

EFFECTIVENESS OF MACEDONIAN ANTI-CORRUPTION LEGISLATION AND IMPLEMENTATION GAPS

Gjorgi Slamkov, page 75-85

ABSTRACT

The paper addresses a crucial issue in the fight against corruption, which is whether anti-corruption legislation is effectively implemented in practice.

The author has conducted an analysis of the implementation of several essential competencies of the State Commission for the Prevention of Corruption, as well as data from competent institutions on persons convicted of corruption crimes.

The paper emphasizes that North Macedonia has a generally good legal framework for the fight against corruption, but weak implementation, which has also been noted in reports by international organizations, is a fundamental problem for the proper fight against corruption.

The author pays special attention to the level of implementation of the strategic document for the fight against corruption - the National Strategy and the consequences of the poor implementation of this document.

The paper uses the method of content analysis, as well as the statistical method. In addition, official data from competent institutions were used.

Strengthening the fight against corruption is a prerequisite for the rule of law and in this direction it is necessary for the competent institutions to take action to fully implement their competencies, which implies normative and institutional changes in order to achieve effective implementation of the regulation.

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Introduction

According to Macedonian legislation, the main institution for preventing corruption is the State Commission for the Prevention of Corruption (SCPC). As a preventive body, it is responsible for the implementation of the Law on the Prevention of Corruption and Conflict of Interest, the Law on Lobbying, and it also has its own competences in the protection of whistleblowers. The SCPC has several preventive competences (in accordance with Article 17 of the Law on the Prevention of Corruption and Conflict of Interest), but its number one competence is the adoption of a national strategy for the prevention of corruption and conflict of interest, together with an action plan for its implementation. In addition, the SCPC records and monitors the property situation and interests of elected and appointed persons, initiates criminal prosecution, maintains several registers, including the register of persons authorized to receive reports from whistleblowers, prepares the catalog of gifts and publishes it on its website, as well as other competences in accordance with the Law on the Prevention of Corruption and Conflict of Interest. Regarding lobbying, with the new 2021 law, SCPC received increased powers to register entities and supervise lobbyists, as well as those lobbied.

When discussing anti-corruption regulations, the position of corruption crimes contained in the Criminal Code is significant. Essentially, these are crimes in which public officials abuse public authority for their own benefit or the benefit of a third party, thereby violating public order and citizens' trust in institutions.

The above shows that North Macedonia has created a regulation to prevent corruption, but the essential question is whether its implementation is effective in achieving the set goal and whether there are gaps or weaknesses in the entire process. Namely, the European Commission's Progress Report on North Macedonia in 2024 highlights the weak implementation of the regulation, especially the law on lobbying and the law on whistleblower protection. That the written and the practice do not go together is also confirmed by the Transparency International CPI 2024, where North Macedonia is ranked 88th (a drop of 12 places compared to the previous year) and with 40 index points (2 less compared to the previous year), describing it as a country with serious problems in the fight against corruption.

1. Implementation challenges – SCPC between normative and practice.

a) The National Strategy for the Prevention of Corruption and Conflict of Interest is the key strategic document for building a society resistant to corruption. In it, the dominant areas for the occurrence of corrupt behavior are public procurement and employment in the public sector. In addition, it has a sectoral approach, i.e. it covers the political sector, judiciary, law enforcement agencies, health, education, labor and social policy, urban planning, environment, sports, agriculture, economy, public enterprises owned by the state and local self-government, media and civil society. Problems, measures to overcome them, as well as activities have been identified for each of the listed sectors.

As a rule, an analysis of the level of implementation of the Strategy is conducted once a year, according to the level of realization of the activities.

As a strategic act, the Strategy is adopted by the SCPC, as a five-year document, but it must be confirmed by the Assembly of North Macedonia.

According to the action plan, the responsibilities for the implementation of the activities have been assigned to about 30 highest institutions of the legislative, executive and judicial branches, as well as local self-government. This data is an indicator of the serious approach to the fight against corruption and the strengthening of integrity, as well as the resilience of society to corruption and related harmful phenomena.

