

# Macedonian State Commission for Prevention of Corruption: Can It Effectively Control and Prevent Corruption in the Public Administration?

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## Abstract

*This paper deals with the core preventive anti-corruption authority in the Republic of North Macedonia (hereinafter: Macedonia), which is the State Commission for Prevention of Corruption (hereinafter: SCPC). The main research question is: can and does the SCPC effectively control the public administration as per its legal competencies and does it therefore prevent corruption successfully? The final objective is to provide critical observations in terms of the SCPC's functions, tasks, and powers, as well as its performance and the effects of its work, which would later allow for recommendations for improvement. In other words, the paper will indicate that a discrepancy exists. By law, the SCPC is the key authority for prevention of corruption in the public administration. In reality, the SCPC's successes are rather humble – the administrative corruption has hardly been eliminated. The content of the paper reflects its object and the idea behind it. It shall pay attention to the existing research in terms of the prevalence of corruption in the Macedonian public administration (so that the national context is given), the role of the SCPC by law and its performances.*

**Keywords:** State Commission for Prevention of Corruption, corruption, public administration, anti-corruption authorities, Republic of North Macedonia, prevention.

**JEL Classification:** H83, K14, K23

## 1. Introduction

The Republic of North Macedonia (hereinafter: Macedonia) has been struggling with corruption within the public sector – and the public administration therein – for a rather long time. One can support this claim using multiple sources, for instance the Corruption Perception Index (hereinafter: CPI) as one of the most popular measurements, reports by non-governmental organizations (hereinafter: NGOs), the reports produced by the international community, etc.

CPI ranks countries by their perceived levels of public sector corruption.<sup>3</sup> Each country earns between zero and 100 points, zero meaning that corruption is widespread and 100 points meaning that the country is very clean (in terms of corruption). Ever since 2012, Macedonia has been scoring between 35 and 44 points, meaning that corruption is fairly widespread (the rankings before 2012 are not taken into consideration since a different methodology for the CPI was used then). The rankings can be seen here:

Year	'12	'13	'14	'15	'16	'17	'18	'19	'20	'21
Score	43	44	45	42	37	35	37	35	35	35
Ranking	69	67	64	66	90	107	93	106	111	87

Multiple Macedonian NGOs have also taken efforts to measure the corruption perception. SELDI is a network of NGOs which issues Reports on corruption level assessment for a few years now. According to the 2014 SELDI Report,<sup>4</sup> corruption was perceived by the citizens as the fifth key problem for Macedonia (preceded by high prices, low income, poverty and unemployment). The

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<sup>3</sup> In terms of the methodology, the points are assigned crisscrossing data from various sources such as the World Bank, World Economic Forum, Freedom House, as well as private consulting houses. The methodology is explained on the webpage of Transparency International. The document is available online at <https://www.transparency.org/en/news/how-cpi-scores-are-calculated> (12.05.2023).

<sup>4</sup> Emina Nuredinoska, Marija Sazdevski, Borjan Gjuzelov, *Corruption Assessment Report for Macedonia*, Macedonian Center for International Cooperation, Skopje, 2014, 17, the document is available online at [https://seldi.net/fileadmin/public/PDF/Publications/CAR\\_Macedonia/CAR\\_MacedoniaEnglish.pdf](https://seldi.net/fileadmin/public/PDF/Publications/CAR_Macedonia/CAR_MacedoniaEnglish.pdf) (12.05.2023).

situation got even worse in 2021, at least according to SELDI. That year corruption was perceived as the first key problem for the country.<sup>5</sup> Even though SELDI measures corruption in general, not corruption in the public sector or the public administration, the research results are quite alarming. Speaking of the public administration corruption *per se*, an NGO called Center for Change Management conveyed a survey in 2017 and issued a Report where it was stated that 35,6% of the respondents agreed with the statement that “corruption is widely spread within the state and public administration”.<sup>6</sup> The country does not get much better scores in the World Bank estimates, the estimates of Freedom House, etc. At this moment we would refrain from burdening the text with too many analyses on the perceptions of corruption in the Macedonian public administration. The point is that all sources indicate that the Macedonian public sector, and the public administration as a part of it, is highly corrupt.

Therefore, effective prevention of corruption in the public administration is vital.<sup>7</sup> The key institutional actor when it comes to the prevention, per the current legislation, is the State Commission for Prevention of Corruption (hereinafter: SCPC). This brings us to the question – is the SCPC successful in performing its task? In fact, can the SCPC considering its institutional structure be successful? To reach a conclusion in this regard one needs to understand the functions of the SCPC and measures it can take in accordance with the legislation, as well as its performances within the last few years. Also, the national context is important. If the SCPC should control the public administration in terms of corruption, as well as undertake preventive measures, one has to know how the administration in Macedonia is structured. It is important to note that the SCPC exists as an institution since 2002, however it was significantly reformed at the beginning in 2019. Respectively, only the last few years are taken into consideration.

