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THE “NEW” STATE COMMISSION FOR PREVENTION OF CORRUPTION AND ITS POTENTIAL FOR EFFECTIVE PREVENTION OF CORRUPTION

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Abstract

This paper deals with the core preventive Anti-corruption Agency (ACA) of the Republic of North Macedonia, namely the State Commission for Prevention of Corruption (SCPC). The idea therein is two-fold: firstly, to explain the ACA model which the Republic of North Macedonia has chosen (especially since it can be claimed that the model changed in the beginning of 2019) and, secondly, to criticize some of the characteristics of the respective legal and institutional framework. Of course, we do not aim to analyze every aspect of the SCPC – which would imply a much longer article than the one at hand – but rather to focus on the most important details. In that respect, we would place focus on the SCPC’s competencies (functions, tasks and powers) and discuss if they are properly designed. Furthermore, we would tackle the institutional design and the capacities of the institution, so to illuminate the existing discrepancy between this ACA’s de-jure competencies and de-facto possibilities. Doing so, we would not only draw the attention of the international research community to the SCPC, but also enable comparative researches in the future. What is especially valuable to note is that in multiple of its characteristics, the SCPC is compared to other ACAs in the region of Southeastern Europe too.

Keywords: anti-corruption, effectiveness, anti-corruption agencies, State Commission for Prevention of Corruption, prevention

1. Introduction

It cannot be disputed that no country can build strong institutions – implying their effectiveness, accountability and inclusiveness – if its anti-corruption policies are not sufficiently successful. Additionally, if justice is considered a category which comprehends social equity and prevention of poverty as well, the importance of the anti-corruption efforts becomes vivid, or, as explained by the UN, “[c]orruption, bribery, theft and tax evasion cost some US \$1.26 trillion for developing countries per year; this amount of money could be used to lift those who are living on less than a \$1.25 a day above \$1.25 for at least six years”¹. Nevertheless, as elaborated bellow, corruption is still a remarkable challenge for the states in

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¹ This information is retrieved from <https://www.un.org/sustainabledevelopment/peace-justice/> (last visited October 19, 2018).

the Southeastern European region, among which the Republic of North Macedonia.² It is for that very reason that we find the research on its anti-corruption agencies (hereinafter: ACAs) crucial for better understanding of the progress prerequisites. This article deals, in that respect, with one of the country's ACAs: the State Commission for Prevention of Corruption (hereinafter: SCPC). The idea is to check if, and to what extent, is this authority effective. What is especially captivating is that the Republic of North Macedonia recently adopted a new Law on Prevention of Corruption and Conflicts of Interest (Official Gazette of the Republic of Macedonia no. 12/2019) which not only increased the SCPC's competencies significantly, but also altered the character of the institution (from one which was indisputably preventive, the SCPC now leans more towards the suppressive ACAs).

Having that said, the following text will refer to the ACAs and their role in general, as well as to the SCPC's characteristics, competencies and capacities. It goes without saying that a comparison between the country's new and old legislative framework will be included, which means that this text draws upon the authors' previous researches.

2. Anti-corruption Agencies and their role

As numerous other commonly known terms, the one of ACAs is difficult to break-down, i.e. the question that we are facing in this particular occasion is what is an ACA and how can we define it? One of the perhaps best definitions is the one given by de Sousa who explains them as "public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures."³ Respectively, there are four main characteristics of theirs. The first one is that the ACAs are public authorities or in some cases labelled as publicly funded ones. The second one is that they are specifically founded to combat corruption, while the third one is that they are ones of durable, long-lasting nature. This means that only those institutions which are not *ad-hoc*, formed to handle a specific case or a pool of cases upon which they cease to exist, can be considered as ACAs. The institutions which are *ad-hoc* – as for instance the so-called Special Public Prosecution of Macedonia⁴ – can be considered as anti-corruption authorities but not ACAs *stricto sensu*. They can neither be analyzed through the same methodology as the ACAs, nor do the principle for the ACAs apply to them. They are not a rule, but rather its exception. Finally, the fourth attribute of the ACAs is related with their competencies, i.e. the measures they can undertake or impose. It also serves as a basis for their classification in two groups: preventive and suppressive (classification also pointed out by Tomić)⁵.

Preventive are those ACAs which are primarily focused on education, keeping records, training and spreading information among citizens, while the suppressive ones are vested with prosecutorial and investigative powers as well as, in certain cases, powers to impose fines for regulatory violations. There are cases when the preventive ACAs can carry out investigations too, however they cannot indict a (natural or legal) person but rather to use soft mechanisms such as, for instance, public warnings. In addition, if they suspect that a crime or a regulatory

² The country changed its name recently. See: Amendment XXXIII of the Constitution of the Republic of Macedonia (Official Gazette of the Republic of Macedonia no. 6/2019) wherefore both names ("Republic of Macedonia" and "Republic of North Macedonia") are used in this article.

³ Luis de Sousa, *Anti-corruption agencies: between empowerment and irrelevance*, Crime, Law and Social Change, Springer Verlag, 2009, 53(1) (2009), available at: <http://cadmus.eui.eu/handle/1814/10688> (last visited October 15, 2018).

⁴ The full title of the institution is Public Prosecution for Persecution of Crimes Related with or Arising from the Content of the Illegally Monitored Communications.