The National Strategy for the period 2021-2025 is a good document, covering the essential segments of corruption risk and offering solutions to overcome them.

But here the key question arises: what is the implementation of the National Strategy?

The answer to this question says a lot about North Macedonia's efforts in the fight against corruption, namely, in 2023 only 13% of the planned annual activities were implemented, which shows an extremely poor implementation of the activities. Namely, it has been determined that out of a total of 166 activities planned for 2023, only 22 have been implemented, 89 have not been implemented, while 55 activities are in the process of implementation. In general, there is poor implementation in all areas, but if they have to be selected, then it should be emphasized that the

least implemented activities are in the sectors: law enforcement, education, sports, economy and business.

This situation is not incidental, namely, in 2022 only 10% of the planned activities were implemented, while in 2021 the implementation was 20%. From such data, the conclusion can be drawn that the strategic document for preventing corruption is not being implemented in practice, which means that in practice the state is not taking essential actions to protect against corruption, that the system is left without effective protection. An aggravating circumstance is the fact that the implementation of the activities is the obligation of the highest state institutions, i.e. they should implement them.

b) In order to strengthen integrity and prevent corruption crimes, any public office holder or official in the performance of public authority and duties may not accept gifts, except in the cases, in the amount and in the manner determined by the Law on the Use and Disposal of State-Owned and Municipally-Owned Assets , i.e. the Law on Public Sector Employees . In such situations, state institutions are obliged to submit to SCPC a copy of the list of records of gifts received for the previous year. In accordance with the Law on the Prevention of Corruption and Conflict of Interest, SCPC is obliged to enter the received data into the catalog of gifts that should be published on the SCPC website.

Normatively, such a provision is good and useful for preventing various illegal or unethical actions, but in reality, a catalog of gifts has not been established, i.e. it is not on the SCPC website, as a result of which there is no insight into whether institutions fulfill the legal obligation to submit data on gifts received and how they were dealt with, taking into account the provisions of the Law on the Use and Disposal of State-Owned and Municipally-Owned Assets, as well as the Law on Public Sector Employees.

c) The anti-corruption legislation of North Macedonia also includes the Law on Lobbying . This law regulates the conditions for obtaining the status of a lobbyist and lobby organization, the registration of lobbyists and lobby organizations, the obligations of lobbyists and lobby organizations and the obligations of persons and bodies to which lobbying is carried out, with the aim of transparency in the processes of preparing, adopting and amending public policies, i.e. programs, laws, by-laws or other general acts. According to the law, lobbying can be carried out with

the bodies of the legislative and executive authorities, as well as the bodies of local self-government units.

The purpose of the law is to control lobbying, its conduct in accordance with a legally established procedure, to be conducted by registered lobbyists, an obligation for lobbyists and the lobbied to submit a report/minute to the SCPC, i.e. a series of actions aimed at preventing lobbying from turning into illegal trading in influence as a criminal offense.

The Law on Lobbying was adopted in 2021, came into effect in mid-2022, and replaced the previous law on lobbying from 2008. Despite the fact that it is a better legal solution than the previous one, its implementation is still insignificant. Namely, at the beginning of 2025, only three lobby organizations were registered in the SCPC register (for comparison, in Slovenia, 87 lobbyists were registered in the same period). This situation is another example where the difference between the prescribed regulation and its implementation in practice comes to the fore.

Regarding the weak implementation of the law on lobbying, it should be emphasized that the subject of lobbying is poorly known in Macedonian society and that before the start of its implementation, it was necessary to take measures to raise the awareness of citizens, through campaigns or similar processes, which would present the purpose of the law and the point of lobbying. Of course, such actions can still be implemented now, because without raising public awareness, it is not possible to expect significant results from the law.

d) The anti-corruption regulation also includes the Whistleblower Protection Act. This Act regulates protected reporting in the public and private sectors, in order to protect the public interest, the rights of whistleblowers, as well as the actions and duties of institutions, i.e. legal entities, in relation to protected reporting and ensuring protection for whistleblowers.

