Reforms in the anti-corruption and the fight against organized crime:
The Anti-Corruption Commission - one of the few lights in the tunnel

Assessment of North Macedonia's progress in meeting the political criteria necessary for EU membership

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One year after the last research on this topic, it can be concluded that progress is happening very slowly. The brightest point is the work of the new composition of the Anti-Corruption Commission and the work of part of the non-governmental sector, which are maintaining current and open the issues for the fight against corruption in particular, but also the fight against organized crime.

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Last year was a promising year, especially in the field of anti-corruption, but also the fight against organized crime.

After several years, a new promising anti-corruption law was passed, which was softened in some of its articles, especially in terms of misdemeanours, due to the Government’s compromises with the opposition for this law to be passed in Parliament. However, the general assessment was that the new law and the new election of members of the State Commission for the Prevention of Corruption (SCPC) would give a strong impetus to the fight against corruption.

A year later it can be said that apart from the enormous activity and commitment of the Commission, many things have remained the same. Among other things, the Commission in early 2020 managed to develop the first National Strategy for the Prevention of Corruption and Conflict of Interest. Unfortunately, it has remained only on paper and will await better times, as the National Strategy remained unadopted on the Assembly’s busy schedule before being dissolved on 16 February due to the April 12 elections, and postponed indefinitely due to the “corona crisis”.

Also, the legally enabled and imaginary connection of the SCPC with over 60 state institutions and other legal entities, which was supposed to provide the Commission with great efficiency, is very difficult. Additionally, the government did nothing to increase the finances of the SCPC, to increase its personnel potential and professional services.

In the field of the fight against corruption and organized crime, the same hope that arose with a year in which verdicts were expected for a large number of cases filed by the former Special Public Prosecutor’s Office (SPO), ended with “a slap in the face” mainly because of the “Racket” affair in which the main special prosecutor Katica Janeva ended up as a defendant in corruption (abuse of office and authority).
What is encouraging is that after the collapse of the SPO and the transfer of cases and prosecutors to the regular, state Public Prosecutor’s Office (PO), the Government with great difficulty pushed through the new Law on Public Prosecution, with which the cases from the SPO were taken over by the PO, but also it was envisioned for PO to receive more money from the budget than before - “at least 0.4 percent”. Whether PO will receive the money remains to be seen, but what has been confirmed so far is that the Public Prosecutor’s Office has already started a procedure to set up four investigation centers, something that has not happened before, although it was planned as early as 2013 when the then-new Law on Criminal Procedure (LCP) gave the Public Prosecutor’s Office a key position in conducting investigations, something that had until then been reserved for the investigating judge and the police.

At the end of 2019, reorganization of all specialized departments in the Police took place, but for now it is difficult to see the effects due to the coronavirus epidemic and the fight against it, which targets all state authorities, including the overall capacity of the Police.

But it is precisely the coronavirus crisis that poses new challenges in the field of anti-corruption. After the declaration of a state of emergency on 19 March by the President of the country, and in the conditions of a dissolved Parliament - the ruling party is concentrated in the technical government that passes the decrees with legal force. This raises the question of possible abuses of such power, which is why the State Commission and the non-governmental sector dealing with anti-corruption have already announced that they will conduct detailed checks. From the very first checks, the question of the transparency and accountability of the decrees and the procedures for their implementation arose.

Finally, it can be concluded that though on the Corruption Perceptions Index of Transparency International published in December 2019 the country has been accessed several places higher as a country fighting corruption, the objective assessment would be that steps forward have been taken, but that this is little for the desired accomplishment of drastic improvement of the situation. The political will, which is declaratively lacking, is very slowly being put into practice, sometimes with the impression of “two steps forward, one step backwards.”