⁵ Slobodan Tomić, *Explaining enforcement patterns of anticorruption agencies: comparative analysis of five Serbian, Croatian and Macedonian anticorruption agencies*, PhD thesis submitted to the London School of Economics and Political Science (LSE) (2016), <http://etheses.lse.ac.uk/3370/> (last visited October 15, 2018).

violation has been committed they can, in most of the cases, file motions to the prosecution authorities or the competent courts. Of course, these are the general characteristics of the two groups of ACAs. Regardless, if one is to decide if a certain ACA is preventive or suppressive in its nature, he/she would have to individually study its competencies and determine which mechanisms, the pre-emptive or the repressive, prevail. Bearing this in mind, we could say that the following ACAs are preventive: the Anti-corruption Agency of Serbia,⁶ the Commission for Prevention of Conflicts of Interests of Croatia,⁷ the Commission for Prevention of Corruption of Slovenia,⁸ the Agency for Prevention of Corruption of Montenegro,⁹ the Agency for Prevention of Corruption and Coordination of the Fight against Corruption of Bosnia and Herzegovina,¹⁰ etc. Suppressive ACAs are, on the other hand, the Lithuanian Special Investigative Service,¹¹ the Latvian Corruption Prevention and Combating Bureau,¹² the Hong Kong Independent Commission Against Corruption,¹³ and the Singapore Corrupt Practices Investigation Bureau¹⁴ which – as numerous authors suggest¹⁵ – can be considered the pioneers in the area, etc. Yet, one should not and most not misunderstand what has been said so to reach a conclusion that the suppressive ACAs only investigate and prosecute. They, too, can educate and train, especially when it comes to the administrative (public) servants of their state, however, unlike the preventive ACAs this is not their core competence. To illustrate this more vividly, both the Singapore Corrupt Practices Investigation Bureau (suppressive ACA) and the Montenegrin Agency (preventive ACA) can carry out trainings.¹⁶ Nevertheless, the prior ACA's competencies are in general much harsher (among which there are investigative ones) than the latter one's. For instance, the Singaporean ACA has its own special investigators who are armed and can even make an arrest, while the Montenegrin Agency generally has no suppressive competencies. It can merely initiate proceedings for regulatory violations before the courts but nothing more on the suppressive side. Finally, it has to be pointed out that a single country can have multiple ACAs of both, preventive and suppressive nature. This is the case with a large number of states among which some of the ones which were already enlisted. Respectively, Croatia does not only have the

⁶ Law on the Anti-Corruption Agency (original: Zakon o Agenciji za borbu protiv korupcije) of Serbia, Official Gazette of Serbia, no. 97/08, 53/10, 66/11 with Decisions of the Constitutional Court of Serbia Published in Official Gazette no. 67/13 and 8/15.

⁷ Law on Prevention of Conflicts of Interests (original: Zakon o sprečavanju sukoba interesa) of Croatia, Official Gazette of Croatia, no. 26/2011; 12/2012; 126/2012; 48/2013).

⁸ Law on Integrity and Prevention of Corruption (original: Zakon o integriteti in preprečevanju korupcije) of Slovenia, Official Gazette of Slovenia, no. 45 from 04.06.2010, ISSN 1318-0576.

⁹ Law on Prevention of Corruption (original: Zakon o sprečavanju korupcije) of Montenegro, Official Gazette of Montenegro, no. 53/2014.

¹⁰ Law on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (original: Zakon o Agenciji za prevenciju korupcije i koordinaciju borbe protiv korupcije) of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, no. 103/2009 and 58/2013.

¹¹ Law on the Prevention of Corruption (original: Lietuvos Respublikos korupcijos prevencijos istatymas) of Lithuania, Official Gazette of Lithuania 2002, no. 57-2297, reg. no. 1021010ISTA00IX-904

¹² Law on Corruption Prevention and Combating Bureau (original: Korupcijas novēršanas un apkarošanas biroja likums) of Latvia, Law / LV no. 42(2807), 18.03.2003, 96(2861), 27.06.2003, 206(3154), 24.12.2004, 25(3183), 15.02.2005, 101(3259), 30.06.2005, 180(3548), 09.11.2006, 183(3967), 25.11.2008, 200(3984), 23.12.2008, 100(4086), 30.06.2009, 193(4179), 09.12.2009, 169(4567), 26.10.2011, 57(5629), 22.03.2016, 30(5857), 08.02.2017, 253(6080), 20.12.2017.

¹³ Initially established in 1974 with the Independent Commission Against Corruption Ordinance no. 7 of 1974.

¹⁴ Established by the British colonial government in 1952.

¹⁵ For instance, Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, The Journal of Economic Policy Reform Vol. 8, No. 1, 69-103, March 2005, Taylor & Francis Online (2005), <https://www.tandfonline.com/doi/full/10.1080/1384128042000328950> (last visited October 16, 2018).

¹⁶ Article 78, para. 1, subpara. 14 of the Law on Prevention of Corruption (original: Zakon o sprečavanju korupcije) of Montenegro, Official Gazette of Montenegro, no. 53/2014.

CCI but also the Office for the Suppression of Corruption and Organized Crime (commonly referred as USKOK) within the Public Prosecution.

This division of two groups of ACAs pretty much explains their roles too. Due to practical purposes and the interest of this paper, we will not elaborate on this matter separately, but point out to other researches such as the one conducted by Meagher.¹⁷ We will proceed with the SCPC and the examination of its (present and current) role.

3. The State Commission for Prevention of Corruption: foundation, functions and role as per the old *vis-à-vis* the new legislative framework

The SCPC of Macedonia was indisputably a preventive ACA; however, one with numerous competencies. However, this characteristic of its changed in the beginning of 2019, when new legislation came into force. Presently the SCPC is, we would claim, somewhere on the theoretical borderline between the preventive and the suppressive ACAs.