## 2. The State Commission for Prevention of Corruption as a preventive anti-corruption authority

The State Commission for Prevention of Corruption can be classified as a preventive anti-corruption authority. So, let us first elaborate what an anti-corruption authority is, and, furthermore, what a preventive anti-corruption authority is. De Sousa defines anti-corruption authorities as “public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures.”<sup>8</sup> So, it becomes vivid that the anti-corruption authorities are public bodies which are specialized in fighting corruption as their main role and can either focus on preventive or repressive measures. Sometimes both. Thus, preventive anti-corruption authorities are the public bodies of durable nature with a specific mission to fight corruption and reduce the opportunities for its occurrence through preventive measures – preventive control of assets, education, research, strategic planning and policy-making, anti-corruption review of laws and legislation altogether,<sup>9</sup> coordination

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<sup>5</sup> Jasmina Ristovska, Natasha Dimova, *Corruption Assessment Report: Level of Corruption 2021*, Macedonian Center for International Cooperation, Skopje, 2021, 45, the document is available online at <https://seldi.net/wp-content/uploads/2021/12/izveshtaj-za-procenak-na-korupcijata-nivo-na-korupcija-2021.pdf> (12.05.2023).

<sup>6</sup> Neda Maleska Sachmaroska, Dragan Gotcevski, *Attitudes and perceptions of public administration - report from field research*, Center for Change Management, Skopje, 2017, 29, the document is available online at <https://cup.org.mk/publication/Percepcii%20i%20stavovi%20za%20javnata%20administracija.pdf> (12.05.2023).

<sup>7</sup> As the United Nations Office on drugs and Crime puts it in simple words: “The common wisdom has it that “prevention is better than cure”. This is particularly true for the prevention of corruption, when public trust, the effectiveness of institutions, economic development and the security of the State are at stake. Even the most successful enforcement of criminal law happens after the crime has already been committed and the detrimental consequences of corruption have taken place”, <https://www.unodc.org/unodc/fr/corruption/prevention.html> (12.05.2023).

<sup>8</sup> Luis de Sousa, *Anti-corruption agencies: between empowerment and irrelevance*, “Crime, Law and Social Change”, Springer Verlag, Berlin/Heidelberg, 53(1), 5, the document is available online at <http://cadmus.eui.eu/handle/1814/10688> (12.05.2023).

<sup>9</sup> Anti-corruption assessment is defined as a “review of the form and substance of drafted and enacted legal rules in order to detect and minimize the risk of future corruption that the rules could facilitate” in the publication: Tilman Hoppe, *Anti-corruption assessment of Laws (“Corruption Proofing”) Comparative Study and Methodology*, Regional Cooperation Council, Sarajevo, 2014, 12, the document is available online at [https://archive.rai-see.org/wp-content/uploads/2015/06/Comparative\\_Study-Methodology\\_on\\_Anti-corruption\\_Assessment\\_of\\_Laws.pdf](https://archive.rai-see.org/wp-content/uploads/2015/06/Comparative_Study-Methodology_on_Anti-corruption_Assessment_of_Laws.pdf) (12.05.2023).

of other institutions, public warnings, sometimes misdemeanor sanctions (fines), etc. Repressive (or suppressive)<sup>10</sup> anti-corruption authorities are the ones with law enforcement tasks. The OECD calls the preventive anti-corruption authorities “preventive, policy development and co-ordination institutions”.<sup>11</sup> The OECD wording is merely more descriptive.

Clearly, the SCPC is a preventive anti-corruption authority. According to the Law on Prevention of Corruption and Conflicts of Interests of Macedonia from 2019<sup>12</sup> (Article 17) it has 28 competencies, all of which would be considered preventive. If we classify all those competencies, we can state the SCPC has several functions:

- should develop policies to improve the legal and institutional framework for prevention of corruption:
  - the SCPC prepares the National Strategy for Prevention of Corruption and Conflict of Interests which is adopted by the Macedonian Parliament (Assembly), however most of the activities prescribed in this National Strategy cannot be enforced or undertaken by the SCPC since they fall within the competencies of other institutions.
  - the SCPC should conduct anti-corruption assessment of laws.
  - the SCPC should collaborate with NGOs, academia and the private sector in terms of research.
- monitors persons and processes within the public sector:
  - the SCPC should record and monitor the assets and interests certain individuals (via its webpage and via other mechanisms):
    - as per the Law on Prevention of Corruption and Conflicts of Interests,<sup>13</sup> all elected and appointed persons, as well as responsible persons in public enterprises and other legal entities which have state capital, all notary public and enforcement agents, all administrative servants from the category A,<sup>14</sup> all persons employed at the cabinets of the President of Macedonia, the president of the Parliament of Macedonia, the vice-presidents of the Parliament of Macedonia, the president of the Government of Macedonia, the vice-presidents of the Government of Macedonia, the ministers and the secretary general of the Government should submit to the SCPC with a statement of assets and interests. This statement of assets and interests should be submitted electronically.
  - the SCPC should monitor whether the public functionaries<sup>15</sup> or the public sector employees are in a position which constitutes conflict of interests (for instance, one person is holding two incompatible offices, a functionary or a public sector employee does business with a firm which he/she may not do business with, etc.).
  - the SCPC should monitor the procedures for recruitment within the public sector in terms of the existence of conflicts of interests and corruption.
- education and awareness-raising:
  - the SCPC should prepare and conduct analyses for corruption risks in various sectors.
  - the SCPC should undertake activities to educate the public sector on issues related with corruption and conflicts of interests, but also the general public as well.

