Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners' Experience

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Abstract: Corruption in the Eastern European and the CIS countries existed long before the process of transition and was rooted in the functions and structures of the communist system. Some of the characteristics of that system still have a bear on the degree and features of the corruption phenomenon in the region. With the fall of the Soviet Union and the beginning of the transition toward democracy and market economy, corruption became pervasive and acquired a large economic dimension. During the late nineties the countries of the region started introducing measures to fight corruption and creating anti-corruption agencies (ACAs). The paper will discuss these measures with particular focus on the reality of ACAs in the region in the context of the UN Convention Against Corruption. The main shortcomings of the anti-corruption systems and potential remedies will be analyzed from the perspective of UNDP's experience interacting with practitioners from ACAs in anti-corruption projects.

This paper is based on the authors'[1] experience at the UNDP Bratislava Regional Centre, working with anti-corruption institutions in Eastern Europe. While the Regional Centre also covers the CIS, considering the specific dynamics of the countries in Central Asia and the focus of the conference, the paper will focus on the institutional arrangements for fighting corruption in the CIS neighbors of the EU and in the Western Balkans. The purpose is not to compare the situation of different countries since each reality must be analyzed individually, but to identify some of the dynamics that should be taken into consideration by the EU and other actors when proposing the introduction of anti-corruption measures in these countries[2].

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[2] Disclaimer: the descriptions and statements contained in the paper reflect personal opinions and experiences of the authors or of practitioners working in anti-corruption institutions and are not to be considered official statements of UNDP.

1) Corruption and anti-corruption in Eastern Europe

Levels of administrative corruption and state capture in Europe's ex-communist states, including new EU Member states remain high after almost two decades of transition; it seems evident that, despite the distinctive characteristics of the different countries, some of their shared legacy from recent history, and common features of their subsequent transformations have a bear on the degree and specifics of the corruption phenomenon across the region. This should be taken into consideration when analyzing the performance of the Anti-Corruption Agencies and introducing new measures to address the shortages of the anti-corruption mechanisms in place.

One of the legacies of communist regimes originates in the fact that the public sector was strictly controlled by the communist party through a mixture of incentives and repression. One key incentive derived from the system of appointing individuals to important positions in government and the economy. Such appointees had special privileges and, as a consequence of their positions, unique access to goods and services in short supply. This created an environment in which patronage, nepotism and decision-making through non-transparent channels of personal influence became part of the public sector and of its relations with the citizens. This reality still has consequences in many CIS countries, where large portions of the public sector are controlled by influential oligarchs; in such countries, the path toward full democracy and transparent, accountable governance is still long. International organizations and donors should be very careful in supporting the introduction of anti-corruption measures under these circumstances. In the absence of broad institutional reforms to establish democratic governance principles, anti-corruption laws and regulations can even have perverse effects and may contribute to the increase, rather than reduction of corruption – e.g. by being used as an instrument for political repression and as an alternative to reform politics.

The communist past has also an impact on the structures and dynamics of the civil society. The long suppression of civil liberties, the impossibility of creating social structures outside the party's control, as well as the lack of independent media, annihilated or severely reduced the capacity of civil society to organize itself for promoting collective interests autonomously from the state. To be sure, there are significant differences among different parts of the region: experiences of independent social movement especially in Central Europe provided a blueprint for the development of civil society structures, so these countries started their transition with a big advantage from this point of view. Concerning the CIS, the colored revolutions in Georgia and Ukraine; the protests in Belarus during the 2006 elections; and the development of opposition movements in other CIS neighbors of the EU, demonstrated the capacity of civil society to promote democracy and the rule of law. It is not by coincidence that the implementation of anti-corruption measures was one of the main issues on the agenda of the post-revolution governments in Georgia and Ukraine. Nevertheless the development of a functioning integrity system in which the civil society plays its role cannot be based only on civic engagement during electoral periods. Mechanisms allowing the citizens to be represented in the decision-making and policy-making processes have to be introduced, as well as transparency measures and systems for denouncing corruption and a functioning whistle blowers protection. And for these to have a real impact, civil society needs to develop much stronger traction with the general public. Partially the problem is related to the lack of organizational structure within the civil society itself;

NGOs do a very important work of monitoring and political pressure but they still do not involve a significant portion of the population, they are largely dependent on foreign aid and have to cope with the scarcity of resources when implementing far reaching programmes.

An additional feature that shapes the context of anti-corruption in Eastern European and CIS countries is the persistent capacity deficit in their public administrations. From the previous regime, they inherited very hierarchical administrative structures, politically controlled, secretive and accountable much more to the vertical of power than to the citizens whom public institutions are supposed to serve. The dismantling of the political system that provided the organizing principle of such public administrations left them largely unequipped to deal with the challenges of responsive, transparent and accountable public service. Moreover, from the beginning of the transition period they faced the double challenge of having to perform (i.e. maintain the provision of basic public services under adverse circumstances of economic crisis and shrinking state power) and reform at the same time. The upgrading and reform of public administrations, with a view to turning them into modern, citizen-oriented providers of public services, is still an unfulfilled agenda, even among the more advanced reformers that joined the EU in 2004 and 2007. Notwithstanding the progress achieved, significant problems remain with regard to civil service professionalism and de-politicization, performance management, policy and inter-agency coordination, horizontal integration and horizontal accountability, truly transparent and accountable decision-making – to name just a few. Such problems continue to impact on anti-corruption efforts, since the elaboration and implementation of anti-corruption policies and measures cannot be insulated from the overall governance and administrative environment in a given country. A weak policy capacity will surely impact on every policy, including anti-corruption policies; and a poor capacity for policy implementation and monitoring will also affect anti-corruption measures. While the international community usually emphasizes the importance of political will to fight corruption (as for instance the EU with its New Member States in their run up to accession), the persistent capacity problems and broader governance deficiencies that impair anti-corruption efforts tend to get significantly less attention.

