

EUROPEAN ANTI-CORRUPTION AGENCIES: PROTECTING THE COMMUNITY'S FINANCIAL INTERESTS IN A KNOWLEDGE-BASED, INNOVATIVE AND INTEGRATED MANNER

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Anti-corruption Commissions and Agencies in South East Europe

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The paper provides a comparison of different models of anti-corruption bodies in South East Europe. Particular popularity in the region have gained the so-called Anti-corruption Commissions which are rarely empowered with investigative powers, but are involved in building partnerships with civil society groups, preparing comprehensive (omnibus) anti-corruption strategies, action plans, etc. These bodies – the commissions - are an essential element of a specific approach to the fight against corruption which has been dubbed by the EBRD “omnibus programmes” – the first part of this paper focuses on these programmes and their application in South East Europe in particular. Initially, the work of these bodies as a rule has a positive effect largely in terms of raising public awareness concerning the issue of corruption. Gradually, however, publics grow tired of this type of activities. Paradoxically, there is a point at which awareness of the spread of corruption turns into cynicism regarding anti-corruption activities as a whole, perceptions of powerlessness of state bodies to produce more “tangible results”, etc. The ultimate result then is falling confidence in the political establishment, the rise of populist leaders and parties, discontent with the constitutional order and calls for ever more radical reforms. Some of the countries of South East Europe have experienced and experience this negative dynamics - it is of course not produced by anti-corruption activities per se, but these activities do help the negative dynamics. If this analysis is correct, apparently there is a need for rethinking of the almost universal recipe of anti-corruption activities pursued in the region which could be described as: setting up of a commission, producing of an omnibus strategy, producing of annual reports of implementation, schemes of monitoring, indices of corruption.

Countries in the region have explored other alternative ways of fighting corruption. First, an alternative strategy is the general strengthening of the institutions of the democratic state – all administrative capacity building projects do have an anti-corruption angle as a rule. Secondly, currently several states have created specific investigative and prosecutorial agencies to tackle the issue of corruption. Romania has set up Anti-corruption Prosecutorial Office, Bulgaria is probably going to follow suit by creating a special unit in the Supreme Prosecutorial Office specifically targeting corruption. In Macedonia, there has been a Commission with some investigative powers for some time, etc. The results of this change of anti-corruption strategy are difficult to assess at the moment: the development is too recent. The paper will provide some preliminary evaluation, and will offer an analysis of the indicators of success or failure which might be applied. For this purpose, the paper first briefly examines the results of a country which has not yet established a specialized anti-corruption agency with investigative powers – Bulgaria. This analysis serves as a baseline for the assessment of the achievements of another country – Romania –which has recently established a specialized prosecutorial office in the fight against corruption.

I. OMNIBUS PROGRAMS AND ANTICORRUPTION COMMISSIONS

*This analysis is based on **Martin Tisne and Daniel Smilov, From the Ground UP: Assessing the Record of Anticorruption Assistance in Southeast Europe, CEU Press, Budapest, 2004.** The material for this publication was gathered during a research project carried out in 2003-2004.*

In this part of the paper the EBRD's recent definition of an omnibus program as a coordinated assemblage of governmental structures and policies specifically geared towards fighting corruption will be used.

The omnibus programs that we have analysed share one basic assumption. If a government is reluctant to engage in anti corruption reform, the program will lay the structural and legislative foundations for future work. If a newly elected government is keen to work in anti corruption but lacks direction, a well-crafted national anti corruption strategy and accompanying structures can infuse a sense of direction, coordinate institutional efforts and thus press for the effective implementation of the laws. The assumption is that omnibus programs are universal tools in the fight against corruption. Provided the institutional structure used to implement the strategy is well adapted to the country context, countries benefit from a well coordinated approach to the multiple / heteroclitic reforms that together make up anti corruption policy. The premise is that omnibus programs present a win-win situation.

This part of the paper is chiefly based on observations gathered in three case studies: the Council of Europe's PACO I project in Albania, strengthening the anti corruption monitoring group; the Macedonian State Commission against Corruption's national program for the fight against corruption; and the Friedrich Naumann Stiftung's national anti corruption strategy for Macedonia.

INSTRUMENTS

Omnibus anti corruption programs generally contain all or a selection of the following attributes:

- an anti corruption law
- a national anti corruption strategy or program
- a ministerial commission, specialised unit or dedicated agency
- an action plan to implement the program
- a monitoring mechanism

The national anti corruption strategy and action plan

The guiding attribute within this broad set up is:

- the national anti corruption strategy, which sets priorities, coordinates between different ministries and ensures implementation. The strategy provides for a wide range of different reforms, more or less directly linked to anti corruption, yet implicitly linked by their inclusion in the strategy.
- The Action Plan which operationalises the strategy by distributing responsibility for the implementation of the reforms included in the strategy, accompanied by a matrix, clearly laying out x/y/z.