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<sup>10</sup> The classification of preventive and suppressive anti-corruption authorities is also given in one extremely significant PhD thesis which deals, amongst the rest, with the SCPC: Slobodan Tomić, *Explaining enforcement patterns of anticorruption agencies: comparative analysis of five Serbian, Croatian and Macedonian anticorruption agencies*, London School of Economics, London, 2016, the document is available online at <http://etheses.lse.ac.uk/3370/> (12.05.2023).

<sup>11</sup> Gordana Klemenčič, Janez Stusek, Inese Gaika, *Specialised Anti-Corruption Institutions Review of Models*, OECD Publishing, Paris, 2008, 32, the document is available online at <https://www.oecd.org/corruption/acn/39971975.pdf> (12.05.2023).

<sup>12</sup> Official Gazette 12/2019, the document is available online at [https://www.dksk.mk/fileadmin/user\\_upload/Zakon\\_za\\_sprecuvanje\\_na\\_korupcija\\_i\\_sudirotna\\_interesi.pdf](https://www.dksk.mk/fileadmin/user_upload/Zakon_za_sprecuvanje_na_korupcija_i_sudirotna_interesi.pdf) (12.05.2023).

<sup>13</sup> Article 82 of the Law on Prevention of Corruption and Conflicts of Interests.

<sup>14</sup> Administrative servants from category A are the highest ranking administrative servants in the country, called state secretary (within the ministries), secretary general (at the Government and at the Parliament), and just secretary within the municipalities as units of local self-government.

<sup>15</sup> Elected or appointed persons.

- the SCPC should collaborate with the NGOs and other institutions in this regard.
- monitoring of campaign finances.

Speaking of the monitoring of persons and processes within the public sector, the SCPC can initiate administrative procedures (specific type of administrative procedures, where the Law on General Administrative Procedure is *lex generalis*) in which it examines, case-by-case, whether there is a conflict of interests and illegal activities. Once it initiates a procedure, the SCPC can:

- reach a decision to issue a public warning, in case of existing conflict of interests.
- report suspicion of a crime to the public prosecution, meaning that the case at hand is passed over to the prosecutors.
- reach a decision to ask a certain institution (i.e. the managing person – director, minister, etc.) to re-examine and/or annul an employment decision, a decision for promotion of staff, or a decision for employment termination, if the respective decision is a result of illegal influence by a political party or its representative.
- reach a decision to ask a certain institution to dismiss an appointed person.

The SCPC can also issue fines in misdemeanor procedures in certain cases. The misdemeanors are mostly constituted by violating the obligations functionaries and other persons have per the Law for Prevention of Corruption and Conflicts of Interests. For instance, all functionaries are obligated to deliver a statement of assets and (conflicts of) interests to the SCPC within days of being elected/appointed. If this obligation is infringed, the SCPC can issue a fine. Another example would be the one where a certain institution does not report back to the SCPC after it has received its decision. For instance, the SCPC has asked a certain managing person within an institution to re-examine an employment decision. If the managing person does not report back to the SCPC within 60 days, stating what he or she has done in light of the SCPC's decision, he/she can be fined.

What is also captivating is that the Law for Prevention of Corruption and Conflicts of Interests stipulates that the SCPC should have direct computer access to the data bases of 17 institutions in total: the Ministry of Interior, the Pension and Disability Insurance Fund, the Health Insurance Fund, the Public Revenue Administration, the Central Registry, the Agency for real estate Cadastre, the Employment Agency, the Central Securities Depository, etc. The idea is that the SCPC should directly access all these databases so that it does not need to request information from these institutions in each individual case, by sending a request. In other words, the SCPC is, by law, the institution with the highest guaranteed access. However, this legal provision is not enforced. The SCPC does not in fact have access to most of these databases. As per the latest information, the SCPC can only electronically withdraw information from the Central Registry (where all companies and other legal entities are registered) as well as from the Agency for real estate Cadastre.<sup>16</sup>

Aside from the Law on Prevention of Corruption and Conflicts of Interests, several other laws also stipulate competencies of the SCPC. Those are the:

- Law for Protection of Whistleblowers<sup>17</sup>:
  - all institutions within the public sector should report to the SCPC on how many reports from whistleblowers have they received semi-annually and annually.
  - the protected internal reporting by whistleblowers is regulated with a bylaw which is proposed by the SCPC and adopted by the Minister of Justice.
  - whistleblowers may also externally report, meaning not within their institution, but to other ones, amongst which to the public prosecution, the Ombudsman, as well as the SCPC.
- Law for Lobbying<sup>18</sup>:
  - the Register of Lobbyist is, by law, maintained by the SCPC.
  - in order to be recorded in the Register of Lobbyists each lobbyist should deliver an application to the SCPC, after which the SCPC checks whether the application is

<sup>16</sup> From the webpage of the SCPC: <https://dksk.mk/en/> (12.05.2023).

<sup>17</sup> Official Gazette no. 196/15, 35/18, 257/20.

<sup>18</sup> Official Gazette no. 122/21.