3.1. Foundation, functions and powers of the State Commission for Prevention of Corruption

The SCPC of the Republic of North Macedonia is founded with the Law on Prevention of Corruption from 2002 (Official Gazette of the Republic of Macedonia, 28/2002). Even though the legal act was adopted in April that year, its provisions provided that the members of the SCPC will be appointed within six months. As parliamentary elections were held that very year – July 2002 – there was a little focus on appointing members of the SCPC immediately upon the introduction of the new legal act; the first members of SCPC were appointed in November 2002. Established as it was, the SCPC was clearly envisaged as a preventive ACA. Unlike the Singaporean, the Lithuanian, the Latvian and the other suppressive ACAs, it was not vested with powers to investigate crimes related with corruption, but was constructed as an institution which has a significantly milder role. The legal act with which the SCPC was established, namely the Act on Prevention of Corruption, was amended several times over the years, nevertheless the role of the respective ACA remained untacked. This goes for the period of time until January 2019 when the SCPC functioned on the basis of these 6 legal acts:

Frame no. 1 – Legal acts which regulated the work of the SCPC until January 2019

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| <ol style="list-style-type: none">1. Law on Prevention of Corruption (hereinafter: LPC) published in Official Gazette of the Republic of Macedonia, no. 28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 and 148/2015;2. Law on Prevention of Conflicts of Interests (hereinafter: LPCI) published in Official Gazette of the Republic of Macedonia, no 70/2007, 114/2009, 6/2012 and 153/2015;3. Lobbying Law (hereinafter: LL), published in Official Gazette of the Republic of Macedonia, no. 106/2008 and 135/20114. Law on the Financing of the Political Parties (hereinafter: LFPP) published in Official Gazette of the Republic of Macedonia, no. 76/2004; 86/2008; 161/2008; 96/2009; 148/2011; 142/2012; 23/2013 and 140/20185. Electoral Code (hereinafter: EC), published in Official Gazette of the Republic of Macedonia, no. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16 and 99/166. Law Protection of Whistleblowers (LPW) published in Official Gazette of the Republic of Macedonia no. 196/2015 and 35/2018. |
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¹⁷ More on the roles of the preventive, but also the suppressive ACAs can be found in the paper: Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, The Journal of Economic Policy Reform Vol. 8, No. 1, 69-103, March 2005, Taylor & Francis Online (2005), <https://www.tandfonline.com/doi/full/10.1080/1384128042000328950> (last visited October 16, 2018).

The functions of the SCPC were set out in these 6 legal acts, although the first one was the most relevant one from all aspects. Upon the overview, we located several functions of the SCPC, under which we are enlisting the powers.

Frame no. 2 – Functions and powers of the SCPC before January 2019

1. Development of anti-corruption policies and legislation

There were no powers of the SCPC under this function, it was brought down to adoption of National Program for Prevention and Repression of Corruption and opinion providing (Art. 49 of the LPC, Art. 21 of the LPCI).

2. Monitoring over electoral campaign and elections

The SCPC was competent to oversee misuse of budget funds for election campaigns (Art. 13 of the LPC), utilization of illegal financial sources for elections (Art. 13 of the LPC), bribing of voters (Art. 14 of the LPC), breaches of the Electoral Code in respect to employment in the public sector during elections and other aspects (Art. 8-a, 8-b, 84-b and 85 of the EC). The measures varied, however they came down to informing competent authorities about irregularities, submitting special reports to the Assembly, notifying the public prosecutor (who was obliged to report back to the SCPC).

3. Protection of whistleblowers

The SCPC was competent to adopt the by-laws for protected reporting (Art. 4 of the the LPW), receive reports from whistleblowers and oversee if these individuals are properly protected by other institutions (Art. 5 and 8 of the the LPW). The SCPC had no powers to sanction anyone for breaching the whistleblowers' protection regime.

4. Continuous monitoring of elected and appointed persons, highly-ranked administrative servants and political parties

The SCPC was competent to monitor the elected and appointed persons in respect to their compliance with the LPC and the LPCI (Art. 16-a, 21 – 35-b, 42, 43, 49, 52 of the LPC and Art. 20 – 23 of the LPCI). However, the SCPC had no harsh mechanisms to enforce the law. It could merely request the courts to issue regulatory violations' fines, issue public warnings, ask the appointing authority to dismiss a certain person from office (non-obligatory for the authority), report the breaches and ask for financial audits. Only in the case where the SCPC would find, through its investigation, that a political party has influenced public sector employment, it was allowed to ask the respective authority to re-examine or annul the employment decision. The respective authority was obliged to do as asked by the SCPC.

5. Continuous control of lobbyists

Registered lobbyists were obliged to provide annual reports on their activities to the Assembly and to the SPCP (Art. 25 of the LL); if not the SCPC could issue a public warning.

6. Providing advice and education

The SCPC was competent to educate servants and other employees of the public authorities and provide opinions to officials whenever they do not know whether they are in a position of conflicts of interest. There were no powers under this function.

7. Awareness rising and disclosure of information to the public.

This was more of a general idea of the SCPC existence; no specific tasks fall under it.

Thus, the preventive character of the SCPC in the past is clear. Despite its numerous functions and tasks, the SCPC's powers to sanction were almost non-existent. The only sanction the SCPC was able to impose, if it can be deemed as a sanction at all, was the public warning. Other than that the SCPC could only report its suspicions of irregularities as well as its findings to the competent authorities (for instance the Public Revenue Office) or the courts. The LPC contained provisions where pecuniary fines were stipulated (for regulatory violations), however each one of them was imposed by the judiciary. This tendency – of the SCPC being an indeed mild institution – had only one exception, i.e. the power of the SCPC to ask for

annulment or re-examination of a contract for employment of a public sector employee or a decision for appointment of a person to a certain political function, if either of those was a result of a political party's (or its representative's) interference.

The dilemma which was raised – in the context of the SCPC's character, functions and tasks – was whether such an ACA is adequate for a country that has been struggling with corruption for a serious period of time? This dilemma is especially relevant if one bears in mind that the Republic of North Macedonia is a country in which numerous former high-level politicians and officials such as the former Prime-Minister (from 2006 to 2016), the former Director of the Administration for Security Counterintelligence (from 2006 to 2015), the former Minister of Transport and Connections (from 2006 to 2015), etc. are either currently indicted in several cases or already convicted.¹⁸ Moreover, while these individuals were in position during the time when the political party VMRO-DPMNE was in power (with majority in the Assembly), corruption scandals are not inherent to that period of time only and have appeared in the more recent years too, as reflected in the Corruption Perception Index (hereinafter: CPI) published annually by Transparency International. In fact, it appears that the Republic of North Macedonia almost constantly deteriorates in its rankings (see table below).

