



Shadow **REPORT** on the Second Cycle Review Process and Implementation of the United Nations Convention against Corruption (UNCAC) in the Republic of North Macedonia



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Macedonian Centre for International Cooperation

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I Contents

Introduction	6
Methodology	8
1, The importance of the Convention in the creation of mechanisms to combat corruption	9
2, Review process of the Convention	12
3, Review cycles of the Conventuoin in North Macedonia	15
4. Implementation of Chapter 2 of the Convention in North Macedonia	17
4.1 Article 6 Preventive anti-corruption body or bodies	18
4.1.1 Interpretation of the provision	18
4.1.2 Implementation of Article 6	18
4.1.3 The State Commission for the Prevention of Corruption - the main body for the prevention and repression of corruption	18
4.1.4 Enactment and implementation of anti-corruption policies	20
Other institutions whose competencies are aimed at prevention and fight against corruption	22
4.2 Article 7 Public sector	24
4.2.1 Interpretation of the provision	24
4.2.2 Implementation of Article 7	25
Criteria for candidacy and election for public office	29
Transparent financing of political parties	29
4.2.3 Challenges for future implementation of Article 7	31
4.3 Article 9: Public Procurements and Public Finance Management	32
4.3.1. Interpretation of the Provision	32
4.3.2. Implementation of Article 9	33
4.3.3 The significance of the new Law on Public Procurements for the implementation of Article 9 of the Convention	39
4.3.4 Challenges for future implementation of article 9 of the Convention	39
4.4 Article 10 Public reporting	40
4.4.1 Interpretation of the Provision	40
4.4.2 Implementation of Article 10	40
4.4.3 New Law on Free Access to Public Information	42
4.5 Article 11 Measures that refer to the judiciary and prosecution services	43
4.5.1 Interpretation of the Provision	43
4.5.2 Implementation of Article 11	43

4.5.3 The strategy for reforming the judiciary system for the period 2017-2022	44
4.6 Article 12 Private sector	45
4.6.1 Interpretation of the Provision	46
4.6.2 Implementation of Article 12	47
4.7 Article 13 Participation of society	50
4.7.1 Interpretation of the Provision	50
UNCAC Coalition	51
4.7.2 Implementation of Article 13	51
4.8 Article 14 Measures to prevent money laundering	54
4.8.1 Interpretation of the Provision	55
4.8.2 Implementation of Article 14	55
5. Implementation of Chapter 5 of the Convention	59
6. Analysis of the Provisions of Chapter 5 of the Convention	61
6.1 Article 51	61
6.2 Article 52 Prevention and detection of transfers of proceeds of crime	62
6.2.1 Interpretation of the Provision	63
6.2.2 Implementation of Article 52	63
Determining the identities of clients	64
Effective Measures for Prevention of Money-laundering	66
Reporting certain financial activities of accounts abroad of holders of public office	67
6.3 Article 53 Measures for direct recovery of property	68
6.3.1 Interpretation of the Provision	68
6.3.2 Implementation of Article 53	68
6.4 Article 54 Mechanisms for recovery of property through international cooperation in confiscation	70
6.4.1 Interpretation of the Provision	70
6.4.2 Implementation of Article 54	70
6.5 Article 55 International cooperation for purposes of confiscation	73
6.5.1 Interpretation of the Provision	74
6.5.2 Implementation of Article 55	74
6.6 Article 56 Special cooperation	76
6.6.1 Interpretation of the Provision	76
6.6.2 Implementation of Article 56	76
6.7 Article 57 Return and disposal of assets	77
6.7.1 Interpretation of the Provision	77
6.7.2 Implementation of Article 57	78
6.8 Article 58 Financial intelligence unit	80
6.8.1 Interpretation of the Provision	80
6.8.2 <u>Implementation of Article 58</u>	80

6.9 Article 59 Bilateral and multilateral agreements and arrangements	81
6.9.1 Interpretation of the Provision	81
6.9.2 Implementation of Article 59	81
<hr/>	
7. Future Steps to promote the Convention's review system	82
<hr/>	
8. Conclusions	83
<hr/>	
9. Recommendations	86
<hr/>	
10. Bibliography	88
<hr/>	





Introduction

A democratic state can be stable if it is effective and legitimate, respectful and supportive of its citizens. Civil society is a monitor, but it is also a vital partner in the search for this kind of positive relations between the democratic state and its citizens. This role of the civil society sector is particularly important in the reform of good governance in Macedonia, since the deficiencies in anti-corruption are identified in several international reports, such as the Country Progress Reports (prepared by the European Commission), Urgent Reform Priorities, the Country Status Report on the implementation of the United Nations Convention against Corruption (UNCAC), the State Department's Human Rights Report for Macedonia. Anti-corruption reforms, as one of the most urgent reforms to be listed in the coming years, need to be developed in close cooperation with the civil society. Promoting active participation of CSOs in preventing and combating corruption, as well as raising public awareness, has been accepted by Macedonia with the ratification of the United Nations Convention against Corruption (UNCAC)¹ in 2007. It stipulates that the state should strengthen the participation of CSOs by increasing transparency and by promoting the public's contribution to decision-making processes; ensuring that the public has effective access to information; respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information on corruption. Bearing this in mind, the Convention is one of the key documents that provide and facilitate the involvement of civil society, specifically linked to anti-corruption efforts, as one of the key reforms for good governance.

The Convention is one of the most comprehensive of all anti-corruption documents; it establishes common standards, policies, processes and practices to support anticorruption efforts in signatory countries.

In order to determine to what extent the country has implemented the Convention, this Shadow Report is prepared for the second cycle review process of the implementation of the United Nations Convention against Corruption (UNCAC) in the Republic of North Macedonia. Namely, the scope of this report pertains to the second cycle of the review of the Convention, covering chapters 2 and 5, for which an official report by the United Nations Office on Drugs and Crime (UNODC) should also be prepared. Until the moment of preparation of this report, on 30 April 2019, the official report on the second cycle of review was not published by the Government, nor was the Executive Summary by (UNODC).

The Shadow Report for the second cycle review process of the implementation of the United Nations Convention against Corruption enables identification of the degree of implementation and the review process of the Convention. The review

¹ Law on Ratification of the United Nations Convention against Corruption (Official Gazette of the Republic of North Macedonia No. 37/2007 dated 26.03.2007)

process reviews the implementation of the Convention at the country level and represents the documentation and assessment of legislation and other measures taken by the states, in accordance with the standards set by the Convention. The shadow report will also be complemented by the official UNODC report by providing additional information, filling the gaps and by taking more critical perspectives on its implementation. The shadow report is organized in such a way as to enable the reader to get to know the matter in detail and obtain information about the process of revision of the Convention itself.

This report was prepared by the Macedonian Center for International Cooperation (MCIC) in partnership with the Balkan Civil Society Development Network (BCSDN), with the support of local and international experts.

(MCIC) has prepared the Shadow Report for the Second Cycle Review process of the implementation of the United Nations Convention against Corruption in the Republic of North Macedonia and published this publication as part of the project “Monitoring Anti-corruption Reforms”, supported by the European Union.





Methodology

From a methodological point of view, this Report uses a combination of three methods: analytical, critical and polemical.

The main source of information were documents, previous reports and the experience of the team that prepared the Report.

Data were collected using several quantitative and qualitative research methods, i.e. analysis of secondary data, academic literature, laws and documents such as: national strategies, programs and statistical analysis.

The authors provided relevant information on the preparation of the Report from the Government and from other competent authorities.

The report was prepared in accordance with the guidelines of the model developed by Transparency International, whose structure reflects the model of the official evaluation of the implementation of the Convention developed by UNODC.

The analysis of the provisions of chapter 2 and chapter 5 of the Convention and their impact on or transformation into the national legislation is carried out through the normative method of comparison, where the degree of compulsion to implement the provisions of the Convention in the national legal systems is directly assessed, followed by the extent to which they are implemented in the Macedonian legal system. At the beginning of each article, the text of the Convention against Corruption is provided in Macedonian language (the official translation published in the Official Gazette of the Republic of North Macedonia No. 37/07 of 26.03.2007), and directly under the text an analysis is made of its content and the appropriate measures taken as a response and practical implementation in the Macedonian legal system. Finally, in the part where there is an insufficient level of compliance or absence of appropriate provisions through which the Convention is implemented in the national legal system, appropriate recommendations and guidelines for their implementation in the relevant laws are given.

The data contained in the Report were collected in the period from September 2018 to April 2019.

01

The importance of the Convention in the creation of mechanisms to combat corruption

The United Nations Convention against Corruption (hereinafter: the Convention) was adopted by the General Assembly of the United Nations on October 31st 2003 and entered into force on December 14th 2005. The Republic of North Macedonia has signed this Convention on August 18th 2005, and ratified on April 13th 2007.


The Convention against Corruption is considered to be one of the most important and influential international documents in the field of corruption prevention, since it contains mandatory provisions introducing for the signatory states the obligation to prescribe a whole set of criminal offenses within their national penitentiary-legal systems in the field of corruption. These criminal acts greatly unify the matter of criminal law as a prerequisite for strengthened cooperation between the states, in order to increase the efficiency in the fight against corruption.

The Convention is the only international instrument that is of binding character in this area among the States that have ratified it and which provides a framework for the establishment of anti-corruption standards.

There are 185 States parties that have signed and use the Convention and 140 have ratified it.

The purpose of the Convention is to reduce the various types of corruption that may occur within a country, such as trading in influence and abuse of power, as well as corruption in the private sector, for instance fraud and money laundering, etc. Another objective of the Convention is to strengthen international co-operation for the implementation of legislation and judicial cooperation between countries, by providing effective legal mechanisms for the international protection of asset recovery.

The Convention does not provide a definition of corruption, although in Chapter III the Convention lists corruption-related offenses. This has its own advantages, because it means that the scope of the Convention is not unnecessarily confined



to the details of a definition agreed between governments at a specific point in time.

The main decision-making body of UNCAC is the Conference of States parties to the Convention (COSP). It has established subsidiary bodies under its mandate to assist the work. The United Nations Office on Drugs and Crime (UNODC) serves as its secretariat.

All states that have ratified UNCAC automatically become a part of the Conference of States parties. Other states (signatories and non-signatories), intergovernmental organizations and civil society organizations may apply for observer status at COSP meetings.

COSP has established a number of “subsidiary bodies”. So far, they were all “open intergovernmental groups”, composed of representatives of all States parties, without permanent members. They are set up to provide advice and recommendations to COSP, in order to assist in the execution of its mandate. Their reports, using the language of the Resolution, urge countries to take certain actions, or to ask UNODC to carry out a specific job.

States parties can participate actively and fully in COSP meetings, including in the adoption of resolutions and decisions, whether by consensus or by voting. States parties may also participate in working groups and expert meetings.

Observers may attend plenary sessions of the COSP, make statements, submit information in writing and receive documents of COSP. A specific category of observers/signatories may also attend “non-plenary” meetings of COSP (for example, informal meetings) and hold speeches during an advisory process. Observers cannot participate in the adoption of resolutions or decisions by the COSP.

The Convention against Corruption is systematically divided into eight chapters, the first of which is intended for general provisions, while chapters seven and eight establish mechanisms for implementation and final provisions. The remaining five chapters determine the subject matter, as follows: Preventive measures for deterring corruption; Criminalization of specific crimes and their implementation in practice; International cooperation; Collection and recovery of illegally acquired assets and Technical assistance and exchange of information².

Structurally, each chapter covers the following questions:

▶ **Chapter I**

- General provisions (followed by the following four chapters containing material provisions).

▶ **Chapter II. Preventive measures**

- The measures covered include codes of conduct for public officials, transparency in public procurement and public finances, and steps to prevent corruption and money laundering in the public sector. Article 13 requires States parties to ensure the participation of civil society and non-governmental organizations in the prevention and the fight against corruption. It refers to the need for measures to provide public access to information and participation in educational programs.

² <https://www.unodc.org/unodc/en/corruption/uncac.html>

- ▶ **Chapter III. Criminalization and enforcement of laws**
 - The criminal offenses covered in this chapter include bribery, embezzlement, abuse of office, unlawful enrichment, concealment, money laundering, trading with influence and obstruction of justice. The chapter also stipulates the protection of whistleblowers, witnesses, victims and experts.

- ▶ **Chapter IV. International cooperation**
 - This chapter sets out standards for mutual legal assistance in investigations and prosecution of offenders.

- ▶ **Chapter V. Asset recovery**
 - This chapter is about preventing and detecting transfers of proceeds from crime and measures for their return, with an emphasis on international co-operation.

- ▶ **Chapter VI. Technical assistance and information exchange**
 - This chapter calls on States Parties to the Convention to develop or improve specific training programs for staff responsible for preventing corruption and combating corruption. States parties should also consider providing the widest measure of technical assistance amongst each other, especially for developing countries, as well as voluntary mechanisms for providing financial assistance to developing countries and countries in transition.

- ▶ **Chapter VII. Mechanisms for implementation**
 - This chapter is established by the Conference of States Parties to the Convention (COSP) on Improving the capacity and cooperation among States parties and promoting and reviewing its implementation, as well as providing recommendations for improving the implementation.

- ▶ **Chapter VIII. Final Provisions**
 - The headings covered here include provisions for the entry into force, the process of ratification and amendments to the text of the Convention.



02

Review process of the Convention

The Convention's review mechanism was created by the adoption of the Terms of Reference of the third COSP meeting in Doha in 2009.

They contain procedures and processes for expert review of the implementation of the Convention by the countries and include a supervisory body called the Implementation Review Group.

The audit process consists of two four-year cycles:

- The first cycle (2010-2015) covers Chapter III on Criminalization and enforcement of laws and Chapter IV on International cooperation.
- The second cycle (2015-2020) covers Chapter II on Preventive Measures and chapter V for Asset recovery.

Both chapters of the second cycle include measures that, if fully implemented, should significantly contribute to reducing corruption in each country. The implementation of Chapter II on Preventive measures should ensure: the existence of an anti-corruption preventive body with the necessary level of independence that will enable the effective and efficient performance of its functions from any inadequate influence; transparency in public procurement and public finance; strengthening the systems for recruitment, employment, retention, promotion and retirement of civil servants and other non-elected public officials; strengthening integrity and preventing the possibility of corruption among members of the judiciary, as well as steps to prevent corruption in the private sector and money laundering. On the other hand, if Chapter V on the recovery of funds is implemented in full, it should contribute to the prevention and detection of transfers of proceeds from crime and their recovery through international cooperation. Namely, the provisions on the return of funds set a framework, both in civil and criminal law, for monitoring, freezing, confiscating and recovering assets obtained through corrupt activities. The Requesting State will in most cases receive the assets as

long as it can prove ownership. In some cases, the assets can be returned directly to individual victims.

There are several stages in the review process, they are structured as follows:

► **State I. Self-assessment**

UNODC notifies each State Party that is under review about the commencement of the review process, and the reviewed country is required to identify and send to UNODC a focal point that will coordinate the country's participation in the review. The focal point/coordinator can be an individual, existing body or department of a ministry or an inter-ministerial group, established precisely for that task. The State Party should then complete the self-assessment checklist using special software.

► **Phase II. Peer review**

The peer review is carried out by two reviewing countries (one from the same geographical region as the country under review) that are carefully selected and tasked to provide experts for the establishment of a peer review team. That team works together in the review of the responses listed in the Self-Assessment Checklist provided by the country under review.

UNODC receives the completed checklist and sends it to the team of experts for review. With the support of UNODC, the review experts prepare a review of the documentation, with an analysis of the answers in the checklist. The documentation analysis may contain requests for additional information. UNODC sends the analysis of the documentation to the country where the review is conducted for comment.

Direct dialogue between the review team and the country under review is carried out through conference calls and, if agreed by the country under review, through a visit to the country (or at UNODC in Vienna).

► **Phase III. Country Review Report and Executive Summary**


The peer review team prepares a draft country review report, with the support of UNODC. The draft report is sent for approval by the State Party that is under review. In case of disagreement, the experts involved will participate in a dialogue, in order to reach a consensual and final report. The final reports are between 80 and 300 pages long.

If the country under review agrees, the full report is published only on the UNODC website. Practice shows that an increasing number of countries agree to publish it.

The peer review team, with the help of UNODC, prepares an executive summary of the report of about 7-12 pages. When completed, the executive summary is automatically published on the UNODC website.

► **Phase IV. Follow up**

There is currently no follow up process to confirm whether the countries in which the review was conducted have introduced reforms in line with the recommendations from the review, although such follow-up is provided in the Review Mechanism's



Terms of Reference. However, the country in which the audit is conducted can apply for technical assistance.

All of these measures are also required of Macedonia, as part of the EU accession reforms, within the political criteria in the area of rule of law and are described in detail in Chapter 23 - Judiciary and Fundamental Rights. The particularly highlighted issues are related to Chapter II of Article 6 of the Convention on Preventive Anti-Corruption Bodies, Article 8 of the Code of Conduct for Public Officials (in particular concerning Conflict of Interests) and Article 9 on Public Procurement and Public Finance Management. Given this, the independent assessment of the implementation of the two chapters will be important for establishing further anticorruption reforms in the best possible way.

03


Review cycles of the Convention in North Macedonia

Macedonia signed the United Nations Convention against Corruption on August 18th 2005. The Law on Ratification of the Convention was adopted on March 19th 2007 (Official Gazette of the Republic of Macedonia No. 37/2007, from March 26th 2007), and it entered into force on April 3rd 2007. Macedonia has not made any reservations regarding any of the articles of this Convention. In accordance with the requirements of Article 6 paragraph 3 of the Convention, the Republic of Macedonia informed the Secretary General of the United Nations that the State Commission for Prevention of Corruption and the Public Prosecutor's Office for Prosecuting Organized Crime and Corruption are the competent state institutions that can assist other States Parties to the Convention in developing and implementing specific measures for the prevention of corruption

The Ministry of Justice has a coordinating role in the process of review of the Convention, such as constant communication with UNODC, that is, with the UN Office on Drugs and Crime, coordination of all competent institutions when completing the UN Self-assessment Questionnaire, establishing an expert team for reviewing the implementation of the Convention, the coordination of team members, coordination with the reviewing states, the overall organization of an on-site visit to the state by the peer review team.

The first self-assessment of the state was in 2007, the evaluation within the first cycle (Chapter 3 and Chapter 4) was in 2014, while the evaluation within the second cycle (Chapter 2 and Chapter 5) in 2017 and 2018.