- correct and adopts a decision to record the lobbyist in the Register.
- just as the SCPC records the lobbyists, it is also competent to erase them.
- the SCPC receives reports by lobbyists or lobby organizations and inspects if they are truthful and correct.
- the SCPC should minutes of meetings between lobbyists and institutional representatives.
- other tasks.
- Electoral Code<sup>19</sup>:
  - the SCPC is competent to oversee misuse of public budget for election campaigns.
  - once the elections are announced in Macedonia, the Electoral Code forbids all institutions to hire new staff members, as well as to dismiss staff (Article 8-a), with the aim to prevent influence on voters. In addition, the Electoral Code provides that the facilities of the institutions, their means (vehicles and others) may not be used for campaign purposes (Article 8-b). The SCPC is monitoring whether institutions breach these provisions.
  - if breaches in light of the previous three bullets are noted, the SCPC adopts decisions for that, but it cannot impose a sanction, and those decisions can be disputed before the Administrative Court with a lawsuit (in fact, just like any other decision by the SCPC). This time the Administrative Court should decide urgently, within 48 hours.

As per the above said, there is no doubt that the SCPC is a preventive anti-corruption authority. None of the competencies (or functions) above include law enforcement mechanisms. Even though the SCPC can conduct “investigations”, throughout the procedures it carries out, it cannot really impose sanctions. In this sense, as an additional argument, all of the employees within the SCPC have the status of administrative servants. In the Macedonian system, every public sector employee falls into one of four categories: administrative servants – individuals who are employed to conduct administrative tasks; persons with special authorizations – persons employed in law enforcement agencies, the security sector, the armed forces, etc. in order to perform tasks of special nature<sup>20</sup>; public service providers – individuals who work in the public sector and provide public services such as education or health services, scientists employed in the public research institutions, etc.; and finally, persons who provide technical assistance – individuals who are employed in the public sector to maintain hygiene, drivers, maintenance workers, etc.<sup>21</sup> If the SCPC were to be a suppressive anti-corruption authority, some of its employees would have the status of persons with special authorizations, and they would have been able to perform law enforcement type of tasks.

Thus, the position of SCPC within the system is rather vivid. In the following text we shall examine how all of the functions are actually performed, i.e. how successful the SCPC in its work? Before that, however, we will provide a brief overview on the national context – the public administration (and public sector) in Macedonia. This is merely to better understand the scope of the Law for Prevention of Corruption and Conflicts of Interests and the SCPC functions.

### 3. National context: public sector and public administration in Macedonia

The term public sector is wider than the term public administration. In fact, the public administration in Macedonia is a part of the public sector. The public sector is composed of:

- all state and local government bodies and other state bodies established in accordance with the Constitution and the law as well as.
- institutions which perform activities in the fields of education, science, health, culture, labor,

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<sup>19</sup> Official Gazette no. 40/06 ... 215/21.

<sup>20</sup> These employees can carry weapons, arrest individuals, conduct special investigative measures in criminal procedures, etc. Basically, we are speaking of police officers within the Ministry of Interior, special financial police officers within the Ministry of Finance, officers within the Agency for National Security, armed forces members, etc.

<sup>21</sup> This division is provided in Article 14 of the Law on Public Sector Employees of Macedonia (Official Gazette no. 27/14, 199/14, 27/16, 35/18, 198/18, 143/19 and 14/20).

social protection and child protection, sports, as well as in other activities of public interest established by law, and organized as agencies, funds, public institutions and public enterprises.<sup>22</sup>

The public administration, on the other hand, consists of the ministries (16 in total), the bodies within the ministries, and the independent bodies of state administration and administrative organizations. All report to the Government of Macedonia. In addition, in the wider sense, the mayor of the units of local self-government and the municipal administration also falls under the definition of public administration.

To put it simply, public sector covers every legal entity with public competencies which is with public funds. Public administration is a narrower term, covering specific administrative authorities. E.g., the regulatory bodies which are founded by the Parliament and report to it fall within the public sector, but not within the public administration since they do not report to the Government (executive branch) and are fully independent of it. The SCPC itself falls within the public sector, since it is founded by law and reports to the Parliament, but not within the public administration (it is fully independent from the Government). Public hospitals or universities fall within the term public sector, since they provide public services, but not within the term public administration since they are not founded to perform administrative tasks.

Not to burden the text with definitions, let us provide specific data. According to the data provided by the Ministry of Information Society and Administration,<sup>23</sup> the public sector in Macedonia is consisted of 1.346 institutions.<sup>24</sup> Those institutions have a total of 132.088 employees. The 16 ministries of Macedonia have a total of 5.037 employees, while the number would be 15.302 if we add the employees within the Government of Macedonia, the bodies within the ministries (such are the Public Revenue Administration, the Inspectorates as specific bodies carrying out inspection supervision, etc.), and the independent bodies of state administration (for instance, Agency for Youth and Sport, which is not a ministry but does not fall under any ministry either, it is fully independent).

In addition, Macedonia has 80 municipalities as units of local self-government, each of which has a mayor and municipal public administration.