With the fall of the Soviet Union and the beginning of the transition toward democracy and market economy, the largely non-monetary corruption developed under the former regime became pervasive and acquired a large economic dimension. The connections and privileges previously developed were utilized by powerful interest to influence policymaking for private gains and by the elites to maintain their power. The establishment of corrupt practices was also encouraged by the fact that most of the controlling structures of the communist system were formally dismantled, although in many countries they have come to play new roles. New institutions of accountability have been slow to emerge. The administrative, legal, economic, social protection systems of the old regimes collapsed before the development of new ones adapted to democratic and market-oriented societies. The combination of unclear property rights, weak and inconsistent legal frameworks and lack of controls, in combination with the persistence of the culture of state intervention, facilitated the emergence of corruption as one of the key governance problems of the region. The rapid privatization undertaken in many post-communist countries in the absence of the proper institutional infrastructure and safeguards to ensure fairness and transparency further increased the scope for corruption, so that the massive transfer of public assets in private hands in many cases reinforced, rather than undermined, the corrupt networks.

Anti-corruption measures started being introduced in the countries of the region during the late 1990's, under the pressure of international organizations like the Council of Europe, OECD, the World Bank

and most of all the European Union. The EU accession process represented one of the fundamental incentives for many of the countries of the region to implement anti-corruption measures and try to comply, at least on paper, with the international standards for fighting corruption.

The EU Commission proposed principles for improving the fight against corruption in acceding, candidate and other third countries; requirements included the development and implementation of national anti-corruption strategies or programmes covering both preventive and repressive measures; the ratification of relevant international instruments (UN, Council of Europe and OECD Conventions); the creation of competent and visible anti-corruption bodies; the development of targeted investigative techniques, statistics and indicators. Other principles concerned broader public administration issues like the access to public offices for the citizens; the promotion of transparency and accountability in the administration; the introduction of Codes of conduct in the public sector; clear rules in both the public and private sector on whistle blowing. Finally the EU promoted the implementation of awareness raising campaigns; clear and transparent rules on party financing, and external financial control of political parties.

Candidate states under the political pressure of the European Commission and incentivized by the benefits to be derived from EU membership, implemented numerous legislative anti-corruption measures. Among transition countries EU accession states were the most active in reviewing and amending key legislation for corruption prevention, such as their laws on the civil service, financial disclosure, public procurement, freedom of information, party financing and money laundering. As a consequence the Baltic countries, as well as other new EU members in Central Europe progressed much faster than the CIS in fighting corruption, and even though a lot of problems are still present, these countries can by large claim having introduced meaningful anti-corruption measures.

However, the overall picture is not completely positive. Romania and Bulgaria have always been considered to face the most serious challenges in fighting corruption among post-communist New Member States. Currently the European Commission continues to monitor them even after accession, amid concerns of backtracking or stalling in their anti-corruption efforts, which is generally attributed to weakening political will of their governments to address corruption after accession to the EU was secured. Romania's post-accession replacement of a non-political Justice Minister who had gained recognition from the Commission for her anti-corruption drive, the recent resumption of mafia-like killings in Bulgaria, and numerous corruption scandals in both countries are examples used to illustrate this argument.

Such concerns of fading political will to fight corruption absent the pressure that the EU was able to exert before accession, are not limited to the newest two entrants. In Slovenia, the government has been persistently tried to dismantle the country's independent Commission for Corruption Prevention. In Latvia, the government last autumn suspended the Head of the Anti-corruption Bureau, widely credited by civil society and the opposition as a champion of independent anti-corruption efforts. In other Central European countries, anti-corruption officials and institutions who have taken their role seriously are subject to diverse forms of political pressure. But there is an important difference between the situation in these countries, on the one hand, and Romania and Bulgaria on the other hand. While in Slovenia and Latvia the independent anti-corruption bodies managed to resist political pressures primarily due to strong support from the public and media (people demonstrated in Latvia and forced the government to recall the suspension of the Head of the Anti-corruption Bureau) and

thanks to a truly independent judiciary, Romania and Bulgaria's anti-corruption efforts appear to have largely unraveled after accession.

The pattern that seems to indicate a reflux of anti-corruption efforts after the EU accession of post-communist countries can be seen as supporting the "political will" argument. According to this line of thinking, political will is the main ingredient in successfully fighting corruption, and external pressure during the pre-accession period – in the form of accession requirements – helps keeping political will high, and consequently real progress is achieved. After accession, the external pressure largely disappears or is significantly reduced, and consequently political will to drive the anti-corruption agenda fades away and progress in this area slows down, or there is even back-sliding[3].

However, this narrative raises some important questions. Indeed, if real progress on anti-corruption (and other difficult reforms) was achieved before accession, why cannot it be sustained afterwards? Surely "political will" or external pressure cannot be a permanent feature of successful reforms. It is assumed that they may be needed to overcome resistance to reforms in the initial phase, but why such anti-corruption achievements are immediately jeopardized when political will falters in some countries (Romania, Bulgaria), but are more resilient in others (Slovenia, Latvia)? What if measures enacted under external pressure were never really sustainable in cases like Romania and Bulgaria because of broader governance deficiencies and administrative capacity gaps? What if they were primarily intended as quick fixes to satisfy stringent accession requirements, not as long-term solutions?