The only available information about the first cycle of self-assessment is that the process started in 2014, that there was an peer review visit to the country and that the full report and summary have been published. No information is available on the involvement of CSOs and other stakeholders in the process. Unlike the first cycle, the second one has greater transparency of the process and involvement of the stakeholders.



Namely, the second cycle of self-assessment started in September 2017, when a report was published on the website of the Ministry of Justice regarding the start the process of self-assessment, inviting all interested individuals and organizations to become informed about the activities within of the process through the Process Coordinator in the Republic of Macedonia (the Ministry of Justice). The announcement also informed that the coordinator is Elena Dimovska, an advisor for monitoring the anti-corruption legal framework within the Ministry of Justice, and a schedule of activities was also published.

- Establishing a team of government experts to review the implementation of the Convention.
- Submitting answers to the Evaluation Questionnaire - January 2018..
- On-site visit by evaluators - May 2018.
- Answers to additional questions and an update of the answers of the questionnaire - ongoing.
- Report on the implementation of the Convention - expected.
- Publication of the Report - expected.
- Acting upon given recommendations from the Report.

The evaluation in the first cycle was conducted by experts from Croatia and Iceland, while the evaluation in the second cycle was carried out by experts from Moldova and Montenegro.

04

Implementation of Chapter 2 of the Convention in North Macedonia

Chapter 2 of the Convention against Corruption - Preventive measures, covers Articles 5 to 14, which foresee measures and mechanisms for the prevention and combating of corruption, promotion of integrity, accountability and proper management of public affairs and public property.

This chapter focuses on preventive measures, standards and procedures and sets out the main prevention goals and ways to achieve them. States parties are required to introduce, maintain and coordinate effective anti-corruption measures and policies, in cooperation with the civil society. This chapter highlights the importance of preventive policies, the need for continuous assessment of existing anti-corruption practices and international co-operation. Since preventive policies, measures and bodies can be more effective with the clear reporting and participation of civil society, the Convention also provides guidance on the organization of those processes and relations. In addition, this chapter sets out the measures and systems that need to be applied to achieve transparency in the public sector, and include measures to prevent corruption in the public administration, the judiciary, etc. The chapter concludes with provisions relating to the prevention of money laundering.

4.1.

Article 6 Preventive anti-corruption body or bodies

1. Each State Party, in accordance with the fundamental principles of its legal system, shall ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:
 - (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;
 - (b) Increasing and disseminating knowledge about the prevention of corruption.
2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.
3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

4.1.1 Interpretation of the provision

Article 6 provides guidance to the States parties signatories to the Convention on the institutional set-up for developing a (legal and institutional) system to implement a policy of effective prevention and repression of corruption. Namely, the members foresee the creation of conditions for the bodies that are key in the fight against corruption, to effectively perform their functions.

4.1.2 Implementation of Article 6

For the successful fight against corruption, its prevention and reduction, involvement of various actors is required, such as: the Assembly, the Government, the judiciary, the Public Prosecutor's Office, the SEC, the Ombudsman, the SAO, the SCPC, political parties, media, civil society organizations, business entities, etc.

4.1.3 The State Commission for the Prevention of Corruption - the main body for the prevention and repression of corruption

The State Commission for the Prevention of Corruption (SCPC) was established in 2002. The basis for its establishment was the Law on Prevention of Corruption. According to the law, the SCPC is independent and autonomous in the exercise of its competences, determined by law. The law has been amended several times over the years, and in January 2019 a new Law on Prevention of Corruption and Conflict of Interests³ was adopted, according to which the SCPC is composed of seven professionally engaged members elected by the Assembly of the Republic of North Macedonia for a term of five years, with no right to a re-appointment.

³ Official Gazette of the Republic of North Macedonia No. 12/2019

The SCPC also has a Secretariat, which carries out expert, administrative and technical matters. The Secretariat is managed by the Secretary General. According to the job classification act of the Secretariat, a total of 51 posts of administrative officers were established. In 2016, 22 job positions were filled. The state budget provides funds for the implementation of the activities of SCPC. For the year 2018, the SCPC had a planned budget of EUR 509,925, and for comparison, in 2006 the SCPC budget amounted to around EUR 170,000, indicating a steady increase in the available funds for work, although still insufficient, and also there is lack of staff.

The new Law on Prevention of Corruption and Conflict of Interest aims to strengthen the efficiency and independence of the State Commission for the Prevention of Corruption and strengthen the legal and institutional anti-corruption framework, and the aim of adopting this law is to achieve more efficient prevention and fight against corruption

This law regulates the measures and activities for preventing corruption in the exercise of power, public authorizations, official duties in politics as well, measures and activities for prevention of conflicts of interest, measures and activities for preventing corruption in the performance of activities of public interest, expanding the competence of the SCPC by introducing several new SCPC competencies; and there is a change in the way the members of the Commission are elected, which should guarantee an independent process and election based on experience and integrity, and not on political and partisan influences. Some of the SCPC's competencies are: adopting and implementing the State Program for Prevention and Repression of Corruption and its action plan; adopting its Annual Operational Program; giving opinions on draft laws related to the prevention of corruption; exercising control over the financial operations of political parties, trade unions and civil society organizations; initiating procedures for dismissal, demotion or other measures of responsibility with official and legal persons; handling cases of conflict of interest; reporting and supervising the state of the property of the holders of public office; cooperating with other state bodies for the prevention of corruption and cooperating with international organizations for the prevention of corruption. In addition, the SCPC adopts a state program for the prevention of conflicts of interest and its own action plan; gives opinions on draft laws that refer to prevention of conflicts of interest; inspects the reports of conflict of interests; reviews cases of conflict of interest and cooperates with state authorities for conflict of interests. It also supervises the lobbying process and collects and publishes financial reports for political parties in the election process.

A significant new practice foreseen by this law is the way in which new anti-corruption officials will be elected. Transparency was established through the establishment of a Selection Committee, within the Commission for Election and Appointment of the Assembly of the Republic of North Macedonia, comprising representatives from CSOs and the Ombudsman. Interviews of candidates are public. Representatives of civil and media associations have the right to participate in the interviews and they can ask the candidates questions. The entire process is also transmitted through the national broadcasting service.

The Law establishes clear conditions for termination of the mandate and dismissal of the president and member of the SCPC, and it is foreseen in the event of termination of the mandate or in case of dismissal, until the election of a new

president, the function of the president of the SCPC to be performed by the Vice-President of the SCPC. One of the main changes that relates to the SCPC is that the Assembly of the Republic of North Macedonia has a separate voting for the section dedicated to the SCPC in the Budget of the Republic of North Macedonia, and the SCPC, on the other hand, decides independently on the use of the approved funds.

The members of the SCPC are elected by the Assembly and this body reports for its work to the Assembly by submitting the Annual Report on the undertaken measures and activities. After a lengthy discussion and remarks by the Members of Parliament, a precedent came about when the Report for 2016 ended by simply moving on to the next item, which is an option provided to the Assembly on the basis of Article 82 of the Rules of Procedure of the Assembly⁴. This means that the Assembly did not take any position regarding the issue, and the matter at hand is neither accepted nor rejected.

4.1.4. Enactment and implementation of anti-corruption policies

The main current document on anti-corruption policies is the “State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest (2016-2019).”⁵ and its action plan, adopted by the SCPC. As stated in the document, the Program is a comprehensive anti-corruption strategy that consolidates the consensus on the need for co-ordinated, systematic and comprehensive action against corruption in line with the country’s strategic goals in the fight against corruption and development and reform processes.

The concept of the National Program (2016-2019) applies an integrated approach targeting five strategic objectives pertaining to strengthening the systems of prevention and repression of corruption and conflicts of interest, the capacities and independence of law enforcement institutions, public involvement for prevention and fight against corruption and conflict of interest, as well as effective coordination of anti-corruption activities, monitoring and evaluation of the exercise.

Such orientation of the State Program (2016-2019) enables the fight against corruption and conflict of interests to be raised at a higher level from the sectoral approach and creating a strategic framework for creating individual strategies and action plans for prevention and fight against corruption and conflict of interest. Such documents have been adopted by the SCPC since 2003.

⁴ Art. 82 of the Rules of Procedure of the Assembly of the Republic of North Macedonia:

The Assembly may finalize the debate on each item of the agenda by:

- adopting an act;
- making a conclusion; or
- simply moving on to another item.

⁵ National Programme for Prevention and Repression of Corruption and Reduction of Conflict of Interest (2016-2019) December 2015, available at https://www.dksk.mk/fileadmin/Drzavni_programi/Drzavna_programa_2016-2019.pdf

Name of document:	Responsible body:
State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest (2016 -2019)	State Commission for Prevention of Corruption
Operational program of the Government of the Republic of Macedonia for the period (2017- 2019)⁶	Government of the Republic of Macedonia
Plan 3-6-9⁷	Government of the Republic of Macedonia
Strategic Plan of the Ministry of Justice (2017- 2020)⁸	Ministry of Justice
Strategy for Public Administration Reform in the Republic of North Macedonia (2017-2022)	Government of the Republic of North Macedonia / Ministry of Information Society and Administration
Strategy for integrity and fight against corruption in the Customs of the Republic of North Macedonia (2015-2018)⁹	Customs Administration of the Republic of North Macedonia
Strategic Plan of Mol (2017-2019)¹⁰	Ministry of Interior

Table No.1 Documents that refer to the issue of combatting corruption and the body responsible for their implementation

It is important to point out that the Program for Prevention and Repression of Corruption and the Reduction of Conflict of Interest for the period 2016 to 2019 is prepared through a participatory process, involving the stakeholders (state institutions, civil society organizations, experts). In fact, all previous programs have been prepared in a similar way, and with such preparation, the SCPC regularly has the support of the international community (OSCE, UNDP, USAID, EU). The new Program does not contain identified problems/risk factors, it only provides 5 strategic objectives, 18 areas, 74 activities and 140 performance indicators. Taking into consideration the time frame for realization of the activities defined in the action plan, 74% of the total number of activities have a start date for implementation in 2016. and should be completed over the next three years; 20% are scheduled to start implementation in 2017. and 4 activities are planned to begin their implementation in 2018. The extent to which the activities have been completed is measured twice a year.

6 http://vlada.mk/sites/default/files/programa/2017-2020/ProgramaVlada2017-2020_08062017.pdf

7 <http://vlada.mk/sites/default/files/Plan3-6-9MKD.pdf>

8 http://pravda.gov.mk/documents/STRATESKI%20PLAN_2017_19.pdf

9 <http://www.customs.gov.mk/images/documents/borbaKorupcija/stratIntegBorbaKorup20152018>

10 <http://mvr.gov.mk/Upload/Documents/170428%20%20SKRATEN%20SP%202017.pdf>

Activities of the SCPC for increasing and disseminating knowledge related to the prevention of corruption

By educating the bodies responsible for detecting and prosecuting corruption and other types of crime, the SCPC can contribute to strengthening the capacities of the state administration bodies. According to available information in the annual reports of the SCPC, in the period from 2006 to 2017 The Commission held over 80 training sessions. These trainings cover over 500 judges and public prosecutors and over 100 other officials. Part of the topics covered by the trainings are: “Corruption and Conflict of Interest: identification and resolution”; “Transparency in the function of preventing corruption in the judiciary”; “Anti-corruption measures and ethics in the civil service”; “Active and passive bribery through the concept of an official”. In addition, SCPC in cooperation with the Bureau for the Development of Education and the Ministry of Education and Science, in the past years, conducted an anti-corruption education pilot project for primary school students as an extracurricular activity. These activities should not stop here and the SCPC should actively pursue educational events for the prevention and repression of corruption.

Other institutions whose competencies are aimed at prevention and fight against corruption

Other state institutions also play a role and have their competencies in terms of corruption. MoI is key in detecting cases, but also in the prevention and repression, the State Audit Office, the Financial Intelligence Directorate, the Public Revenue Office, the SPPO, etc. have significant competencies.

The Ministry of Interior (MoI) has the broadest powers and authority to investigate corruption. From the central organs of the Ministry of Interior, the Department for Suppression of Organized and Serious Crime is responsible for investigating cases of corruption. This department has eight sections, including the Section for Corruption, within which two units operate:

- Public Procurement Corruption Unit; and
- Unit for Classical Corruption and Abuse in the Public and Private Sector.

Within the Ministry of Interior is the Department for Internal Control and Professional Standards, and internal corruption and irregularities in the work of the Ministry of Interior are part of its competencies. The Department works to prevent, educate and familiarize public officials with the issue of conflict of interest and undertake measures to develop a system for detecting and combating corruption. International standards require the internal anti-corruption control unit within the Ministry of Interior to be one of the most stringent in the system, not only because of its role to fight corruption in general, but also because of the usually higher corruption risk in the police itself. In addition, very detailed rules for cooperation and work with financial intelligence and intelligence agencies should be established, in order for the Ministry to prosecute cases of high-level corruption involving financial transactions. Without such cooperation, sustained results are unlikely.

The public prosecutor has the legal authority to investigate cases of corruption and does not need approval by other investigating institutions and to prosecute certain cases of corruption. The powers of prosecutors in relation to corruption

cases are adequate (for example, warrants for conducting searches, arrests, access to personal information, use of SIMs). There is a clear set of criteria for deciding by prosecutors whether they should or should not prosecute cases of corruption. The Public Prosecutor's Office for prosecuting crimes related to and arising from the content of the illegal interception of communications (SPPO) is an investigative and prosecuting authority for crimes related to and arising from the content of the unlawful interception of communications between 2008 and 2015, including but not limited to audio recordings and transcripts submitted to the Public Prosecutor's Office of the Republic of Macedonia before 15 July 2015. The Special Public Prosecutor is elected by the Council of Public Prosecutors without a public bid, at the proposal from the Commission on Elections and Appointments of the Assembly. The Special Public Prosecutor's Office includes investigators, experts, professional and administrative service. According to the conceptual organizational set-up of this Prosecutor's Office on the basis of the autonomy provided by law, it autonomously and independently investigates the crimes listed under its jurisdiction.

The Public Revenue Office is a body of the Ministry of Finance and is a separate legal entity. It is responsible for implementation of the Law on Taxes, registration of taxpayers, administering the register of single taxpayers, inspections, monitoring and analysis of tax reports. There is a Tax Inspectorate for the prevention of corruption in the tax system within the PRO. Regarding the ways of dealing with corruption in their ranks, in 2012 The Public Revenue Office issued an instruction for anticorruptive behavior of the employees in the Public Revenue Office for the purpose of developing the methods and procedures for protection against corruption and investigating corruption among the employees.

The Financial Intelligence Administration (FIA) is a body of the Ministry of Finance and is a separate legal entity. FIA was established in 2002, although it was previously called the Directorate for the Prevention of Money Laundering, and then the Directorate for Prevention of Money Laundering and Financing of Terrorism. The Administration submits his annual report to the Ministry of Finance and to the Government. FIA's responsibilities include collecting and analyzing financial, administrative and other data relating to money laundering and terrorist financing, although it may also report offenses and order termination of financial transactions.

There is a solid legal basis for the highest ranked audit institution, the State Audit Office (SAO), but its powers are not embedded in the Constitution. The law¹¹ regulates the functions of the SAO and establishes broad powers for performing regularity and performance audits, as well as access to all necessary information. In practice, the SAO has the freedom to decide on the subject of the audit and its content, and in the course of its work adheres to international professional standards. In terms of management, the SAO has established procedures for ensuring transparency, accountability and integrity. In practice, the reports are factually accurate and all reports are prepared and submitted in a timely manner. In addition, the SAO has developed mechanisms for monitoring the security recommendations and for the proper implementation of the recommendations given in the audit reports.

11 Law on State Audit (Official Gazette of the Republic of North Macedonia, No. 66/2010 and 145/2010)

4.2.

Article 7 Public sector

1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.

4.2.1 Interpretation of the provision

Article 7 of the Convention gives guidance to the States parties to the Convention in order to regulate the internal framework with regard to the criteria for candidacy, election and promotion for public office and, in particular, for the transparency and financing of these procedures.

Public administration, in the modern sense of the word, is composed of professionals, people who obtain employment with the purpose of building a career and perform their work as a professional and vocational calling, as compensation for which they receive a salary. As a rule, public administration employees, who are directly responsible for the performance of public functions, i.e. the direct provision of services to citizens and the business community, have a special status that distinguishes them from private sector employees. This status is regulated by law.

In the Republic of North Macedonia, since 2014, employees in the public administration are called administrative officers. The administrative officers are the employees in the state and public (classic) administration who perform administrative matters: professional-administrative, regulatory-legal, executive, statistical, administrative-supervisory, planning, IT, personnel-related, material, financial, accounting, informative and other matters of an administrative nature. In other words, these employees work on cases upon requests of citizens and legal entities in the process of exercising their rights or when they fulfill legal obligations to the state: they carry out supervision (inspection, expert, etc.), carry out expert analyses, prepare regulations for the needs of the bodies of the state government, etc.

Civil servants (as a rule) are employed in the bodies of the state and local government and other state bodies: ministries, bodies within the ministries (inspection, bureaus, administrations, etc.), in the professional services of the Government, the Assembly, the President of State, The Ombudsman, administrative organizations, such as the State Statistical Office and the State Archive of the Republic of North Macedonia and the professional services of the local self-government units.

Public servants are administrative officers employed in institutions that perform activities in the fields of education, science, healthcare, culture, labor, social protection and child protection, sports, as well as in other activities of public interest determined by law, and organized as agencies, funds, public institutions and public enterprises established by the Republic of Macedonia or the municipalities, the City of Skopje, as well as the municipalities in the City of Skopje.

The public sector represents the public administration seen in its wider sense, i.e. it covers all public institutions that perform public functions and activities, and are established by the state or the municipalities and are financed, as a rule, from public funds, i.e. from the state budget or from municipal budgets. This means that only the public institutions are included in the public sector, including the professional services of the Government, the Assembly and the judicial authorities, are considered public sector, and private institutions are not included in this category (private hospitals, private schools, private kindergartens, etc.) as well as private companies providing public services .

For the purpose of regulating the legal status of about 128,722¹² persons employed in the public sector in 2014, the Assembly adopted the Law on Public Sector Employees and the Law on Administrative Officers, which entered into force on February 13th 2014 with a delay of enforcement of one year , i.e. they first started to be applied on February 13th, 2015. According to the data from the Register of Public Sector Employees from March 2016, a total of 1,287 public institutions that make up the public sector in the Republic of Macedonia are covered.