Table no. 1 – CPI in (North) Macedonia (Transparency International)¹⁹

Year	'08	'09	'10	'11	'12	'13	'14	'15	'16	'17	'18
Score	36	38	41	39	43	44	45	42	37	35	37
Ranking	72	71	62	69	69	67	64	66	90	107	93

Bearing this in mind, the state political factors initiated the process for adopting a new legal framework which would regulate the functions, tasks and powers of the SCPC. The Ministry of Justice formed an Expert Working Group around the end of the first half of 2018²⁰ and the first proposal of the new key anti-corruption law was published on the Electronic National Register Regulations (ENER) on July 7, 2018.²¹ Several months later, more precisely in January 2019, the new Law on Prevention of Corruption and Conflicts of Interest (hereinafter: LPCCI) was adopted. It was built upon the country's negative experiences as well as the recommendations of the international organizations, especially Council of Europe's Group of States against Corruption (hereinafter: GRECO).²² Replacing the former LPC and LPCI (however, the other legal acts from frame no. 1 remain in force), this act not only increased the SCPC's powers but it also contains a significant number of guarantees for the members' integrity, independence, knowledge and skills.

Respectively, we would firstly pay attention to the new SCPC's powers, before continuing on to the other aspects of this ACA's work (the process of members' selection, the

¹⁸ After being convicted of crimes, the former Prime-Minister, Mr. Nikola Gruevski, left the country and was granted asylum in the Republic of Hungary. More information available at: <https://www.rferl.org/a/hungary-reportedly-grants-gruevski-asylum-macedonia-files-extradition-request/29611350.html> (last visited June 21, 2019).

¹⁹ The Corruption Perception Index is formulated in such way that 100 points mean that the country has no corruption at all, while 0 points mean that the country is deeply corrupt. The rankings start from 1 – least corrupt country and end with 180 – most corrupt country in the world. It can be accessed at this link: <https://www.transparency.org/research/cpi/overview> (last visited October 19, 2018).

²⁰ This information was retrieved from: <https://akademik.mk/vo-podgotovka-izmeni-na-zakonska-regulativa-zasprechuvane-na-koruptsija-i-na-poveke-propisi-od-pravosudstvoto/> (last visited June 20, 2019).

²¹ This information was retrieved from: <https://ener.gov.mk/default.aspx?item=search&term=%d0%ba%d0%be%d1%80%d1%83%d0%bf%d1%86> (last visited June 20, 2019)

²² GRECO Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report “the Former Yugoslav Republic of North Macedonia”*, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9ab5> (last visited October 19, 2018).

guarantees for their integrity as well as the human resources). Yet, before we continue, we would point out that most of the new powers are allocated under the function enlisted under number 2 in Frame no. 2, under the title “Continuous monitoring of elected and appointed persons, highly-ranked administrative servants and political parties”. For that reason, we would not pay additional attention to the other functions, but merely expose the (new) powers of the SCPC under this one.

Frame no. 3 – (New) powers of the SCPC related with its monitoring functions

Just like as per the old regime, the SCPC continuously monitors elected and appointed persons, as well as high administrative servants and political parties (Art. 31 – 40, 43 – 71, 82 – 96 of the LPCCI). However, there are few crucial differences from the old legal regime.

1. Direct access to other authorities’ and entities’ data-bases

The first significant difference is that the SCPC now has direct access to almost all of the data bases and official records of the Ministry of Interior Affairs, the Pension and Disability Fund, the Public Revenue Office, the Employment Agency, the Central Depository of Securities, the Health Insurance Fund, the Real Estate Cadastre Agency, the Customs Administration and numerous other public authorities or private entities with public competencies. In fact, it might even be arguable that the SCPC is presently the only authority with such direct access to information. Unlike, for instance the Public Prosecution,²³ the SCPC needs not to request information from the ministries and other authorities for information but access their data-bases itself.

2. Running of a register

The SCPC runs a register of all elected and appointed persons, responsible persons in public enterprises, establishments and other legal entities which are budget funded, notaries, enforcement agents, administrative servants in the highest category (secretaries) and cabinet servants. The persons are obliged to provide the SCPC with certain information right after they take office. Non-compliance with this obligation constitutes a regulatory violation (Art. 109 of the LPCCI in relation to Art. 82 of the LPCCI)

3. The SCPC imposes pecuniary fines for regulatory violations

Further on, the SCPC no longer remains a mild authority, i.e. one equipped only with non-suppressive powers alone. The LPCCI allows it to impose pecuniary fines for a number of regulatory violations (Art. 100 – 112 of the LPCCI), the highest of which is 1,000 EUR for a legal person. The regulatory violations procedure is carried out by a special commission within the SCPC consisted of its employees (one of which must be a lawyer with a bar exam). What is also captivating that (under Art. 98 of the LPCCI), the SCPC is obliged to publish the information on the imposed pecuniary fines on its webpage immediately after completing the procedure. This comprehends the information about the regulatory violation, the perpetrator and the amount he/she had to pay. What is interesting is that one of the regulatory violations set out in the LPCCI is not targeting the elected / appointed persons or the highly-ranked servants but, on the contrary, the authorities which the SCPC informs on breaches of the law and asks for undertaking measures. Namely, if the SCPC notifies an authority that a certain person has breached the law and asks it for undertaking necessary measures (for instance, the SCPC asks the Public Revenue Office to inspect on a person’s financial resources), the respective authority is obliged to report back within 60 days. If not, the respective authority’s responsible person will be sanctioned as per Art. 103, para. 1, subpara.

²³ Neither the Law on the Public Prosecution (Official Gazette of the Republic of Macedonia no. 150/2007, 111/2008, 198/2018) nor the Criminal Procedure Law (Official Gazette of the Republic of Macedonia no. 150/2010 ... 198/2018) authorize the Public Prosecution to enter all the enlisted and other data bases like the SCPC.

1 of the LPCCI. This means that the other authorities can no longer ignore the SCPC as before.