Unfortunately, there is some anecdotic evidence suggesting that the problems may run deeper than the political will / external pressure narrative implies. In the run-up to EU membership, in 2005-2006, Romania was commended for introducing some of the toughest asset disclosure rules for public officials, and its National Anti-corruption Department earned praise from the European Commission for initiating the prosecution of several high-profile politicians under corruption charges. Those highly publicized cases were seen as proof that the country was making significant progress on anti-corruption, which helped with the decision to offer EU membership in 2007 rather than 2008. However, two years later none of those cases was seen through court and convicted, and most of them were either stalled or dismissed; and the institution that should investigate asset and interest declarations is still not functional. In Bulgaria, a reduction in the number of mafia-type killings (none of which has been resolved) was considered as critical in the run-up to accession, but it later emerged that the Interior Minister had been in contact with organized crime bosses apparently in an effort to secure a moratorium on killings.

EU accession carrots and sticks indeed appear to be effective in mustering political will for fighting corruption: political leaders will go out of their way to please the EU by "delivering" on anti-corruption, even doing "impossible" things. However, the same pressure creates incentives for adopting quick fixes instead of painstaking long-term reforms to build adequate institutions. And with

[3] Typical illustrations of this perspective recently in *The Economist:* "Europe's Marxist dilemma" (http://www.economist.com/world/europe/displaystory.cfm?story_id=11089474&CFID=4653545&CFTOKEN=25384049) , or *The International Herald Tribune:* "Backsliding on reform is seen in new EU states" http://www.iht.com/articles/2008/04/01/europe/union.php): "Since 2006, anti-corruption campaigns in Latvia, Slovakia, Romania and Slovenia have come under pressure as governments or Parliament members sought to scale down their activities".

opportunity costs pushed up by external pressures to show quick results, the long term solutions are the losers of this trade-off.

Some of the Central European countries that joined the EU in 2004 have been relatively more successful in improving their overall governance systems during their long transition period, and that – not external pressure or political will in the run-up to accession – may be the reason why their anti-corruption measures appear more effective and resilient. By contrast, Romania and Bulgaria have been slower reformers during transition and still have a significant catch-up to do on reforming their state apparatuses, and no amount of political will can substitute for that.

The lesson from this experience is that there is no short-cut possible in genuinely tackling corruption. Broader legal and institutional reforms are key to changing the incentive structures and reducing the scope for corruption, education and public awareness raising are indispensable to altering expectations and attitudes, political consensus-building on key reforms is a must to ensure their sustainability across political cycles. Even with political will and the best intentions, anti-corruption cannot systematically outperform the other sectors, and anti-corruption agencies can hardly be sustainably maintained as islands of excellence in an otherwise deficient institutional and administrative environment. Only by addressing the corruption problem in the broader context of governance reforms, and as part of a consistent, long-term reform agenda, can countries achieve sustainable progress in reducing corruption.

Other strong factors for the introduction of anti-corruption measures have been the international legal instruments and monitoring mechanisms of the Council of Europe and the OECD and later on the UN Convention against Corruption. These conventions provide a comprehensive framework for the development of anti-corruption activities that constitutes a good base for effective reforms; but the most important element of the conventions resides in the introduction of the international dimension in addressing corruption. In many countries of the region, national elites and economic interests still find in the corruption of the system an ally for maintaining their power, and therefore the implementation of anti-corruption measures is often limited to window-dressing, or used merely as a weapon against political opponents. In such cases, the international legal instruments and the related standards and monitoring mechanisms could potentially sustain the introduction of genuine anti-corruption reforms. Nevertheless the main effort for the development and effective implementation of AC measures rests on the governments in cooperation with all the stakeholders. On the specific theme of anti-corruption agencies (ACAs), the international instruments promote the introduction of specialized agencies or persons to deal with anti-corruption activities[4] but as a matter of fact there is no obligation to create new institutions to comply with the international standards, strictly speaking a designation of an adequate number of specialized persons within existing structures meets the requirements of international treaties[5]. Countries are free to choose the institutional set up that they think is more suitable considering the local context and the national legal and institutional framework; this freedom of action of the State Parties is necessary considering the fact that it is impossible to identify a model for anti-corruption that would be suitable in all situations, but the analysis of the reality in the CIS and Eastern European countries suggests that this freedom can have the side effect of reducing the capacity of the international instruments to address the institutional problems conducive to corruption.

[4] The UN Convention Against Corruption (which is in place in almost all the countries in the region) requires the establishment of a body or bodies dealing with prevention of corruption (A.6) and a *body or bodies or person* specialized in combating corruption through law enforcement (A 36).

[5] OECD, *Specialized Anti-Corruption Institutions: Review of Models,* P.16

2) Anti-Corruption Agencies in the region

A) Multi-task agencies

To address corruption International instruments identify the following categories of activities: prevention; law enforcement (prosecution and investigation); education and awareness raising; monitoring and a general coordination function.

In the literature the name of "Anti-Corruption Agency" is mostly used to indicate independent multi-task agency combining law enforcement powers, preventive functions and often also functions of policy advice to the cabinet or the president. The mandate of this type of institutions varies according to elements like the presence in the system of other institutions involved in specific anti-corruption law enforcement activities or in policy making to fight corruption. In the majority of the cases these institutions can propose and implement measures for corruption prevention and for education against corruption or cooperate with other institutions or with the line ministries in these areas. Concerning the law enforcement function, these agencies can initiate investigations into complaints received as well as on their initiative and have varying degrees of investigative powers; after the investigation if there is ground for prosecution the matter is normally referred to the Prosecutors' Office. Often an important part of their investigative function is also the monitoring of the asset declaration of public officials.