4.2.2. Implementation of Article 7

Law on Public Sector Employees. The Law on Public Sector Employees¹³ regulates the procedure for employment, rights and duties, responsibility, assessment, termination of employment, protection and decision-making on rights and obligations and the register of public servants.

¹² Public sector employee registry, MISA, 2017 pg. 7;

¹³ Official Gazette of the Republic of North Macedonia No.: [27/2014](#), [199/2014](#), [27/2016](#), [35/2018](#), [198/2018](#)

In accordance with the Law on Public Sector Employees, the Agency for Administration also has competencies related to the procedure for selection and employment of a public official and for the protection and decision-making regarding the rights and obligations of public officials. Public service, according to the aforementioned law, comprises the institutions for: science, labor and social affairs, social and child protection; institutes, funds, agencies, public enterprises established by the Republic of Macedonia, which are not covered by the Law on Civil Servants. Institutions, in the sense of this Law, are all state bodies and bodies performing public interest activities or entrusted public authorizations - institutions, funds, agencies, as well as public enterprises established by the Republic of Macedonia, and not covered by the Law on Civil Servants. The issues relating to employment, rights and duties, responsibility, assessment, termination of employment, protection and decision-making on the rights and obligations of a public official, for which a special procedure is prescribed, shall be governed by the provisions of the relevant law.

Law on Civil Servants. The Law on Civil Servants¹⁴ regulates the scope of the civil service, the status, rights, duties and responsibilities of civil servants, the salary system and salaries for civil servants, as well as the competencies of the Agency for Administration. The Law stipulates that civil servants perform duties related to the functions of the state in accordance with the Constitution and by law, professionally, politically neutrally and impartially. Certain issues related to the rights, obligations and responsibilities of the employees of the Intelligence Agency, the Directorate for Security of Classified Information, the Crisis Management Center, the Directorate for Protection and Rescue, the employees that perform security work in the penitentiary and correctional facilities, employees of the customs and tax administration, persons with special duties and authorizations and police officers in the Ministry of Interior, authorized officials in military service for security and intelligence in the Ministry of Defense, the auditors in the State Audit Office, the employees in the agencies, the directorates, the regulatory bodies and other institutions in which a management board is established by law, except in the Agency for Management of Confiscated Property, may be regulated by law, in a manner different than this law stipulates, if this is necessary due to the specific nature of the tasks and the particularity of the execution of the special duties and authorizations.

Employment procedure in the public sector. Filling the vacancy of administrative officials is carried out through a transparent, fair and competitive procedure for:

- Employment - public announcement
- Promotion - the best candidate is selected from the line of employees in the institution and transferred to a higher-level job position.
- Mobility - taking an employee to a position at the same level in the same or another institution, in accordance with the Law on Public Sector Employees.

¹⁴ Official Gazette of the Republic of North Macedonia No. [27/2014](#), [199/2014](#), [48/2015](#), [154/2015](#), [5/2016](#), [80/2016](#), [127/2016](#), [142/2016](#), [2/2017](#), [16/2017](#), [11/2018](#)

In order for a candidate to become an administrative officer, he/she should meet given general conditions (to be a national of the state, to be proficient in Macedonian language, to be of legal age, to have a general health capacity and to not to have been issued with an effective court verdict prohibiting him/her from performing a profession, activity or duty) and special conditions (appropriate professional qualifications, appropriate work experience, to possess appropriate general working competences prescribed by the framework of general competences and to possess appropriate special working competencies).

The procedure for recruitment of candidates for the position of administrative official begins with the publication of a public announcement, and the selection is conducted by the Commission for Selection of Candidates for Administrative Officials, composed of employees from: the Agency for Administration, the institution for which the public announcement is advertised and the Secretariat for the Implementation of the Framework Agreement, if employment is carried out in a state administration body. The Secretary, i.e. the head of the institution shall make a decision for selection, which shall be submitted to the selected candidate and shall be published on the website and on the notice board of the Agency.


From 1 August 2016 until now, 91 public advertisements have been published for 362 job positions, for which 1606 candidates applied, and 162 decisions were made. That means that for each job there were 4 candidates on average, however the procedure was not completed for 200 of the advertised vacancies, i.e. no suitable candidate was selected. Apart from the recruitment conditions, the selection commissions are not always objective and are insufficiently competent, especially in the area of structured interviewing, based on competences, leading to breach of the merit-based recruitment principle.

The selection procedure for recruitment consists of three stages: administrative selection, an exam for an administrative officer, and a verification of the credibility of the evidence and an interview.

The selection commission, selects the best ranked candidates from the final ranking lists for that position, and the candidates are members of the community, for which, according to the annual plan of the institution, new employments are envisaged and with perspective of the number of officers required for such a post and submits a proposal to the institution within three days.

The public announcement can be repeated if there are not enough candidates, and if two or more candidates get the same number of points to the second decimal place in the ranking list from which the selection is to be made, the candidate who has received the most points in the phase of the administrative selection shall be selected.

When selecting candidates for managerial positions, the Commission takes care of ensuring adequate and equitable representation of those positions. The selection decision is sent to the selected candidate and is published on the website and on the Agency's notice board. A candidate who wishes to dispute the decision has the right to submit an appeal to the Agency, i.e. to a competent body in accordance with this Law, within eight days.



Procedure for promotions. The promotion process aims to provide administrative officers with career advancement, i.e. moving from lower to higher positions. In the promotion process, the principle of adequate and equitable representation is respected. An administrative officer, who is an employee of the same institution and who meets the general and special conditions for filling in the position prescribed for the appropriate level in this law and in the job classification act can respond to an internal advertisement. Candidates for promotion are registered in the internal announcement, by submitting a completed application and evidence of the data contained in the application and submitting it through the archive of the institution to the organizational unit for human resources management in the institution within a period not shorter than five, nor longer than ten days from the date of its publication. The selection committee for promotion conducts the selection procedure for promotion, which consists of two stages: administrative selection and interview.

The decision for selection is sent to the candidates for promotion and is published on the institution's web site. In case of a decision not to select any of the candidates, it is obligatory to state the reasons for such a decision. The internal advertisement may be repeated before a decision is made to make a public announcement. A candidate who wishes to dispute the decision has the right to submit an appeal to the Agency, i.e. to a competent body in accordance with this Law, within eight days.

The current rigid solution, according to which an administrative officer can go only one level up at an internal advertisement, hinders the career development of administrative officers, especially those who have been at the lowest level within the category for a long time. As a final effect, some of the employees become demotivated, therefore high-quality public sector employees leave the public sector. As with the recruitment procedure, the composition, competence and insufficient training of the members of the Committee for Promotion are sometimes problematic, which leads to the possibility of discretionary decision-making when proposing a candidate for promotion.

Education and training programmes. The legal framework for the professional development of administrative officers regulates most of the activities for managing the development of the capacities of the employees. MISA is responsible for coordinating the generic trainings of administrative officers. Within the internal organizational structure, a training department has been set up (Academy for Professional Development of Administrative Officers). Changes have been made in the preparation and adoption of the Annual Program for Generic Training of Administrative Officers (APGT) adopted by the MISA and the Annual Training Plan of Administrative Officers (ATP) by the institutions. Namely, APGT is not based on the training needs assessment for officials at the national level, instead MISA prepares the Catalog of Generic Training, which is based on the nine competences from the Framework of General Labor Competences, which determines which generic trainings are available to administrative officers.

The administrative officer has the right and obligation to attend vocational training in the course of the year, on the basis of the individual plan for professional development, as well as the obligation to disseminate the acquired knowledge to other administrative officers. Training for professional development of administrative officers can be generic and specialized, and can be organized in

a classroom or online, by accessing an electronic training management system from the job position of the administrative officer.

Criteria for candidacy and election for public office

Unlike recruitment in the public sector, which is based on the merit system (precise description of the tasks and the job position, precise description of competences, transparent selection procedure, etc.), filling in the places of high officials, i.e. appointed and elected persons (the persons who have received a mandate to perform the function of presidential, parliamentary or local elections, the persons who have received a mandate to perform their functions in the executive or judicial power through election or appointment by the Assembly or local authorities, as well as other persons who according to the law are elected or appointed to the office of the legislative, executive or judicial authorities) is done by implementing the spoils system, i.e. according to legally determined ways of filling positions or jobs.

A specific novelty in the Law on Administrative Officials is the introduction of the so-called. cabinet staff, which represents a type of hybridization between the spoils and the merit system. These are jobs in the offices of: the President of the State, the Speaker of the Assembly, the President of the Government, the vice-presidents of the Assembly, the Deputy Prime Ministers, the Secretary General of the Government and the cabinets of Ministers, and are determined by the job classification acts as special jobs in the cabinet. This type of jobs can be filled with administrative officers from the same or from another institution, through a mobility procedure.

Transparent financing of political parties

The Law on Financing Political Parties¹⁵ prescribes the manner and procedure for securing financial resources and how they are managed by political parties. Rules for election campaign financing are regulated in the Electoral Code¹⁶. With the amendments to the Law on Financing of Political Parties from 2018, an increase was made in the amount of funds received from the state budget from 0.06% to 0.15%. In parallel, the maximum amount of donations from legal entities and individuals was reduced accordingly - from 150 average salaries to 60 for legal entities and from 75 to 30 average salaries for individuals. Political parties may have only one bank account and are obliged to submit a report on material and financial operations. The State Audit Office performs ex-post control of the work of the parties, and with the new authorizations, the SCPC will be able to conduct continuous monitoring of the party, i.e. it has the right to supervise at any time.

15 Official Gazette of the Republic of North Macedonia No. [76/2004](#), [36/2006](#), [86/2008](#), [161/2008](#), [96/2009](#), [148/2011](#), [142/2012](#), [23/2013](#), [140/2018](#)

16 Official Gazette of the Republic of North Macedonia No. [40/2006](#), [127/2006](#), [136/2008](#), [148/2008](#), [155/2008](#), [163/2008](#), [44/2011](#), [51/2011](#), [142/2012](#), [31/2013](#), [34/2013](#), [14/2014](#), [30/2014](#), [31/2015](#), [196/2015](#), [35/2016](#), [97/2016](#), [99/2016](#), [136/2016](#), [142/2016](#), [57/2017](#), [67/2017](#), [125/2017](#), [35/2018](#), [99/2018](#), [140/2018](#), [208/2018](#), [27/2019](#), [98/2019](#)

Integrity, prevention of corruption and conflict of interest

The Law on Prevention of Corruption and Conflict of Interest regulates the measures and activities for prevention of corruption and conflict of interest in the exercise of power, public authorizations, official duty and in politics, as well as the measures and activities for prevention of corruption and conflict of interests in conducting activities of public interest by legal entities, related to the exercise of public authorizations. The Law stipulates that administrative officers are also obligated to report their assets. The State Commission for the Prevention of Corruption is a competent body for implementing the aforementioned laws. Pursuant to the Law, the SCPC is responsible for documenting and monitoring the property status of elected and appointed persons, who are obligated to submit an assets declaration list. The SCPC is obliged to initiate a procedure before the PRO to investigate the origin of the property, if during the inspection it finds that there is a violation of the obligations under the Law. The SCPC is also responsible for keeping the Register of Elected and Appointed Persons as one of the measures for enhancing transparency. Pursuant to the Law, as a measure for violation of the obligations arising from non-compliance with it, only a pronouncement of a public warning is foreseen, resulting in ineffective prevention and sanctioning of cases of conflict of interest.

The Law on Protection of Whistleblowers regulates the protected reporting, the rights of the whistleblowers, as well as the actions and duties of the institutions, i.e. the legal entities in relation to the protected reporting and the provision of protection to whistleblowers in the public and private sector. Appropriate regulation of the right to protection of employees in the public sector who have reported suspicion of a criminal act or unlawful or unacceptable treatment is also contained in the Law on Public Sector Employees. With the Law on Public Internal Financial Control, a system for risk assessment and management has been established at the institutional level. Pursuant to the Law on Protection of Whistleblowers, SCPC is one of the institutions with responsibility for providing protection for whistleblowers in terms of receiving reports for cases when the protection of whistleblowers was not provided by the institution in which the reporting was done, i.e. it is one of the institutions for which a whistleblower can make a protected external reporting. In addition to the above competencies, the SCPC is also competent for monitoring the application of the Law on Lobbying.

Since discretionary powers represent a high risk of corruption, in accordance with the activities foreseen in the State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest and the Action Plan for 2016-2019, the SCPC should prepare an analysis of the discretionary powers of the holders of public office.

Despite the efforts made through several legal solutions, to place integrity up on a pedestal, as one of the basic measures to reduce corruption, in practice this mechanism shows a series of ambiguities. Namely, control mechanisms do not meet their expectations and, most often, the issue of integrity remains solely as words written on paper.

4.2.3 Challenges for future implementation of Article 7

In the legislation of the Republic of North Macedonia, there is no clear distinction between the political and professional levels i.e. the scope for senior civil service is not clearly defined and determined. The Law on Administrative Officers made the first step towards the professionalization of the executive officers of the administrative service. Namely, in the highest category “A” of administrative officials, the secretaries (state, general secretaries and secretaries of the units of local self-government and the City of Skopje) are included. The general and special conditions that are to be fulfilled by the secretaries are regulated by the LAO, while the general and special conditions for the directors of the state administration bodies with the status of high officials are regulated in separate laws. It is evident that there are no clear rules and criteria for naming and dismissing secretaries and directors, nor open competition for most of these positions, which violates the principle of merit. Hence, one of the key measures to be taken is precisely the depoliticization of the administration, through a strengthened application of the principles of merit, equal opportunities and adequate and equitable representation and professionalization of senior management positions, which would contribute to limiting the political influence in appointments and dismissals.

4.3.

Article 9: Public Procurements and Public Finance Management

1. Each State Party takes, in accordance with the basic principles of its legal system, the necessary measures for implementing appropriate public procurement systems that will be based on transparency competition and objective criteria for decision making and that will be also effective for prevention of corruption. These systems, for whose use might be taken into consideration the initial values, especially envisage:

a.) Public spreading of information regarding the procedures of public procurements and

the contracts, as well as the information on invitations for tender and appropriate information on awarding contracts, leaving sufficient time for potential bidders to prepare and submit their bids;

b.) Determining the conditions for participation, as well as the criteria for selection and participation and the rules on appeals of bids, and their publication;

c.) Use of objective and predetermined criteria for making public procurement decisions to facilitate later control of the correct application of the rules or procedures;

d.) An effective internal audit system, as well as an effective system of appeals, which guarantees the right to remedies in case of non-compliance with the rules or the procedures established in accordance with this paragraph;

e.) If necessary, measures to regulate issues in relation to persons responsible for public procurements, such as the application for an interest statement for some public procurements, procedures for selection of the said persons and requirements in the matter of training.

2. Each State Party takes, in accordance with the basic principles of its legal system, appropriate measures for improving the transparency and accountability in the management of public finances. These measures especially contain:

a.) Procedures for adopting the national budget;

b.) Informing in a timely manner on expenditures and revenues;

c.) System of standards for compliance and audit, and second level control;

d.) Effective systems of risk management and internal control; and

e.) If necessary, corrective measures in the event of default of the requirements of this paragraph.

3. Each State Party takes, in accordance with the basic principles of its internal law, civil and administrative measures necessary to preserve the integrity of the accounting books, financial conditions or other documents regarding expenditures and public revenue and to prevent fabrication.

4.3.1. Interpretation of the Provision

Article 9 of the United Nations Convention against Corruption constitutes a kind of framework for the way in which the signatory states to the Convention should regulate public procurements to prevent corruption, as well as the measures they need to take to increase transparency and accountability in the management of public finances.

Although the Article is not extensive, it can be said that it is quite concentrated and with content.

In short, the article first presents the basic principles that should be retained during the implementation of public procurement procedures, that is, the principles according to which those who conduct the procurements should be guided during their work.

Hence, the following three principles are mentioned:

- ▶ transparency;
- ▶ competition; and
- ▶ objective criteria for selection of bidders, that is, impartiality in the selection process.

The Convention also explicitly requires the measures taken to preserve these principles, at the same time to be effective in preventing corruption in public procurements.

In order to ensure the proper application and fulfillment of the requirements of Article 9, the United Nations (UN) goes beyond the Convention, by publishing detailed Guidelines for anti-corruption measures in public procurement procedures and public finance management.

It is also very important that Article 9 of the Convention, and the Guidelines, cover the entire public procurement cycle - from assessing the need for procurement, through planning, implementing of the tender, the selection of the best bidder, to the contract concluding and its realization - because only if you look at procurements this way you can prevent corruption in said procurements. The importance here is also due to the fact that the public procurement laws for the most part, as is the case with the Macedonian law, are limited only to the procedure that leads to the conclusion of public procurement contracts, that is, the so-called tender phase.

However, each of the three main phases in the implementation of public tenders - the pre-tender, tender and post-tender phases are important for corruption and its prevention, since corruption is generally negotiated in the pre-tender phase, is enabled in the tender phase and is exercised in the post-tender phase. Hence, the prevention of corruption should adequately include measures in each of these phases, regardless of the fact that all phases are not included in the subject Law on Public Procurements.

4.3.2. Implementation of Article 9

Especially problematic in North Macedonia are two of the three basic principles in public procurement referred to in Article 9, that is, competition and objective selection criteria.

One of the main disadvantages of the Macedonian system is the very low competition in tenders. In this regard, the Guidelines warns that “a public procurement system that lacks competition is an ideal ground for corruption”.

The average number of public procurement bidders in Macedonia, for years on end, is less than three - which is considered a threshold for providing at least a minimum competition. An exception is 2017 when, according to the latest published data from the Public Procurement Bureau¹⁷, the average number of

¹⁷ Annual report of the Public Procurement Bureau for 2017, available at: <http://bjn.gov.mk/content/Priracnici,%20brošuri%20i%20izvestai/%D0%98%D0%B7%D0%B2%D0%B5%D1%88%D1%82%D0%B0%D1%98%20%D0%B7%D0%B0%202017%20%D0%B3%D0%BE%D0%B4%D0%B8%D0%BD%D0%B0.pdf>

submitted bids for one tender was 3.33. In 2016, there were an average of 2.97 bids, in 2015 there were 2.91 bids, and in 2014 an average of 2.79 bids.

The low competition for tenders can be also noticed in the following several indicators:

- There is one or no bidders on nearly one third of the tenders;
- A small number of companies receive a high percentage of the total value of the concluded public procurement contracts (in tenders conducted by the institutions at local level, only ten companies are holders of 30% of the value of the concluded contracts);
- Only about 7% of the total registered companies in the country participate in public procurements (4,888 active users of the Electronic system for public procurements from 71,419 active business entities¹⁸).

