institutional reform*
- *Help countries to build capacity to deter new flows*
- *Engage in global advocacy to lower barriers to asset recovery*



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 **StAR (1): Helps countries recover assets** 

- **Assistance to countries:**
 - **with necessary forensic and investigative advice required to trace stolen assets**
 - **to manage their asset recovery cases**
 - **with the drafting of MLA requests / the response to MLA requests**
- **Sponsoring of case meetings which bring together all national parties involved in a case, and regional StAR events**

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 **StAR (2): Promotes Legal and Institutional Reform** 

- **Assistance to countries to develop and put in place regulatory framework for asset recovery and implementation of the UNCAC**
- **Assessment of vulnerabilities within the country**
- **Single points of contact in each country**
- **Legal analysis of successful and unsuccessful asset recovery cases**

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 **StAR (3): Helps countries to build capacity to deter new flows** 

- **Assessment of vulnerabilities within the country**
- **Generic training on asset recovery**
- **Designing best-fit models to integrate asset recovery into overall governance structure**
- **Provide model guides on asset recovery**

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**StAR (4): Helps to
reduce barriers to asset
recovery**

- **Help countries identify obstacles to their response to MLA requests**
- **Expert groups to produce technical guidance necessary to advance asset recovery efforts**
- **Research in asset recovery experiences to develop cumulative knowledge**
- **Promotion of effective structural approaches for the requested country**

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