In Albania, the national anti corruption strategy and action plan were the product of two years of dialogue between the donor community and the Albanian government, resulting in a strategic document spanning five reform areas, from public administration reform, improved legislation, improvement of public finances management, better transparency in business transactions, to public information and civil society participation.

Ministerial commission / anti corruption monitoring group

The structure or agency overseeing the progress of the strategy is a determining factor in the strategy's success. The onus is on the actual implementation of a clear and focused strategy, by a strong institutional mechanism. The mechanism can either be an inter-ministerial commission followed by a permanent anti corruption monitoring group, or a specially dedicated agency. International regulations are free to interpretation in this domain. The Council of Europe's twenty principles in the fight against corruption – the COE is a major source of expertise in anti corruption in the region.

In Albania, the Council of Europe has set up a comprehensive institutional structure to monitor and support the implementation of the action plan. This structure includes:

- an anti corruption monitoring group (ACMG) - an expert group composed of the legal directors of relevant ministries as well as the Minister of State – to monitor

the implementation of the plan, give advice and issue recommendations, and suggest improvement and prioritization of the plan.

- And a permanent secretarial unit to the ACMG which provides administrative support, is responsible for the day to day implementation of the action plan, and follow up with the different contact points which have been selected at relevant ministries.

The Council of Europe's approach is entirely focused on the implementation of the action plan. The institutional structures that have been created have no responsibility or powers beyond ensuring the implementation of the plan.

Dedicated anti corruption commission or agency

In contrast to the latter example, strategies or action plans may be overseen by specially created anti corruption agencies with broader powers than the sole implementation of the action plan.

The State Commission for the Fight against Corruption in Macedonia has responsibility for adopting and monitoring a national program for corruption prevention and repression (art 49, 1), but it also has the power to summon – in secret if necessary - persons suspected of corruption before the state commission in view of clarifying their position before possibly starting an initiative before the relevant bodies to discharge, replace or criminally prosecute those suspected elected officials or public servants suspected of corruption (52,1 and 49, 1).

EFFECTS

Since it is too early to observe the effects of the Macedonian national program to fight corruption, this chapter will largely focus on the activities of the Albanian omnibus program.

The Council of Europe's PACO project in Albania had a main objective and a long-term objective. Its long-term objective was to assist Albania in developing the rule of law, increase the possibility to attract foreign investment to the country and get closer to negotiations on the Stabilization and Association Agreements.

Its main objective was:

- To create a sustainable structure to monitor the implementation of the action plan
- To strengthen the cooperation of state institutions with the anti corruption monitoring group in order to implement the action plan

To Create a Sustainable Structure

The structure governing the monitoring and reporting on the Albanian action plan is now in place. A new board for the anti corruption monitoring group was successfully appointed, a permanent administrative unit to the board was created, and contact points within the relevant ministries in order to facilitate the unit's work have been located.

Capacity building

For each step, the Council of Europe, with the financial and expert assistance of the Swedish International Development Agency (SIDA) provided technical assistance to all groups. In particular, the permanent unit staff were trained in monitoring, reporting and strategic planning in workshops also attended by the ministerial contact points and representatives of other independent state institutions (general prosecutor's office, ombudsman etc.). The anti corruption action plan has been improved, the permanent unit staff trained to update it and the anti corruption monitor group has been tasked and trained to improve it on a regular basis. The implementation of the action plan is now part of a well-oiled bureaucratic system issuing yearly achievements indicators based on which the action plan is updated and modified.

There is no doubt that the Albanian administration benefited greatly from the training and is gaining valuable experience with strategic planning methods.

Sustainability

The permanent unit staff are young and motivated and supported by the office of the Minister of State, which is equally dedicated to the task. The process is firmly in Albanian hands. It is worth noting that the Council of Europe hired an Albanian project manager – now based in Strasbourg – to oversee the project which contributed to facilitate the communication and cooperation between the permanent unit, anti corruption monitoring group and the COE experts.

The GRECO report on Albania in December 2002 highlighted this achievement, noting that “above all, the very creation of the anti corruption plan and the machinery for its implementation was highlighted as a great achievement in itself.”

According to the project's own evaluation team: “the virtues of the project design are the technical and material support envisaged for the support of the ACMG.”

Implementation of the anti corruption action plan

Achievements

The ACMG's achievements so far in implementing the action plan have been limited to passing laws as far as its first three objectives are concerned: public administration reform, improving legislation and improving public finances management. The Council

of Ministers passed a law on a code of ethics in public administration as well as a law on the declaration of assets of public and elected officials; amongst others, laws “on notary” and “on advocacy” were passed in the judicial sector and a law “on the internal audit in the public service” was passed under the public finance management heading.