The monitoring of public procurements by civil society organizations detects the following factors as main contributors to low competition in public procurements, which results in a series of interwoven causality problems:

- The lowest price as the only criterion for awarding public procurement contracts;
- Mandatory electronic auction for reducing the initially submitted prices;
- The high or inadequate criteria that are being set for the participation of companies on certain tenders;
- The late payment by the institutions for the realized public procurement contracts;
- Corruption and mistrust in the public procurement system;
- The large volume of the necessary documentation for participation in tenders;
- Inadequate capacities and resources, especially for small and micro enterprises.

Related to the aforementioned, but also related to corruption, is the setting of the criteria for the decisions in public procurements, that is, the selection of the most favorable bidders. The legal framework in this sense determines that the implementation of public procurements should provide equal treatment and non-discrimination of economic operators. However, examples are not rare in the practice of setting criteria that are, at the very least, limiting, and therefore under the doubt that they are adapted to specific bidders.

The surveyed companies¹⁹ place the problem with the set-up or adjusted conditions for participation in the tenders in the fourth place. 28% of companies evaluate this as main problem in public procurements.

The research²⁰ on transparency, reporting and integrity of the institutions shows that 29% of the tender documents of the analyzed institutions set high criteria for determining the economic and financial situation, as well as the technical or professional capability of the bidders. Here, among other things, it is about set requirements for total turnover of the bidders, that is, certain realized income; requirements for number of employees, their qualifications and experience; previously concluded or realized contracts; certain type and scope of mechanization, equipment, premises, buildings, etc.

18 According to data from ESPP <https://www.e-nabavki.gov.mk/opendata-users.aspx#/home> and the State Statistical Office <http://www.stat.gov.mk/PrikaziSoopstenie.aspx?rbrtxt=79>

19 www.integritet.mk

20 www.integritet.mk

In this context, it should be also mentioned the high percentage of annulled tenders in North Macedonia, which for years ranges over 20%.

Furthermore, Article 9, explaining the basic principles, requires:

- Public announcement of information on tenders, that is, advertisements and contracts;
- Sufficient time (in terms of deadlines) for companies to prepare and submit their bids;
- Predetermined criteria for participation and selection, as well as a possibility to verify that those criteria are appropriately applied;
- Effective system of internal audit and appeals; and
- Personal responsibility for procurements - statements for conflict of interest, as well as the possibility for supervision and requirements for proper training of persons involved in procurements.

When it comes to the request for public accessibility of the announcements, it can be concluded that in the last years, little by little, the situation is improving. Public procurement announcements are available to everyone through the government on-line platform Electronic Public Procurement System (ESPP). The advertisements offer basic information about the Procuring entity, the subject of procurement, the estimated value, the basic rules and conditions for participation, as well as the deadlines for submitting a bid and asking a question.

The tender documentation, where the entity that procures describes in more detail the conditions for participation of the companies in the tender, as well as the specific requirements for a particular product, service or work - are publicly available and free to all registered entities in the ESPP. In 2017, an opportunity was introduced for anyone who is interested in accessing and reviewing any tender documentation, at the time it is published (together with the announcement) of the ESPP, without having to be registered on the ESPP.

The public procurement contracts have also become publicly available a year ago. Also, an appropriate connection of the basic contracts with their potential annexes was made possible - something that has not been directly connected so far, instead there was only the possibility for their indirect connection. Here it should be mentioned that the registration and use of the EPPS by the companies and contracting authorities is charged according to the Tariff of the Ministry of Finance²¹.

In the direction of wider informing on tenders, civil society organizations asked the contracting authorities to publish the basic information on procurements on their websites, too, as a place that most interested parties visit first to receive the requested information. Although this has become an obligation of the country's action plans that arise from the Open Government Partnership initiative, however, only a casual number of institutions publish on their websites regular information on public procurements. Not even the software facilitation of the Public Procurement Bureau did not help - to provide links with which the mandatory announcements from ESPP can be then quickly and easily posted on the websites of the institutions. The last investigation of the so-called "active transparency of institutions" shows that only 13% of them (ministries, Parliament and municipalities) publish the basic information for public procurements on their web pages²².

²¹ The Tariff is available at: <http://bjn.gov.mk/content/documents/TARIFNIK-ZA-VISINATA-NA-NADOMESTOCITE-ZA-KORISTEWE-NA-ELEKTRONSKIOT-SISTEM-ZA-JAVNI-NABAVKI1.pdf>

²² [Index of active transparency](#), 2018, CCC, Skopje, may 2018

When it comes to the time that is given to the bidders to prepare the bids, to collect and prepare the necessary documents and to submit the bids - that is legally regulated with minimal deadlines depending on the procedure and other specific conditions. Hence, the contracting authorities must determine at least those minimum legal deadlines. Of course, if they estimate that more time is needed (for procurements with more complex and more extensive requirements and technical specifications in other situations), they can determine longer deadlines than the legal minimal.

For the application of the requirement of Article 9 for leaving 'sufficient time' for the bidders, it can be said that the legal minimum deadlines (which the contracting authorities mostly apply) are indeed determined at some of the lowest tolerable limits, since the intention in their determination was to make the public procurements more effective. The next requirement from Article 9 is the existence of previously determined criteria for participation and selection, as well as a possibility to verify that those criteria are appropriately applied;

The criteria for participation on tenders and the selection of the most favorable bid are determined in the tender documentation itself, which, as it was mentioned above, is published together with the announcement for each procurement, publicly, on ESPP. The general criteria for participation and selection are determined by the Law on Public Procurements, but the contracting authorities are allowed to also add additional ones.

When it comes to the possibilities for checking that the criteria are appropriately applied, as a control instrument in Macedonia, in general, a system for submitting appeals from unsatisfied companies was set up. But in practice, it did not prove to be effective in terms of protecting bidders and in general, in control over public procurements and preventing corruption.

At a time when as many as 88% of the companies with experience in participating in tenders state that there is corruption²³ in public procurements, complaints are submitted to only about 3% of the announced public procurement announcements. Among the three main reasons why they have never or rarely appealed the tenders on which they participate, the companies mention: the high fee for the appeal procedure (45%), the mistrust toward the State Appeals Commission on Public Procurement (41%), as well as the fear of retaliation (9%).

The internal audit, which is also mentioned in the Convention in the context of control of public procurement, does not play its role in that sense. This audit is set up in such a way that, in principle, it protects the managing authority from misconduct or mismanagement of other employees.

Taking this into consideration, it turns out that the audit carried out by the State Audit Office is the only control over the implementation of public procurements in the institutions. As part of the audits it performs, the SAO also reviews the public procurements of the audited entities and regularly detects irregularities expressed through audit findings, as well as recommendations for their overcoming.

On the basis of the carried out audits, the SAO groups and publishes²⁴ the irregularities that refer to the findings and submissions on the public procurements of the audited institutions each year. Thus, the most weaknesses in 2017 were noted in the phase of realization of the concluded public procurement contracts, then in the contracting phase, followed by the weaknesses related to the elements of the tender documentation.

²³ http://www.ccc.org.mk/images/stories/30_mk_web.pdf

²⁴ Annual report of the State Audit Office for 2017, available at: http://www.dzr.mk/Uploads/DZR_Godisen%20izvestaj_2017_MKD_REDUCED.pdf

Although the role of SAO in this sense is unique, it can still be said that even here there are at least three limiting factors. The first is that only a small number of institutions are audited annually. The second is that the audit is a type of ex-post control, i.e. it refers to already implemented procurements and even realized contracts. The third limiting factor is that despite the regular indications of the auditors, there is no further processing of their findings, in cases when due to an assessment that a criminal offence/misdemeanor has been committed, the reports on certain institutions are sent for further dealing to the prosecution.

When it comes to the request of the Convention on Personal Responsibility for Procurements, that is, for signing conflict of interest statements, as well as the possibility of overseeing and proper training of the persons included in the procurements, the practice proves to be insufficiently successful. The members and the president of the Commission for Public Procurements, their deputies and the responsible person in the institution sign statements for non-existence of conflict of interest, and in case of a conflict, they are withdrawn and new persons are appointed. However, in practice there are cases where the statements are signed at the very beginning of the procedure when neither the bidders are known, therefore it is not known whether there is a conflict of interest. Also, there are several cases opened by the Special Public Prosecutor's Office (established for the prosecution of criminal offences related to the content of the unlawful monitoring of communications) that point to inconsistencies related precisely to conflict of interest, in terms of formal signing of statements and failure to report the existence of a conflict of interest. It seems that not only in public procurements but in general, in the country there is a low degree of awareness of conflict of interest and even less knowledge of its successful management.


Hence the requirements for appropriate training of the persons included in public procurements, among other things, for the conflict of interest and for prevention of corruption. Unlike the persons who conduct the procurements that must attend training and obtain certificates for the passed exam in order to be able to work on public procurements, such programs are not envisaged, nor do such programs exist for the members of the commissions, and even less for the responsible persons. In the training programs for persons for public procurements, it seems that the topics related to prevention of conflict of interest and prevention of corruption in terms of their deeper treatment, beyond the frames and the provisions of the Law on Public Procurements, are insufficiently covered.

Following the instructions from the Guidelines and the public procurements cycle, and according to the data from the detailed and direct monitoring of the public procurements conducted by civil society organizations, one can conclude that the weakest are the first and the last phase of that cycle, i.e. before the start of the procedure for public procurement and after the conclusion of the contract - the realization of the procurement. Numerous and everyday weaknesses and violations of the law are also found in the phase of the procedure implementation, i.e. the tender phase.

In the first phase, it is the poor planning and estimation of the value of the procurement, in the second phase the obvious bidding adjustments that favour certain bidders, and in the last phase it is the lack of control, poor management of contracts and disconnection of the needs with their fulfilment.

The research on the transparency, reporting and integrity of the public procurement institutions²⁵ ranked by the institutions according to the manner in which public

²⁵ <http://www.integritet.mk/>



procurement is conducted in each of the three phases, shows a limited fulfillment of the obligations in this sense. Out of the possible 100% fulfillment of obligations and requirements for transparency, reporting and integrity, the analyzed institutions fulfill 52% of the obligations on average. In addition, the lowest ranked in this sense are the institutions that spend most money through public procurements.

Some of the weak practices of the institutions are the following:

- Half of the institutions do not provide a rationale for the need for public procurements;
- Not one institution has a methodology for calculating the estimated value of procurements;
- Rarely any institution publishes the annual plan for public procurements and advertisements for public procurements on their internet page or on any other place;
- The plans for public procurements on average are realized with around 65%;
- Around one third of the tender documentations contain discriminatory elements;
- Two thirds of the institutions do not have an internal monitoring system for realization of the concluded public procurement contracts.

A part of these identified weaknesses are directly related to the above described more specific requirements of the Convention on the ways in which public procurement systems should be regulated.

Although the Guidelines refer to e-procurements, that is, the complete electronic implementation of tenders as one of the most significant measures for increasing competition and transparency and reducing corruption in public procurements, at least the practice in North Macedonia where the procurements are fully electronic shows that, is not enough to play that role. Namely, 'e-procurements' is again referring only to the middle phase of the procurement implementation - the tender. The digitization of procurements does not cover and does not exceed the weaknesses in the planning phase, that is, the pre-tender phase, as well as the phase of implementation of the contracts, that is, the post-tender phase. Also, at least in North Macedonia, e-procurements did not prove to be sufficient for a significant increase in competition, among other things, because small and micro enterprises were not and still are not sufficiently prepared for participation in such fully electronic procurements. That requires them to have additional knowledge, equipment and personnel, something that is exactly their greatest weakness. Hence, it seems that e-procurements should be expanding to the other two phases in order to isolate as much as possible the influence of individual human factors in the processes of decision-making. Although, in the case of procurements, this is not always possible. A series of other measures is needed to fully use the potential of this anti-corruption tool.

4.3.3. The significance of the new Law on Public Procurements for the implementation of Article 9 of the Convention

Starting from the end of 2017, the country began to develop an entirely new Law on Public Procurements, in an attempt to respond to frequent criticisms of the

existing law that came to almost all involved parties in the process, but also from civil society organizations and international partners and organizations.

Finally, **the new text of the law entered into force in April 2019.**

The law, at least on paper, seeks to respond to most of the above-mentioned problems in the application of Article 9 of the Convention. In general, the Law contains the indications from the EU in order to synchronize it with the new Public Procurement Directive, the civil society organizations in the direction of narrowing the space for corruption and abuses, but also the main involved parties in the process – the contracting authorities and the economic operators for facilitating the procurements implementation.

The main changes in the law are the replacement of the ‘lowest price’ criterion with the ‘most economically favorable bid’; the optionality of the e-auction; the introduction of additional obligations for transparency, more detailed anti-corruption provisions and provisions for the prevention of conflict of interest; introduction of the so-called administrative control by the PPB on selected tenders, during their implementation (ex ante); introduction of misdemeanor provisions and abolition of criminal provisions; extension of the law to the phase of contracts implementation and strengthening of the part of procurement planning; as well as provisions for stimulating greater participation of small and micro enterprises. In addition, the new law, in general, sets the grounds for applying the principle of choice for the most cost-effective bid (Best Value for Money Principle).

4.3.4 Challenges for future implementation of article 9 of the Convention

It is expected that the biggest challenges for the consistent application of this new law will be the timely and complete preparation of the numerous by-laws, as well as the preparedness and additional capacities that will be needed by the procurement participants.

And the new law does not, of course, cover many of the aspects that fall into the group of integrity factors that are not prescribed by law and whose application depends on the personal behavior of the persons involved in the procurements, the efforts of the managerial personnel and the general will of the government and the society.

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4.4.

Article 10 Public reporting

Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decisionmaking processes, where appropriate. Such measures may include, inter alia:

(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

4.4.1 Interpretation of the Provision

Article 10 of the Convention requires the State Party to take appropriate measures for increasing the transparency and openness of the administration. The Convention indicates that each State should find in its legislation modules through which will provide citizens with information about the organization and the procedures of making decisions of the public administration, as well as information on the risks of corruption in the area of public administration.

4.4.2 Implementation of Article 10

The constitutional and positive legal framework for public informing of public sector operations is regulated in Article 16 of the Constitution, the Law on Free Access to Public Information²⁶, the Law on the Use of Public Sector Data and the Law on Local Self-Government, as well as in the other material laws that refer to specific areas individually. The Law on Free Access to Public Information regulates the public information procedure, defines the term information, applicant and information holder; regulates the exceptions from the right to free access to public information, regulates the two-stage procedure, the position and operation of the second-degree procedure, and similar. The Law on Free Access to Public Information has been changed 6 times²⁷ since its adoption to date, in order to increase its compliance with European and international standards. The Ministry of Justice in November 2018 has set up on the National Electronic Registry of Regulations (ENER) a new law on free access to public information for commenting.

²⁶ Official Gazette of RNM no.: [13/2006](#), [86/2008](#), [6/2010](#), [42/2014](#), [148/2015](#), [55/2016](#), [64/2018](#), [98/2019](#)


²⁷ Official Gazette of RNM no.: [86/2008](#), [6/2010](#), [42/2014](#), [148/2015](#), [55/2016](#), [64/2018](#)

Since the adoption of the Law on Free Access to Public Information, it can be concluded that the biggest problem regarding its implementation is the “silence of the administration”, which is the main reason why the applicants submit complaints to the Commission. This indicates that the administration, the state authorities and other holders of information continue to disregard their obligations defined in the Law, are closed off and do not provide the information that the citizens, according to the Constitution and the Law, have the right to receive.

Despite the existence of a legal framework that regulates this issue, access to public information is still limited due to the insufficient and untimely management, updating and publishing in a manner accessible to the public of information that are also available to the state authorities and other bodies and organizations determined by law, the authorities of the municipalities, the City of Skopje and the municipalities in the City of Skopje, the institutions and the public services, the public enterprises, the legal and natural persons performing public authorizations, determined by law as holders of informations, but also due to their limited administrative capacities. An additional problem is the insufficient proactivity of holders of public information to fulfill their legal obligations and responsibilities. A step towards resolving this problem was the decision of the Government in September 2017 for determining compensation for the material costs for information provided by the holders of information, whereby applicants for public information can receive without charge the requested information in electronic form and oblige the ministries to publish on their websites a unified list of 21 documents/acts and materials that the ministries are obliged to publish in accordance with the Law. In addition, the Government in 2018 made a decision obliging the state administration bodies to publish on their website all information available to the public on the principle of active transparency.

The absence of clear criteria for classification of information additionally limits the access to information that do not have the character of security classified information, which results in abuse of this provision for the wilful and excessive definition of certain confidential data, which ultimately depends on discretionary decisions of the holders of information. In June 2017, the process of declassification was initiated, and ministers were obligated to declassify all information related to expenses for business trips and costs for representation in the ministries, and declassified were also the information provided by GRM that are in the public interest and refer to contracts for granting state aid, concluded between GRM and companies/foreign investors. Also, in August 2017 the publishing of the daily agenda of the held sessions in the Government was initiated, as well as the adopted reports of those sessions, which will additionally contribute for strengthening the transparency.

In order to facilitate the submission of requests for free access, increase the transparency of the institutions, but also promote the right to free access to public information, several electronic platforms have been implemented that give a chance to natural and legal persons to also submit a request electronically. These platforms are www.slobodenpristap.mk, www.fiskalntransparentnost.org.mk. However, it should be mentioned that the institutions do not have an obligation to answer to the submitted requests of the applicants through these platforms, and in the absence of an answer, an appeal can not be submitted against these



requests due to non-compliance with the conditions for electronic submission of requests.

4.4.3 New Law on Free Access to Public Information

In the beginning of 2019 the Government submitted to the Parliament a new bill – Law on Free Access to Public Information, stating that they are offering solutions for overcoming the problems, facilitating the exercise of the right to access to public information, overcoming the limited transparency of the institutions and incomplete exercise of the right to the requested information.