The second main model of specialized ACA is the law enforcement one. These specialized agencies often have the prosecutorial authority in specific cases established by law and sometimes they also have investigative structures and functions. Sometime these agencies have also important preventive functions and are requested to support the development of anti-corruption strategies and legislation, as well as performing research on corruption.

The third model is constituted by preventive and coordination agencies. In reality talking about a model in this area can be misleading since many types of agencies with different structures and levels of independence deal with corruption prevention. Some of these agencies are simple commissions of high level officials producing advice for the executive, some are composed mostly by experts or technicians who advise the cabinet or the president, and finally there are real agencies with a structure, staff and budget.

An inventory of the anti-corruption agencies existing in the CIS and the Balkans reveals a general reluctance of the governments to introduce multi-functional, specialized and independent anti-corruption agencies. In 2000 and 2002 Latvia and Lithuania introduced this type of agency in their administrative system; the Latvian Corruption Prevention and Combating Bureau (KNAB) and the Lithuanian special Investigative Service (STT) became reference models in the region and are generally acknowledged as effective institutions. In effect the creation of these Agencies was a rather innovative initiative in Europe and was supported by international organizations, the EU above all, in preparation of the accession of the two countries to the Union. The KNAB and the STT are both the main AC agency respectively in Latvia and Lithuania, recognized as the focal body to detect, investigate and prevent corruption as well as to coordinate and direct the governmental anti-corruption activity. Both institutions are tasked with conducting pre-trial investigations on corruption cases (under the supervision of the prosecutor) and perform activities of corruption prevention such as working on

anti-corruption strategies, developing methods for preventing and combating corruption, analyzing and drafting legal acts, carrying out surveys and analyzing public opinion, educating and informing the public. The two institutions are different though: the STT has a law enforcement nature, and the majority of its staff carry out investigations, with a smaller number dedicated to other activities. The investigators of the STT dispose of special powers, including access to financial data and special investigative means such as covert interception of communications, covert observation, deployment of undercover agents and simulated corruption offences. On the other hand, one of the distinctive features of the Latvian KNAB is the function of control over the financing of political parties: as established by the law *on Financing of political Organizations,* the office has special investigative powers for requesting and receiving information including classified documents from public agencies, enterprises, organizations or financial institutions. The KNAB has also a major role in ensuring the enforcement of the *Code of Administrative Violations* for public officials, charging the state officials with administrative liability and imposing punishments for violations.

The model of ACA introduced in Latvia and Lithuania is recognized as one of the most effective among the countries that joined the EU in 2004. Their good results are of course to be analyzed and understood in relation not only with the prerogatives and structures and rules regulating their work, but also with regard to coordination with other agencies and the broader administrative environment in the framework of far reaching anti-corruption strategies. Nevertheless these agencies are not immune to problems and criticisms. In Latvia the establishment of the KNAB faced several difficulties, political parties were reluctant to accept the control of the office; there were also rivalries among the KNAB, the police and the Prosecutor General Office, while there were had high expectations for the work of the KNAB and the public expected quick results. In Novembers 2007 Mr. Aleksejs Loskutovs, the head of the KNAB was suspended by the government of the Prime Minister Aigars Kalvitis, who suspended him alleging fiscal improprieties. Critics accused the prime minister of overstepping his powers and said the move was politically motivated as Mr Loskutovs had been investigating possible campaign violations by Mr Kalvitis' People's Party. The KNAB under the supervision of Mr. Loskutovs had built an impressive record: hundreds of officials, businesspeople and politicians had been arrested and convicted for corruption thanks to the work of the agency. The prime minister was accused of actively destroying the reputation of the institution, thousands of people protested in the streets against his controversial moves against KNAB; the prime minister was forced to re-instate Mr Loskutovs and decided to resign in December 2007.

These events are significant because they attest at least a couple of facts: the first is that governments, politicians and powerful interest in general are not really inclined to accept the scrutiny of an anti-corruption agency and are willing to use any means to protect their power, many other examples from this region can be quoted in support of this statement; the second is that an agency can stand the pressure and the hostility of the government if the appropriate safeguards for its independence are in place and if it enjoys the support of the public opinion. The experience of the KNAB also reinforces the idea that the multi-task independent agency is probably the most effective model for post-communist countries affected by corruption that is spread and entrenched in the public administration as well as in the judiciary and law enforcement institutions. This type of ACAs have a higher degree of specialization, are separated from the agencies that they are supposed to investigate, have a clear mandate and therefore their results can be more easily measured and thus they can gain greater public credibility and support from civil society. Arguably, in a situation where a culture of corruption is present in the public sector, whatever new institution will be sooner or later infiltrated by corruption

and no institution can in fact be isolated from the system and impermeable to the problems of the surrounding environment. However, a new, independent multi-task agency appears to stand a better chance of having a fresh start than co-opting departments from existing institutions. If the early period when the institution is new and untainted by controversies can be used to take some serious, concrete steps against corruption, chances are that it may build a self-sustainable dynamics that is based on tangible results that lead to increased credibility and public support. In any case, the experience of the Latvian KNAB, the Lithuanian STT, as well as various examples from South-Eastern Asia, seem to demonstrate that these types of agencies can represent a very strong element in starting off the anti-corruption machinery.

Nevertheless this model has not been widely replicated in the region. Looking at all the western CIS, Caucasus and the Balkans, one will find several agencies with a broad mandate in anti-corruption, but strictly speaking none of them can be fully counted in the number of the multi-task, independent AC agencies. Some of them are not really independent, or they do not perform all the key functions for fighting corruption. Among these agencies, one seems particularly inspired by the multi-task, independent model – the Kosovo ACA.