The EC has been openly critical of the action plan’s focus on the implementation of legislation, citing the lack of precision of the indicators used by the ACMG, lack of firm deadlines, institutional cooperation, as well as poor quality of the requested measures in the draft action plan’s recommendations on legal consolidation.

The permanent unit has also been criticized for not having the necessary governmental backing to be able to act as an effective coordinating unit. Despite the selection of contact points at each of the relevant ministries, most of the institutions do not collaborate in gathering and exchanging information.

Political backing is crucial

These achievements pale in comparison with the task before them. The government has now given priority to civil service reform, public procurement reform, state police reform, has pledged to eliminate corruption in the judiciary, as well as to keep the public informed on these developments and cooperate with civil society.

The structures that have been created will only succeed to make a dent in the mammoth task before them if they have political backing at the highest possible level, and enjoy public support to ensure that that backing remains.

Political and Public backing behind the Program

Civil Society

Cooperation with civil society has been fair given the relatively weak state of Albanian civil society. The USAID sponsored Albanian Coalition against Corruption was given a seat on the board of the anti corruption monitoring group, and civil society groups contributed as experts in a small number of projects and surveys run by the permanent unit, no least in pushing for the adoption of the declaration of assets law.

The triangle commission - whereby the ACAC sponsored Citizen’s Advocacy Office sends suspected corruption cases it has uncovered to the general prosecutor’s office for follow up, with the help of the office of the Minister of State – has been lauded in its early phases as a success. So far, the prosecutor has been willing to cooperate with the CAO – a hugely popular office – thereby demonstrating tangible and mutually beneficial cooperation between government and civil society.

Support from the business community has been poor to non-existent.

Public support

Public support behind the program seems weak. In terms of public support, little has been done beyond making information on the anti corruption monitoring group available to the public on the internet.

Political backing

The structures that have been put in place were supported by the then Minister of State, Ndr Legisi, the senior country representative to the Stability Pact Anti Corruption Initiative, who was directly active in facilitating the implementation of the action plan.

However, going beyond the Minister of State to the higher levels of government, which determine the success or failure of the action plan's more ambitious goals, the picture is much less inspiring. International observers concur in their judgment of the poor level of political will behind the action plan, despite the creation of the structures to implement it.

According to a recent report by the U4 research institute:

“This framework [the anti corruption action plan] seems very sensible on paper, but if one accepts that the Prime Minister is unwilling or unable to instigate a real fight against corruption, the whole plan with its different levels of monitoring becomes very hollow.”

The U4 group is not alone in being critical of the government's will in the fight against corruption. The European Commission's Stabilisation and Association Report on Albania in 2003 notes that:

“Although Albania has developed, in close cooperation with the international community, a number of mechanisms to fight strong systemic corruption, actual progress in this area remains insufficient. Albania has demonstrated its capacity to develop action plans, prepare matrixes, and to set up specific institutions with the objective of fighting corruption. However, declarations of intent and multilateral events are far from being sufficient. Fighting corruption requires full commitment and political will, and full and determined implementation of action plans.”

The structure now in place lacks the necessary political backing to do its work, regardless of the level of conviction and professionalism of its staff. The question is whether – if one accepts that the ACMG's work is sustainable – its existence alone and small victories gathered along the way are, despite their present apparent lack of success, laying the foundations for future reforms, and thus worth the cost.

ANALYSIS

Opportunities

Laying the foundations for future reforms?

The structures in place may lay the foundations for future anti corruption reforms, in a more benevolent political environment. However, this is not the ambition of the action plan. Albania's legal framework is largely up to international standards, and the action plan reflects this. The country has entered the implementation stage. Its own agenda for 2003-2004 is strong on institutional reform and public support, and pays considerably less attention to legislative change.

Could the programs act as a mobilizing force for reform?

Our evidence suggests that the anti corruption action plan, and its packaging of large scale institutional as well as legislative reforms in one single, well-monitored matrix, will only act as a mobilizing force if it is strongly supported by relevant civil society groups (including business), the international donor community and the highest levels of government. The structure is in place, and is valid, but will only be validated if there is the necessary political backing and public as well as international pressure for reform.

As was demonstrated in the preceding chapter, there are as of yet no coherent public pressure groups that could successfully influence government in matters where the government officials' own interests are at stake. The declaration of assets law was passed with the help of civil society. But the lack of a coherent movement to apply constant pressure and oversee its implementation, means that the law runs a considerable risk of being ignored.¹

Risks

A prop for the donor community

Omnibus anti corruption programs run the risk of transforming a political issue into a technical one, which will then be flaunted to donors as proof of the government's political backing behind the project. Donor should beware equating commissions with commitment.