The bill on free access to public information aims at faster access of applicants to public information, as well as greater transparency and reporting of the state authorities and other bodies and organizations determined by law, the authorities of the municipalities, the City of Skopje and the municipalities in the City of Skopje, the political parties, institutions and public services, public enterprises, legal entities and natural persons that perform public authorizations, determined by the Law. In the Law on free access to public information, as it is said in the legal explanation, the basic principles are embedded on which the right to free access to public information are based, such as: maximal openness (everyone has the right to access to information, and state institutions have an obligation towards the public to provide access to information), obligation to publish (state institutions should publish information about their activities and all information of public interest), a limited number of exceptions (each basis should be related to a legitimate objective that is threatened with significant damage if access to information is granted), procedures that facilitate access (all state institutions have an obligation to establish and apply an easily accessible internal system for enabling the public to know the information) and others. The new law regulates the establishment of the Agency for Protection of the Right to Free Access to Public Information, which is a standalone and independent state body that works and makes decisions in accordance with the competencies determined by that law. According to the law, the Agency, amongst the other competencies, conducts an administrative procedure and decides on appeals against the decision with which the holder of information has rejected or denied the request for access to information of the applicants, takes care of the implementation of the provisions of the law, develops policies and provides guidelines in relation to exercising the right to free access to information, cooperates with holders of information regarding the exercising of the right to access of information, etc.

4.5.

Measures that refer to the judiciary and prosecution services

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.
2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

4.5.1 Interpretation of the Provision

Article 11 directly indicated the need for integrity of judges and strengthening the measures in the judiciary towards eliminating corruption. The Convention indicates that it is important to maintain the independence of the judges and to create mechanisms that will strengthen the principle of integrity of judges. All of this is aimed at eliminating the possibilities for bribing the judges. The provision gives guidelines and states can regulate this not only through primary legislation, but should also rely on by-laws such as codes of conduct, etc. The Convention considers this measure exclusively important, it even provides direction that states can also do this through forming special bodies that will monitor precisely the implementation of this measure.

4.5.2 Implementation of Article 11

This issue is one of the most critical areas in the Macedonian legislation and has been repeatedly criticized through other international instruments, such as GRECO and the EU.

The amendments and modifications to the Law on the Judicial Council, adopted in May 2018, actually completely revise the assessment system of judges, and particularly emphasize the qualitative criteria. So, the changes envisage the following quantitative criteria: a) the number of annulled decisions due to serious procedural injuries in relation to the total number of resolved cases; b) the quality in the performance of court proceedings (compliance with the legal deadlines for taking the procedural actions and for the preparation and publication of court decisions, the duration of the court proceedings and the level of compliance with the principle of trial within a reasonable deadline); c) the number of changed decisions in relation to the total number of resolved cases, d) the degree of specialization in the profession; e) the number of well-founded complaints and complaints filed by the parties on the work of the judge and the number of the grounded requests for exemption at the request of a party; f) issued disciplinary measures. The new rules envisage that the assessments will be used by the computerized system for allocating cases in the judiciary, which allows obtaining (extracting) data on certain decisions/legal remedies/annulments/procedural violations, at the level

of activity in the management of the case and the compliance of all procedural steps with the deadlines.

Regarding the qualitative criteria, in the changes is indicated:

- fulfilling the work program,
- consistency in the application of the Rules of Procedure of the court (annual work schedule, exemption of judges, redistribution of cases, etc.) ;
- functioning of the system for automatic case management;
- the quality of the decisions that are made in the judicial administration;
- public relations and work transparency. The assessment is based on the Annual Report on the appropriate scope of work of the court after it has been considered at a general session of the Supreme Court, during the work program of the president of the court, as well as from the results of the executed control reports by the higher courts, the Judicial Council and the Ministry of Justice.

4.5.3 The strategy for reforming the judiciary system for the period 2017-2022

The recommendations and conclusions contained in EU reports in recent years, the GRECO Compliance Report, as well as the Convention, were the main motive for the Government to adopt the Strategy for the Reform of the Judiciary System for the period (2017-2022) in November 2017 with the Action Plan²⁸, through which it should be implemented.

The process of drafting the Strategy was transparent and was implemented through intensive consultations with civil society organizations that work in the area of judiciary. As a result, part of the remarks and proposals of the civil society organizations were taken into account and incorporated in the Strategy and the Action Plan, while some of them were gradually incorporated into the newly proposed legal solutions.

Concrete steps for strengthening the independence in the judiciary were made with the process of preparation of the Law on Amending the Law on Courts²⁹ published by ENER in January 2018. and the Bill on Amending the Law on Courts³⁰ published in July 2018. These amendments improve the text of the law, revise the part of the organization and the jurisdiction of the courts, envisage new criteria for the election of judges that are more stringent, etc.

Despite the fact that Macedonia has adopted a legal framework that generally contains the international standards for an independent and impartial judiciary and the proper functioning of the justice system, there is a need for additional legal interventions that will provide greater independence and impartiality in the work of the judiciary and the Public Prosecutor's Office, and the recommendations of GRECO and the EU will be implemented. It is also necessary to sign the decree for declaring the Law on Courts so that it can enter into force and start being practiced.

28 <http://www.pravda.gov.mk/Upload/Documents/2017-2022.pdf>

29 https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=XYtZr8RCbnko9tHMV+hzoA==

30 https://ener.gov.mk/default.aspx?item=pub_regulation&subitem=view_reg_detail&itemid=kLr1ETMDCCI9xJjhgdAz2g==

4.6.

Article 12 Private Sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

a.) Promoting cooperation between law enforcement agencies and relevant private entities;

b.) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

c.) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

d.) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

e.) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

f.) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

a.) The establishment of off-the-books accounts;

b.) The making of off-the-books or inadequately identified transactions;

c.) The recording of non-existent expenditure;

d.) The entry of liabilities with incorrect identification of their objects;

e.) The use of false documents; and

f.) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

4.6.1 Interpretation of the Provision

Article 12 of the United Nations Convention against Corruption represents a framework providing guidance on what measures should be undertaken to reduce and eliminate corruption in the private sector.

The Article of the Convention refers to legal regulation at the level of national economy through the application of accounting and auditing standards, as well as defining the appropriate penal policy for non-compliance with the measures.

The Convention also refers to cooperation of the state agencies in charge of combating corruption with the business sector that support the implementation of the legal regulation. Promoting standards and procedures, codes of conduct for the proper and honest performance of the activities by the private sector, the use of good business practices between the businesses and contractual relations of the business sector with the state and all relevant professions in order to prevent conflicts of interest, affirmation of proactive preventive policies for narrowing the space for corruption and conflict of interest, intensifying the realization of the activities arising out of the legal competencies, strengthening the interinstitutional and international cooperation, intensification of the cooperation with the private sector and, of course, strengthening its capacity for efficient and effective fight against corruption.

Preventive measures pointed out by the Convention are appropriate definition of procedures in awarding subsidies and licenses by the state competent institution for commercial activities.

Article 12 also refers to the appropriate defining of the restrictions and determination of a time period for professional engagement of former public servants by the private sector after the termination of their obligation in a public institution for retirement or resignation, in the case of job positions which are directly related to the functions held or supervised by those public officials during their tenure.

Within the preventive measures foreseen by the Convention, and in order to prevent corruption, Article 12 also underlines the need of each state institution to undertake the necessary measures in accordance with the domestic legislation for establishing a records keeping and book keeping system. It is necessary for the purpose of disclosing the financial statements and accounting and auditing standards, for the purpose of enabling the prohibition of certain actions in the case of maintaining off-the-book accounts when part of the transactions are inadequately identified, when presenting non-existent costs, recording incorrect identification, use of false documents, as well as consciously destroying accounting documents before the expiration of the deadline stipulated by law.

Each State Party should prohibit tax incentives and other forms of fiscal obligations that would induce relations with public servants who would have certain benefits, which is a punishable offence in accordance with Article 15 and Article 16 of the Convention.

4.6.2 Implementation of Article 12

According to the Law on Prevention of Corruption and Conflict of Interest, corruption refers to “the use of function, public authority, official duty and position to achieve any kind of benefit for themselves or for others.” Article 17 paragraph 16 of the Law on Prevention of Corruption and Conflict of Interests


states that the State Commission, in addition to the others, has the competence to cooperate with the private sector in connection to prevention of corruption and conflict of interests. Article 18 paragraph 5 stipulates that the National Strategy for Prevention of Corruption and Conflict of Interests (prepared by SCPC) is prepared with the participation of representatives of state bodies, institutions, associations, foundations, private sector and media. Article 30 of the Law provides for the SCPC in the frames of realization of its programme activities that include research, analysis, training, informing and raising the awareness of the public and public sector institutions and transferring good practices, to cooperate with associations and foundations, scientific institutions and the private sector in the area of prevention of corruption.

The Law on Whistleblowers and Raising Awareness of Whistleblowing regulates the protected reporting both in the public and private sector, in order to protect the public interest, the rights of the whistleblowers, as well as the actions and duties of the institutions, i.e. the legal entities in relation to the protected reporting and providing protection to the whistleblowers. Strengthening public awareness about protected reporting, the protection of whistleblowers and their importance in the prevention of and fight against corruption and protection of public interest will encourage reporting punishable or otherwise unlawful or unacceptable actions that violate the public interest.

The SCPC's 2019 Work Programme foresees "Development and promotion of the cooperation with the civil society organizations, foundations, scientific institutions and the private sector. Taking into account, but not limiting to, the signed memoranda of understanding, coordination and joint action in the field of prevention and repression of corruption and conflict of interests with the non-governmental and private sector, during 2019 SCPC, in accordance with the Programme, should intensify the contacts and meetings with representatives of these sectors in the society, in order to more effectively prevent and repress corruption and conflict of interests and promote integrity in the Republic of North Macedonia. The aim is to achieve and maintain immediate, continuous communication which, in turn, will encourage greater preparedness of all stakeholders to increase the efficiency in the fight against corruption and to continuously undertake activities in order to reduce the unnecessary formalities and avoid the parallel isolated operation.

Business communities (Chambers of Commerce, the Employer Organization etc.) are the institutions that should have immediate communication with the State Commission for Prevention of Corruption and the established relation SCPC – Chambers of Commerce as well. However, the degree of awareness of the private sector has not reached a point of inclusion as an active stakeholder in the whole process aimed at continuous contribution to the increase of the efficiency in the fight against corruption, so the activities still cannot be made in continuity. This conclusion is supported by the fact that in the analyzed reports from the relevant competent institutions it was also found that regular quarterly meetings with the signatories of the Memorandum of Cooperation with the business sector are not held.

Despite the legally defined obligation for cooperation of the competent state authority (SCPC) with the private sector in relation to the prevention of corruption and conflict of interests, as well as the obligation for consultations during the preparation of the National Strategy for Prevention of Corruption and Conflict of



Interests, and having in mind that the Commission's annual programmes envisage continuous cooperation with the private sector, the thorough introduction of the businessmen with corruption, i.e., with the elements that contribute to inciting corruption and money laundering is lacking. Private sector is not familiar with all segments of corruptive measures.

Analyzing the points under Article 12 of the United Nations Convention against Corruption providing guidance on what measures should be undertaken to reduce and eliminate corruption in the private sector, the following conclusion has been drawn:

- In the direction of intensifying the cooperation with the private sector and strengthening its capacity for efficient and effective fight against corruption, the Court of Honor and the Code of Conduct operate as part of the business associations. Court of Honor decides upon cases of violations of good business practices in the operation, as well as cases of violations of the principles of the market economy, for cases of non-performance of the obligations of the Chamber's members for whom it a warning or public reprimand, with publication in the media may be pronounced.
- Business sector does not recognize dialogue in the phase of law adoption. Many of the laws are adopted without consultation with the business sector. The laws, which are adopted by a fast-track procedure (extraordinary procedure), bypass the basic rule of consultation with the business community.
- As part of the implementation of the Open Government Partnership Initiative, the Government of the Republic of North Macedonia, setting it as a high priority in its agenda, committed itself to set up open, transparent, reliable and efficient governmental institutions that communicate and cooperate with citizens and with the private sector, as the basis for its operations.
- The request of the business community for efficient and transparent public procurement system has the unique goal - the state and the private sector to achieve the highest value for the spent funds, thus achieving positive economic effects in the public and private sectors - promotion of market competition, prevention of corruption, support and improvement of quality, as well as improvement of the management of public finances.
- Unfair competition is still at an extremely high level in many sectors. For the most part, it results in the inability to control the process of work of the legal entities, in accordance with the existing legislation. At the same time, the weakness is also in institutions that need to monitor the enforceability of laws. This all leads to the nourishment of corruptive processes involving legal entities as a stakeholder, with the purpose to stay on the market.
- Internet trade in conditions of unregulated activity of legal entities working in the field of e-commerce leaves room for the existence of Internet crime as a result of several levels of unfair competition.

Recommendations about the implementation of Article 12

1. It is necessary for the Government to exercise continuous dialogue with the stakeholders in the process of law adoption in order to eliminate the possibility of adverse effects resulting from the law implementation, the need of their amendment as well as eliminating the danger of being subjected to corruptive actions;
2. It is necessary to prepare a White Paper for notifying the key anti-corruption measures that will be addressed to the state in order to take appropriate measures for prevention and reduction of the level of corruption.
3. Development of a register of anti-corruption measures, which will serve as a relevant source of information on adopted measures in the fight against corruption, and a basis for their supplementing, upgrading, as well as creating new ones in order to complete the process in the fight against corruption.
4. Implementation of profound, thorough, qualitative research of the impact of the Law on Public Procurement on the sectors mostly subjected to corruption, above all.
5. Deepening the cooperation between the organized private sector and the SCPC in order to strengthen the capacities of the companies for efficient and effective fight against corruption.



4.7.

Article 13 Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- a.) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- b.) Ensuring that the public has effective access to information;
- c.) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;
- d.) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:
 - i.) For respect of the rights or reputations of others;
 - ii.) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

4.7.1 Interpretation of the Provision

Article 13 of the United Nations Convention against Corruption expressly recognizes the role of the civil society in the fight against corruption. This provision requires each state that has ratified the Convention to promote the active participation of individuals and groups outside their sector, in particularly including the civil society and organizations in order to assist in the fight against corruption and raise the awareness in terms of this issue. In addition to the recognition of the civil society in Article 13, there is also Article 63 which provides space for civil society inclusion in the operation of the Convention.

Civil organizations may attend meetings of COSP. Thus, the organizations having consultative status with the Economic and Social Council (ECOSOC) may apply for observer status and it should be automatically granted, unless the COSP decides otherwise. The organizations that do not have consultative status with ECOSOC may also submit a request for observer status, but that procedure is a bit complex.

Civil society organizations may also provide written submissions. The submissions, that have a limited word count, become part of the official documentation of

the Conference. They are published on the Conference's webpage and may be divided between the States parties through formal channels.

During the plenary sessions, representatives of non-governmental observers who register for an address are invited, once all the speakers from the States Parties and from the intergovernmental organizations have finished.

Civil organizations may organize accompanying events, such as meetings, presentations or panels discussions of titles related to the Convention, but outside the official agenda of the Conference. CSOs may organize meetings with governmental representatives. They can represent the outcomes of COSP and discuss the anti-corruptive efforts in their state.

UNCAC Coalition

In order to provide wider involvement of the civil society sector at international level, UNCAC Coalition, being a global network of more than 350 civil society organizations from over 100 countries, is dedicated to promoting the ratification, implementation and monitoring of the Convention.

UNCAC Coalition was established in August 2006 and mobilizes civil society action on an international, regional and national level. The Coalition participates in joint actions about the general positions of the Convention, assists in the exchange of information among members, and supports national civil society efforts to promote the Convention. Civil society organizations from North Macedonia are part of this Coalition.

4.7.2 Implementation of Article 13

In order to determine the involvement of civil society organizations in the process of implementation and revision of the Convention in North Macedonia, MCIC conducted a survey among civil society organizations and chambers of commerce in April, 2018. The questionnaire was sent to 50 civil society organizations and chambers of commerce and it was aimed at determining both direct and indirect involvement of the stakeholders. Thirteen organizations provided feedback (civil society organizations and chambers of commerce).

The general conclusion is that the stakeholders had little knowledge of the provisions of the Convention, as well as partial involvement in the process of implementation and revision of this Convention.

It can be concluded that partial cooperation between the competent state institutions and stakeholders in the process of revision of the Convention is established, but it should be further developed in the future.

Table of the answers received from the Questionnaire for assessment of the participation of CSOs and chambers of commerce in the implementation and revision of the Convention

Have you ever been contacted by the state competent institutions for questions related to the implementation and revision of the UN Convention against Corruption?

YES	NO
4	9

Has your organization undertaken other activities related to the implementation and revision of the UN Convention against Corruption so far?

YES	NO
3	10

Starting from the efforts of the civil society organizations for the prevention and repression of corruption in the country, a Platform of Civil Society Organizations for the fight against corruption was established, which is an open space for cooperation, networking and democratic debate aimed at strengthening the role of this sector in the fight against corruption. This Platform was established on December 9th, 2014 and is composed of 18 civil society organizations.

The aim of the Platform is to provide a corrective measure for the situations in the field of corruption, and it is cooperating and communicating with all stakeholders, including the state institutions, political parties, the business community and the international community in order to achieve this goal. Since its establishment, this Platform has been following and analyzing the legal framework and current public policies and activities for the suppression of corruption.

It is precisely the Platform, through its representatives, that in the past period was involved in a series of activities in the direction of reforms in the legislation in the area of fight against corruption.

Namely, the CSOs participated in the working group on the new law on prevention of corruption and conflict of interests, and this process of stakeholder involvement proved to be successful, thus bringing the law through a transparent and integrable process, which has great expectations in the coming period. Furthermore, CSOs have proved themselves to be partners in creating the State Program for Prevention and Repression of Corruption and for preventing and reducing the occurrence of conflicts of interests with the Action Plan for the period (2016-2019), as well as for the years previously.

General recommendations for enhancing the cooperation of state institutions with the civil society sector in the area of implementation and revision of the Convention are the following:

- Compulsory publication of the full report on the evaluation of the implementation of Chapter 2 and Chapter 5 of the Convention, with an emphasis on the provision and translation of the Convention.
- Creating a webpage dedicated to the Convention - with relevant information for all stakeholders.
- Timely publication of all information related to the process of revision and implementation of the Convention in the state, as well as further activities undertaken by the State with regard to the provisions of the Convention.
- Transparency of the process of revision and implementation
- Raising the public awareness about the importance of the Convention
- Strengthening the report through regular reports on the audit process and implementation.



4.8.

Article 14 Measures to prevent Money- Laundering

1. Each State Party shall:

a.) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering. This regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions.

b.) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

a.) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;

b.) To maintain such information throughout the payment chain; and

c.) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

4.8.1 Interpretation of the Provision

Article 14 of the Convention, also completed from Chapter 2, imposes the States Parties to create legal and administrative system for detecting and preventing money laundering by establishing cooperation and information exchange both between the various bodies within the state and between the states.