So, to put things into perspective, the SCPC should monitor (bearing in mind the second function we enlisted above) thousands of individuals in terms of their assets (whether they have reported all of them per the law, whether there is a non-proportional increase of assets when the person is in office), conflicts of interests (whether individuals hold two or more offices which are incompatible with each other, whether there are illegal influences in public procurements, other contracts, employment procedures, etc.). Not to forget all the other functions and tasks; the SCPC should perform anti-corruption assessment of laws, educate the elected or appointed persons, as well as the employees within the public sector and the general public on corruption-related matters, and it should develop policies and strategies.

#### **4. Organization of the State Commission for Prevention of Corruption and resources**

The SCPC has 7 members total, with a term of 5 years without the right to be re-appointed. A person can become a member of the SCPC if it fulfills the following criteria:

- Citizenship of the Republic of North Macedonia and permanent residence.
- Capacity to contract.
- At least 300 ECTS credits or a VII/1 degree of high education in the field of legal sciences, or at least 240 ECTS or a VII/1 degree of high education in the political and economic sciences or communicology.
- At least 10 years of working experience after completing the high education, out of which at

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<sup>22</sup> Article 2 of the Law on Public Sector Employees where the definition of an “employer in the public sector” is given.

<sup>23</sup> Report from the Register of Public Sector Employees for 2021, the document is available online at [https://www.mioa.gov.mk/sites/default/files/pbl\\_files/documents/reports/finalen-izveshtaj\\_2021\\_rabotna\\_30.03.2022.pdf](https://www.mioa.gov.mk/sites/default/files/pbl_files/documents/reports/finalen-izveshtaj_2021_rabotna_30.03.2022.pdf) (13.05.2023).

<sup>24</sup> Page 22 of the Report.

least six<sup>25</sup> in the areas of uncovering or preventing corruption, rule of law or good governance.

- No prohibition to perform profession, activity or duty has been imposed to the person.
- The person has not been a member of Parliament, member of the Government, donor of a political party or a functionary in a political party's organs in the last 10 years.
- The person has not been a member of the SCPC before.

The procedure for appointing persons for members of the SCPC is rather complicated, however, it is set out as it is to ensure appointing on the basis of merit. The procedure starts with a public call for applications for membership. Within 10 days of the public call for members of the SCPC, the Parliamentary Commission for Elections and Appointments forms a new Commission for Selection of President and Members of the SCPC. This latter Commission (hereinafter: CS) is composed of: (1) one representative nominated by the Ombudsman; (2) two representatives of the civil society (NGOs and foundations);<sup>26</sup> (3) two MPs from the ruling party or coalition; (4) two MPs from the opposition. The CS organizes interviews with all the candidates who have applied on the public call. The CS also makes sure that the respective interviews are broadcasted on TV, on the specific channel of the Assembly. Finally, the LPCCI stipulates that the interviews are conducted by the members of the CS, but also by the nominated representatives of the following institutions and entities: (1) the Ombudsman; (2) the Macedonian Academy of Sciences and Arts; (3) the Inter-University Conference; (4) the journalists' associations and other associations and foundations. These individuals may also ask questions. After the interviews, the decision is reached.

The SCPC has a Secretariat where administrative servants are employed, as noted above. Currently 49 persons are employed.

## **5. Policy-development, improving of the legal and institutional anti-corruption framework by the State Commission for Prevention of Corruption**

The first function that was enlisted above was the development of anti-corruption policies, i.e. policies and suggestions for improvement of the legal and institution anti-corruption framework. The SCPC does so, primarily by drafting the National Strategy for Prevention of Corruption and Conflicts of Interests, which is later adopted by the Macedonian Parliament. The latest National Strategy covers the period between 2021 and 2025, and an Action Plan was adopted along with it.<sup>27</sup> The SCPC adopted the final draft of the National Strategy for Prevention of Corruption and Conflicts of Interest 2021-2025 (hereinafter: the Strategy) on December 10, 2020. This version was delivered to Parliament for adoption.

The Strategy detected problems in terms of corruption in two horizontal areas (meaning they are spreading across the entire public sector) and several sectors. The two horizontal areas were the areas of public procurement and the public sector employment. The sectors were: political system; judiciary; law enforcement bodies; health; education; labour and social policy; urban and special planning; environment; agriculture; sports; economy and business; public enterprises and media and civil society.

Unfortunately, as already noted above, the SCPC merely drafts the Strategy, but has no way of enforcing it, i.e. making sure that the activities and measures from the Action Plan are duly implemented in timely manner, due to the fact that they fall under the competencies of other authorities. Therefore, only 10% of the measures and activities which were envisaged for 2022 were actually completed.<sup>28</sup> Around 25% of the measures were in the process of implementation at the end

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<sup>25</sup> When it comes to the candidate for President of the SCPC the number is eight instead of six.

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

<sup>27</sup> National Strategy for Prevention of Corruption and Conflicts of Interests (2021-2025) with an Action Plan, the document is available online at [https://dksk.mk/wp-content/uploads/2021/09/NACS-2021\\_25-and-Action-Plan-EN-final.pdf](https://dksk.mk/wp-content/uploads/2021/09/NACS-2021_25-and-Action-Plan-EN-final.pdf) (12.05.2023).