The risk is that donors should continue to market a seemingly successful product, while its tangible effects have not yet been determined. Omnibus anti corruption programs including a national anti corruption strategy and plans for its implementation are

¹ It is also worth noting that the inadequacies of the Albanian banking system, as well as the sheer number of public officials' accounts to be monitored by a relatively office staff, are likely to combine and render the law inapplicable as intended. There is also an existing risk is that the law might be manipulated for political reasons by politicians desirous of getting rid of cumbersome opponents.

currently being prepared by donors as a reform to be implemented in all South East European countries.

It is a disturbing trend that national anti corruption strategies are being applied from country to country with little regard as to whether the solution matches the problem. In Albania, close to six years after the World Bank's first attempt at a national anti corruption strategy for Albania in July 1998, little has yet been achieved.

A signal of failure

The omnibus programs' original intent was to develop the rule of law, increase the possibility to attract foreign investment to the country and get closer to negotiations on the Stabilization and Association Agreements.

Develop the rule of law

In Albania, the PACO program could plausibly maintain that the passing of an ethics code as well as law on the declaration of assets by the Council of Ministers has contributed to developing the rule of law in the country. However, real developments will be judged on substance and not on form. The rule of law will only benefit in Albania if the laws are actually implemented and monitored. As was suggested earlier, for lack of public and political pressure behind those laws, they are unlikely to be successfully implemented in the near future. By continuing a pattern whereby laws are passed but not implemented, not respected and thus ignored, the program arguably contributed to decreasing respect for the rule of law in the country.

Increase the possibility to attract foreign investment

Both in the Albanian and Macedonian cases, the implementation of a national anti corruption strategy was meant by the governments in question as a signal to the international community, as well as to its own public, that it acknowledged the problem of corruption, had taken the first steps to control it, and thus was to be considered as a trusted partner and efficient government.

The appearance of anti corruption strategies, accompanied by commissions or agencies to monitor them, signal a dramatic inability on the part of the existing government institutions to deal with corruption. If the government is to send that type of signal, it should be soon backed up with tangible proof of results, to avoid that the initial strong signal that it sent out should not be misread as a signal of powerlessness, increase the public's feeling of frustration while buttressing foreign investors' reservations.

A recent EBRD study based on the BEEPS results from 1999 to 2002, found that omnibus anti corruption programs had not led to reductions in the levels of either administrative corruption or state capture, and that perceptions of corruption were positively correlated with the intensity of anticorruption programs. The EBRD report concluded that:

“By launching high profile anticorruption initiatives, governments may be more likely to heighten managers’ perceptions of the problem rather than to reduce the impact of corruption in firms.”

Get closer to negotiations on the Stabilization and Association Agreements

Albania is getting closer to negotiations on the Stabilization and Association Agreements, but despite rather than thanks to its anti corruption programs. As quoted above, the EC remains sceptical that the structures in place bear any link or have any influence on the government’s level of political will behind the measures included in the action plan.

A political tool

In the highly politicised transition context, there is a risk that the structures put up to fight corruption might be misused as weapons to attack political opponents. There is a particular risk that anti corruption commissions or specialised agencies might be manipulated, especially if these have investigative and prosecutorial powers.

To the Council of Europe’s credit, their strategy cautions a two-step approach whereby countries should first start with an Albania type monitoring group overseeing the national strategy’s implementation, before graduating to being an independent office, set up by law and with more authority.

The literature on anti corruption agencies is rich. Yet, it is worth reminding that any specialised anti corruption commission, agency or group has a tendency to either stall or grow in power. If it grows in power, as it has in Macedonia recently, it should be carefully monitored for any potential abuse.

The risks outweigh the opportunities

Returning to the original assumption behind the projects, our evidence has shown that government anti corruption programs cannot be seen as separate from their surrounding environment, and thus cannot be seen as a universally applicable tool.

The risks of implementing omnibus anti corruption programs in countries where the fight against corruption has neither high-level government backing nor focused public and civil support outweigh the opportunities provided by such programs.

II. THE FIGHT AGAINST CORRUPTION AND ORGANIZED CRIME AND THE DIFFERENCE SPECIALIZED AGENCIES MAKE

1. The Experience of Bulgaria (a country without a specialized anti-corruption body with investigative powers)

The analysis of the indicators of the performance of the Bulgarian judicial system with respect to organized crime and corruption uncovers serious problems. There are almost no convictions for participation in organized criminal groups – the statistical data lumps together all “organised-crime-related cases” thus concealing the difficulties in proving membership in organised groups. This “lumping” exercise is probably the explanation for the reported increase of indictments and convictions for the period 2003-2005. (See Chart 2) This means that the investigative bodies work “one piece at a time” and experience considerable difficulties in infiltrating and unraveling criminal networks. As a result, the convicted are convicted for individual crimes, while their alleged participation into organised groups remains unproven, and in that sense is not being punished. Similar is the situation with the money laundering issue, where the ineffectiveness of the institutions is also troubling. The so called “contract killings” also demonstrate very low levels of indictments and convictions. (See the *Excerpt from the Report of the Prosecutorial Office*, on contract killings below.)