4.8.2 Implementation of Article 14

The legal framework functioning in the direction of money laundering and financing terrorism is defined in our country by the Law on Money Laundering and Financing Terrorism (Official Gazette of Republic of Macedonia No. 120 dated June 29th, 2018), which stipulates the measures and activities undertaken by the entities and competent institutions in order to prevent money laundering and financing terrorism. The Law initiates adoption and implementation of 20 bylaws³¹. Pursuant to the Law on Money Laundering and Financing Terrorism, the institution competent for implementation and monitoring of the compliance with the legal regulation is the Financial Intelligence Office. It operates since March, 2002 as a body within the Ministry of Finance in charge of fight against money laundering and financing terrorism in Republic of North Macedonia³². It is established in accordance with the international standards that impose the obligation of each state to establish a Financial Intelligence Unit as specialized institution which will fight against money laundering and financing terrorism. Its main mission is to protect the financial system of the country from the threats from money laundering and financing terrorism by complying with international standards, improving human and technical capacities in the function of effectively recognizing cases of money laundering and financing terrorism and, consequently, timely informing of the competent authorities of persecution and repression.


As in other countries in the world, so in our country, this institution operates as a Financial Intelligence Unit, with the basic competence to collect, process and submit data for the purpose of preventing money laundering and financing terrorism. Partners in the achievement of these functions are the entities, on one hand, and the prosecution authorities, on the other. The Law on Prevention of Money Laundering and Other Proceeds of Crime and Financing Terrorism determines the competencies of the Financial Intelligence Office, including: notifying the competent state authorities on the existence of suspicion of other crime committed, issuing a written order to the entity with which it temporarily withholds the transaction; submitting a request to the competent public prosecutor for submission of proposal for determining interim measures; submitting to the entity an order to monitor the business relation.

- Submitting a request to initiate a misdemeanor procedure before the competent court;
- other matters stipulated by Law.

Entities are obliged to undertake measures and actions to prevent money laundering and financing terrorism, i.e., to implement a series of comprehensive measures that should contribute to the more efficient implementation of the obligation in recognizing attempts of money laundering and financing terrorism and to inform the Office on the same.

³¹ <http://www.ufr.gov.mk/?q=node/30>

³² <http://www.ufr.gov.mk/?q=node/4>



The Office shall process, supplement with data and information from other sources, both from our country and from other countries, data received from the entities in charge or from the state bodies, it shall analyze and deliver the results of its analyzes in the form of a report or notification to the Ministry of Interior, to the Financial Police Office and/or to the Public Prosecutor's Office.

In addition to these functions, the Financial Intelligence Office shall supervise the application of the measures and actions for the prevention of money laundering and financing of terrorism against all entities, independently or in coordination with the supervisory bodies.

By adopting the new EU Directive 2015/849 on the prevention of the use of the financial system for the purpose of money laundering and financing terrorism, the Office has implemented activities for harmonization of the regulations on prevention of money laundering and financing terrorism. Furthermore, using the international experience, within the framework of the Bilateral - Technical Assistance Project with the Republic of Slovenia, an analysis was conducted for the impact of the Unit's provisions on the Macedonian legislation on prevention of money laundering and financing terrorism.

The analysis shows that, in order to overcome the shortcomings determined by the Moneyval Committee, there is need of amending the Law on International Restrictive Measures. For that purpose, the Office, in cooperation with the Ministry of Foreign Affairs, prepared a draft text for new Law on Restrictive Measures. The same has been aligned with the new recommendations of FATF and with the provisions of the UN Security Council Resolutions (UNSCR 1276, 1373). In preparation of the draft-law, an expert assistance has been obtained (provided by using the TAIEX instrument) from the Moneyval Committee's experts. Law on Restrictive Measures has been adopted by the Parliament of Republic of North Macedonia on 22.12.2017 and published in the Official Gazette No. 190/2017.

According to the Annual Report for the work of the Office for 2017, during the year, a total of 6,678 subjects were identified to undertake measures and actions for prevention of money laundering and financing of terrorism.

Within the legally determined competences, the Office cooperates with the authorized bodies of other states and with the international organizations dealing with the fight against money laundering and financing of terrorism and participates in fulfilling the obligations arising from the membership of the Republic of North Macedonia in the international organizations (Moneyval Committee the Council of Europe and EGMONT). The exchange of data and information, i.e. the receipt and submission of the data to EGMONT members is done electronically, in a secure way through the Egmont Secure Web Site³³.

The Office has the authority to assist in the professional development of authorized persons and employees in the Departments for Prevention of Money Laundering and Financing of Terrorism. For that purpose, trainings on prevention of money laundering and financing terrorism for different institutions and stakeholders were realized. Pursuant to the Law, 20 entities in their Programmes for Prevention of Money Laundering and Financing of Terrorism are compulsorily preparing an Annual Training Plan for the employees in the entity in the field of prevention of money laundering and financing of terrorism, which ensures the realization of at least two trainings during the year. These obligations contribute to increasing the knowledge and capacity of the entities for detecting suspicious activities for

33 <http://www.ufr.gov.mk/files/docs/Godisenizvestaj2017.pdf>

money laundering or financing of terrorism and timely submission of reports to the Office for such activities.

Since 2004, the Financial Intelligence Office, with its membership in the EGMONT Group, is an equal partner of the financial intelligence units in the world.

For further improvement of the system for prevention of money laundering and financing of terrorism, the Government also adopted a National Strategy for Combating Money Laundering and Financing of Terrorism in November 2017. As a medium-term strategic document, it defines the basic strategic goal, ranks the priorities and defines the activities that need to improve the system for prevention of money laundering and financing of terrorism in the country, through realization of 13 separate goals for the period between 2017 and 2020. Measures and activities are detailed in the Action Plan and have been developed according to the findings and conclusions determined by the Report for Conducted National Risk Assessment. The measure implementation will be monitored by the Council for Anti-Money Laundering and Countering the Financing of Terrorism.

The Office pays particular attention to the professional development and promotion of its human resources by organizing trainings, workshops and conferences:

Traditionally, money laundering is present in the so-called “cash economies”, states where the commercial activities are mostly cash-based. In addition to the traditional money laundering, by introducing it as cash in the banking system, in practice there are contemporary money laundering techniques as well. This, in fact, includes all non-cash manners of money laundering: electronic money transfer, use of money cards, loans, securities, insurance policies, etc.

If the established anti-corruption legislation and the measures envisaged for the prevention of money laundering are to be analyzed, the following conclusions will be drawn:

this area is extremely well covered by legal solutions;

bylaws have been developed (20 of them);

cooperation with other institutions in the state has been established;


the processes are monitored on international level;

EU directives are implemented;

the experience in the regulation of this area of the countries from the region and beyond is used.

At the same time, with the recent changes in this area in accordance with the new Law on Prevention of Money Laundering and Financing Terrorism, the flow of money, holders of these processes, etc. is regulated in several members.

In this regard, what is lacking is the application and respect of the members of the Law, i.e. the fact that despite this fairly regulated legislation, corruption and money laundering are highly positioned in the functioning of the entire social system of the country.



Moreover, in almost all cases of corruption or money laundering, the proceedings end without an epilogue, or with a purpose-made public high-sounding display in certain situations, without the ultimate closure of the cases. There is presence of selective justice, i.e. situations in which for some individuals there is a strict law for minor misdemeanors and long processes for large crimes and money laundering cases without a closure that leave a bad impression and a message about the functioning of the legal system and the establishment of a system of justice in the state, as one of the key matters for the private sector in creating a favorable business environment with respect to the legal regulations and procedures.

05

Implementation of Chapter 5 of the Convention

Chapter 5 of the Convention: “Asset Recovery” covers Articles 51 to 59 about the manner of securing and recovering illegally acquired property and property benefits. In that regard, the basic mechanisms of international cooperation between the States Parties to this Convention are foreseen in the field of the detection, securing, confiscation and recovery of illegally acquired property and property benefits by committing some of the identified corrupt criminal offenses under this Convention. In other words, Chapter 5 of the Convention against Corruption, in fact, tackles the last part of the fight against corruption, that is, the effectuation of illegally acquired property, which, on the other hand, is the goal, primarily due to which these crimes are committed.

One of the most important instruments in the fight against corruption - the confiscation of proceeds of crime, i.e. their permanent seizure by an order issued by a court or other competent authority on any property that originates or is acquired (directly or indirectly) by committing a crime, constitutes a long-known concept that is particularly relevant in the last quarter of the twentieth century, the so called “age of proceeds”.³⁴ This concept is a response to the increased financial power and capital of the organized crime, primarily accumulated through illicit trafficking in narcotic drugs and weapons. In addition, the traditional approach to crime control, with priority over prison sentences, has proven to be inappropriate and insufficient to deal with growing organized crime,³⁵ which is why the confiscation of illegally acquired property is considered a key element of contemporary strategies to combat organized crime.³⁶

Therefore, the discovery of illegally acquired property and property benefits and its confiscation is underlined or even glorified as one of the most significant and unique effective measures for tackling or reducing organized crime. The

³⁴ See: Pieth, M. ed., *Financing Terrorism*, Springer, Netherlands, стр.118, (2002).

³⁵ See: Gallant, M. “Money Laundering, Criminal Assets and the 1998 Proposed Reforms”, *Journal of Financial Crime*, Vol. 6 Issue: 4, стр.325-332, (1999).

³⁶ See: Vettori, B. *Tough on Criminal Wealth, Exploring the Practice of Proceeds of crime Confiscation in the EU*, Springer, стр. 2-5, (2005).

confiscation is a serious blow to crime, in a manner in which criminals are prevented from acquiring the necessary capital for committing other crimes and for infiltrating and corruption in the legal economy.³⁷ Through this measure, it appears that the desired objectives of the Law are effectively achieved, i.e. “crime should not pay” and that “no one can retain the property benefits gained from criminal activity”, thus fulfilling the essence of the principle that “wrong cannot become right”.³⁸

However, no matter how attractive the benefits of using the identification of illegally acquired property and its subsequent confiscation as effective instruments in the fight against organized crime and corruption, there are serious practical problems in the application of these measures. These practical problems can be recorded: in identifying illegally acquired property and proceeds from crime; in the form of institutional problems; in terms of lack of financial resources and human capacity; as well as through certain legal imperfections that greatly reduce the capacity of the prosecution authorities to achieve the desired goal: “doing crime is not profitable”!³⁹

Precisely due to these attributes of the confiscation of property and property benefits, as well as the recovery of illegally acquired property to the real owners in a series of international documents⁴⁰, provisions have been envisaged that instrumentalize the cooperation between the states in the field of increasing the efficiency in the application of confiscation, as well as of the return the illegally acquired property and property benefits to the real owners. In that regard, the provisions of Chapter 5 of the Convention against Corruption, which largely have the character of an international treaty, i.e. specifics of compulsion and self-fulfillment, are of paramount importance.

37 See: Hawkins, C.W., Payne, T.E., ‘Civil forfeiture in law enforcement: an effective tool or cash register justice?’, во J.D. Sewell (ed.) *Controversial Issues in Policing*. Boston, MA: Allyn and Bacon, (1999).

38 See Камбовски, В., *Организиран Криминал*, 2-ри Август Штип, 2005, стр. 759 и сл; or Lajic, O. Comparative Review of the Investigation and Confiscation of Criminal Assets, 46 *Zbornik Radova*, стр. 207, (2012).

39 See: Ветори, Б., Камбовски В., Мисоски Б., *Спроведување конфискација на приноси од кривични дела по реформите на Кривичниот законик од 2009-та година*, Прирачник за практичари, ОБСЕ Мисија во Скопје, (2011).

40 See, for example, the EU regulation in: Misoski B., *The Impact of the EU Directive 2014/42/EU on Freezing and Confiscation of Instrumentalities and Proceeds of Crime to the Macedonian Criminal Justice System*, *EU Law In Context – Adjustment To Membership And Challenges Of The Enlargement*, Vol. 2, Faculty of Law Osijek, Croatia, (2018).

06

Analysis of the Provisions of Chapter 5 of the Convention

6.1.

Article 51

Chapter 5 of the Convention against Corruption refers to prevention and detection of transfers of proceeds of crime, and also envisages measures detecting the proceeds of crime, with an emphasis on international cooperation between countries.⁴¹ In addition, particular importance is given to the cooperation between the signatory states to this Convention with regard to the recovery of property acquired in an unlawful manner, as a fundamental principle of this Convention (Art. 51).

⁴¹ See: page 19 of the Convention Guidebook

6.2.

Article 52 Prevention and detection of transfers of proceeds of crime

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial

owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and recordkeeping measures to take concerning such accounts; and

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance.

Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

6.2.1 Interpretation of the Provision

Article 52 points out to the States Parties the need to take appropriate action when performing all financial transactions, regardless whether they are related to a criminal offence - money-laundering, and, of course, in that process these actions of controlling transactions should in no way hinder the financial institutions in the performance of their business.

6.2.2. Implementation of Article 52

Bearing in mind the fact that the Convention against Corruption extends in many areas of the country's legal system, it is quite justified to apply the provisions of this Convention to several laws. Therefore, the incriminating behaviors that appear to be obligatory for the signatory states are mostly transposed through the incriminations of the Criminal Code⁴², while the influence of these provisions of the Convention, as well as their practical implementation, can be seen through the provisions from: The Law on Criminal Procedure⁴³, the Law on International Cooperation in Criminal Matters⁴⁴, the Law on Prevention of Money-laundering and Terrorism Financing⁴⁵, the Law on Prevention of Corruption and Conflict of Interest⁴⁶, the Law on Banks⁴⁷, the Law on Providing Fast Money Transfer Services⁴⁸, the Law on Voluntary Fully Funded Pension Insurance⁴⁹, Law on Notary Public⁵⁰, Law on Advocacy⁵¹, Law on Games of Chance⁵² and others. However, the most direct provisions regarding the measures for prevention of corruption and money-laundering are envisaged in the Law on Prevention of Corruption and Conflict of Interest and the Law on Prevention of Money-laundering and Financing of Terrorism.

42 Official Gazette of Republic of Macedonia, no. 37/1996, amended and modified several times, including 248/2018.

43 Official Gazette of Republic of Macedonia, no. 150/2010.

44 Official Gazette of Republic of Macedonia, no. 124/2010.

45 Official Gazette of Republic of Macedonia, no. 120/2018.

46 Official Gazette of Republic of Macedonia, no. 12/2019.

47 Official Gazette of Republic of Macedonia, no. 67/2007, amended and modified several times, including 7/2019.

48 Official Gazette of Republic of Macedonia, no. 27/2003, amended and modified several times, including 23/2016.

49 Official Gazette of Republic of Macedonia, no.7/2008, amended and modified several times, including 13/20013

50 Official Gazette of Republic of Macedonia, no. 46/1998, amended and modified several times, including 75/2019

51 Official Gazette of Republic of Macedonia, no. 59/2002, amended and modified several times, including 148/2015.

52 Official Gazette of Republic of Macedonia, no. 24/2011, amended and modified several times, including 90/2017.

Determining the identities of clients

Determining the identity of the client that enters into a business relation or performs financial transactions, the part in determining the identity of the persons who use the assets deposited in accounts with significant amounts, as well as the obligation for enhanced control of the holders of financial transactions, are regulated in several articles of the Law on Prevention of Money-laundering and Financing of Terrorism, and: 31, 32, 36 and Articles 41 to 54. Moreover, the obligation to determine the identities of clients that enter into a business relation is also envisaged through several laws that regulate the special areas of financial transactions or business relations, in accordance with the legal definition of financial transactions and business relations referred to in Article 2 of the Law on Prevention of Money-laundering and Terrorism Financing.⁵³In addition, Article 36 of the Law on Prevention of Money-laundering and Terrorism Financing envisages enhanced control of transactions as a way not only to protect against money-laundering, within the meaning of Article 33 of the Law, but also envisages enhanced analyses in all cases where transactions are performed by a client who is a holder of public office. Thereto, according to the legal definitions referred to in paragraph 22 of Article 2 of the same law, additional extensions are envisaged in terms of which persons are considered holders of public office, pursuant to paragraph 1 of Article 52 of the Convention against Corruption. Therefore, it is also envisaged to perform a range of enhanced financial analyses on former holders of public office (in our case, at the latest of two years after completing the public office), and, not only to the public official, but also to the members of their immediate families, as well as their close associates.

In terms of actions in Article 36 of the Law on Prevention of Money-laundering and Financing of Terrorism, enhanced analysis is envisaged for the following measures: determining whether the client – holder of public office and/or the beneficial owner is a holder of public office, through his statement; providing approval from the higher management to establish a business relation with a client – holder of public office and/or the beneficial owner, as well as providing consent for the extension of the business relation with the existing client – holder of a public office and/or the beneficial owner that became a holder of public office; taking appropriate measures for determining the source of the assets and the source of client's property – holder of public office and/or the rightful owner, who is a holder of public office and, enhanced monitoring of the business relations of these clients. In addition to these measures, enhanced monitoring of business relations exists in cases when it will be determined that the beneficiary and/or the rightful owner of the life insurance beneficiary and other insurances are related to investing by a holder of public office, and in these cases the financial entity is obliged to notify the higher management prior to the payment of the prize from the insurance policy and to carefully examine and determine the overall business relation with the client. Finally, the Commission for Prevention of Corruption

⁵³ See for example: Law on Banks, Law on Money Transfer and Law on Games of Chance. In addition, in certain laws, for example in the Law on Games of Chance, we have certain disagreements regarding the amount of money for which the client's identity is required, in the sense of the Law on Prevention of Money-laundering. Therefore, in the Law on Games of Chance in Article 11, identities are required in cases when an amount of at least EUR 3,000 is paid, or related transactions that exceed EUR 3,000, while this obligation is envisaged for the entities in the Law on Money-Laundering in cases where the transaction exceeds EUR 1,000. However, this inconsistency does not cause problems in practice, due to the fact that the organizers of games of chance are obliged to identify their clients for all transactions higher than EUR 1,000, so in cases of risk, certain data for these persons could be collected even if the amount does not exceed EUR 3,000.

should prepare and maintain an updated listing of persons holding public office, who are citizens of Republic of North Macedonia.