The first National Anticorruption Strategy

The drafting of the National Strategy for Prevention of Corruption and Conflict of Interest 2020-2024 is the first such document in the country. Although the first State Commission for the Prevention of Corruption (SCPC) was established in 2002, the state has never had such a comprehensive document. The place of such a strategy was filled with State Anti-Corruption Programs which were the work plans of the SCPC and which, together with
action plans, were carried out every four years. The last one expired in the period 2016-2019.

Due to the limited responsibility for implementation, the biggest activity was reduced to the SCPC, so with the new law on prevention of corruption, the SCPC was obliged to prepare a national strategy which, after the adoption in Assembly, the responsibility for implementing the action plan will be shared among all responsible entities in the country.

The strategy has 12 goals - from strengthening political responsibility, by increasing integrity and accountability in the public sector, reducing corruption in public procurement ... to involving civil society and the media in the fight against corruption through control mechanisms and raising public awareness about the problem.

In the introductory text, the current assessment of the level of corruption in RNM of SCPC and all entities that have been working in an inclusive process for four months on the preparation of the strategy is given: “European Commission Progress Reports on the Republic of North Macedonia, GRECO’s evaluations and the reports of other relevant organizations, continuously point out the unfavorable conditions in dealing with corruption. Research on citizens’ perceptions shows acceptance of corruption as a way of life. Corruption is deep and widespread in all pores of society, indicating the need to reduce it, with a final aim of eradicating it.”

SCPC flooded with cases and workload

Over 100 decisions only since the beginning of 2020 at three sessions held in February - is the current result of SCPC’s work during this year. This shows that the Anti-Corruption Commission, which started working immediately after the election in the Assembly at the beginning of February 2019 has its hands full. In the beginning, the new composition of the SCPC faced over 3,000 cases leftover from March 2018, when the old Commission stopped working due to the resignations of five members. Among the old cases, there have been over 40 reports of corruption.

But shortly after taking office, less than two months later, the SCPC was flooded with more than 400 new cases, most of the demands for a nepotism check, as part of a mini-war between the ruling party and the opposition, which have repeatedly accused each other about who had more nepotistic employment decisions in public institutions. The annual report of the SCPC is expected in the period when this report is being written, but it is quite certain that it will outperform all the current compositions of the SCPC, at least in terms of the number of cases in operation.
The impact of the SCPC is yet to be assessed, but the fact is that there is a perception that this body is the only bright spot in the fight against corruption across the country, especially after the infamous end of the SPO. The Anti-Corruption Commission, along with several dedicated civil society organizations, is the most trusted body with the prevention of corruption in North Macedonia. We will reiterate that this is only a matter of perception.

The election of the new members of the SCPC probably adds to this. According to the new Law on Prevention of Corruption and Conflict of Interest\textsuperscript{4} passed in January 2019, the election was held through a public competition announced by the Assembly. This was followed by a public hearing of all registered candidates who met the requirements on open sessions of the Commission for Elections and Appointments, which was also broadcast by the public service MRT. The next step was scoring by the Joint Commission in the Assembly, to end with the elections at a plenary session with a two-thirds mandatory majority.

\textbf{GRECO – many unfulfilled obligations}

“North Macedonia has been part of GRECO since 2000 and has gone through four rounds of evaluation on various topics related to the prevention and fight against corruption. The best results in terms of implementation of GRECO’s recommendations were achieved in the Second Round (93% of the recommendations were fully implemented, and 7% were partially implemented) and in the First Round (88% of the recommendations were fully implemented, 6% were partially implemented and 6% remained unimplemented). The conclusions of the Third Round were a little less encouraging, with 77% of the recommendations fully implemented and 23% partially implemented. As for the Fourth Round, a non-compliance procedure was initiated in June 2018 as a result of poor results: to date, only 31% of the recommendations have been fully implemented, 42% have been partially implemented and 26% remain unimplemented.”

This is stated in the latest Report\textsuperscript{5} on the implementation of the obligations arising from the Fifth Round of Evaluation concerning the measures to prevent corruption in the central government and law enforcement agencies, and the focus of this report being the Ministry of Interior.