Chart 1. Crimes of High Public Relevance 2005: the proportion between number of prosecutors’ acts and the number of indicted persons. First two columns - organized crime; second two columns - corruption related crime; third two columns - tax fraud; fourth two columns - drug crimes; fifth two columns - trafficking in human beings

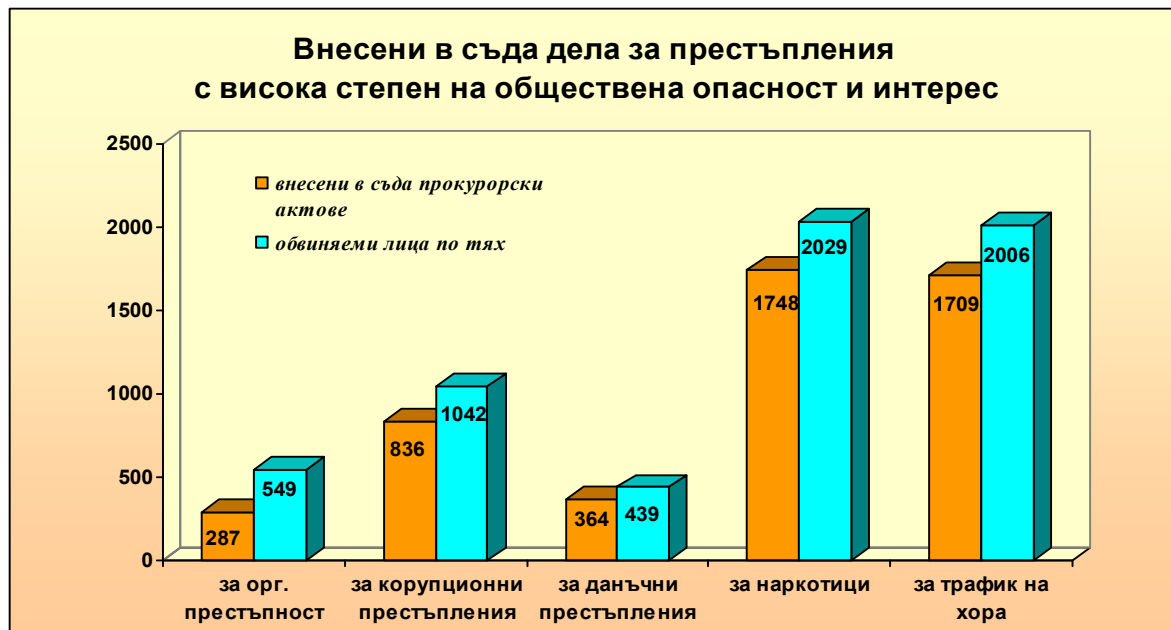
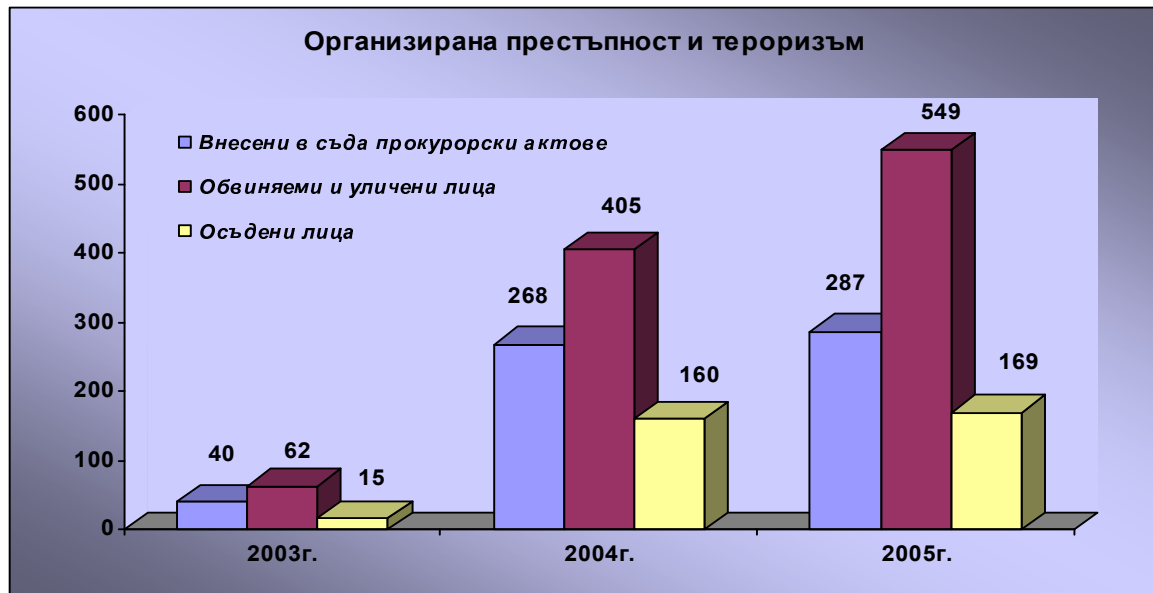