In the framework UN administration, the Kosovo ACA became functional in February 2007. It was established by the *Suppression of Corruption Law* promulgated through a UNMIK Regulation; its development has been sustained by the Capacity Building for European Integration (CBEI) Project, an EU funded project managed by the European Agency for Reconstruction and implemented by the United Nations Development Programme. Notwithstanding the international support, the Agency is the first set up entirely by the Provisional Institutions of Self-Government (PISG) and has a high degree of local ownership[6]. The agency is responsible for the implementation of key aspects of the anti-corruption strategy, particularly concerning: the elimination of the causes of corruption and specific areas of intervention like the conflict of interests; regulation for the acceptance of gifts; supervision of public officials' assets and of those of their relatives; restrictions regarding contracting entities participating in public tenders. In addition to that, the agency carries out administrative investigation of public corruption. The KACA has a certain degree of independence and a mandate in prevention, education and investigation, nevertheless, there are some elements that restrict its mandate compared to other multi-task ACAs. First of all, the agency does not perform criminal investigations, it can undertake only administrative investigation for suspected cases of corruption where no criminal proceedings will be initiated, otherwise the case is transferred to the Prosecutors' Office. In addition to that, there are concerns about the independence of the Agency; the KACA is in fact accountable to the parliament, but also supervised by a Council composed by representatives from the Assembly, central government, local government, the Supreme Court, the Prosecutor Office and the civil society. According to the European Commission, the composition of the Council does not sufficiently guarantee its impartiality, and the Agency had repeatedly to defend its independence against political pressure from the government and the Assembly[7]. Another element casting doubt about KACA's strength and independence is related to its staffing situation: in 2007, as a consequence of recruitment restrictions for the public administration imposed by the government, the agency was able to recruit only 15 officers out of 35 needed even though the 2007 annual budget provided the necessary fund to cover all the staff expenses.

[6] European Commission, *Kosovo 2007 Progress Report (Under UNSCR 1244)*, Commission Staff Working Document.
[7] European Commission, *Kosovo 2007 Progress Report (Under UNSCR 1244)*, Commission Staff Working Document.

The Progress Report on Kosovo of the European Commission highlights also the fact that some of functional capacities of the Kosovo ACA are not well designed: the law on asset declarations does not allow the Agency to publish the declarations or to make inquiries about the origin of the wealth declared, and the correctness of the declarations is not checked with other relevant bodies. The Agency also faces several problems in establishing its position in the administrative framework and coordinating with other bodies, for instance the Agency is competent for administrative investigation leading to disciplinary measures against civil servants, but in this area its competence is overlapping with the disciplinary committees present in the various public services. The unclear delineation of responsibilities between the KACA and the Office of Good Governance, whose head is deputy head of the anti-corruption Council, has led to friction and remains to be addressed.

According to the Transparency International Global Corruption Barometer 2007, in Kosovo 67 % of the respondents who came in contact with services have paid a bribe. The data on corruption's impact on different sectors and institutions in Kosovo indicates that most corrupt are the political parties and medical services, followed by the parliament and the judiciary. At the same time, 62 % of the respondents think that the government efforts to fight corruption are ineffective. The European Commissions' report states that despite the progress achieved, corruption is still widespread and constitutes a very serious problem for Kosovo. In this context, the current institutional arrangement seems inadequate to face the challenges of effectively fighting corruption, and the Kosovo ACA needs to be reinforced in terms of staffing, functions and independence. In addition to that, it would be important to identify relevant stakeholders and create the institutional means to allow their participation in key anti-corruption functions like reporting, monitoring the public institutions and developing the anti-corruption strategy.

B) Law enforcement agencies

Many governments in the region opted for the creation of a law enforcement agency specialized in corruption or for the introduction of specialized units for investigation and/or prosecution of corruption cases. Among the several types of law-enforcement ACAs, particularly interesting models are the Moldovan Centre for Combating Economic Crime and Corruption (CCECC), the Romanian National Anti-corruption Directorate (NAD) and the Croatian Office for the Suppression of Corruption and Organized Crime (USKOK). The peculiarity of these agencies is that they are created by law, have legal personality and a certain degree of independence. Other distinctive element is constituted by the fact that in addition to the typical law enforcement functions they also deal with some preventive and educational activities and are clearly identifiable among the various state agencies as the focal structure for the fight against corruption.

The Moldovan Centre for Combating Economic Crime and Corruption is a specialized law enforcement body designed to prevent financial economic and tax offences as well as acts of corruption. The Centre was created by merging the Department of Financial-Economic Police, the Anti-corruption Department of the Ministry of Interior and the Financial Guard and the Department of Financial Control and Inspection of the Ministry of Finance, with the purpose of optimizing the structure of public administration, reducing the number of departments and bodies involved in internal controls. The core of the Centre's functions is law enforcement: it is specialized in combating economic crimes and corruption and has a complex system of detecting those crimes including gathering and elaboration of operative information, carrying out inspections and initiating criminal

procedures. In addition, CCECC is responsible for assessing corruption risks within the institutions at the central and local level, screening the new legislations to avoid the introduction of corruption-prone systems[8] and conducting public opinion polls. The Centre is also dealing with education campaigns, carried out in cooperation with NGOs.