Regarding the general fight against corruption by the Public Prosecutor’s Office, GRECO concludes that “the criminal justice system has not been successful in the fight against corruption and that if the Special Public Prosecutor’s Office is excluded, prosecutors generally do not prosecute high-profile or politically sensitive cases. Progress in this area is seen as strongly dependent on whether the judiciary in the country can function independently and impartially.”
This was confirmed by one of the experts we spoke to, with a slight nuance, that “I would not burden the court so much in terms of its efficiency and politicization if a sufficient number of well-prepared prosecutorial decisions are submitted to the court.” The assessment was that the Public Prosecutor’s Office for Organized Crime and Corruption does not produce a sufficient number of cases, that many investigations are not completed and that such a situation had been empirically established since 2004 when the Anti-Corruption Commission inspected the number of investigations and the number of indictments.

Another expert operating with more recent data supports this claim. “Only 5% of all indictments of the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption, refer to ‘abuse of official position’, and in these cases, the rate of convictions is barely 25%, while in all other cases it is over 90%,” the expert said.

On this assessment of the work of the SPO and especially of the Public Prosecutor’s Office for Organized Crime and Corruption, it is worth reiterating the issue with insufficient funding. This, although now specified with a fixed percentage in the budget of RNM (at least 0.4 percent), is still insufficient. The Public Prosecutor’s Office of RNM is only now approaching the process of establishing 4 investigation centers, while the Public Prosecutor’s Office for Prosecution of Organized Crime and Corruption until now has had only 3 investigators. Contrary to this, the SPO, which has now been abolished and functioned smoothly from 2016 to 2019, had about 40 investigators and a large fund for external experts and expertise.

Regarding the central government, GRECO made several recommendations regarding the improvement of the rules for employment of persons hired based on the rule of the officials to employ councillors or persons who would perform similar functions. It is also recommended in the Report that the existing Code of Ethics for Persons Performing the Highest Functions “be implemented in practice with the help of a mechanism equipped with sanctioning powers; and to be the subject of systematic awareness-raising about persons performing the highest executive functions through training, dedicated referral and counselling, including confidential counselling “.

Regarding the State Commission for Prevention of Corruption, GRECO notes that there is little support from the central government in terms of providing budget and resources, and even in one part of the report the term “archaic work” is used, in the sense that there are still many activities done on paper, by manual classification and the like. GRECO, however, welcomes the amendment of the law and the central position of the SCPC in the situation with the declarations of property
and conflict of interest, but recommends increasing the misdemeanour sanctions in order “to be effective and dissuading” and “strengthening supervision over the statements for interests and property of the persons performing the highest executive functions in the government by providing the State Commission for Prevention of Corruption (SCPC) with human and financial resources, competencies, methodologies and tools that are appropriate for the proper and efficient performance of its duties.”

**Politicized police!**

Many of the remarks in the Fifth GRECO Report refer to the Ministry of Interior (MOI). From the very beginning, there have been concerns about the politicization of the police. Analysing the command system in the Ministry of Interior, GRECO determined that the system leads the Minister of Interior, which leaves the possibility, outside of European practice, for them to command the police forces, instead of a police commissioner or something similar. Hence, GRECO recommends that North Macedonia immediately strengthen the “**operational independence of the police vis-a-vis the Ministry of Interior**”, as well as **take “relevant measures to ensure that the duties of individual police officers are following existing rules on integrity and impartiality to perform their functions in a politically neutral way”**.

Some of the remarks refer to the transparency of the budget of the Ministry of Interior, in terms of its expenditures, and it is recommended “to increase the transparency of the police by improving access to information, among other things, by publishing, preferably online the reports on the results of its activities and decision-making, police budgets, administrative proceedings, including public procurement reports, statistics, rulebooks and similar information.

