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Policy Paper

CORRUPTION AS IMPEDIMENT TO EU INTEGRATION: IMPROVING GOOD GOVERNANCE IN THE REPUBLIC OF MACEDONIA



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**"Corruption as impediment to EU integration:
Improving good governance in the Republic of Macedonia"**

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Abstract

In the ratings produced by Transparency International the Republic of Macedonia made substantial improvements over the last couple of years. However the European Union Progress reports from 2009 and 2010 show that corruption is still a prevalent impediment to the EU integration process. Between 2007 and 2010 the State Commission for Prevention of Corruption raised 52 initiatives with the Public Prosecutor's Office. None of them had a court sentence. This policy paper looks at why is that so, and in specific analyzes the cooperation between the State Commission for Prevention of Corruption and the judiciary. The findings suggest that political interference from the executive is impeding the anti-corruption system in Macedonia. Cutting the political power and upgrading the existing institutional system for fighting corruption is suggested as a short-term policy option. For a long term solution closer structural cooperation between the commission and the judiciary is suggested.



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1. Introduction

Reforms in the judiciary and the implementation of anti-corruption legislation are listed among the key short-term priorities in the Accession Partnership between the EU and Macedonia (OJ L 80, 19/03/2008). The two policy areas are highly interdependent; results in the fight against corruption depend on both.

The established anti-corruption system seemed to yield results. According to the Transparency International corruption perception index, the Republic of Macedonia made substantial progress. Being ranked in position 105 in 2006, the country moved to position 84 in 2007, then to 72 in 2008, 71 in 2009, finally reaching position 62 in 2010. However, the Bertelsmann Transformation Index states that “corruption in Macedonia is a serious and widespread problem that affects many aspects of the social, political and economic life” (BTI Macedonia, 2010: 10). The Freedom House report of 2009 finds that “improving the independence and the efficiency of the judiciary remained a major challenge” (Nations in Transit, 2009: 350). The 2009 and 2010 reports of the European Commission note some progress in the anti-corruption policy, yet they conclude that “corruption remains prevalent in many areas and continues to be a serious problem” (COM (2010) 660). The data from the State Commission for the Prevention of Corruption (SCPC) shows that none of the initiatives in the field of criminal trials raised with the public prosecutor between 2007 and 2010 has led to a court sentence. The question arises why anti-corruption cases do not end with a court judgment?

To answer that question, this policy paper analyzes the cooperation between the SCPC and the judiciary. The main finding is that there is a lack of structured cooperation between the SCPC and the judiciary, namely the public prosecutor. The research finds that the lack of political will is the main reason for this shortcoming. It seems that political interference from the executive is impeding the anti-corruption system in the Republic of Macedonia.

2. How anti-corruption works or does not work?

The Law on the Prevention of Corruption was enacted in 2002 and with it the SCPC was established. Its role is primary preventive. The anti-corruption commission gives opinions on laws, monitors the wealth of elected and appointed political officials and monitors the work of public companies and the state administration. In addition, the SCPC can ask the public prosecutor to start a criminal investigation and raise a trial for cases of corruption.

Constitutional reforms were enacted in 2005 by which judiciary and a prosecutor's councils were established. These councils are in charge for the election of judges and prosecutors. The Minister of Justice was designated as a member in both of the councils, hence the political influence in both was retained. Over the years, an Academy for Judges and Prosecutors was established, which improved the quality of human resources. Moreover, an independent judiciary budget was secured. Organizationally, within the judiciary, special units were developed for the fight against corruption.

In 2004 a cross-sectoral working group for the fight against corruption was established. It was coordinated by high-ranking officials from the Ministry of Justice, and included inter-ministerial officials as well as members from the judiciary and the SCPC. The working group still exists today, but while the technical level meetings have intensified, “the high-level political commitment to monitoring of the implementation of anti-corruption policies has weakened” (COM (2010) 660: 14).

The fight against corruption for several years seemed to be intensifying. In three separate cases in 2009 numerous public employees were arrested. The arrests included border policemen, pay toll employees, doctors

and administrative workers from the Pension Fund. The arrests were followed by a media frenzy and were widely publicized. Some of the institutions involved in the process, namely the Ministry of Interior (Mol) aided the publicity of the process. Namely the Mol requested media presence in front of the courts before taking the arrested for questioning. This jeopardized the constitutional rights of the arrested in terms of their presumption of innocence. In some cases the Mol gathered evidence for the arrests using surveillance techniques. But the Mol did not always obey the procedural steps to secure the usage of these measures, so they were not valid in the court trails.