3. The SCPC may ask for re-examination or annulment of an appointment / employment decision

Aside from the new (regulatory violations sanctioning) powers, the SCPC kept the authority to ask (obligatory) for a re-examination or annulment of a public sector employment, deployment or firing (Art. 40 of the LPCCI) as per the old regime (see: Frame no. 2 above).

4. Initiating procedures before other authorities or the Public Prosecution

Additionally, the SCPC can further on notify other authorities or initiate criminal procedures before the Public Prosecution for some of the breaches of the LPCCI (Art. 32, 33, 35, 37, 58, 71, 77, 94, 95, 96 of the LPCCI). What is different this time, as noted above (see: point 2 in this frame) is that the respective authorities are now obliged to report to the SCPC on the actions they have undertaken; and if not, they will be sanctioned by the SCPC.

5. The SCPC can issue a public warning and ask for dismissal of appointed functionaries / disciplinary measures against administrative servants and other employees

The SCPC decides on the existence of conflict of interests. If the SCPC reaches a decision that a conflict of interest does in fact exist, it will oblige the respective individual (functionary or employee covered with the LPCCI) to undertake the necessary measures to remove the respective conflict. If the person does not comply within 15 days, the SCPC will issue a public warning and, in parallel, ask for the person's dismissal from office or disciplinary responsibility. Of course, the SCPC cannot ask for dismissal if the respective functionary is elected on by the people (on public elections). In those cases, it will only issue a public warning.

6. The SCPC can provide special reports to the Assembly

Finally, the SCPC provides the Assembly with special reports on two occasions – if it finds misuse of funds during election campaign (Art. 36 of the LPCCI) and if the public authorities do not provide all necessary documents which they have and the SCPC needs for its investigatory purposes (Art. 94, para. 3 of the LPCCI).

These somewhat harsh powers of the SCPC, along with its traditional preventive ones (education, providing of opinions, etc. as pointed out in Frame no. 2), make it to a certain extent a *sui generis* ACA which is neither completely preventive nor completely suppressive. In other words, the SCPC falls somewhere on the border line between the preventive and suppressive ACAs, leaning more to the prior. While it is clear that the primary objective of this ACA's existence is to raise awareness on the negative consequences of corruption and to bring the information on the functionaries', institutions', political parties' and servants' work closer to the citizens, the SCPC does have the power to impose pecuniary fines which are not to underestimate. Aside from that, as it was explained, the access to information the SCPC has is quite impressive and it exceeds the one of the prosecution authorities or the police. While the latter do have a lot of information in their own data-bases, the SCPC can directly access theirs, but also the ones of multiple other public authorities and private entities too. This also means that the SCPC can carry out (to some extent) in-depth investigations. On the other hand, it has no employees which have police-like authorization such as the other suppressive ACAs (e.g. the Singaporean one).

Having that said, the position that we would take in this article is the following: the SCPC is a specific ACA if one carries out an integral overview of its counterparts in other countries. While the SCPC does have some suppressive powers, its vitality for the fight against corruption derives not from them, but from the data access this ACA has. Namely, the best way to utilize the SCPC in the combat against corruption in the Republic of North Macedonia is to

use its access to data and expertise in the criminal and other investigations as well as procedures carried out by other bodies or authorities. In other words, one should not expect that the SCPC will prevent corruption solely by itself. Yet, if the other state authorities who have a role in the anti-corruption efforts collaborate closely with the SCPC, the successes are more likely. For instance, the Assembly oversees the work of numerous functionaries and can initiate investigations against them through its permanent or *ad-hoc* Inquiry Committees. These Committees can be way more effective if the Assembly uses the resources and the knowledge of the SCPC which is, in fact, ultimately founded by it. The same goes for numerous other authorities. While the SCPC cannot carry out criminal investigations, the fight against corruption might be quite more effective if the initiatives it submits to the Public Prosecution Office are taken into serious consideration and if the public prosecutors work alongside the members of the SCPC as much as possible as per the applicable legislation (the Criminal Procedure Law as well as the Law on the Public Prosecution).

To summarize, the crucial point in respect to the SCPC's role is that although it has changed with its new suppressive powers, one should not expect that this ACA can make a significant difference in the fight against corruption if it acts on its own; instead, the knowledge, information, and capacities of the SCPC should be used by other state authorities with which a partner relationship should be harvested and developed.

3.2. Integrity of the State Commission for Prevention of Corruption as a prerequisite for its success

One of the biggest concerns in regards to the SCPC before the adoption of the LPCCI was the integrity of its Commissioners (members). Although the analysis of the SCPC from a formal point of view lead to a deduction that it is an independent institution with integrity and expertise, the criteria for selection of its members were indeed vague. Namely, the seven members of the SCPC whose term lasted for four years (with the right to one more consecutive appointment) were to be selected on the basis of the following four standards:

1. citizenship of the Republic of North Macedonia;
2. obtained diploma for high education in the areas of law, finances or anti-corruption;
3. high reputation;
4. 8 years of working experience.

Out of the four standards, it was perhaps only the first and the last which were not disputable. As for the other ones, the ambiguity is more than evocative. The second criterion was problematic in respect to the "high education in the field of anti-corruption" as numerous social sciences and humanities study the issue of corruption from their own perspective (sociological, political, legal, economic). The third criterion, on the other hand, had no influence at all in the selection of the Commissioners – the reputation could and can neither be measured nor properly assessed. This legal framework lead, as it was be believed, to the appointment of Commissioners who did not have the integrity needed for the office they held. The reason one can say this is that in March 2018 the citizens of the Republic of Macedonia learned that the members of SCPC have been misusing the funds budgeted for the institution. Namely, the Public Revenue Office carried out an internal audit in the SCPC, the scandalous results of which were delivered to the media by a whistleblower. It was shown not just that the Commissioners have falsified travel warrants in the sense that they have added kilometers to their trips (in order to reimburse a larger sum for travel costs), but that they have also reported business trips in days when they were present at the offices of the SCPC. Upon this scandall, 5

of the 7 members of the SCPC resigned, leaving the institutional non-operational for the vast part of 2018.²⁴

This problem is, however, resolved with the new LPCCI. This new law sets out numerous criteria the President and the other members of the SCPC should fulfill in order to be appointed by the Parliament. In order to make them easier to compare, we are providing a tabular overview of the new *vis-à-vis* the old criteria for appointment of Commissioners.