Regarding the integrity of the employees in the Ministry of Interior, GRECO found that the old principle of declarations of property and conflict of interest has been abandoned and that currently there is only one employee that has this as a legal obligation besides the Minister, and that is the director of the Public Security Bureau (PSB). The recommendation is to consider introducing this obligation to at least most of the management staff in the Ministry of Interior and the Police, up to the level of heads of departments.

Examining the Code of Police Ethics adopted in 2007, GRECO found that it had weaknesses, especially in the sense that it did not include the issue of conflict of interest. The recommendation is to modernize it, to get rid of unnecessary things that are placed in other laws or regulations and to define the conflict of interest.
Dysfunctional internal and external control

Regarding the supervision of the work of the Ministry of Interior and the Police, the commission from GRECO concluded that both the internal and external control is ineffective.

“The overall system of internal oversight within the Ministry / PSB seeks to strengthen its capacity to promote integrity, prevent corruption and proactively investigate violations, as opposed to responding only to complaints like it is operating currently. Given the above, GRECO seeks the autonomy and independence of the political influence of the internal control mechanism of the police to be ensured, by granting it an appropriate mandate, resources and expertise.”

It should be noted that last year’s recommendations contained in the Metamorphosis report also stated the request of the experts for the internal control to be completely separated from the Ministry of Interior and to be a kind of special agency or institution. However, this recommendation has not been fulfilled, and it has not been noticed by the public that there is a political will to achieve it.

The overall system for external control over the work of the Ministry of Interior and the Police is inefficient, concluded the experts from GRECO. That system consists of the supervisory bodies in the Assembly of RNM, the Ombudsman and the Public Prosecutor’s Office.

“Immediate interviews have shown that none of these bodies is performing this function effectively. Parliamentary oversight can be seen as a failure because no real investigation has been conducted into alleged cases of police brutality, and the European Court of Human Rights has ruled against the country on several occasions under Articles 3, 5 and 6 of the European Convention on Human Rights,” stated the GRECO report.

The report notes that after completing the monitoring mission, GRECO was informed of changes in the Law on Public Prosecution that establishes a special unit within the Public Prosecutor’s Office to combat organized crime and corruption for investigations of criminal acts committed by police or other persons with special competences. Concerning external control, the GRECO recommendation is that “the available mechanisms for external oversight of police forces, including those of the Assembly, the Ombudsman’s Office and the Public Prosecutor’s Office, should be subject to an appropriate level of transparency in cases that are processed and appropriate statistics should be published at regular intervals.”
The Government of North Macedonia must inform GRECO what have they undertook concerning the recommendations by 30 September 2020. The situation with the corona crisis, the dissolved Parliament, the anticipation of the new elections that were postponed due to the state of emergency, are not elements that support the fact that a large percentage of these recommendations will be met. If in this Fifth Circle of Evaluation the percentage of fulfilment disappoints, as it did in the Fourth Circle, where the emphasis was on integrity and corruption in the judiciary and the Assembly, the official assessments that corruption remains one of the biggest problems in the country will be confirmed.

### Confiscation is still minimal

The Republic of North Macedonia has implemented in its legislation modern recommendations and other obligatory documents regarding the confiscation of illegally acquired property, including the Framework Decision of the Council of the European Union 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, which harmonizes the domestic legislation with the legislation of the European Union regarding the provisions for freezing and confiscation of illegally acquired property.