According to SCPS, between 2007 and 2010, 52 separate initiatives to start criminal investigation were sent to the public prosecutor. Among them there is not a single case where corruption was detected among high level national politicians. In twelve cases, the SCPS suspects that public administration officials were involved in corruption. In thirteen cases, those suspected are heads and employees of public companies, while local politicians (e.g mayors) are involved in fifteen cases. In five cases, employees in the local administration were involved, and multiple actors were involved in seven cases.

The public prosecutor denied eight of the initiatives, on the grounds that there is not enough evidence or that there is no act of corruption. The prosecutor has opened an investigation in thirty five of the cases, while three of the cases are currently in trial. For six cases there is no information on their status. The most surprising fact is that none of these cases has resulted a court judgment.

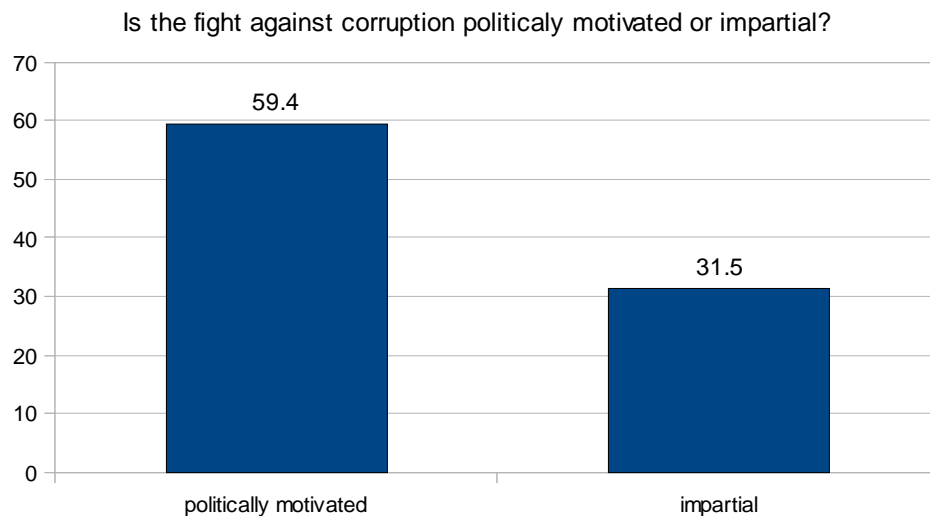
3. What is preventing the fight against corruption?

To research the problem we carried out a public opinion survey and conducted interviews with the experts public. The phone poll was carried out in Skopje on 374 respondents that were randomly chosen. The sample was stratified on the basis of the 11 municipalities making up the city of Skopje. The respondents were asked on a scale from 1 (lowest) to 5 (highest) to judge the work of the government in terms of the fight against corruption and to give scores for the judiciary and the SCPC. They were also asked about the motives for the fight against corruption and about the level of corruption compared to previous years.

The government received a mean score of 2.9, and so did the SCPC. A share of 38.5% of the respondents gave a 1 for the government, while 16% gave a 5, and in the case of SCPC 18% gave a score of 1 and 11% gave a 5. The judiciary received a mean score of 2.3 where 32% of the respondents gave a 1 for the judiciary and only 4.5% gave a 5. These results show that the public considers the judiciary to be the least effective in the fight against corruption, and while many think that the government is not effective, the results are close to average for the SCPC.

The results presented in graph 1 below show that close to 60% of respondents think that the fight against corruption is politically motivated in the Republic of Macedonia, while 31.5% think that it is impartial. Furthermore, 42.8% of the respondents said that now there is more corruption compared to previous years, while 22.7% said that there is no significant difference and that the level of corruption remained the same. In comparison, 30.8% of the respondents said that today there is less corruption than in previous years. These results show that in the views of the public, the fight against corruption is not conducted impartially. Further more, for large part of the public the level of corruption has not decreased.