The SCPC's legal responsibility is to maintain a register of authorized persons for receiving reports from whistleblowers, this applies to all public sector institutions. According to the SCPC's Annual Report for 2023 out of a total of 1324 institutions, SCPC has data on authorized persons in 207 institutions or about 15%.

In addition, according to the law, public sector institutions are obliged to submit semi-annual reports on receipt of reports from whistleblowers, which should contain general statistical data and data on cases filed after

receiving reports. In the first half of 2023, 107 institutions fulfilled this legal obligation, while in the second half, 126 institutions. The small number of semi-annual reports submitted in 2023 indicates that institutions are not sufficiently committed to fulfilling their obligations under the Law on Whistleblower Protection and the by-laws arising from it.

e) The SCPC is competent to verify the data from the declarations of assets and interests. Namely, according to the law, all elected and appointed persons have an obligation, within 30 days after the election/appointment, to submit to the SCPC a declaration of assets and interests containing data on movable and immovable property, loans, debts, securities and other property owned by the holder of the public office or members of his family. In addition, data on membership in management or supervisory boards, i.e. associations of citizens or foundations, must be submitted.

If during the term of office there are changes in the property status in the amount of over 20 average salaries, there is an obligation to report the change, such an obligation also exists in the area of interests. After the end of the term of office, the holder of the public office is obliged to submit a declaration of property status and interests within 30 days.

According to the law, SCPC records and monitors the assets and interests of elected and appointed persons. In addition, it also checks the data from declarations of assets and interests.

To achieve the above objective, especially the verification of data, in accordance with the law, the SCPC should have access to databases maintained by other institutions, and should have direct electronic access and use data from the databases of the Ministry of Interior, the Pension and Disability Insurance Fund, the Health Insurance Fund, the Public Revenue Office, the Real Estate Cadastre Agency, the Employment Agency, the Central Registry, the Central Securities Depository, the Customs Administration, the State Audit Office, the National Bank of the Republic of North Macedonia, the Ministry of Labor and Social Policy, and the Ministry of Economy. This is about the interconnection of databases, so that the SCPC can smoothly and quickly investigate allegations of corrupt behavior.

However, according to the EC Progress Report on North Macedonia in 2024, it is emphasized that the SCPC's capabilities for verifying declarations of assets and interests are limited due to the lack of

connection to the databases of the Public Revenue Office, the Cadastre Agency, the Central Registry and the Ministry of Interior .

The lack of opportunities for detailed and objective verification of declarations of assets and interests greatly affects the successful fulfillment of the legal competence by the SCPC. Namely, in the SCPC there is a special department for monitoring assets and interests and if there is no possibility for timely and independent verification of the data contained in the declaration, then the entire process is greatly complicated and the next step is a written address to the competent institutions, a process that requires time and the involvement of other entities in the procedure.

Even the structure of the declaration of assets and interests is questionable. Namely, it requires that data on family members be entered by the elected/appointed person. This leaves space, in certain cases, for the public office holder to declare/not declare family members depending on his/her point of view on protecting his/her interests.

f) According to the Law on Prevention of Corruption and Conflict of Interest, the SCPC is competent to monitor the legality of the financing of political parties (in accordance with the Law on Financing of Political Parties), as well as to monitor the legality of the financing of election campaigns (in accordance with the Electoral Code). It is a matter of supervision over financing both during the election process and in the ongoing operations of political parties. For this competence, there is a special department within the SCPC for monitoring the financing of political parties, election campaigns and corruption in public procurement.

However, in the 2024 Progress Report for North Macedonia, the EC highlights that the SCPC's oversight of election campaign financing is weak due to limited resources and the fact that data is processed manually.