<sup>28</sup> State Commission for Prevention of Corruption, Annual report for the implementation of the National Strategy for Prevention of Corruption and Conflicts of Interests 2021-2025 for the period 01.01.2022 – 31.12.2022, State Commission for Prevention of Corruption, Skopje, 2023, 9, the document is available online at <https://dksk.mk> (12.05.2023).

of 2022, while 55% of the measures were not even started.

Speaking of the Strategy, aside from the fact that the SCPC does not have the legal jurisdiction to implement all the envisioned measures, it should also be pointed out that several measures are, in the view of the authors of this paper, not adequate. For instance, in the horizontal area of public sector employment, the SCPC envisaged a strategic measure to preclude the possibility for temporary employment through temporary employment agencies within the public sector.<sup>29</sup> The rationale is the following: the Government, the ministries, the municipalities and all other institutions are misusing the legal possibility to hire temporary staff through temporary employment agencies for political purposes (e.g. a minister can gain political sympathy by voters if he/she hires temporary staff). However, in the view of the authors this strategic measure should not be even implemented. It is a fact that temporary employment is generally perceived as abused, cannot be completely abolished. Namely, in the operation of any public sector authority, it may happen that there is an increased volume of work and/or another circumstance due to which it is necessary to perform temporary employment. Let us say, for instance, that a certain ministry becomes a partner in a Twinning Project funded by the European Union.<sup>30</sup> Of course that additional staff might be needed to work on project management and project assistance. Or, let us try another example: several individuals in the same public body are on parental leave in the same time period. Of course, that the management of this public body (minister, state secretary, director, etc.) might want to hire temporary staff members to replace the ones who are on leave. Thus, it might be said that the strategic measure envisaged by the SCPC is not very prudent.

Other measures can be disputed too. Perhaps enlisting all the disputed measures prescribed at the Strategy is a topic of a separate research paper. At this point, however, we aimed to indicate that not everything in the Strategy ought to be blindly followed, and that not all measures are adequate.

Considering the anti-corruption assessment of laws, it is positive that the SCPC is proactive. They have conducted such assessments on tens of laws during 2022, most of the times on their own initiative.

## 6. Monitoring of persons and processes in the public sector

The second function, as we noted above, is the monitoring of persons and processes in the public sector. Since this function is rather broad, it is vital to learn how effectively the SCPC is performing it.

As already mentioned, the SCPC should record the assets and interests of certain individuals, and continuously monitor them. The initial recording of assets and interests should be done on the basis of a statement delivered to the SCPC from:

- all elected and appointed persons.
- all responsible persons in public enterprises and other legal entities which have state capital.
- all notaries public.
- all enforcement agents (individuals who enforce judicial decision as per the Law on Enforcement)<sup>31</sup>.
- all administrative servants from the category A.
- all advisors of the president, prime minister (president of the Government), president of the Parliament, secretary general of the Government, ministers.

The statements of assets and interests should be delivered electronically to the SCPC (Article 82 of the Law for Prevention of Corruption and Conflicts of Interests), which means that the SCPC was supposed to develop a software for that purpose.

At the moment the webpage of the SCPC contains only information on the assets of elected

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<sup>29</sup> Page 12 of the Strategy.

<sup>30</sup> More about the Twinning Projects: [https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/twinning\\_en](https://neighbourhood-enlargement.ec.europa.eu/funding-and-technical-assistance/twinning_en) (12.05.2023).

<sup>31</sup> Official Gazette No. 72/16, 142/16, 233/18, 14/20.

and appointed persons. In other words, there are no information on the notaries, enforcement agents, high-rank administrative servants, advisors from the cabinets of the president, prime minister, etc. Additionally, the SCPC records only information on the assets, not the interests as well. When speaking of the interests, to clarify, the idea behind the Law for Prevention of Corruption and Conflicts of interests is that the enlisted persons shall report what their interests are. For instance, an advisor of the prime minister has a spouse with a private firm which has entered into public procurement agreements in the past. The advisor’s statement of assets and interests should clearly indicate that his/her spouse owns the firm. Therefore, if the firm competes in a Governmental tender, it can be ensured that the advisor shall have no influence in the decision. Moreover, the SCPC has yet not developed a software for electronic submission of statements of assets and interests, i.e. it still receives them in writing as per the Law on Prevention of Corruption from 2002. Altogether, the SPCP only partially enforces this task.

When it comes to the monitoring of persons, in the sense of their compliance with the provisions of the Law for Prevention of Corruption and Conflicts of Interest, the SCPC can, as stated above, initiate specific administrative procedures and adopt decisions with which: it issues a public warning; it requires a person to step down from an office if there is incompatibility with another office; it requires an institution (i.e. the responsible person such as director, minister, the Government etc.) to re-examine or annul a decision for employment, promotion or dismissal of employees, or a decision for appointment or dismissal of an appointed person; require an institution to dismiss an appointed person in case where the person has been in a state of conflict of interests or to hold him/her accountable otherwise (for instance, disciplinary measures).