Graph 1. Public opinion on the motives for fighting corruption



Beyond the poll, interviews with 28 experts were conducted under conditions of anonymity due to the sensitivity of the subject. The majority of the respondents for these interviews, 16 in total, were Members of Parliament from three parliamentary committees, namely the legal committee, the committee on the political system and the EU affairs committee. Half of the MPs came from the parties in the government coalition and the other half come from parties in opposition. Of the other interviewees, seven were experts working on the issue of corruption, law professors or working in anti-corruption NGOs. The remaining five were journalists from different media outlets that follow developments in the judiciary and in corruption cases.

The research team also approached the SCPC to get answers from the members of the commission, sent the questionnaire to the Ministry of Justice and contacted several judges and prosecutors. The SCPC provided some data on their work; however, the members of the SCPC failed to return any answers. The answers from the Ministry of Justice are pending on their review of our request where the research project was explained and further information on the Progress institute was requested. The judges and prosecutors denied answering to any of the questions. One of the main reasons pointed out was fear of reprisal and punishment for the answers given. Despite the promises for anonymity, there is a negative experience from a previous poll conducted by the OSCE in the field of judiciary. The results of the OSCE poll showed that the judiciary lacks independence and is under systematic political pressure. Nevertheless, the survey was not followed by adequate reforms, but instead the Minister of Justice and other high judicial officials publicly denied the results, and some judges and prosecutors were later downgraded and punished.

The respondents in the expert interviews were asked a series of six questions to judge the political will and independence of the institutions fighting corruption, as well as the cooperation between the judiciary and the SCPC. The answers were given on a 5-point scale where the lowest points, showing negative results, were mutually exclusive with the highest points, showing positive results. The statistical analysis of the results shows that there is a high consistency of the answers among the respondents. The sum of the results is presented in tables 1 and 2.

Table 1. Political will and institutional independence for fighting corruption in Macedonia

	1	2	3	4	5
The government instigates corruption					The government is fully dedicated to the fights against corruption
Mean score		2.17			
The fight against corruption is politically driven					The fight against corruption is impartial
Mean score	1.8				
The judiciary is under political pressure					The judiciary functions independently
Mean score	1.5				
The anti-corruption commission is under political pressure					The anti-corruption commission functions independent
Mean score		2.3			
Crombah's Alpha .852					

The mean scores, presented in table 1 show that there is low political will for fighting corruption in Macedonia and that the judiciary and the SCPC are under political pressure. The results in table 2 show that there is a lack of cooperation between the judiciary and the SCPC, while the division of competences between them is somewhat obscure. From the 28 expert, 23 considered that the fight against corruption is not impartial, but that it is politically driven.

Table 2. How is the cooperation between the judiciary and the anti-corruption commission?

	1	2	3	4	5
It is a disaster					It is fantastic
Mean score	1.9				
There is overlap and competition					There is clear division of competences
Mean score		2.7			
Crombah's Alpha .749					

The interview with the experts also included a series of qualitative questions. Firstly, they were asked what the main impediments for the fight against corruption in the Republic of Macedonia are. Widespread poverty and a deteriorating economic situation were suggested by some and many noted that the legal provisions and the capacities of the institutions may always be improved. However according to most what is substantially missing is a strong political will to seriously and impartially fight corruption.

The institutional reforms were judged positively. The 2002 anti-corruption legislation in and the 2005 constitutional reforms set the basis for a strong system for fighting corruption. However, the practices of that system today do not match the expectations and the needs for the eradication of corruption. In that respect, the experts point to two factors as to why anti-corruption cases fail in courts. On the one hand, some say that the main purpose is to have a media spectacle, a public performance that would create the impression that the government is seriously fighting corruption. On the other hand, some say that the procedural steps for the investigation and preparation of the cases by the prosecutors are not carried out correctly, and sometimes may

even be conducted unlawfully. With the legal forms and procedures for gathering evidence or detention not being observed, the cases fail in court.

Overall, the work of the SCPC was seen as positive, but rather symbolic. The definition of the SCPC's work is dubious. It is not a fully preventive unit, as it does not screen contracts and procurements before they are done. On the other side, it can start initiatives with other institutions, but it cannot investigate cases or take offenders to court. Many of the experts criticized the appointment process of the SCPC members and their status. Because the members are elected in Parliament, some see political influence in the composition of the SCPC. As the mandate of the SCPC is drawing to an end, many fear that the political influence over the commission is likely to increase. Also, the members are not full time employed, which hampers their work dedication.