Chart 2. Organized Crime and Terrorism 2003-2005: first column - prosecutorial acts brought to court; second column - number of indicted persons; third column - number of convicted persons



Excerpt from the Report of the Prosecutorial Office

Contract killings in 1992 – 2005.

- 173 cases of “contract” killings by non-identified perpetrators were established and described. It was found out, that the resolved cases of contract killings were 25, where the perpetrators of 17 of the killings were established and indictments against the responsible for these killings are brought to court. On some of them there are convictions at the first instance.
- 12 cases were re-opened. The common traits of contract killings were analyzed. A project on a methodology in the investigation of this type of crime was prepared.
- (2005) in “Organized Crime and Terrorism” Section of Supreme Cassation Prosecutorial Office, 585 files on organized crime-related cases were decided. For the same period in this Section there are new 2 595 files, according to the register. Together with cases from a previous period, the prosecutors have taken “under special supervision” and realize supervision on more than 122 pre-trial proceedings, compared to 77 for the preceding 2004 year.

With respect to the fight against corruption, the measured progress is unsatisfactory. (see Chart 3.) For the 2003-2005 period, the number of convicted persons and the number of indictments (the rough ratio is 380/700) is relatively stable. Probably it is more important to introduce a more precise statistics, separating the low-level from the higher-level corruption. The current indicator includes a great number of relatively minor crimes, for the greater part of which there are relatively mild convictions, which does not reflect the weight of the public interest in the forms of high-level “political” corruption. In this sense it is telling that our judicial system stays “out” of certain sensitive spheres, like political party financing, for example. On such issues there are in practice no cases.

Chart 3. Corruption Cases 2003-2005 (first column - indictments; second column - convicted persons)



2. The Experience of Romania

Appendix: Presentation of NAPO – Romanian National Anticorruption Prosecutor’s Office

I. The status of the National Anticorruption Prosecutor’s Office

The National Anticorruption Prosecutor’s Office was set up on the 1st of September 2002, on the basis of the **Government Emergency Ordinance no. 43/2002** approved by the **Law 503/2002**, as an independent prosecutor’s office within the Public Ministry, specialized in dealing with case regarding corruption deeds and those connected to them as they are provided in the **Law no. 78/2000** (on the prevention, discovery and sanction of the corruption crimes).

According to its organizing law, the National Anticorruption Prosecutor's Office (NAPO) is an inter institutional, complex structure, at the carrying out of the investigating and criminal pursuit activities, police officers and experts in the economic, financial, banking, IT etc., participate together with the prosecutors. The police officers are detached by order of the Minister of Interior for 6 years (with the possibility of renewing the mandate) and appointed within the National Anticorruption Prosecutor's Office.

The institution is led by a general prosecutor and coordinated by the general prosecutor of the Prosecutor's Office attached to the Supreme Court of Justice.

According to art. 2 of the **Emergency Government Ordinance no. 43/2002**, the National Anticorruption Prosecutor's Office is independent in respect of the courts, the prosecutor's offices attached to them, as well as in its relationship with the other public authorities.

The aspects conferring a certain degree of **autonomy** to the NAPO within the Public Ministry, as well as in relation with the Minister of Justice are as it follows:

- the NAPO is only coordinated by the General Prosecutor of the Prosecutor's Office attached to the Supreme Court of Justice, it is not subordinated to him as the other Prosecutor's Offices are.

- the General Prosecutor of the NAPO is appointed by the President of Romania at the proposal of the Superior Council of Magistracy.

- the General Prosecutor of NAPO is, as a result of the legislative modification intervened through the **Government Emergency Ordinance no. 24/2004**, main fund appropriation entity, provision which gives financial independence for the institution.

II. The Structure

The National Anticorruption Prosecutor's Office has competence in the entire state, having a central structure, as well as a territorial one. The central structure has its headquarters in Bucharest, in a distinct building. It is divided into sections and services directly subordinated to the General Prosecutor, as it follows:

- the Section for fighting corruption crimes;
- the Section for fighting crimes connected to those of corruption;
- the Section for fighting corruption crimes committed by militaries;
- the judiciary section;
- the Service of international cooperation, information and public relations;
- the Service of classified information and centralizing data regarding corruption;
- the Service for studies, human resources and professional training;

- the Service of inspection;
- the Economic – administrative compartment;
- the Technical service;
- the Judiciary police brigade;
- the Service of specialists;

At local level, 15 anticorruption territorial Services function, in the cities where there are courts of appeal. These services are led by chief prosecutors, subordinated to the general prosecutor.