Statistical data show that the SCPC often initiates such procedures. The data for 2022 and 2021, taken from the Annual report of the SCPC, is presented bellow:<sup>32</sup>

<b>Proceedings of the SCPC</b>	<b>2022</b>	<b>2021</b>
Cases with allegations for conflicts of interests	145	106
Adopted decisions	161	152
- <b>Unconfirmed allegations</b>	<b>46</b>	
- <b>Rejected – the SCPC has no jurisdiction</b>	<b>21</b>	
<b>A state of conflict of interests was noted and a decision was reached</b>	<b>3</b>	
- The subject of the decision has complied with the SCPC’s recommendations how to remove the conflict of interests	-	-
- The process of complying with the SCPC’s recommendations is ongoing	3	-
<b>Submitted initiatives for accountability of persons because of conflicts of interests</b>	<b>6</b>	<b>2</b>
- Accepted initiatives	2	1
- The process of complying with the SCPC’s initiative is ongoing	4	<b>1</b>
<b>Submitted initiatives for dismissal of an official person because of conflicts of interests</b>	<b>2</b>	-
- Accepted initiatives	2	-
- The process of complying with the SCPC’s initiative is ongoing	-	-
Delivered recommendations to other institutions competent to handle cases, once allegations for conflicts of interests were confirmed		-
<b>Delivered initiatives for criminal prosecution of responsible official persons</b>	-	<b>1</b>

<sup>32</sup> State Commission for Prevention of Corruption, *Annual report for the work of the State Commission for Prevention of Corruption for the year 2022*, State Commission for Prevention of Corruption, Skopje, 2023, 23, the document is available online at <https://dksk.mk/wp-content/uploads/2023/03/GI-2022-%D0%BA%D0%BE%D0%BD%D0%B5%D1%87%D0%B5%D0%BD.pdf> (12.05.2023).

- Accepted initiatives	-	-
- Rejected initiatives	-	1
<b>Issued public warning</b>	-	1
Submitted orders to pay a fine for a misdemeanor	37	32
Paid orders to pay a fine for a misdemeanor	29	
Submitted requests to carry out misdemeanor procedure because the orders to pay a fine were not paid in time	3	4
Received requirements for opinion	88	85
Given opinions	87	85

Since the table which was integrally taken from the Annual Report of SCPC may be confusing, we shall pay some attention to the data within.

First of all, the SCPC issued only one public warning for conflicts of interests in the last two years.

Secondly, even though there were more than 200 cases for conflicts of interests in the last two years, the SCPC often finds no breaches of the law or declares that it has jurisdiction. From the 161 adopted decisions in 2022, the SCPC found conflicts of interests in only 11 cases.<sup>33</sup> Thus, if we derive a conclusion from the case-law of the SCPC it would turn out that there is almost no situation where an appointed or an elected person in Macedonia has a conflict of interests. This would not coincide with the public opinion for which we spoke in the introduction – citizens find that corruption is widespread in the country. The reason for this is simple. The SCPC has no investigative powers like the ones of the law enforcement authorities and the public prosecution. So, it can only detect conflicts of interests in simple cases, such as ones where the same person holds two public offices which are by law incompatible. In all other cases where there are allegations for conflicts of interests and/or corruption, the SCPC cannot really prove them during the procedure. For example, if a citizen reports that a representative of a political party has been illegally influencing an employment procedure, the SCPC has no way to prove that. Aside from taking statements from the employee, the representative of the political party and the managing person of the institution at hand, the SCPC cannot utilize any other evidence. Thus, cases are often open and closed as unconfirmed. One might say, respectively, that opening cases is often a waste of resources on the side of the SCPC.

When it comes to the monitoring of processes within the public sector, and the public administration therein, the SCPC has one more competence per the Law on Prevention of Corruption and Conflicts of Interests. Article 38 of the SCPC contains a provision according to which the SCPC monitors discrimination or privileges in public procurements and other contracts: the SCPC may inspect documentation for public procurement and related contracts with the realization of profit concluded between state bodies, local self-government bodies, public enterprises and other legal entities that have a state capital with domestic or foreign legal entities, as well as all permits, concessions, and other decisions by which legal persons are recognized with rights or privileges determined by law or are deprived or limited such rights or benefits. If the SCPC determines privileges or discrimination in relation to procurement and other contracts it will, without delay, ask the competent authorities to take measures and activities within their competences. However, if we analyze the Annual Report of SCPC for the last year, we can see that there was only one case (explained in Annex 3) where the SCPC asked the competent authorities (financial police) to review a public procurement contract. Again, even if the SCPC is eager to monitor all public procurements, it neither has the necessary resources, nor has it the necessary law enforcement authorizations. Therefore, it is legitimate to ask – how would the SCPC notice discrimination if public procurement procedures if the documentation is formally legal? It can neither monitor illegal contacts between firms and the public bodies before the public procurements, nor can it undertake any similar measures

<sup>33</sup> Some confusion may arise when seeing that the SCPC the number of adopted decisions is higher than the number of cases for conflicts of interests in 2022. This is due to the fact that is lagging behind: certain cases were open in 2021 but not closed.

in that regard. The position of the authors is that this competence of the SCPC should be removed from the Law for Prevention of Corruption and Conflicts of Interests. There are other competent authorities who monitor public procurements, such as the Bureau of Public Procurements (as a preventive authority), as well as the financial police, and the Ministry of Interior as law enforcement bodies. There is no reason to stipulate such a competence of the SCPC and burden its members and the secretariat of the SCPC.