The current capacities and resources of the commission are rather scarce. The SCPC depends on the state budget, and earlier in 2010 when the government was re-balancing the budget the SCPC was practically left without adequate means to function normally. This decision was redrawn after a strong public reaction of the newly elected president of the SCPC and after the EU raised concerns. The integrity of the president of the SCPC is seen as a crucial point. The previous president was seen as trying to tone down the fight against corruption. At the same time, she served several other public functions, which raised concerns over a possible conflict of interests.

A big crux in the work of the SCPC is that it does not prioritize the corruption cases it handles. In that respect, an unlawful appointment of a public school director in a small rural municipality would be regarded as being equal to the mismanagement of funds in a big public company or in a national ministry. Furthermore, the SCPC does not always react to reports from the State Audit Office. For example, the auditors' reports in 2009 showed concerns about procurements in several line ministries (i.e. Ministry of Transport and Telecommunication, Ministry of Justice, Ministry of Foreign Affairs), but none were examined by the SCPC. The data from SCPC shows that audit reports were the base for one third of the cases initiated with the public prosecutor in 2009 and 2010, while external initiatives were the base for two thirds of the cases. Only one case was raised as an internal initiative of the SCPC. None of these cases involves high-level political figures, but instead most dealt with local politicians or public administration officials.

Except for the MPs from some of the governing parties, the other interviewees consider that the judiciary is under strong political pressure. They point to politicized practices of election and dismissal of judges and prosecutors in the respective councils. The views of the experts are best captured in the EU's progress report, which states that "the Judicial Council and the Council of Public Prosecutors need to ensure high standards of independence and impartiality of the judiciary in practice. (...) The role of the Minister of Justice within the Judicial Council raises serious concerns about the interference of the executive in the work of the judiciary. (...) Independence of the judiciary remains a matter of serious concern affecting the determination to combat corruption" (COM (2010) 660: 13-15).

The cooperation between the SCPC and the judiciary lacks a clear structure. The SCPC can only initiate cases with the public prosecutor; and the latter usually depends on the MoI to gather evidence, sometimes using special investigative measures. Experts are skeptical that investigative measures will be transferred to the public prosecutor. It would effectively mean losing political control over the process. At the same time, the EU report states that "the role of the Ministry of the Interior in authorizing the use of interceptions is not in line with EU standards and raises concerns about undue political interference" (COM (2010) 660: 14). In general then, the efficiency of the fight against corruption fully depends on political factors.

4. Conclusions and recommendations

Lack of political will and political interference in the processes seem to be the main factor hindering the fight against corruption in Macedonia. The fight against corruption seems to be politically motivated. The dominant goal is to influence the public perception rather than to actually eradicate corruption. The structural cooperation between the main anti-corruption unit, the SCPC, and the judiciary is lacking. The SCPC does not have the competence to start trials, while the public prosecutor does not have the competence to investigate the alleged cases of corruption. None of the processes initiated in front of the public prosecutors by the SCPC since 2007 have been concluded; none of them involved high political figures. Instead, they were focused on alleged corruption at the lower levels of the pyramid of power.

Possible options for action

Option 1: No change. Essentially, since this is a “no-option”, the current problems with corruption are likely to remain. Furthermore, political influence is likely to increase as the mandate of the current SCPC members is drawing to a close and new members will again be elected in Parliament.

Option 2: Cutting political power and institutional upgrading. This option mostly depends on the political will of the executive. Concretely, the Minister of Justice would redraw from the Judicial and Prosecutor's Councils and the MoI would transfer investigative competences to the Public Prosecutor. The SCPC would mainly have competences to screen public procurement and public appointments. More investments would be made in the capacities and resources of SCPC and the prosecutor's office. The budget of the SCPC needs to be stable, with no over proportional cuts if the state budget needs to be re-balanced. This is a cost-effective scenario that would improve the efficiency of the existing system. It would require Constitutional changes to redraw the Minister of Justice from the Judicial and Public Prosecutor's councils. It would also require smaller amendments in the anti-corruption legislation, in terms of clearer preventive definition for the role of the SCPC and transfer of investigative competences from the MoI to the office of the Public Prosecutor. This is a short term policy solution; depending if there is political will to implement the necessary changes.