Regarding the obligations for determining the identity of the client who enters into a business relation or performs financial transactions, as well as in relation to the obligations for determining the identity of the persons who use the assets deposited in accounts with significant amounts, we can conclude that the Law on Prevention of Money-laundering and Terrorism Financing in Article 15, prescribes the obligation for business entities to determine the identity of all clients, authorized persons or real entities, and not only in cases of high risk of money-laundering, but also when it comes to low risk of money-laundering. The manner of determining the identity of the clients is regulated in the successive Articles 16 to 23 of the same Law.

Accordingly, regarding the amount of assets, Articles 43 to 48 envisage the obligation for the business entities for determining the identity of the clients in cases of money transfer of more than EUR 1,000,⁵⁴ as well as in cases when it involves cash transactions, notarial acts, loans, life insurance or purchase of vehicles in an amount higher than EUR 15,000, or loans in the amount of EUR 5,000, or purchase of chips and prizes in the amount of EUR 1,000 (Art. 52-53 of the Law on Prevention of Money-laundering and Terrorism Financing). In addition, the recommendations referred to in paragraph 1 of Article 52 of the Convention against Corruption, which state that this information is collected not only in cases of money-laundering, but also in cases of proceeds of crime, are consistently applied, whereby this obligation is stipulated word for word in line 2, paragraph 1, of Article 54 of the Law on Prevention of Money-laundering and Financing of Terrorism.

The obligation for the signatory states of the Convention against Corruption to introduce appropriate directions and guidelines for financial institutions to conduct an enhanced analysis of the business relations and transactions, the types of accounts and transactions of clients for which an analysis is required, as well as the introduction of the obligation to store these data, is regulated in Articles 3 and 4, as well as in Articles 8, 9 and 10 of the Law on Prevention of Money-laundering and Financing of Terrorism, which refer to the prevention of money-laundering, it is envisaged that the determination of the measures and the actions for prevention of money-laundering will be identified by the Council for Combatting Money-laundering and Financing of Terrorism, through national risk assessment, and then all financial institutions apply appropriate measures envisaged in programs, to effectively reduce and manage the identified risks of money-laundering and terrorism financing, and according to the appropriate guidelines by the Financial Intelligence Office (Art. 64, paragr. 3), as well as the regulated obligations in the Law on Prevention of Money-laundering and Financing of Terrorism in Articles 11 to 63. The deadline for storing this data, whether in paper or in electronic form, and Articles 54 and 55 provide the indicators and guidelines for implementing the analyses and enhanced analyses, while the possibility for international cooperation, as well as the exchange of data, information and documentation is regulated in Articles 127 and 129 of the Law on Prevention of Money-laundering and Terrorism Financing. However, this possibility for cooperation is envisaged only in cases where there is suspicion of money-laundering and terrorism financing. Whereas,

⁵⁴ Except in cases of exceptions referred to in paragraph 7 of Article 43 of the Law on Prevention of Money-laundering and Terrorism Financing. That is, if it is about using cards for withdrawing money in banks, post-terminals and ATMs for payment in the retail trade; transfers and settlements where both the payer and the recipient are banks that make the transfer in their own name and for their own account; or, tax payments, fines and other public fees.

this possibility is not envisaged for cases when an analysis of the clients is needed in cases where the legal entities presume or have reasonable doubts that the property is from criminal activities, in the sense of the paragraph of Article 52 of the Convention, or Article 54 of the Law on Prevention of Money-laundering and Financing of Terrorism.

Recommendation:

The legislation, which is mostly in line with the Convention, as a possible intervention in the Law on Prevention of Money-laundering and Financing of Terrorism, would be in direction of incorporating opportunities for international cooperation and information sharing in cases involving transactions of property that is acquired in an unlawful manner.

Effective Measures for Prevention of Money-laundering

Article 49 of the Law on Prevention of Money-laundering and Financing of Terrorism states that it is “forbidden to establish or extend a business relation with shell banks, or initiating or extending the correspondent relation with banks for which they know allow opening and working with accounts in shell banks”. This means that this obligation is binding for all transactions, whether related to money-laundering or to some of the other criminal offences, envisaged in the Convention. Moreover, as an argument of this claim, we state the second paragraph of Article 49 of the Law on Prevention of Money-laundering and Financing of Terrorism, which states that it is forbidden for Shell banks to carry out any financial activities in Republic of North Macedonia.

As mentioned above, the possibility of monitoring the financial transactions of public officials, as well as the enhanced analysis, in accordance with the provisions of the Law on Prevention of Money-laundering and Financing of Terrorism, are permitted for all transactions of holders of public office, and not only for those which are considered to be related to money-laundering and terrorism financing. However, unfortunately, the possibility to use, that is, share this data with other states, for the purposes of detection and prosecution, as well as recovery of property acquired through a criminal offence, in accordance with the positive legal solutions, is currently only envisaged for the criminal offence - money-laundering and terrorism financing, but not for the other incriminations envisaged in the Convention against Corruption, which have been transposed into the national criminal legislation.

On the other hand, in accordance with the Law on Prevention of Corruption and Conflict of Interest, the holders of public office are obligated to submit data to the State Commission for Prevention of Corruption (Art. 82) and to update them in a timely manner (Art. 85), referring to their financial situation. These assets declaration lists of holders of public office, pursuant to Article 87, are publicly available on the website of the Commission for Prevention of Corruption⁵⁵.

⁵⁵ See Law on Prevention of Corruption and Conflict of Interest, as well as the web page of the Commission: www.dksk.mk.

Reporting certain financial activities of accounts abroad of holders of public office

The Macedonian legislation envisages the possibility to sanction the holders of public office if they do not submit the data on these activities to the Financial Intelligence Office, or to the State Commission for Prevention of Corruption. The obligation to report the realty status, as well as every change in the realty status and the interests of the holders of public office, is envisaged in Articles 82 and 85 of the Law on Prevention of Corruption and Conflict of Interest, while in cases where the holders of public office do not submit these data, that will be sanctioned as an offence, in accordance with the provisions of Article 109 of the Law on Prevention of Corruption and Conflict of Interest.

On the other hand, these persons are not obligated to submit these data to the Financial Intelligence Office, but in accordance with the provisions of the Law on Prevention of Corruption and Conflict of Interest, the State Commission for Prevention of Corruption collaborates with all the competent departments, including the Financial Intelligence Office and the Public Prosecutor's Office, in the direction of detecting the corruption activities of the holders of public office, regulated in accordance with Articles 92 to 97 of the Law on Prevention of Corruption and Conflict of Interest.

Recommendation for Article 52

Increased efficiency in detecting, processing and proper sanctioning of the perpetrators of the criminal offence of money-laundering is needed, through: increased number of detected and documented cases of money-laundering, increased number of processed cases of money-laundering, increased number of appropriately sanctioned perpetrators of the criminal offence of money-laundering. Measures to be taken:

- Establishing a practice for conducting financial investigations with the law enforcement bodies;
- Raising awareness for the exposure and involvement of legal entities in money-laundering and their appropriate sanctioning;
- Strengthening the capacities of law enforcement bodies.

At the same time, it is necessary to increase the efficiency in detecting, processing and proper sanctioning the perpetrators of the criminal offence – terrorism financing, through increased awareness of the risks of financing of terrorism, effective detection, prosecution and proper sanctioning of the perpetrators of the criminal offence of terrorism financing.

In that direction, the Council for Combatting Money-laundering and Terrorism Financing, established in accordance with the Law, is competent to monitor and coordinate the activities for implementing this strategy in order to fulfill the determined goals, to improve the functionality of the system and to propose activities for increasing its effectiveness. For their work, the members of the Council prepare quarterly reports that will be reviewed at the meetings, which will be held at least on a quarterly basis, and an annual report will be submitted to the Government.

It is necessary to make further analyses on the justification of the introduction of the possibility of using data from the questionnaires of holders of public office in the direction of detecting and prosecuting criminal offenses, envisaged in the Convention against Corruption, as well as the recovery of property acquired through a criminal offence, as well as the possibility of submitting this data to other countries for the purposes of detecting and prosecuting the perpetrators and recovering unlawfully acquired proceeds of crime.

6.3.

Article 53 Measures for direct recovery of property

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and (c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

6.3.1. Interpretation of the Provision

Article 53 of the Convention elaborates cases of direct recovery of property acquired in an unlawful manner. That is, in the first paragraph, the possibility is foreseen that other states may submit a civil procedure for determining ownership of property resulting from having committed any of the criminal offences envisaged with this Convention, before the courts where the property is situated. The second paragraph covers the possibility of predicting ways of compensation towards other States for damages caused by some of the incriminating behaviors in the Convention against Corruption within the State in which the criminal procedure is conducted. While the third paragraph envisages the possibility of taking into account, by the national courts, the request of the other States for compensation for damages caused by any of the criminal offences specified in the Convention against Corruption in the adoption of the decision for confiscation of property and proceeds acquired through a criminal offence.

6.3.2. Implementation of Article 53

In accordance with our national law regarding the determination of ownership in front of the national courts through the provisions of the Law on International Cooperation in Criminal Matters, in accordance with the envisaged possibility for recognizing foreign confiscation decisions, the procedure is conducted through the provisions of the Law on International Cooperation in Criminal Matters, in accordance with the provision of Article 28. In addition, this Article envisages the direct recovery, upon the request of the foreign competent authority, of to the items and property that have been seized for their protection. In accordance with the provisions of this Article, items and property benefits include: the items with which the crime was committed; the items that occurred as a result of committing the criminal offence or their counter-value; the proceeds of the criminal offence or their counter-value and the gifts given in order to encourage committing a criminal offence; as well as rewards for the criminal offence or their counter-value. Pursuant to paragraph 3 of the same article, the transfer of the items and the property benefits is done on the basis of a final and executive decision of the foreign competent authority, except in the cases when it concerns: goods that

are under temporary protection or represent a cultural heritage, or are natural rarities of Republic of North Macedonia; when the injured party has a place of residence or habitation in Republic of North Macedonia, and should be returned to him; when the national competent authority issued a right to Republic of North Macedonia over them; when the person who has a place of residence or habitation in Republic of North Macedonia did not participate in committing the criminal offence (he will prove that he did not know and could not have know that the item and the property were acquired by a criminal offence in Republic of North Macedonia or abroad); are necessary for the implementation of criminal procedures in Republic of North Macedonia; when they are necessary for the application of the measure of confiscation of property and property benefits and seizure of items; and when it comes to items that according to the Criminal Code must be seized.

The possibility for compensation of damage to another country for a committed criminal offence is not precisely envisaged in the positive legal regulations, but that does not mean that the foreign countries do not have the right to protect their interests during the criminal procedures that are conducted in front of the national courts. Or, to put it differently, if the foreign country is damaged, it can exercise its claim within the criminal procedure as any other injured party, within the meaning of Article 57 of the Law on Criminal Procedure. While, the Public prosecutor even after his official duty, shall provide securing the property and property benefits that are acquired through the criminal offence or through undertaking the measure of confiscation, in the meaning of Article 39 of the Law on Criminal Procedure.

On the other hand, special and explicit possibilities for participation of foreign countries in the judicial proceedings are not envisaged, which means that for them, equally as for the national citizens, the regular provisions for protection of the rights of damaged persons from criminal offences are applied.

It is necessary to foresee special and explicit possibilities for participation of foreign countries in the judicial proceedings in our country in direction of compensating damages to another country and recovery of assets.

6.4.

Article 54 Mechanisms for recovery of property through international cooperation in confiscation

1. In 1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

6.4.1. Interpretation of the Provision

Article 54 of the Convention envisages mechanisms for recovering unlawfully acquired property through international cooperation and use of confiscation, and envisages the possibility for providing legal assistance in relation to requests from other states for taking measures for freezing or temporary seizure of such property.

6.4.2. Implementation of Article 54

The international cooperation referred to in Article 54 of the Convention against Corruption in the Macedonian legal system is regulated in the Law on

International Cooperation in Criminal Matters in Article 15, paragraph 1, lines 13 and 14. In these two lines, the possibility for cooperation between the states is envisaged in the area of temporary securing of items, property or assets related to the criminal offence, as well as their temporary freezing, seizure and retention of funds, bank accounts and financial transactions or proceeds from a criminal offence. The reasons for taking these procedural actions are, of course, for securing the unlawfully acquired property, in order for that property to be confiscated after the conducted criminal procedure. Meaning, there have been envisaged appropriate mechanisms regarding the securing of the property through its temporary freezing and seizure, in the sense of paragraph 2 of Article 54 of the Convention against Corruption.

The practical realization of the possibilities for international cooperation is further operationalized through several Articles of the Law on International Cooperation in Criminal Matters, i.e. through Articles 26, 27 and 28. These articles envisage general characteristics regarding the procedure for temporary securing and freezing of property in cases where the basis for these procedural actions are the requests by another state, as the manner of confiscation and/or transfer of proceeds from criminal offences through the use of confiscation is also envisaged. While the procedural provisions for the application of the temporary freezing of property and seizure of items are regulated in Articles 194 to 204 of the Law on Criminal Procedure, especially in Article 196 about Article 194 of the Law on Criminal Procedure in relation to the temporary seizure of items and in Articles 200 and 202 in relation to the temporary so-called “freezing” of the property.

The confiscation procedure is regulated in Articles 529 to 541 of the Law on Criminal Procedure, while the confiscation, as a measure, is regulated in Chapter 7, that is Articles from 97 to 100-a of the Criminal Code. In addition, the measure confiscation is regulated in the Criminal Code, confiscation from third parties, the extended confiscation, also including the use of confiscation in cases where the criminal procedure is not possible (paragraph 3, Article 97 of the CCM, and in the sense of line 3 of paragraph 1 of Article 54 of the Convention).

From the analysis of these Articles, we can conclude that appropriate possibilities have been envisaged for temporary securing and freezing the property for which there is reasonable doubt that it is acquired through criminal acts, including all offences, not just those incriminated in the Convention against Corruption. Certain specifics, in the sense of limiting the use of confiscation in terms of the gravity of the offence, are envisaged in the Criminal Code, but only regarding the extended confiscation. However, even in this case, we can conclude that our legal system envisages appropriate mechanisms for both international legal assistance and the use of extended confiscation, simply because the extended confiscation, applies primarily to more serious criminal acts, directly under the influence of the Convention against Corruption and the Convention on the Fight against Organized Crime.

Regardless of the fact that the generally nomotechnical procedure for confiscation, as well as freezing and securing the property for confiscation in the Macedonian criminal justice system seems to be appropriately addressed and standardized, in practice there are serious problems in the application of these solutions. In this direction, particularly problematic are the areas for determining the amount of property benefits that need to be confiscated, especially in the sense of Article 97-a of the CPM, which regulates the confiscation of the indirect property benefits, there are still doubts regarding the clear determination of the amount of property that should be confiscated, the determination of the value of the

mixed property benefits, and similar, also certain weaknesses in the confiscation decisions have been detected, which do not exactly specify the property that should be confiscated, just the value, while mixing the principles of net and gross amount of confiscation.

Although the process of identifying all the necessary components and solutions for improving the confiscation and the detection of unlawfully acquired property has begun, as a necessary instrument in the fight against crime and in the fight against corruption, with the Plan 3-6-9⁵⁶ in the part of organized crime there is still no progress in terms of increasing the functionality of the law enforcement institutions.

The problem is in the inconsistent implementation of laws in practice, in terms of confiscation. These disputes need to include the Public Prosecutor. It is necessary to lead the financial investigations in parallel with the criminal investigations. The court decisions are not precise and clear enough regarding the confiscation measure. The court decisions do not contain precise data on the property that should be confiscated or frozen. Weak charges and non-identifying the property that should be confiscated are the main reasons why the judges did not make decisions in a timely manner and are not precise enough. Every decision should be executive, that is, clearly identified, to have clearly delineated property, its value, where it is located. It is necessary to create or produce one multidisciplinary team that will jointly lead the entire process. It is necessary to further professionalize the personnel in the judiciary and in the Public Prosecutor's Office.

For confiscation disputes it is necessary to include the Public Prosecutor. It is necessary to lead the financial investigations in parallel with the criminal investigations. Every decision should be executive, that is, clearly identified, to have clearly delineated property, its value, where it is located. It is necessary to create or produce one multidisciplinary team that will jointly lead the entire process, as well as to further professionalize the personnel in the judiciary and in the Public Prosecutor's Office.

In this direction, within the positive legislation, a nomotechnical improvement of the provisions of the CCM may also be stipulated, such as the removal of terminological vagueness in the CCM in the part of the extended confiscation when the term founded confidence of the court is used, which is unknown in the terminology of procedural law.⁵⁷

56 The direction of reforms proposed by the Government of Republic of North Macedonia, included in the "Plan 3-6-9", derives from the Government's Work Program (2017-2020), and takes into account the political Przino agreement and follows the recommendations of the high level meetings with the representatives of the EU institutions, the guidelines of the European Commission in the Urgent Reform Priorities (2015), the recommendations of the group of senior experts on the systemic issues of the rule of law regarding communication monitoring (2015), as well as the series of recommendations to the Government for the past several years from the bodies of the Council of Europe (Venice Commission, GRECO), the recommendations of the OSCE/ODIHR, the findings and recommendations of the European Commission's annual reports, including from the High-Level Accession Dialogue, the conclusions of the ministerial dialogue on the Economic Reform Program, the conclusions of the regular meetings of the bodies of the Stabilisation and Association Agreement, the document prepared by a group of civil society organizations entitled "Proposal for Urgent Democratic Reforms" (Blueprint) and the results of consultations with Civil society. <https://vlada.mk/plan-3-6-9>

57 For example, in the use of confiscation of property, in practice there are several problems through a series of well-known cases in the public, such as the case "Trust", the case "Boss", the case "Bachilo" and others.

6.5.

Article 55 International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it;

b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with Articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in Article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of Article 46 of this Convention are applicable, mutatis mutandis, to this Article. In addition to the information specified in Article 46, paragraph 15, requests made pursuant to this article shall contain:

a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

4. The decisions or actions provided for in paragraphs 1 and 2 of this Article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this Article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this Article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this Article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

8. Before lifting any provisional measure taken pursuant to this Article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

9. The provisions of this Article shall not be construed as prejudicing the rights of bona fide third parties.

6.5.1. Interpretation of the Provision

Article 55 of the Convention against Corruption envisages the possibility for a State to adopt confiscation decisions of another State by directly adopting the enforceable confiscation decision of the State which made the request or part of the enforceable decision of the State which made a request in another state. Competent courts would reach new confiscation decision based on the confiscation decision of the state which made the request. The obligations of the states regarding the implementation of these requests shall be additionally envisaged, and the confiscation request framework shall be stated.