Table no. 2 – Criteria for appointment of members of the SCPC in the past vs. now

Criteria as per the old LPC	Criteria as per the LPCCI from 2019
Citizenship of the Republic of North Macedonia	Citizenship of the Republic of North Macedonia and permanent residence
Obtained diploma for high education in the areas of law, finances or anti-corruption	Capacity to contract
High reputation	At least 300 ECTS credits or a VII/1 degree of high education in the field of legal sciences, or at least 240 ECTS or a VII/1 degree of high education in the political and economic sciences or communicology
8 years of working experience	At least 10 years of working experience after completing the high education, out of which at least six ²⁵ in the areas of uncovering or preventing corruption, rule of law or good governance
/	No prohibition to perform profession, activity or duty has been imposed to the person
/	The person has not been a MP, member of the Government, donor of a political party or a functionary in a political party's organs in the last 10 years
/	The person has not been a member of the SCPC before

It goes without saying that these criteria are much more of a guarantee for the Commissioners' integrity than the previous ones. However, the criteria are not the sole reason why one is to believe that the members of the SCPC will be much more professional and knowledgeable now in comparison to the past. Namely, what one has to bear in mind is the procedure for appointment. The old LPC only stipulated that the appointment of Commissioners is to be done upon a public call, without any precise provisions as to what steps the Assembly should undertake after it receives the application (Art. 48-a of the LPC). Unlike that, the new LPCCI sets out a specific, lengthy procedure for selection of the SCPC's members. As per those rules (Art. 10 of the LPCCI), within 10 days of the public call for Commissioners, the Assembly's Commission for Elections and Appointments forms a new Commission for Selection of President and Members of the SCPC. This latter Commission (hereinafter: CS) is composed of: (1) one representative nominated by the Ombudsman; (2) two representatives of the civil society (NGOs and foundations);²⁶ (3) two MPs from the ruling party or coalition; (4) two MPs from the opposition. The CS organizes interviews with all the candidates who have applied on the public call. The CS also makes sure that the respective interviews are broadcasted on TV, on the specific channel of the Assembly. Finally, the LPCCI

²⁴ This story was published by numerous media houses, for instance: <https://sdk.mk/index.php/makedonija/vo-antikoruptsiska-si-zemale-pari-za-patni-troshotsi-lazhni-nalozi-nekoi-ne-odele-ni-na-rabota/> (last visited October 19, 2018).

²⁵ When it comes to the candidate for President of the SCPC the number is not eight instead of six.

²⁶ One of them is a representative of the NGO or the foundation which is a member in the Council for Cooperation between the Government and the civil sector in the area of Democracy and rule of law, while the other one of the NGO or foundation which is a member in the same Council but in the area of Media and Information Society.

stipulates that the interviews are conducted by the members of the CS, but also by the nominated representatives of the following institutions and entities: (1) the Ombudsman; (2) the Macedonian Academy of Sciences and Arts; (3) the Inter-University Conference; (4) the journalists' associations and other associations and foundations. These individuals may also ask questions.

Thus, it takes no special effort to elaborate that the LPCCI contains many more guarantees for the Commissioners' integrity than the old LPC. The sole fact that the interviews are aired / broadcasted on a national television is enough for the candidates to be much more prepared, knowledgeable and professional. In addition, the media and the scientific institutions are participating in the interview process directly, which is not the case with almost any other ACA in the region or further on.

Speaking of the SCPC's member integrity, there is yet another note that has to be made; specifically, the problem which existed with their dismissal. As a matter of fact, the old LPC contained no provisions under which the term of a Commissioner could be terminated by the Assembly for a misuse of powers or non-ethical conduct. The only three bases for dismissal, in that regards, were:

1. request of the Commissioner himself/herself;
2. criminal adjudication under which the Commissioner is sentenced than more than six months of prison;
3. permanent loss of the ability to work.

This construction of the LPC brought about a situation in which the members of the Commission who misused funds could not be, except on the basis of the Constitution of the country and the procedure of interpellation, dismissed from office. Actually, we believe that this is the very reason why the SCPC enjoyed almost no public thrust in the past, as indicated in one of the NGOs researches which covered the third quarter of 2017:²⁷ (1) 63,7% of the participants in the survey²⁸ consider that the SCPC protects the interests of the politicians, while only 12,7% believe that it protects the interests of the citizens. The other ones have not responded; (2) 72% of the participants in the survey consider that the media do not contain sufficient information on the work of the SCPC; (3) 77,6% of the participants in the survey consider that the information on the SCPC in the media do not provide an opportunity for them to be "up to date" with the institution's work.

This anomaly of the previous regime is again corrected with the new LPCCI where strict rules for dismissal of the SCPC's members are set out. The President and any other member of the SCPC may be dismissed by the Assembly if: (1) it turns out that he/she does not in fact fulfill the criteria for appointment; (2) he/she does not submit a declaration of assets or interests just as any other functionary or highly-ranked servant, or if the information therein is not correct; (3) if he breaches the rules for prevention of conflicts of interest; (4) if he/she does not respect the deadlines for procedural actions set out in the applicable legislation without a proper justification; (5) if he does not participate in the work of the SCPC for more than six months, without a proper justification.

3.3. Human Resources and Budget of the State Commission for Prevention of Corruption

By now it becomes clear that the "new" SCPC has more capacities to combat corruption, at least in theory. However, the question one has to pose is whether the SCPC actually has the means to effectively complete its numerous tasks as per the LPCCI? Let us

²⁷ The NGO Macedonian Center for International Cooperation publishes quartile reports on the work of the SCPC. This is done in quarter reports. The quoted one is the 5th Report covering the period between October 1 and December 31, 2017, available at: <http://www.mcms.mk/images/docs/2018/sledenje-na-dsk-kvartalen-izveshtaj-br-5.pdf> (last visited October 19, 2018).

