

## **EMPOWERING ANTI-CORRUPTION AGENCIES: DEFYING INSTITUTIONAL FAILURE AND STRENGTHENING PREVENTIVE AND REPRESSIVE CAPACITIES**

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### **ROUNDTABLE 3**

## **STRENGTHENING THE PREVENTIVE CAPACITY OF ACAS**

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### **INTRODUCTION**

Corruption is a global problem and despite the fact that it appears even in the high developed countries, it is still a major problem in developing countries or countries that go through the transitional process. Unless concrete activities are undertaken in due time, the corruption may become systemic and deeply entrenched in all spheres of

the society – public administration, judiciary system, police, customs authorities, local self-government, etc.

Moreover, the inefficient actions of the investigative and judicial authorities could stimulate the corruptive behavior, which could be spread not only vertically, but horizontally in all spheres of the society as well, i.e. in all segments of the national integrity system. Therefore urgent and organized steps for establishing and strengthening the institutional and legal framework for efficient prevention and suppression of corruption are needed. Also, in order to have an efficient fight against corruption, a comprehensive and systematic approach is required.

#### **A. Multidisciplinary approach for fight against corruption**

Apart from strengthening the criminal justice response, in order to solve the problem of corruption and the reasons for its appearance more efficiently, a combined and multidisciplinary approach is necessary. The acceptance of the repression as a sole reaction to the corruption results only in elimination of effects in individual cases, leaving unaddressed the reasons, motives and circumstances which lead to corruption.

The Law on Prevention of Corruption in Macedonia was adopted in 2002, and the State Commission for Prevention of Corruption was established the same year. The State Commission is a specialized body for preventive actions for fight against corruption, but also has competencies for detecting misuses of elected or appointed functionaries, officials and responsible persons in public enterprise and other legal entities disposing with state capital and submitting initiatives before competent bodies for dismissal, removal, criminal prosecution or implementation of other measures of accountability.

Reflecting global trends and with the objective of effective preventive action against corruption, the *State Program for Prevention and Repression of Corruption* adopted in May 2007 by the State Commission for Prevention of Corruption (SCPC) is founded on prevention and detection of the reasons and conditions which lead to corruption, as well as on their elimination. This is the second State Program while the first one was adopted in 2003.

Repression remains as a corrective measure in individual cases. In the current social, political and legal environment, the repressive reaction is necessary for reinforcing responsibility among public officials and citizens, as well as for regaining citizens' trust in the institutions. Also, if the cases are finalized with a punitive court decision, the feedback of effective repression is prevention. But if the criminal justice response is weak then this could encourage the corruption.

Apart from these two components, the third component – the educational component – is also necessary, which refers to wide social action for educating all social layers regarding the negative consequences of the corruption as a phenomenon that directly threatens the freedoms and rights of people, as well as destroys the basic principles of the legal state.

## **B. Preventive measures**

There is a wide range of preventive activities and measures for addressing corruption in a knowledge-based manner.

*Anti-corruption strategies.* The main activity, as it is recommended in article 5 and 6 of UNCAC, is development and adoption of *preventive anti-corruption policies or strategies* and practices and establishment of the *independent body or bodies* for monitoring of implementation of the anticorruption strategies.

As mentioned before, in May 2007 the SCPC adopted the State Program for Prevention and Repression of Corruption & Action Plan. It covers measures and activities to be adopted and implemented within the National Integrity System: (1) Political system, Parliament and political parties; (2) Judiciary; (3) Public administration and Local Self Government; (4) Law enforcement agencies; (5) Economic and financial system and private sector; (6) Civil society, media, unions. The method utilized in developing the National Anticorruption Strategy was the participatory approach. This means that representatives from all relevant institutions of NIS were included in developing the scheme for efficient fight against corruption. Phases of development were – detecting problems, setting up activities to overcome the

problems, activity indicators and key performance indicators. SCPC monitors the implementation of State Program in two ways. First, through level of implemented activities set in the Action plan and second, through Performance Monitoring System, designed to allow monitoring the Key Performance Indicators of the work of selected institutions. By this, the performance efficiency of the selected institutions can be measured and improved, because it is considered that inefficiency is one of the major reasons for spreading corruption in some segments of the National Integrity System.

Researches/surveys. The next important activity is conducting regular *researches on corruption*, public opinion surveys. The results of surveys are additional, but very valuable source of information about the most vulnerable areas of corruption, and lay the groundwork for the ACAs in determining directions, goals and scope of work. In 2006, SCPC conducted the Research – Public Opinion on Corruption. The aim of this research was to determine the perception of the public on the level and intensity of corruption, which would identify dimensions that corruption reaches in the society. Three methods were utilized:

- Polling realized on 1600 survey subjects through two questionnaires:
  1. A questionnaire for the citizens who stated that they were victims of corruption
  2. A questionnaire on the general perception on corruption
- Four focus groups: judges, public administration staff, healthcare staff and professors from state universities
- Twenty interviews with owners of small and medium sized private enterprises

According the survey, corruption was the third recognized problem, following unemployment and bad economic situation. Also, the public evaluated the level of corruption in different institutions. As the most corrupted recognized areas were: Customs administration, Judiciary, Healthcare System. Majors were ranked on 9<sup>th</sup> place, Media on 17<sup>th</sup> and International NGOs on 19<sup>th</sup> place.

Aiming to allow consistency and efficiency in detecting the risk areas and in this respect defining the activities of ACAs and other competent bodies, such kind of surveys should be conducted annually. The main obstacle is the lack of resources in the budget of ACAs.

In depth researches and analysis.

In depth researches and analysis founded on survey based data collection is a tool for implementation of programmes and projects for prevention in specified segments, like construction, health care, education etc. These analyses are mainly based on cases investigated by ACAs. The State Commission for Prevention of Corruption in 2008 assigned a field of construction (i.e. issuing permissions/licenses, general and detailed construction plans etc), particularly on local level, to conduct a peer research. The aim is to analyze the cases and legal framework. Based on findings, by the end of year a report containing conclusions and recommendations shall be issued.

Education/public awareness campaigns; Introducing anticorruption curricula in the system of primary and secondary education; Free access to public information etc.

These activities are also very important for strengthening the preventive capacities of the society for fighting corruption. Implementation depends on position and capacity (financial and human resources) of ACAs, other competent institutions, NGOs, Media.

## **CONCLUSIONS**

The aim of efficient criminal justice system is to achieve two effects – special and general prevention. The special prevention is directed towards perpetrators of criminal offences through their prosecution and penalization and discouraging from similar acts in future. General prevention affects the public awareness for the risk and unprofitableness of committing such criminal offences.

The role of NGOs and media is also of great importance in overall efforts for fighting corruption. Their position as a watch dog bodies and positive critical review on the work of the prosecution and judiciary system, and other state institutions as well, in handling the cases of corruption, have a positive effect for more efficient work of those institutions.

For further strengthening the preventive and repressive system for fighting corruption, strengthening the capacities, monitoring and scrutinizing the implementation of the anticorruption policy, timely reaction for elimination of the detected weaknesses,

using research methods and permanent harmonization of national legislation with international standards and conventions is of vital importance.

The main obstacle for more efficient preventive action in tackling corruption is insufficient capacities of ACAs (human and financial resources, trainings, knowledge for using research methods). Possible ways for overcoming of these shortcomings are cooperation with NGOs for educational projects and trainings, exchanging experiences with other ACAs and joint projects, support from international institutions and networks.