The main limit of the Agency is probably the lack of independence and the rigidity of its internal structure, making it easily controllable by the executive. Control and supervision over the activity of the Centre is carried out by the Prosecutor's Office, but the director and his deputies are appointed by the government. Staffing regulation is the same as for the military and the higher ranks in the Centre's hierarchy are conferred by the government or by the director. The rules on selection and training of the employees are not very elaborated, raising concern with regard to the capacity of the organization to create the necessary pool of specialized and independent practitioners for addressing the more complex corruption cases; the law creating the Centre makes in fact reference only to personal or professional qualities allowing the staff to fulfil the objectives pursued by the Centre and relevant secondary education.

The Romanian National Anti-corruption Directorate (NAD) is a structure with legal personality, within the framework of the Prosecutor's Office attached to the High Court of Cassation and Justice. The NAD is responsible for prosecution and investigation of corruption cases when the offences causes a material damage in excess of 200,000 Euro, or a particularly serious perturbation to the activity of a public authority, public institution or any other legal person. Corruption cases are also investigated by the NAD when the offences are committed by high officials, deputies, senators, cabinet members, etc. The NAD has special investigative powers like the possibility of establishing surveillance of bank accounts and the interception of communications; the banking secret and the professional one, except for the lawyer's professional secret, are not opposable to the prosecutors of the NAD. Staff of the agency is formed of prosecutors, judicial police officers, experts in the economic, financial, banking, customs, IT field and also in other fields, special auxiliary personnel, as well as economic and administrative personnel. In addition to the law enforcement activities the NAD has also an important role to play in preventing corruption since it is tasked with the responsibility of analyzing the causes which generate corruption and the conditions which favor it; drawing up and submitting proposals with a view to their elimination, as well as for improving the criminal legislation.

The NAD is led by a Chief Prosecutor whose independence is guaranteed by law. The government ordinance establishing the NAD also provides for its independence from the courts of justice and the prosecutor's offices attached to these, as well as in from the other public authorities. Despite these provisions and the solid legislative framework supporting the activity of the NAD, a judicial inspection conducted in spring 2007 by the Supreme Council of the Magistracy over the activities of the Agency highlighted a series of deficiencies in the organization, planning and control of the proceedings related to some criminal cases as well as serious management shortcomings attributed to a NAD Head

[8] At the end of the year 2006 the CCECC in cooperation with the NGO "Centre for Analysis and Prevention of Corruption (CAPC)" developed a methodology for assessing legislations from an anti-corruption perspective. The methodology is expected to substantially contribute to the development of a coherent, simple and understandable legal framework. Moreover, this instrument will increase the capacity of the CCECC and the non-governmental sector to disclose the vulnerabilities to corruption and to develop preventive measures.

Prosecutor[9]. The report presents a reality in which registration of deposited complaints was intentionally delayed or stopped in order to obstruct investigations, cases were withdrawn from prosecutors and reassigned, selected information was leaked to media, and basic rules of prosecution services were not respected.

A third interesting model of law enforcement agency specialized in fighting corruption is the Croatian Office for the Suppression of Corruption and Organized Crime (USKOK). The Agency has a broader mandate than the NAD, it performs in fact duties of Public Prosecutor's Office in relation to money laundering and corruption offences as well as in relation to several other typologies of offences related to activities of organized crime. The USKOK is a prosecutorial service, its procedures and regulations are similar to the ones of the other prosecutors' offices. The Ministry of Justice issues the internal rules and approves the personnel schemes of the Office. The Head of the USKOK is appointed by the Chief Public Prosecutor, after obtaining the opinion of the Minister of Justice and of the panel of national Public Prosecutors. The character of specialized anti-corruption agency is given to the USKOK by the presence within its structure of an anti-corruption and public relations department responsible for informing the public about the damages caused by corruption, and the methods and means to prevent it; direct the activities stipulated in the Action Plan of the National Anticorruption Programme; prepare reports and analysis on the form and causes of corruption and propose amendments to existing legislation. It has to be mentioned though that the USKOK is evolving as a law enforcement agency and its function of preventing corruption seems to be loosing relevance in the Croatian institutional framework.

The USKOK is facing problems related to the lack of overall capacity, which leads to the fact that the total number of cases prosecuted is still limited and very few are involving high level officials. Coordination with other agencies is also problematic; some bodies are in fact obstructing the cooperation by not providing reports to USKOK as required by law. Nevertheless, the activity of the USKOK in the framework of the anti-corruption strategy 2006-2008 developed by the Croatian government is considered as effective by several observers. The European Commission's 2007 Progress Report on Croatia mentions the increased number of cases prosecuted by the office (71 cases in 2005, 156 in 2006) and the fact that the USKOK has been involved in the investigation of some important cases of corruption. Of particular note is the "operation Maestro", which led in June 2007 to the arrest of 8 senior officials of the Croatian Privatization Fund[10]. A positive reform for the office was introduced in July 2007, when the USKOK mandate was extended to cover abuse of office; the previous exclusion of that criminal offence from USKOK's competence had made it difficult for the Croatian prosecution authority to employ the Agency in high level corruption cases.