²⁸ As per the statistical methodologies, 1001 persons in total participated in the survey.

start off with the budget of the SCPC. In one of its recent publications, under the title *Strengthening Anti-corruption Agencies in Asia Pacific*,²⁹ Transparency International points out that an ACA can function congruently if the budget is above 0.20% of the state budget. In order to find out if the SCPC's share in the total budget of the Republic of North Macedonia's budget is below or above this border, we cross matched the information from its annual reports and the state budgets in the previous years. The results are shown in table no. 2.

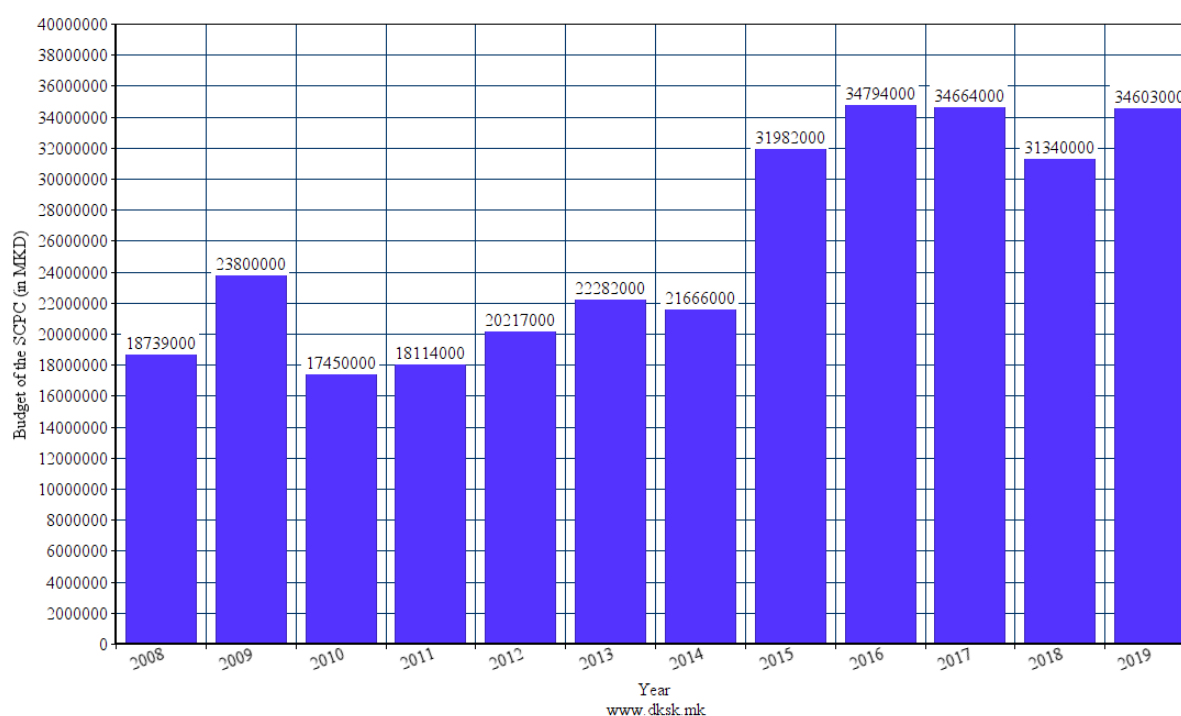
Table no. 3 – Proportion of the country's budget that the SCPC shares

Year	'08	'09	'10	'11	'12	'13	'14	'15	'16	'17	'18	'19
% propot.	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

This table clearly demonstrates that the SCPC is not even near the standards provided by Transparency International. What is even more concerning is that even the increase in the SCPC's budget (illustrated in Graph no. 1 – Annual Budget of SCPC) does not mean that the proportion *vis-à-vis* the state budget grows (since the latter increases too).

Graph no. 1 – Budget of the SCPC (2008-2019) in Macedonian Denar

Budget of the SCPC (2008-2019)



Speaking of this aspect, one should mention that despite the numerous improvements in the legal regime, the Assembly did not include a mandatory-budget provision in the LPCCI in 2019. We believe that such a provision should be included in the LPCCI in the future. Such an example actually exists not far from the Republic of North Macedonia, i.e. in the Law for Prevention of Corruption of Montenegro,³⁰ where in Art. 95, para4 it is stipulated that “the approved means for functioning and work of the Agency [note by the authors: the text is

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Available

at:

https://www.transparency.org/whatwedo/publication/strengthening_anti_corruption_agencies_in_asia_pacific (last visited October 19, 2018).

³⁰ Law on Prevention of Corruption (original: Zakon o sprečavanju korupcije) of Montenegro, Official Gazette of Montenegro, no. 53/2014.

referring to the Agency for Prevention of Corruption] may not be lower than 0.2% of the annual budget of Montenegro”.

Upon this information, it comes not as a surprise that the SCPC’s Secretariat, which is the administrative service of this ACA, has a truly small number of employees during the year. That number is currently 20.³¹ It used to be 22, however two of the former employees in the Secretariat were appointed as members of the SCPC in the first round of appointment as per the new LPCCI.³² This state is quite unsatisfactory as the SCPC's By-law for Systematization of Work Positions³³ states that the SCPC should have 51 employee in the Secretariat. This means that only 39% of the predicted work positions are fulfilled.

It is therefore vivid that the SCPC will face issues in its everyday functioning if its human capacities are not improved as soon as possible. The large number of functions and tasks the SCPC has, as it was explain above, makes a strong, well-equipped Secretariat more than necessary. As a matter of fact, in order to make this note more comprehensible, we would point out an example. One of the key tasks of the SCPC is to run the register of elected / appointed persons and other individuals (such as highly-ranked servants, notaries, etc.). This means that the SCPC should receive declarations of assets and interests from all these individuals, process them and publish them online. Moreover, the SCPC’s staff should compare each next declaration with the previous one in order to be able to determine whether some of the respective individuals (or their close persons) has had an unreasonable increase in his/her assets. This, of course, requires a lot of time and attention. The SCPC has received more than several hundreds of declarations of assets throughout the years, while the number of employees who have the duty to process them is not more than three (one Advisor for Asset State Monitoring, one Associate and one Junior Associate for Evidence of Declarations).