Option 3: New system, new competences. The role and competences of the SCPC are redefined. The members of the SCPC are fully professionalized. The SCPC no longer deals with the mere prevention of corruption, but instead has the competences to investigate and start trials for cases of corruption. In that respect, the SCPC would very closely cooperate with the public prosecutors office, or it is integrated within the public prosecutor's office. To a large, extent this model resembles the Croatian Department for prevention of corruption and organized crime (USKOK). This policy option requires substantial changes in the anti-corruption system. Beside the full time employment of the SCPC's members, this policy option recommends that the work of the SCPC and the public prosecutor is fully integrated. It would require wider legislative changes, including the criminal and penal codes. Changes are likely to be time consuming and substantial increase of resources for the new system will be needed. This is a long term policy solution; depending if the current institutional set up continues not to deliver results in the fight against corruption.

APPENDIX. Quantitative results from the research

I. Survey of public opinion in Skopje

1. How do you judge the work of the government in the fight against corruption, from 1 (lowest) to 5 (highest)?

	Frequency	Percent
1	99	26.5
2	45	12
3	91	24.3
4	63	16.8
5	62	16.6
DK/NA	14	3.7
Total	374	100
Mean score: 2.9626		

2. How do you judge the work of the judiciary, from 1 (lowest) to 5 (highest)?

	Frequency	Percent
1	120	32.1
2	100	26.7
3	93	24.9
4	27	7.2
5	17	4.5
DK/NA	17	4.5
Total	374	100
Mean score: 2.3904		

3. How do you judge the work of the anti-corruption commission, from 1 (lowest) to 5 (highest)?

	Frequency	Percent
1	70	18.7
2	73	19.5
3	100	26.7
4	72	19.3
5	42	11.2
DK/NA	17	4.5
Total	374	100
Mean score: 2.9840		

4. According to you, is the fight against corruption politically motivated or is it impartial?

	Frequency	Percent
It is completely politically motivated	147	39.3
It is politically motivated to some extent	75	20.1
It is impartial to some extent	67	17.9
It is completely impartial	51	13.6
DK/NA	34	9.1
Total	374	100

5. Is there more or less corruption today in Macedonia compared to previous years?

	Frequency	Percent
There is much more corruption	129	34.5
There is little bit more	31	8.3
It is the same, no changes	85	22.7
There is little bit less	81	21.7
There is much less corruption	34	9.1
DK/NA	14	3.7
Total	374	100

II. Interviews with experts

On a scale from 1 to 5 how do you judge the following?

Government's dedication for fighting corruption		
	Frequency	Percent
1 – the government instigates corruption	13	46.4
2	5	17.9
3	4	14.3
4	4	14.3
5 – the government is fully dedicated to the fight against corruption	2	7.1
Total	28	100
Mean score: 2.1786		

On a scale from 1 to 5 how do you judge the following?

Motivation for fighting corruption		
	Frequency	Percent
1 – the fight against corruption is politically driven	14	50
2	9	32.1
3	2	7.1
4	2	7.1
5 – the fight against corruption is impartial	1	3.6
Total	28	100
Mean score: 1.8214		

On a scale from 1 to 5 how do you judge the following?

The political influence over the judiciary		
	Frequency	Percent
1 – the judiciary is under political pressure	17	60.7
2	7	25
3	4	14.3
4	0	0
5 – the judiciary is independent	0	0
Total	28	100
Mean score: 1.5357		

On a scale from 1 to 5 how do you judge the following?

The political influence over the State Commission for Prevention of Corruption		
	Frequency	Percent
1 – the anti-corruption commission is under political pressure	10	35.7
2	7	25
3	2	7.1
4	8	28.6
5 – the anti-corruption commission is independently	1	3.6
Total	28	100
Mean score: 2.3929		

On a scale from 1 to 5 how do you judge the following?

The cooperation between the judiciary and the anti-corruption commission?		
	Frequency	Percent
1 – it is a disaster	13	46.4
2	8	28.6
3	4	14.3
4	2	7.1
5 – it is fantastic	1	3.6
Total	28	100
Mean score: 1.9286		

On a scale from 1 to 5 how do you judge the following?

The overlap of competences between the judiciary and the anti-corruption commission		
	Frequency	Percent
1 – there is overlap and competition	7	25
2	4	14.3
3	11	39.3
4	1	3.6
5 – there is clear division of competences	5	17.9
Total	28	100
Mean score: 2.7500		

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