C) Agencies for corruption prevention

Various types of corruption prevention agencies have been created in the countries of the region; the structural aspects and functions of these agencies are very different. Some authors also consider institutions like Ombudsman, Audit offices, public service commissions etc. as corruption prevention agencies. Without debating on the usefulness of adopting such a wide definition of corruption

[9] Request for Dismissal from office of a NAD Head Prosecutor, addressed by the Ministry of Justice to the President of Romania.
[10] European Commission, *Croatia 2007 Progress Report*, Commission Staff Working Document.

prevention agencies, for the purposes of this paper we focus on the agencies specially designed for the development of corruption prevention measures. This category of agencies is much diversified and it seems useful to distinguish between two types of agencies: 1) those whose work focuses on defining strategic objectives, priorities and anti-corruption measures and on the coordination of the governmental action against corruption; examples of this type of agencies are the Armenian Anti-corruption Council and the related Anti-Corruption Strategy Implementation Monitoring Commission, the Serbian anti-corruption Council and the Montenegrin Directorate for Anti-Corruption Initiative; 2) those that in addition to the general tasks of corruption prevention are also responsible for some operational activities, generally related to monitoring the correct application of public service regulations. Examples are the Commission on Combating Corruption under the State Council on Management of the Civil Service of Azerbaijan and the Commissions on Corruption Prevention of Slovenia and the FYR of Macedonia.

The Armenian Anti-Corruption Council was established by a decree of the President in 2004, in view of the need to coordinate the activities of the relevant public agencies to ensure the comprehensive and effective implementation of anti-corruption policies in Armenia, to address the root causes of the emergence and proliferation of corruption, and to improve the state policy to prevent corruption. The Prime Minister chairs the Council, which is formed by ministers and high level public officials[11]. The council performs general tasks of coordination and monitoring the Anti-corruption strategy and for the implementation of international legal instruments. In accordance with its by-laws, the Council created an Anti-Corruption Strategy Implementation Monitoring Commission chaired by the Assistant to the President and composed by MPs and representatives of NGOs. The commission is tasked with supporting the work of the Council through gathering of information and consolidating data on anti-corruption activity. The commission engages experts and the civil society in the monitoring of the implementation of the anti-corruption strategy and organizes debates and media events to inform and educate the citizens on anti-corruption issues.

The model of corruption prevention agency represented by the Armenian council and by the related Commission is quite common in the region. The Serbian Anti-corruption Council has similar structure and functions to the Armenian one: the Council may be composed by up to 13 members appointed by the Government, who may be members of the Government and officials managing other governmental organizations. The main responsibility of the Council is to comprehensively observe implementation of anti-corruption measures, to suggest new anti-corruption mechanisms in order to increase efficiency of anti-corruption policy and to oversee the enforcement of the suggested measures, and to propose bills, programmes and other acts and measures in this field. The Council also receives reports of corruption cases directly from the citizens.

This type of agencies could be relatively effective in proposing to the government meaningful reforms for the fight against corruption; they benefit from the involvement of civil society representatives in their work and from cooperation with international organizations and donors, allowing them to have an entry point to influence the government's policies. But in all the cases reviewed we noted significant functional, organizational and capacity gaps that raise serious concerns about the real impact of the

[11] Members of the Council are: the Deputy Speaker of the National Assembly, the Chairman of the National Assembly Chamber of Control, the Minister Heading the Staff of the Government, the Minister of Justice, the President's Advisor on corruption matters, the Head of the President's Oversight Department, the Prosecutor General, the Central Bank Governor, and the Chairman of the State Committee for the Protection of Economic Competition.

work of such agencies. First of all, there is lack of mechanisms ensuring even a nominal degree of independence of these ACAs from government control and political influence.

In all cases, the legal mechanisms to enforce the recommendation produced by the agencies are missing: both the Armenian and the Serbian Councils are considered simple advisory agencies and have no policy making and implementation functions. The analysis of the Armenian Anti-Corruption Council's activities reveals that the Agency has promoted several measures; however, there has been no follow-up to transform the recommendations into specific policy measures[12].

Another major problem is the shortage in staffing and finances. The Armenian Council lacks specialized support staff as the Government provides only limited logistic and secretarial assistance. The Gap Analysis for the implementation of the UNCAC developed by UNDP Armenia and UNODC in 2007 shows that also the Armenian Monitoring Commission, after the initial period when it was supported by independent experts funded by international donors, is now facing several difficulties in carrying out its tasks given the absence of financial, human, and technical resources. In the same way, the Serbian Council lacks the legal status to employ personnel on a permanent basis, and engages the necessary technical staff and experts on a contract basis. This means that the level and quality of the AC Council activities depends largely on the amount and structure of its budget, which frequently creates constraints, whether through decreases in approved funds or through approval of funds in budget lines where they are not needed[13].

The participation of civil society in the work of these agencies is also problematic, as the nomination of NGO members of the Agencies is often obstructed or delayed and the mechanisms in place do not ensure a fully participatory process**.** For instance, problems of political nature are often interfering with the nomination of the NGO representatives in the Armenian Monitoring Commission because their nomination depends on the parliamentary factions and groups on a rotation basis. In Serbia, the system of reporting corruption cases directly to the Council is obstructed by over-complicated procedures[14].

As mentioned previously, there is a second category of Corruption Prevention Agencies in the region, which in addition to general policy advice, coordination and research activities are responsible for enforcing public services regulations. Examples are the Commission on Combating Corruption under the State Council on Management of the Civil Service of Azerbaijan and the Commissions on Corruption Prevention of Slovenia and FYR of Macedonia.

The Commission on Combating Corruption under the State Council on Management of the Civil Service of Azerbaijan was established by the Anti-Corruption Act in 2004 and acts as a specialized agency in the field of preventing corruption. The Commission is composed of fifteen members, five appointed by the president, five by the parliament and five by the Supreme Court.