Within three of them, respectively in Bucharest, Oradea and Craiova, due to the high quantum of activity, a territorial bureau was set up in localities which are under the competence of the above mentioned services (Slobozia, Targu Jiu and Satu Mare).

III. The NAPO's personnel

At the carrying out of the investigations resulted from corruption cases, the NAPO's prosecutors work within specialized task forces, along with police officers and experts in order to increase the efficiency of the criminal investigations.

1. The prosecutors

NAPO's prosecutors are appointed as all the other prosecutors, by decree of the President of Romania, at the proposal of the Superior Council of the Magistracy.

In order to be appointed within the NAPO, the prosecutors must have a minimum of 15 years length of service as a prosecutor or a judge, a special professional qualification and a good reputation.

2. Police Officers (The Judicial Police of NAPO)

For the purpose of performing with celerity and efficiency the corruption crimes' investigations, police officers constituting the judicial police of NAPO function within the NAPO.

The judicial police officers can perform only the criminal investigation acts disposed by the prosecutors within the NAPO, carrying out their activity under direct conduct, supervision and control of the prosecutor.

The police officers are appointed by the General Prosecutor of the National Anticorruption Prosecutor's Office for 6 years (with the possibility of extending the mandate with their consent), first being detached by the order of the Ministry of Administration and Interior. They must have a university degree and, at least, 6 years length of service.

3. Specialists

Within the NAPO, specialists of high qualification in the economic, financial, banking, customs, IT fields, as well as in other fields, are appointed for clarifying the technical aspects in the criminal investigation.

The specialists have the status of a public servant and they carry out their activity under the direct conduct, supervision and control of the NAPO prosecutors.

IV. Statistical data regarding the personnel

According to the **Government Emergency Ordinance no. 43/2002**, as it was successively modified, the personnel structure and the positions number, are as it follows:

- 130 prosecutor positions;
- 170 police officer positions;
- 45 specialist positions;
- 85 special auxiliary personnel positions;
- 80 administrative and economic personnel positions;

It's worth mentioning that, until the **1st of January 2005**, the **positions** were filled in proportion of 91%.

V. The competency

The National Anticorruption Prosecutor's Office carries out criminal prosecution for the offences provided by the **Law no. 78/2000**, with the limitations mentioned by the **Emergency Ordinance no. 43/2002**, with the successively intervened modifications.

Law no. 78/2002 enumerates 4 categories of offences, strictly limited, namely:

- Classical corruption crimes;
- Crimes assimilated to those of corruption;
- Crimes directly connected to corruption crimes;
- Crimes against the financial interests of the European Communities.

According to the legal dispositions, the competency of NAPO is not to carry out the criminal investigation for any corruption case, but only for crimes which can be considered as representing **high and medium level corruption**. The Romanian laws considered that the high specialization and the special investigation means of the NAPO must be used in order to solve complex cases which have a strong, public impact, and the petty corruption crimes must fall under the ordinary prosecutor's offices' competence.

Taking into consideration the latest amendment of the Emergency Ordinance no. 43/2002, adopted in November 2004, which gave a narrower scope of what high level corruption means, there are to be mentioned the 3 criteria of demarcation defining NAPO's competence, namely:

- a) the value of the caused damage through committing crimes – **over 100.000 Euro;**
- b) the value of the corruption crime object (the value of the bribe) – **over 5.000 Euro;**
- c) the quality of the offender – when no matter the value of the damage nor the value of the claimed or offered bribe, offences are committed by certain categories of persons, with limitations provided by law, *for example*: members of the Parliament, members of the Government, members of the central and local public administration apparatus, magistrates, admirals, generals, marshals, the general major of Bucharest and the majors of other sectors, cities and towns, notaries, lawyers, police officers, custom officials, bailiffs, commissioners of the Financial Guard, directors and members of the boards of the national companies, banks and commercial companies where the state is the main shareholder.

VI. Investigative means

According to law, when there are serious grounds to suspect that a crime which falls under the NAPO competence was committed the prosecutors can use special methods in order to gather evidence and identify the perpetrators, as follows:

- monitoring the banking accounts;
- accessing the IT systems;
- wiretapping the communications (on the basis of the judge's authorization) ;

Also, the prosecutors can ask for the communication of accountant, financial and banking documents.

If there is no other appropriate method for identifying the perpetrators, **undercover agents** can be used in order to gather evidence according to law.