This is implemented in both the LCP and the Criminal Code (CC), although according to some experts there are ambiguities in both laws regarding certain articles on confiscation. “Extended confiscation” is also allowed, and this is left to the autonomous assessment of the court, requested by the prosecution. But confiscation as a measure has so far been minimally applied in court proceedings. Here is what a recent study on this topic by a specialized domestic NGO says:

According to the data of the Skopje Basic Criminal Court as the largest criminal court and court in which the specialized department for prosecuting crimes related to organized crime and corruption is located with jurisdiction over the entire territory of the country, it can be noted that from 2015 until October 2019, only 9 ineffective and 35 effective judgments were issued for confiscation or an annual average of 10 measures. Of all the confiscation measures imposed, 20 effective measures (more than half) were imposed within the Organized Crime and Corruption Prosecution Department within the Skopje Basic Criminal Court, which is expected, taking into account the nature of the criminal offences within this Department, but still, this figure compared to the total number of defendants per year is extremely small. Thus, within this Department, more than 130 persons were sentenced with a first instance verdict annually, or 658 persons in the period from 2015 until June 2019, which means that the confiscation was pronounced for a little less than 5% of the convicted persons.  

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Also, there are judgments in which the convicted person is obliged to return the property acquired by the crime within a certain period, but without an assessment of the price of that property while they had it. If the convicted does not do so, the Agency for the Management of Confiscated Property is obliged to take it away from them, but only if they find it and the Agency itself does not have the authority to conduct a financial investigation.

Public procurement – strengthening of the system is still needed

Public procurement – an area that is estimated to be highly susceptible to corruption - accounts for between one-fifth and one-quarter of the RNM budget (over one billion Euros) or, according to EU data from 2018, about 9 percent of annual GDP.

The latest major EU report on the progress of RNM since May 2019 states that although there is a certain system of integrity through multiple Codes of Ethics in various public procurement institutions, it is necessary to harmonize and supplement them with mechanisms for timely control over public procurement, concessions, public-private partnerships and the implementation of agreements.

The 2019 Progress Report also gives the general assessment that the country remains moderately prepared in terms of public procurement:

“The country remains moderately prepared in this area, which is particularly vulnerable to corruption. Some progress was made with the adoption of the new public procurement law in January 2019 to ensure a more transparent and effective public procurement system. Further efforts are needed to prevent irregularities and corruption during the procurement cycle.”

Thereby, the particularly vulnerable areas on which RNM should work are also indicated: harmonization with the EU Directives from 2014 for public procurement, especially in the field of public-private partnerships, concessions and defence procurement, to pay attention that suspicions of certain public procurement will be properly investigated and punished and finally, to strengthen the administrative capacity of the Public Procurement Bureau, of the State Audit Office and the Ministry of Economy in the area of managing public-private partnership agreements.

In this report, the weakness of the Ministry of Economy in the area of concession management is especially emphasized. The EU, assessing that there is no consolidated register of concessions and public-private partnerships, underlines in the report the fact that only two officials work on this issue in the Ministry.
Urgent public procurements due to the corona crisis - a possibility of abuses

The corona crisis poses new challenges in terms of abuse and corruption in public procurement. Two authorities have warned against this. First of all, the chairwoman of the Anti-Corruption Commission in several of her public appearances in April pointed out that the SCPC in the upcoming period will focus on checking the decrees with legal force issued by the Government and public enterprises, but also on donations, emphasizing that unintentional or intentional errors are possible. The power of officials is increasing in a state of emergency, and therefore the risks of deliberate mistakes are increasing, said SCPC President Biljana Ivanovska, adding that the Criminal Code in no article absolves those responsible for abusing power due to the state of emergency.

In an interview with the state news agency MIA, Ivanovska added that “in carrying out the procedures for the decrees, it is especially important that they be fully transparent and designed in a way that respects the principles of equality and publicity, i.e. fair participation of interested economic operators, and officials to abide by the principles of integrity, ethical norms and professional standards ... and of course control and accountability mechanisms must be introduced”.

However, it is precisely the control mechanisms that are “relaxed” or loosened, with the public procurement in this period being done without a request for an opinion from the Public Procurement Bureau, which is made possible by the paragraph in Article 55 of the Law on Public Procurement, which says that “under conditions that endanger the safety, life and health of the people”, the contracting authority shall not be obliged to seek an opinion before initiating a procurement procedure by negotiating, without publishing an official open call.