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[12] *Report on the Identification of Existing Gaps between the United Nations Convention Against Corruption (UNCAC) and Armenia's Institutional Framework on Anti-Corruption*, UNDP Armenia - UNODC

[13] *The Fight against Corruption in Serbia: An Institutional Framework Overview*, 2007, UNDP Serbia

[14] In 2006, the citizens reported 320 cases of corruption to the Council. The majority of reported cases by the citizens were related to corruption in the area of privatization procedures, liquidations of certain companies and trading with shares. *The Fight against Corruption in Serbia: An Institutional Framework Overview*, 2007, UNDP Serbia

As the other corruption prevention agencies described above, the commission participates in the formation of the state policy on corruption and coordinates the activity of public institutions in this area, analyzes the state and efficiency of the fight against corruption and supervises the implementation of the State Program against Corruption. In addition to that, the commission is responsible for the collection and analysis of financial declarations of public officials and has the right to inform the competent authorities about any suspicion of corruption. The agency also analyzes and summarizes information regarding corruption-related law violations and makes proposals for reforming public institutions. To perform these tasks, the Commission has been provided with a permanent secretariat, funded by the state budget.

The Commission produces an annual report on its activities and submits it to the President, to the Assembly and to the Constitutional Court. In the highly centralized presidential system of Azerbaijan, in which the president appoints people to key state positions, including judges, one of the major problems in this setting is the lack of independence of the Commission. In terms of capacity, it is also doubtful if the secretariat of the Commission, which consists of few staff, has the ability to systematically screen the financial declarations of public officials. Finally, the involvement of the civil society in the work of the commission is very restricted and the information provided in the financial declarations is considered as confidential, which significantly limits the possibility of civil society oversight.

The Slovenian Commission for Prevention of Corruption was established in 2004 by law as an independent body accountable to the parliament. The agency coordinates the activities for the implementation of the Resolution for the Prevention of Corruption; assesses the effectivness of anti-corruption regulations and monitors their implementation; adopts opinions and proposals on the situation of corruption in the country and makes decisions regarding the implementation of obligations deriving from international legal instruments. The Commission is also responsible for the enforcement of the Code of Conduct for Public Officials and deals with control of the financial assets of Slovenian functionaries. The agency conducts investigations and monitors the implementation of the rules on conflict of interest and the observance of limitations concerning business activities and acceptance of gifts. The Commission sends official warnings to functionaries for conflict of interests, and in case of wrongdoing requests the responsible authority to initiate a procedure for termination of office of public officials. Should the Commission establish that a case being considered exhibits grounds to suspect a criminal offence or other violation for which the Commission is not competent, the case is passed to the competent authority.

As other corruption prevention agencies, the Slovenian Commission faces problems related to its lack of independence from the executive - particularly in terms of finances and staffing. The Commission is in conflict with the government and the parliament: in 2006 a law abolishing the commission was adopted, but its implementation was suspended by the Constitutional Court. The government is also undermining the work of the Commission through serious budget constraints; according to Mr. Drago Kos, chairman of the Commission, the Agency is currently receiving just around 50% of the budget needed to carry out its activities. As a consequence, the Commission employs only eleven staff of the twenty-five needed and it cannot organize certain expensive activities like awareness raising campaigns or participate in training and international events. According to the same source, the government, through the Parliament, has cut the salaries of the Commission’s top 5 officials (the Chairman, his Deputy and three commissioners) by 25-35%.

Conclusions

Progress in fighting corruption in Central and Eastern Europe remains scarce, notwithstanding the establishment of a significant number of new institutions devoted to the cause anti-corruption, and the investment of considerable resources and expertise. EU accession requirements don't appear to have brought so far a significant contribution towards achieving meaningful and sustainable anti-corruption measures; in some cases, there are reasons to believe that external pressure to deliver quick results in the run-up to accession may have even diverted attention and resources from more serious, longer-term and broad-based anti-corruption efforts, to quick fixes that can easily unravel when the external pressure, or the political will of the government decrease. The case of New Member States of the EU indicates that a country's overall progress in governance reforms seems to be a far better predictor for the effectiveness and sustainability of anti-corruption measures than accession-related monitoring and conditionalities focused on anti-corruption.

In terms of Anti-corruption Agencies, there is no universal model. Several typologies exist, with many variations, as described above, each with advantages and disadvantages.

Given the region's post-communist legacy – in particular with regard to the features of the broader public administration and governance structures – it appears from the experience so far that independent, multi-task ACAs of the kind established in Latvia and Lithuania have a better chance to represent a solid anchor for meaningful anti-corruption activities and may be better able to withstand the inherent political pressure. However, the creation of any new institution has to be considered in the specific context of each country, and this "Baltic" model has not emerged as the dominant model in the region.

The main alternative models are the specialized law enforcement agencies, and the corruption prevention agencies. They tend to be more vulnerable to political pressure or to the instrumentalization of anti-corruption fight for political ends. The preventive agencies, in addition, can be easily deprived of any significant power and in many countries may represent the easiest and cheapest way to satisfy the request of the donors and the international community for the introduction of a preventive body.

One key lesson from our experience interacting with ACAs in Central and Eastern Europe is that there is no quick solution for building a functioning anti-corruption system, even with political will. The issue of corruption touches upon all aspects of the state, and addressing it has similarly to draw on many aspects of the broader state reform issues. Civil service reforms, institutional capacity development, building integrity systems, upgrading the policy capacities, strengthening all branches of power in a way that improves their responsiveness without creating unbalance, are all important elements in the anti-corruption arsenal.

In other words, if it is to stand a chance anti-corruption cannot be a narrow sectoral approach, but a multi-disciplinary one. It cannot produce instant cures, but only long-term therapies. And specialized Anti-corruption Agencies cannot durably be decoupled from, and perform in a different league than the rest of the public institutions. They can be marginally better though, and leveraging that difference to improve the rest of the state apparatus is both ambitious and feasible.

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