These agents are police officers within the Ministry of Interior, especially assigned for this purpose. They can only be used with the authorization of the general prosecutor of NAPO.

According to law, the NAPO prosecutors also have the right of taking specific measures to **protect witnesses, experts, victims**.

VII. International Cooperation

Being itself a result of international cooperation relations (Twinning Covenant with Spain within the **Phare program RO 9910.05, “Strengthening the state institutions capacity in fighting corruption”**) NAPO’s creation represents the solution identified by the Romanian Government in line with its efforts in adopting international and European standards concerning the fight against corruption.

Under these circumstances and taking also into account the necessity of coordinating the NAPO’s actions with those of other foreign judicial authorities, in solving cases with trans-border elements this institution carried out an intensive international cooperation, even since its establishment.

The following goals were approached:

- studying the organizational and functioning structure of other European institutions with similar competences, as well as the other states’ efforts in fighting corruption and crimes assimilated to it;
- sharing data and information, developing mutual legal assistance activities with foreign judicial authorities in corruption cases;
- setting up an appropriate image of this institution, of its developing efforts in front of the European and Euro Atlantic organizations;
- implementing technical assistance programs with foreign financing and expertise;
- participating in international conferences and meetings.

VIII. The relation with the citizen, the civil society and the business environment

On the 31st of January 2004, NAPO concluded with Transparency International – Romania a partnership protocol for setting up the Advocacy and Legal Advice Center – a citizens’ assistance center for the fight against corruption. This agreement aimed to informing the citizens on the legal tools they can use when affected by corruption.

Since March 2004, the NAPO’s web page has been put in place and the citizens can use it in order to become aware of the NAPO’s legal and organizational framework, as well as the conditions of notifying the NAPO.

In October 2003, the anticorruption phone line for citizens was put in place. Through this communication means, the NAPO received **1.350** messages, out of which **275** were sent to the sections within the NAPO’s central structure and territorial services, for further verifications.

In May 2004, a department for investigating the notifications related to corruption deeds drew up by foreign businessmen was set up, as well as a line of direct communication with them (phone, fax, email). Through this communication line 18 messages were received.

X. Statistic data regarding NAPO's activity during the 1st of September 2002 – the 1st of January 2005

Since the setting up of the National Anticorruption Prosecutor's Office, its prosecutors had to solve over **5.277 cases**. A total of **3.936 cases** were solved, out of which **346 cases** were solved by sending **1068 defendants** to trial.

50% of the defendants sent to trial had leading positions or other important positions as, *for example*:

- 4 ministers
- 4 state secretaries
- 2 counselors within the Government General Secretariat
- 1 counselor within Ministry for the European Integration
- 1 manager of SAPARD Agency
- general directors and directors within ministries
- 7 judges and 2 prosecutors
- 1 assistant magistrate of the High Court of Cassation and justice
- 180 policemen
- 20 customs officials
- 7 commissioners of the Financial Guard
- 27 military officers (three of them were generals)
- 10 majors
- 93 directors, chiefs of credit depts. and other banking employees
- 10 public officials within General Directions of Public Finances
- 1 intelligence service officer

The damage caused to the state budget or to private companies through the offences for which NAPO sent cases to trial represents the approximate sum of **500 million Euros**, more than **30 times** the annual budget of NAPO. The damage caused by the offences for which the cases are still in the investigation phase, the damage is over **1 billion Euros**.

During this period, in all the cases sent to trial by the National Anticorruption Prosecutor's Office, the courts delivered **189 conviction sentences** (regarding **414 defendants**), out of which 90 sentences (regarding 159 defendants) remained irrevocable.

Only **3** were irrevocably acquitted by the court of trial, and in **2** cases, **the file was sent back to the prosecution office** in order to complete the criminal investigation. *In February 2005, the court revised one of the acquittal decisions, regarding 2 defendants, and currently the case is being re-tried by the court.*

It's worth mentioning that, among the **irrevocably sentenced defendants**, there are: one government counselor, one judge, one prosecutor, one director within the Bucharest City Hall, 23 policemen, 7 army officers, 8 customs officials,, 18 directors of commercial

companies. The convictions were pronounced, the sentences being not yet irrevocable, for one director and one general director within a ministry, other 44 policemen, other 19 army officers, 7 Financial Guard commissioners, 6 bank directors, other 35 directors of commercial companies, etc.

On the 1st of January 2004, the **Office for fighting corruption against the financial interests of the European Community** was set up within the NAPO's central structure.

Between January the 1st and January the 1st 2005, this office sent to trial 7 defendants for committing crimes related to using PHARE funds. The quantum of the total damage caused by committing these crimes is of 300.000 EUR, out of which 100.000 EUR and 280 million ROL have already been recovered. These sums represent contractual penalties and in order to recuperate the rest, ensuring measures have been taken.