2. Corruption crimes in the Macedonian criminal legislation

Corruption crimes are crimes that involve the abuse of power and official position for personal gain, thereby violating the public interest and justice. These crimes can include various forms of illegal actions, such as bribery, abuse of official position, money laundering, etc. The Macedonian Criminal Code (CC) provides for about 20 corruption crimes, mainly in Chapter Thirty – Crimes Against Official Duty.

An official duty is an obligation or responsibility that a person working in a public or state institution, or within an organization, has in connection with his/her function or job. This duty involves fulfilling certain tasks, following regulations, implementing policies, and performing activities that are in accordance with the interests of the public and the institution.

Persons performing official duties are obliged to adhere to ethical standards, professionalism and legal rules when performing their duties.

When talking about corruption crimes in Macedonian legislation, the primary focus is on the crime of Abuse of Official Position and Authority, provided for and punishable under article 353 of the CC, an offense that can be committed by an official by abusing his official position or authority, by exceeding the limits of his official authority or by failing to perform his official duty and as a result of which he will obtain some benefit for himself or for another or will cause harm to another. In 2023, 77 people were convicted for this offense, while in 2022 the number was smaller, i.e., 68 people, mostly men .

The crime of Embezzlement in office, provided for and punishable under article 354 of the CC, sanctions an official who, with the intention of obtaining for himself or another an unlawful property benefit, appropriates money, securities or other movable objects entrusted to the service. Seven people were convicted for this crime in 2023, while in 2022 a total of five people, and here they are mainly men .

Article 357 of the CC contains a classic corruption crime, namely the crime of Accepting a Bribe. This crime is committed by an official who directly or indirectly requests or receives a gift or other benefit or accepts a promise of a gift or other benefit for himself or for another to perform an official act that he should not perform or not to perform an official act that he should perform. Six people were convicted for this crime in 2023, while in 2022 a total of four people, all men . On the other side of the process is the crime of Giving a bribe, provided for and punishable under article 358 of the CC, which can essentially be committed by any person by directly or indirectly giving, promising or offering a gift or other benefit to an official or another person to perform an official act that he should not perform or not to perform an official act that he should perform or the person who mediates in this. During 2023, seven people were convicted for this crime, while in 2022 a total of four people .

A total of four people were convicted of other crimes against official position during 2023, while in 2022 a total of five people were convicted

Corruption crimes also include the crime of Money Laundering and Other Proceeds from a Criminal Offense, provided for in article 273 of the CC, with a group object of protection - Public Finances, Payment Systems and the Economy. The crime is committed by anyone who will enable property acquired through the commission of a crime to be brought into the legal financial system. Two people were convicted for this crime in 2023, while in 2022 a total of nine people .

From the above data, it can be concluded that the number of convicted persons for the most prominent corruption crimes is not large. In doing so, it should be taken into account the fact that a conviction is the most serious reaction of the state in the fight against corruption. The reasons for this situation should be sought first of all in strengthening the revealing role of the investigative bodies, as well as in the submission of indictments with serious evidence by the public prosecution, or the third conclusion is that perhaps such crimes are not being committed often, something that would be difficult to accept given the serious problems that North Macedonia is facing in the fight against corruption.

Conclusion

The fight against corruption requires a serious approach from the entire society, i.e. the creation of a normative framework, and then its practical implementation.

The adoption of laws and bylaws is a formal part, but necessary for the realization of the process. However, the essence lies in the implementation, i.e. no matter how good the regulation is, if it is not applied, it is the same as if it was not adopted.

This is precisely the part that is emphasized in the paper, i.e. some of the weaknesses of the Macedonian system for combating corruption are presented. First, this is done with the specialized national institution for the prevention of corruption – SCPC, where through several of its basic competencies the weaknesses in practical application are presented, and then with the essential corruption crimes provided for in the Macedonian Criminal Code, i.e. the number of convicted persons.

The above situation is in the direction of normative and operational changes that will assist the SCPC and law enforcement agencies in adequately fulfilling their responsibilities in order to more effectively combat corruption.

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