The Center for Civil Communications, a non-governmental organization that has been monitoring the situation with public procurement in RNM for ten years, in an exclusive bulletin for public procurement for the period March – 20 April, stated that exactly 44% of public procurements were performed under this article, where institutions negotiated directly with only one bidder!

Following the data from the exclusive bulletin of the CCC, two general conclusions can be reached - The number of urgent public procurement without a transparent procedure is large, while the total number of regular public procurement has decreased by 46% compared to public procurement in the same period last year.
Organized crime - still active forms and centers

Concerning the fight against organized crime, it can be concluded that this is a danger that is still active in society and that the fight does not yield the expected results. This can be deduced from three international reports. In the State Department’s 2019 Trafficking in Persons Report: North Macedonia it is concluded that North Macedonia does not fully meet the minimum standards for combating this phenomenon, but that the Government is making great efforts in this regard.

Another US document, a report by OSAC (Overseas Security Advisory Council), states that North Macedonia, Albania and Kosovo continue to face the challenges of organized crime, primarily in drug trafficking, human trafficking, money laundering and the like.

Finally, in 2019 a comprehensive study on “Centers of Organized Crime in the Western Balkans” by the Global Initiative to Fight Transnational Organized Crime appeared, where despite the general conclusion that the biggest problem is drug trafficking, where heroin, marijuana and synthetics are the most prominent drugs, while organized cigarette and tobacco smuggling is the biggest problem with smuggling.

Additionally, in North Macedonia, the cities of Skopje, Veles, Štip, Kočani have been apostrophized as “crossroads”, and for the three largest criminal groups in the vicinity of Skopje (from Aračinovo, Grčec and Kondovo), it is stated that “they seem to enjoy political protection”.

Methodology

This research by the Metamorphosis Foundation, within the project implemented by the Center for Democratic Transition in Montenegro (CDT), covers five areas: elections, judiciary, fight against corruption and organized crime, media and public administration reform, with each area covered in a separate document. This policy paper covers the area of anti-corruption and the fight against organized crime.

The areas consist of many sub-areas related to the regulation of the strategic and legal framework, institutional, administrative and material capacity, as well as the practically achieved results.

The analysis is based on the fulfilment of the criteria created by collecting the assessment of the indicators and the issues related to them by experts monitoring the implementation of EU standards, as well as based on an analysis of normative and institutional reforms and their practical results. In this analysis, we would like to express gratitude to the following experts: Slagjana Taseva, PhD, and the team from Transparency


The CDT assessed the progress made in meeting political criteria for the first time in 2017. Then, with the help of Dr Martin Bruce’s methodology, indicators were developed for each of the areas mentioned, which serve as a measure to assess the situation in the areas and, in fact, represent an authentic understanding of what the EC is requesting from each country as progress in a given area. Following the first assessment, the CDT in 2018 has expanded the research focus to other countries in the region, and together with colleagues from CRTA (Serbia), the Metamorphosis Foundation (Macedonia), Why Not? (Bosnia and Herzegovina), the methodology has been refined, and based on this methodology are conducted such researches.

The basics for the development of the indicators are the key assessments and recommendations from the European Commission’s reports, but also other international reports, comparative studies and research, action plans, as well as numerous international standards and practices and other reference materials. The total number of indicators for all areas is 168, with several indicators added this year in each area in terms of gender representation, budgeting and overall policies.
About the Metamorphosis Foundation

Metamorphosis Foundation for Internet and Society is an independent organization operating in the Republic of North Macedonia and our wider European home. Our team is comprised of dedicated activists who advocate for democracy, united by a common goal and values of mutual accountability, open communication and an unwavering commitment to universal human rights and democracy.

We strive for a society in which engaged and aware citizens actively use innovative tools to fulfil their civil rights and responsibilities, citizens who unconditionally influence the authorities and demand accountability, thereby ensuring democratic, accountable and transparent governance.