6.5.2. Implementation of Article 55

The national legal system, especially the Law on International Cooperation in Criminal Matters, does not envisage special provisions which will regulate the obligation of the Republic of North Macedonia to directly adopt decisions of foreign requesting states for confiscation or for taking actions for discovering, monitoring, freezing and securing of criminal proceeds, obtained by performing some offences envisaged in the Convention, for the purpose of implementing the confiscation measure. That is, Articles 27 and 28 only envisage general confiscation implementation provisions and property securing measures upon request of other states, where it is assumed that these enforceable requests are accepted by the national authorities, while the procedural provisions for the direct operationalization of these foreign decisions in the practice of the national courts are not standardized.

That is, in spite of the fact that it is assumed that for the application of the provisions of Articles 27 and 28 of the Law on International Cooperation in Criminal Matters, foreign enforceable decisions on confiscation and securing property are fully adopted and accepted, the national system lacks provisions which would fully comply with the provisions of paragraphs 1 and 2 of Article 55 of the Convention against Corruption.

The specific provisions regarding the identification of the property, as well as with regard to the formal elements of the content of the requests of the requesting states for the adoption of legally enforceable confiscation decisions or for taking measures for securing the property acquired through a criminal offense, for the

purpose of further confiscation, are not envisaged in the Macedonian Law on International Cooperation in Criminal Matters.

However, bearing in mind the fact that, for the States parties to the Convention against Corruption, with regard to these Articles, the Convention has the status of an international treaty, it seems unnecessary to provide for the revival of the provisions of international assistance in the field of confiscation by foreseeing these measures in national legislation.

The Law on International Cooperation in Criminal Matters shall regulate the ratio of the amount of the property, subject to confiscation, in favour of the requesting State. More specifically, paragraph 2 of Article 27 envisages that if the value of the confiscated property is up to 10,000 Euro, then this property shall not be returned to the requesting state. However, this means that the application of the confiscation itself is not brought into question, which is the very essence of paragraph 7 of Article 55 of the Convention against Corruption. That is, the Macedonian national system does not envisage measures for rejecting the Cooperation request for confiscation or securing items due to confiscation in a situation where the request is made by a foreign state.

Due to an increase in the legal security, it is necessary to update the domestic regulation by fully accepting provision 55 of the Convention and its transposition into the Law on International Cooperation in Criminal Matters.

Bearing in mind the fact that there is an exceptionally low rate of realization of the confiscation measure, as well as the fact that by monitoring the analogy within the Law, where the form of the extradition decisions is stated in detail, which applies to this Convention as well, there is a need of complete transposition of paragraph 4 of Article 55 in the Macedonian legal system.

In order to conduct international cooperation for confiscation purposes, the National Strategy against Money Laundering and Financing of Terrorism is a strategic document which provides guidance on the harmonization of the legislation of the domestic legislation in order to strengthen the capacities for implementing the obligations arising from the Convention and from other international documents.



6.6.

Article 56 Special cooperation

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

6.6.1. Interpretation of the Provision

Article 56 of the Convention against Corruption regulates the possibility of submitting data to other states with regard to illegally incurred proceeds through offences that are subject to this Convention.

6.6.2. Implementation of Article 56

In the Macedonian legal system, this option is possible for one of the incriminated offences in the Convention only, i.e., only in cases when there is an allegation for money laundering and terrorism financing, pursuant to Article 30 of the Law on Prevention of Money Laundering and Financing of Terrorism. Pursuant to this Article, the Financial Intelligence Office may submit data, information and documentation for allegation of money laundering and terrorism financing to another state even without prior request from that State.

In the spirit of the provisions of Article 56 of the Convention, it is necessary to apply the provision of Article 130 of the Law on Prevention of Money Laundering and Terrorism Financing to all criminal offenses envisaged in the Convention and the same Article shall be envisaged in the Law on International Cooperation in Criminal Matters.

6.7.

Article 57 Return and disposal of assets

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this Article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this Article, the requested State Party shall:

a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this Article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.

6.7.1. Interpretation of the Provision

Article 57 of the Convention against Corruption regulates the situation with the effects from the property confiscation and the property benefit obtained through offences envisaged in this Convention. That is, it targets the so called “fate” of the confiscated property. Thus, it is envisaged that the confiscated property is handled in accordance with the national law, and the possibility of returning the confiscated property to the legitimate owners is also envisaged. Furthermore, guidelines are provided for adding norms in national legal systems through which the competent authorities are authorized to return the confiscated property to the requesting states.

6.7.2. Implementation of Article 57

Confiscated Property Management

Pursuant to this obligation under the Convention against Corruption, in the Macedonian legal system it is envisaged that the confiscated property will be managed by a separate state authority, in accordance with the first paragraph of Article 57 of the Convention against Corruption. This obligation is regulated with the Law on Managing Confiscated Property, Property benefit, and Confiscated Items in Criminal and Misdemeanour Procedures⁵⁸. The Law on International Cooperation in Criminal Matters, in Article 27, paragraphs 2 and 3, envisages that half of the confiscated property, if it is in cash which exceeds 10,000 Euro, shall be given to the requesting State, and if the property is not in cash, than it can be given to the foreign state, provided that this state gives consent for taking over or it is sold and if its value does not exceed 10,000 Euro, then half of that amount is given to the requesting State. Regarding the confiscated items and the property benefit, they are given to the foreign State, pursuant to paragraph 2 of Article 28 of the Law on International Cooperation in Criminal Matters, except in the case of items or property benefits that need to be returned to the injured party who has a residence in the Republic of North Macedonia, or if the person showed conscientious behavior, i.e. acted in a bona fide relation and has a place of residence or stay in our state.

The state reserves the right to refuse to return the items or the property benefit declared to be goods under temporary protection, cultural heritage or natural rarity, or which, according to the Criminal Code, are not part of the legal transaction and must be confiscated; a criminal procedure is initiated for these items in the Republic of North Macedonia (or the state has certain right to them, or they are subject to confiscation in domestic processes).

The above confirms that, generally speaking, sufficient mechanisms have been envisaged for management with the confiscated property and the property benefit, as well as its return to the requesting states.

However, there are no provisions regarding the transfer of the property and property benefit resulting from the criminal offense - misappropriation of public funds and assets, within the meaning of Articles 17, 23 and paragraph 3 of Article 57 of this Convention, regardless of the fact that in paragraph 3 of Article 57 it is envisaged that the state may attempt to return these funds to the requesting State.

The basis for reducing the value of the property that is returned to the requesting state and, which was confiscated in the requested State, is envisaged in paragraph 4 of Article 57 of the Convention against Corruption. Hence, the provisions contained in paragraphs 2 and 3 of Article 27 of the Law on International Cooperation in Criminal Matters are legitimate.

However, the grounds on which the Republic of North Macedonia reserves these assets in the amount up to 10,000 Euro, in total or half of the amount, if it exceeds 10,000 Euro, are not clearly envisaged within the scope of Article 27. Therefore, we find that a description for this asset reservation should be added to this Article, i.e., this reservation should be regarded as a compensation for the work done and the actual costs of the requested State, or, as per the wording of the Convention

⁵⁸ Official Gazette of the Republic of Macedonia, No. 98/2008, as amended from time to time, as at 64/2018.

against Corruption, compensation for the reasonable costs incurred as a result of conducted investigative measures, the actions of the Public Prosecution, or costs of the court, incurred for the purposes of return or management with the confiscated property and the property benefit.

Recommendations:

It is necessary to clarify the provisions of the Law on International Cooperation in Criminal Matters in the sense of consistently incorporating paragraphs 1, 2 and 3 of Article 57 of the Convention against Corruption. The reason for this recommendation stems from the fact that the nomotechnical solution envisaged in these paragraphs of Article 57 of the Convention against Corruption is better, clearer and offers greater protection of the interests of victims, injured parties and bona fide third parties.

The Macedonian legislation should foresee the overcoming of the rigidity of the domestic legislation in relation to the strict 50% of the value of the confiscated property that would be returned to the foreign state which made the request. Therefore, attention must be paid to correct the 50% percentage in cases when the amount exceeded 10,000 Euro, primarily bearing in mind the value of the property or the property benefit to be confiscated, especially in cases when the confiscation subject may be property or property benefit in an amount a little over 10,000 Euro, or multimillion sums.



6.8.

Article 58 Financial intelligence unit

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

6.8.1. Interpretation of the Provision

The obligation under Article 58 of the Convention against Corruption, that the special authorities for financial intelligence should cooperate with one another for the purpose of preventing and combating the transfer of illegally obtained property as a result of proceeds of offences envisaged in this Convention, as well as of promoting ways and means of recovering such proceeds through establishing special financial intelligence authorities which would be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

6.8.2. Implementation of Article 58

Article 58 has been fully implemented in the Law on Prevention of Money Laundering and Financing of Terrorism. That is, the obligation for monitoring and analyzing suspicious financial transactions, as well as the role of the Financial Intelligence Office, represents the essence of the whole Law, and the mutual cooperation of the Office is envisaged as a separate obligation within the scope of Articles 127-135 of the Law.

6.9.

Article 59 Bilateral and multilateral agreements and arrangements

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention

6.9.1. Interpretation of the Provision

Article 59 of the Convention against Corruption envisages the possibility of the States Parties to conclude additional bilateral or multilateral agreements for the purpose of promoting the effectiveness of international cooperation, as well as for discovering the illegally obtained property and property benefits in the sense of chapter 5 of the Convention against Corruption.

6.9.2. Implementation of Article 59

This possibility is also envisaged in paragraph 4 of Article 127 of the Law on Prevention of Money Laundering and Financing of Terrorism. On the other hand, this provision of Article 59 has a generally referential effect, therefore, on the basis of it, it is not excluded that Macedonian law enforcement authorities can conclude other bilateral or multilateral agreements on cooperation in the area of detection and processing of perpetrators of other offences.



07

Future Steps to promote the Convention's review system

The Convention provides opportunities for international advocacy which may globally improve the standards of anticorruption results. This advocacy may have an influence on better understanding the Convention's norms, as stated in the official guidelines and interpretative materials or in the COSP's resolutions, or it may affect the design of the international processes to follow-up the commitments of the Convention.

The issue the Conference of States Parties (COSP) will face is the fact that there is no mechanism for further monitoring of the Convention's implementation. Namely, after the completion of the second cycle of review of chapters 2 and 5, the Convention does not envisage a follow-up mechanism for the noted remarks and recommendations of both review processes.

This brings into question the whole review process and its importance. The lack of appropriate control mechanism is a ground for incomplete future implementation of the Convention by the States Parties and a possibility for diminution of the meaning of this significant international instrument in the fight against corruption.

The Conference of States Parties to the Convention (COSP) should provide a statement for further steps as soon as possible and create a new follow-up mechanism for the implementation of the Convention by the States.

08

CONCLUSIONS

Due to its wide coverage (including international anticorruption measures, such as mutual legal assistance) and the international scope, UNCAC is well suited for solving the global corruption state and cross-border cooperation for the return of property acquired through corrupt means. However, in order to accomplish this, it is necessary for the states to act at a domestic level.

The abovestated analysis provides a detailed explanation of the conclusions regarding each Article, subject to review, of Chapter 2 and Chapter 5.

The common conclusions for all the Articles and the bases for reducing the corruption in the state are the following:

1. Incomplete transparency of public institutions

- The basic prerequisite for preventing corruption is precisely the transparency which, in order to exist, requires political will and preparedness to be fully open before stakeholders and citizens.

2. Insufficient involvement of all stakeholders throughout the process of policy creation.

- A prerequisite for good policies which eliminate corruptive elements is the their adoption through an inclusive process with all stakeholders which are concerned by a certain issue.

3. Partial accountability as a prerequisite for measuring the consistent fulfillment of the competences of state institutions

- The need for regular reporting of the state institutions regarding their work is an important tool which shows whether and to what extent the institutions work in accordance with the Law, and whether there are corruptive elements based on their work reports.

4. Inconsistent implementation of domestic regulation

- Non-selectivity in the implementation of laws and by-laws and their consistent application is a prerequisite for reducing corruption.

CHAPTER 2

1. From the conducted analysis of the provisions of Chapter 2 of the Convention against Corruption, we can conclude that North Macedonia **has developed and implemented anti-corruption policies, but they are not fully implemented**, such as the non-functioning of the SCPC for almost a year. For that purpose, a new Law on Prevention of Corruption and Conflict of Interests was adopted, which aims to strengthen the efficiency and independence of the State Commission for Prevention of Corruption and strengthening the legal and institutional anti-corruption framework.

2. **There is a lack of promotion of greater participation of the civil society in the shaping of anticorruption policies.** There is an improvement regarding the reporting and transparency tool of the Government through open data, but this tool is not equally implemented in all institutions and, additionally, in the local self-government. While civil society is slowly establishing itself as a relevant partner in the building of anti-corruption measures, the private sector remains on the margins of this issue. Besides the concluded memoranda of understanding between the SCPC and the Chambers of Commerce, these two institutions do not cooperate frequently. The private sector is yet to be included and it is not properly introduced to the cooperation possibilities and to the importance of the matter.

3. **The issue for the judicial system remains unsolved, despite the reforms which have already begun in this area.** The progress is evident, but not enough to clearly state actual progress. As with most areas, the regulation implementation will pose a challenge.

4. **The free access to public information** is an issue for which a great public debate has been initiated, based on which the creation of a new law on the matter has commenced. Since the adoption of the current Law on Free Access to Public Information, it can be concluded that the biggest problem with regard to its implementation was the “silence of the administration” and the inconsistent implementation of it. The new Law, especially with the newly established Agency for Free Access to Public Information, rightfully increases the expectations for a significant improvement in the implementation of this matter.

5. **Public procurements** and their legal standardization have undergone changes and the main conclusion is that the Law provides greater protection against corruptive actions, as well as the competition possibility for small and medium-sized companies. Here, the integrity issue remains a challenge.

6. Despite the detailed procedure for recruitment of **administrative officials** and the existence of strictly established norms for selection of the best candidates, the practice shows that recruitments or employments based on party affiliation or nepotism in employment are an integral part of the process. Moreover, this is reflected in the promotion process which, as a final effect, leads to demotivation of a part of the employees and the departure of quality public sector employees. The procedure for administrative officials assessment creates additional pressure

and does not offer the exercise of the right of protection of the administrative officer in relation to the assessment.

7. Despite the commitments through several legal solutions place **integrity** up on a pedestal, as one of the basic measures to reduce corruption, this mechanism in practice shows a series of uncertainties. Namely, the control mechanisms did not meet the expectations and often, the integrity issue is just on paper.

CHAPTER 5

1. From the conducted analysis of the provisions of chapter 5 of the Convention against Corruption, we can conclude that **in the Macedonian penal system, half of the provisions of this chapter are appropriately articulated to a certain extent.** That is, for the most part they are incorporated within the Law on Prevention of Money Laundering and Financing of Terrorism, as well as within the Law on International Cooperation in Criminal Matters.

2. There is evident lack of international cooperation and information sharing in cases of transactions in property acquired in an unlawful manner.

3. Regardless of the fact that generally, and nomotechnically, **the confiscation procedure**, as well as the freezing and securing of property for confiscation, in the Macedonian criminal justice system seems to be appropriately addressed and standardized, in practice there are serious problems in the application of these solutions. In this regard, the areas for determining the amount of property benefit that needs to be confiscated are particularly problematic. That is, in spite of the fact that it is assumed that in order to apply the provisions of Articles 27 and 28 of the Law on International Cooperation in Criminal Matters, foreign enforceable decisions on confiscation and securing property are fully adopted and accepted, however, the national system lacks provisions which would fully comply with the provisions of the Convention.

09

RECOMMENDATIONS

Starting with the defined conclusions, the following general recommendations shall contribute to total implementation of UNCAC:

1. **Improving the transparency of state institutions** as a basic prerequisite for reducing corruption in that area.
2. **Inclusion of all stakeholders** in the creation of significant policies regarding prevention and repression of corruption.
3. **Increased awareness among the state institutions for accountability for their work**, as a basis for regular monitoring by the citizens about the manner and extent of fulfillment of the competences from the scope of their work.
4. **A full and non-selective application of the regulation** that signifies what should be implemented “de jure”, should also be implemented “de facto”, so that we can provide legal security, both for the physical and legal entities.

CHAPTER 2

1. **Consistent implementation of the Law on Prevention of Corruption and Conflict of Interest**, as well as ensuring full independence, without any political influence on the SCPC.
2. Selective involvement of stakeholders remains a challenge and it is necessary to find a modus for business community inclusion. **The voice of civil society in creating anti-corruption reforms to be evaluated as an equal partner.**
3. **Urgent and immediate judicial system reform implementation** and providing judge integrity determination procedure. No political influence

on the judicial system should be the very basis of reform creation in this area.

4. **Implementation of the new Law on Free Access to Public Information should be a high priority**, as well as the compliance with the principle of transparency and openness of state institutions towards citizens. The institutions should not find excuses for avoiding the delivery of information to citizens and should respect the established legal deadlines.
5. **The legal solution in the public procurement area is yet to show its influence and fulfillment.** Follow-up on the implementation process shall be a prerequisite for the prevention of corruption, as well as training the participants in the public procurement process.
6. One of the key measures which should be taken **in the administration area is its depolitization through enhanced application of principles of merit, equal opportunities and adequate and equitable representation** and professionalization of senior management positions, which would contribute to limiting political influence in appointments and dismissals.
7. **Integrity as a prerequisite for corruption reduction should be envisaged in various areas** as one of the elementary anticorruption measures.

CHAPTER 5

Additional actions should be taken regarding full implementation of the legal provisions of Chapter 5 of the Convention against Corruption, thus fully implementing these provisions.

1. An **intervention is required primarily in the Law on International Cooperation in Criminal Matters**, as well as in the **Law on Prevention of Money Laundering and Financing of Terrorism** from the aspect of extending the scope of the provisions of this Law by covering the financial benefits from other criminal offenses envisaged in the Convention against Corruption.
2. An intervention is required in the Law on Prevention of Money Laundering and Financing of Terrorism in order to incorporate opportunities for international cooperation and information sharing, even in cases when it comes to transactions with illegally acquired property.
3. For more efficient application of the confiscation measure, it is necessary to **improve the legal provisions of the Criminal Code**, as well as the **Law on Criminal Procedure**, which will make the application of this measure clearer from the aspect of its normative specification, and thus it will have more frequent application by the law enforcement authorities.

09

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