Table no. 4 – Number of declaration of assets that the SCPC has processed in the past 10 years³⁴

Year	‘08	‘09	‘10	‘11	‘12	‘13	‘14	‘15	‘16	‘17	‘18	‘19
Processed	604	999	820	900	623	2170	1199	1132	1353	N.A.	/	/

Of course that it is not reasonable to expect that the SCPC will effectively analyze and examine every declaration it receives, when it does not have the resources to do so. A similar point has been made by GRECO in its 4th Evaluation Round Report where it is stated:

“two persons are in charge of the processing and verification of declarations of interest, whereas about 1000 declarations were received in the first quarter of 2013 alone, due to the local elections. If these systems have to be streamlined and scrutiny over the declarations reinforced . . . the provision of adequate resources will be critical.”³⁵

As a positive comparative example in this case, we would like to point out the ACA of Montenegro which, although operating in a smaller country with less competencies, has a larger

³¹ This information is retrieved from: <https://www.dksk.mk/index.php?id=50> (last visited June 20, 2019).

³² This information is retrieved from: <https://kanal5.com.mk/articles/365591/utvrden-sostavot-na-novata-antikorupciska-komisija> (last visited June 20, 2019).

³³

³⁴ The data is withdrawn from the Annual Reports of the SCPC available at: www.dksk.mk/index.php?id=55 (Last visited October 19, 2018). The annual report for 2017 is not available to the public. In 2018 the SCPC was factually non-functional, wherefore there is no annual report (at least not an publically available one).

³⁵ GRECO Fourth Evaluation Round, *Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation Report “the Former Yugoslav Republic of North Macedonia”*, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9ab5> (last visited October 19, 2018).

number of employees, i.e. 55 (which of course is not surprising bearing in mind the provision for mandatory-budget share we cited above).³⁶

4. Conclusions

The SCPC, as the only ACA of its kind in the Republic of North Macedonia, has a great potential to bring about a better fight against corruption. Especially after the adoption of the LPCCI from 2019 – which corrected some of the most devastating anomalies of the previous legal framework (mainly LPC and LPCI) – the SCPC does turn into a serious institution as an ACA is expected to be. Nevertheless, despite the increased powers (with emphasis on the sanctioning authority), the SCPC is not yet a suppressive ACA. At the best case scenario, it is at the border line between the preventive and suppressive ACAs, leaning more towards the prior. Therefore, the SCPC should not focus, in its everyday functioning, on its new suppressive powers, but on the collaboration with other state authorities and the civil sector. This is especially important bearing in mind that the SCPC is indeed impressive in terms of knowledge, expertise and access to data (where it is actually more equipped than any other public institution or entity). In other words, the anti-corruption policies which the country shall build in the upcoming period of time should not focus on utilizing the sanctioning powers of the SCPC but on building a strong partnership between this ACA and the Assembly, the Public Prosecution, the Public Revenue Office, the Customs, the Administration for Financial Police, etc.

Nominally speaking, the budget of the SCPC increases throughout the years. Yet, its proportion in the budget of the Republic of North Macedonia remains untacked, and bellow 0.01%. This is far from the standards laid down in the international community, especially by Transparency International. It is our strong believe that the LPCCI should contain a provision for a mandatory-budget share of the SCPC as in the case of Montenegro.

While the SCPC is improved in terms of its functions, as well as in terms of its members' integrity, it still lacks *de facto* capacities for effectiveness. While, as said, the institution needs to implement 4 systematic acts, it has only 20 employees which is way bellow the minimal numbers for proper functioning. We believe that the priority of the anti-corruption policies in the future should be increase in the budget of the SCPC and fulfillment (at least) of the working positions which are systematized in the present by-laws of the institution (51 employees in the Secretariat).

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**„НОВАТА“ ДРЖАВНА КОМИСИЈА ЗА СПРЕЧУВАЊЕ НА КОРУПЦИЈАТА И
НЕЈЗИНИТЕ ПОТЕНЦИЈАЛИ ЗА ЕФЕКТИВНА БОРБА ПРОТИВ
КОРУПЦИЈАТА**

1.02 Прегледна научна статија
УДК 343.137.5:341.24
343.137.5:[343.91-053.2]/6:323.28

Апстракт

Во овој труд станува збор за суштественото превентивно антикорупциско тело во Република Северна Македонија, поточно за Државната комисија за спречување на корупцијата (ДКСК). Идејата, притоа, е двојна: од една страна да се објасни каков модел на антикорупциско тело е прифатен во Република Северна Македонија (особено земајќи во вид дека би можело да се тврди дека моделот беше променет на почетокот на 2019 година), а од друга да се истакнат критики по повод постоечката правна и институционална рамка. Се разбира, во овој труд нема да се простудираат сите аспекти од работењето на ДКСК, што би имплицирало далеку подолг текст, туку само оние прашања кои се ценат за најзначајни, а кои се поврзани со законските надлежности на ДКСК. Со други зборови, во овој труд ќе се постави прашањето за тоа дали законските надлежности (функции, задачи и овластувања) на ДКСК се соодветно структурирани или пак се можно подобрувања. Понатаму, ќе стане збор и за внатрешната организација на ДКСК и нејзините фактички капацитети со цел да се илустрира дискрепанцата помеѓу законски доделената улога и de-facto можностите на овој витален државен орган. Крајната цел зад овој труд е да се привлече вниманието на домашната и странската научна и стручна јавност кон ДКСК, но и да се постават основни за натамошни компаративни анализи, особено ниво на Југоисточна Европа.

Клучни зборови: антикорупција, ефективна борба против корупција, антикорупциски тела, Државна комисија за спречување на корупцијата, превенција

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