## 7. Education and awareness-raising

Education and awareness-raising are the core competences of this preventive anti-corruption authority. Since, as we illustrated in the heading above, the SCPC cannot really effectively control conflicts of interests and corruption in individual cases, it remains vital that it has as many educational and awareness-raising initiatives as possible. If we look at the last Annual Report, the SCPC carried out several trainings for inspectors within the State Administrative Inspectorate, the Public Revenue Administration, as well as the National Bank of Macedonia. In addition, the SCPC is involved as a beneficiary in the IPA Project “Promoting the transparency and accountability of the public administration of North Macedonia” funded by the European Union. The SCPC has prepared several courses on integrity systems, conflicts of interests, corruption prevention and protection of whistleblowers.

The SCPC also organized several public debates related with integrity in the higher education system, the regulation of urban and special planning and on discretionary competencies.

The SCPC had several educational initiatives in the previous years as well; in 2021 it initiated the project for education within the units of local self-government where it assisted the local administration in setting up integrity systems.<sup>34</sup>

In the following years, the SCPC should allocate more of its resources on this competence and have larger educational and awareness-raising initiatives.

## 8. Competences per the Law on Lobbying

The Law on Lobbyists, even though it was adopted in 2021, is yet not implemented at all. Namely, the SCPC was obliged to set up the Register of Lobbyists and to regularly update it on the basis of the received requests from the lobbyists themselves of the lobbying organizations. The webpage of the Register of Lobbyists is active at the moment, nevertheless empty. In the last two years not a single lobbyist was registered in the country.<sup>35</sup>

## 9. Protection of whistleblowers

The SCPC fulfilled its role when it comes to preparing by-law and it does receive reports from the institutions in the public sector on how many reports from whistleblowers have, they received semi-annually and annually.

Nevertheless, in terms of protection of the whistleblowers, the SCPC has no power to sanction anyone for breaching the whistleblowers' protection regime. Therefore, it is unclear if the SCPC should really have competences per the Law on Protection of Whistleblowers. Even when it comes to the reports, the only thing SCPC does is receive them, and, if willing, publish them on its webpage.

## 10. Conclusions

Corruption is one of the key problems for (the development of) Macedonia. Regardless of the

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<sup>34</sup> State Commission for Prevention of Corruption, *Annual report on the work of the State Commission for Prevention of Corruption for the year 2021*, State Commission for Prevention of Corruption, Skopje, 2022, 41, the document is available online at <https://dksk.mk/wp-content/uploads/2022/03/%D0%93%D0%98-2021-final.pdf> (12.05.2023).

<sup>35</sup> The webpage can be accessed at <https://lobisti.dksk.mk/all-lobbyists> (12.05.2023).

indicator one takes into account, it is vivid that citizens, business and all other factors in Macedonia and abroad consider the country corrupt. For that reason, the country endeavored, in 2019, to reform the SCPC as a preventive anti-corruption authority. This was done with the adoption of a new law, namely the Law for Prevention of Corruption and Conflicts of Interests which provided more guarantees for the independence of the SCPC, as well as more competencies for this authority. Yet, the country continues to struggle with corruption in general, as well as corruption in the public administration specifically. The analyses indicate that even the new SCPC cannot and does not effectively control the public administration in terms of corruption. In addition, the SCPC cannot effectively improve the lobbying control and whistleblowers protection. Briefly:

- the Law for Prevention of Corruption and Conflicts of Interests provides a number of competencies to the SCPC, especially when it comes to opening cases for alleged conflicts of interests or corruption among the elected or appointed persons and/or other persons in the public administration. However, these competencies often result with no outcome, as the SCPC has no authorizations with which it can prove that corruption or conflicts of interests have occurred in an individual case:
  - therefore, it is prudent to review the Law for Prevention of Corruption and Conflicts of Interests and perhaps remove these competencies from the SCPC, so that corruption and conflicts of interests are investigated solely by the suppressive authorities such as the law enforcement ones and the public prosecution.
  - it matters not how many employees the SCPC has and shall have, since it is not a matter of human resources rather than of legal authorization.
- the SCPC fails to effectively control the assets and interests of persons within the public sector, even though four years since the adoption of the Law for Prevention of Corruption and Conflicts of Interests have passed:
  - the SCPC has not yet managed to set up a Register of assets and conflicts of interests, even though there are no factual obstacles to do so.
- the Law for Prevention of Corruption also provides that the SCPC has an educational role, but the annual reports of the SCPC indicate that more efforts are needed in this sense, so the SCPC should strategically allocate more resources into education rather than in opening and unsuccessfully closing individual cases for conflicts of interests and corruption.
- the SCPC, although having the role to protect whistleblowers, can really not undertake any measures to do so.
- the SCPC has not yet registered a single lobbyist, so the Register of Lobbyists and loby organizations is empty.

It can be therefore concluded that the SCPC cannot effectively control the public administration and public sector in general in terms of preventing corruption. The SCPC needs reform, and perhaps should be reduced to an institution which merely proposes strategies and undertakes educational initiatives for anti-corruption, since the case-by-case approach in preventing corruption obviously fails to bring about any results.

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