

Critical Analysis

The State Commission for Prevention of Corruption as a preventive anti-corruption agency in Macedonia

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ABSTRACT

This paper deals with the core preventive Anti-corruption Agency (ACA) of the Republic of Macedonia, namely the State Commission for Prevention of Corruption (SCPC). The idea therein is two-fold: firstly, to explain the ACA model which the Republic of Macedonia has chosen and, secondly, to criticize some of the characteristics of the respective legal and institutional framework. Of course, we do not aim to analyze every aspect of the SCPC – which would imply a much longer article than the one at hand – but rather to focus on the most important details. In that respect, we will place focus on the SCPC's competencies (functions, tasks and powers) and discuss if they are properly designed. Furthermore, we will tackle the institutional design and the capacities of the institution, so to illuminate the existing discrepancy between this ACA's *de-jure* competencies and *de-facto* possibilities. Thirdly, we will speak of its effectiveness. Doing so, we will not only draw the attention of the international research community to the SCPC but also enable comparative research in the future. What is especially valuable to note is that in terms of many of its characteristics, the SCPC is compared to other ACAs in the region of Southeastern Europe too, meaning that an initial contrast has been set. Finally, the main findings of the text are such that an answer for improvement cannot be provided instantly, but additional work in the field is required. Thus, one can only hope that this research inspires other individuals and professionals in the sphere too.

Keywords: Anti-corruption, effectiveness, anti-corruption agencies, State Commission for Prevention of Corruption, prevention

ملخص:

يتناول هذا البحث الوكالة الأساسية المعنية بمكافحة الفساد (ACA) لجمهورية مقدونيا، وتسمى بمفوضية الدولة للوقاية من الفساد (SCPC). وتوضيح فكرة البحث يتعين تناول المؤسسات المعنية كما يلي: أولاً، شرح نموذج وكالة مكافحة الفساد ACA الذي اختارته جمهورية مقدونيا، وثانياً، طرح الانتقادات بصدد بعض خصائص الإطار القانوني والمؤسسي، حيث اتنا لا نهدف إلى تحليل كل جانب من جوانب مفوضية الدولة للوقاية من الفساد SCPC – مما يعني ضمناً بحث أطول بكثير – بل نرمي إلى التركيز على أهم التفاصيل. وفي هذا الصدد، سنركز على اختصاصات اللجنة من حيث مهامها وواجباتها ونطاق عملها وسوف تتم مناقشة مسألة جودة نظامها. علاوة على ذلك، يتطرق البحث إلى النظام المؤسسي وقدرات المؤسسة، وذلك لإبراز التناقض القائم بين الاختصاصات الشرعية لهذه الهيئة وإمكانات الواقع. ثالثاً، يناقش البحث مدى فعاليتها. ومن خلال اتباع هذا المنهج، فإننا لا نلفت انتباه مجتمع الأبحاث الدولي إلى مفوضية الدولة للوقاية من الفساد في مقدونيا SCPC فحسب، بل نشاهد أيضاً في دعم الأبحاث المقارنة في المستقبل، والجدير بالذكر، أنه تتم مقارنة المفوضية في خصائصها المتعددة مع وكالات معنية بمكافحة الفساد الأخرى ACAs في منطقة جنوب شرق أوروبا أيضاً، مما يدل على وجود تباين أولي بين تلك الجهات. وأخيراً، فإن النتائج الرئيسية للبحث كاقتراح آليات للتطوير لا يمكن تقديمها على الفور، ولكن يلزم عمل إضافي في هذا المجال. ولذلك أأمل أن يلهم هذا البحث الأفراد والمهنيين الآخرين في المجال أيضاً.

الكلمات المفتاحية: مكافحة الفساد، الفاعلية، هيئات مكافحة الفساد، الهيئة الوطنية لمكافحة الفساد، الوقاية.

1. INTRODUCTION

It cannot be disputed that as a result of the many years of campaigning by different national and international (governmental and non-governmental) organizations, awareness of the devastating effects of corruption has increased on a global scale. In fact, it is clear that the successful fight against corruption is one of the primary prerequisites for reaching the Sustainable Development Goals of the United Nations (SDG), especially the sixteenth, entitled “Peace, Justice and Strong Institutions” (SDG16). No country can build strong institutions – implying effectiveness, accountability and inclusiveness – if its anti-corruption policies are not sufficiently successful. Additionally, if justice is considered a category which includes social equity and prevention of poverty as well, then the importance of the anti-corruption efforts becomes clear; as explained by the UN, “[c]orruption, bribery, theft and tax evasion cost some US \$1.26 trillion for developing countries per year; this amount of money could be used to lift those who are living on less than a \$1.25 a day above \$1.25 for at least six years”.¹ Nevertheless, corruption is still a remarkable challenge for the states in the Southeastern European region, among which is the Republic of Macedonia. The transition that this country has experienced, from socialism to capitalism in an economic sense, and from an authoritarian regime to democracy in a political sense, has weakened its institutions and brought about the rise of dishonest and fraudulent conduct by its public officials and private entities. This has led to new endeavors and attempts to prevent and eradicate this negative phenomenon and, as per the worldwide trend, to the formation of new particular institutions – anti-corruption agencies (ACAs). It is precisely these institutions, the ACAs, which are the focus of this article; however, not all of them. As will be elaborated below, only a preventive one will be examined: the State Commission for Prevention of Corruption (SCPS) of the Republic of Macedonia. The idea is to check if, and to what extent, this authority is effective. What is especially captivating in this sense is that the Republic of Macedonia has not really achieved any significant success in its fight against corruption in more than a decade (and even, moreover, since the SCPC’s establishment). Although it cannot be argued that the anti-corruption successes are related only to the SCPC’s performance, the respective institution does have an important role in that context. Having said that, the text will refer to the ACAs and their role in general, the legal framework relevant to the SCPC’s functioning and its *de-facto* capacities. When speaking of the legal framework, it is important to mention that it is currently undergoing changes, something that will be elaborated on below. Finally, in order to reach certain conclusions with respect to the SCPC, we are going to compare it to the preventive ACAs of other countries, especially the ones in the region of Southeastern Europe. Thus, we hope not just to contribute to the study of the SCPC but to ACAs generally. Bearing in mind that the first institution of this kind was established half-a-century ago, while others first appeared in the 1970s, we find that any research on the topic is outstandingly important.

2. ANTI-CORRUPTION AGENCIES AND THE ROLE OF THE PREVENTIVE ONES

As stated in the introduction, there is significant evidence that awareness of the negative consequences of corruption has risen in the past few decades. One of these indicators is the increasing number of ACAs worldwide or, as pointed out by Tomić, “[t]hree decades ago, there were hardly more than 20 of such agencies, today we more than 130 of ACAs around the world.”² So, the question that we are facing on this particular occasion is what is an ACA and how can we define it? Perhaps one of the best definitions is given by de Sousa who explains them as “public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures.”³ Respectively, there are four main characteristics of ACAs. The first one is that the ACAs are public authorities or, in some cases, labelled as publicly funded ones. The second one is that they are specifically founded to combat corruption, while the third is that they are of a durable, long-lasting nature. This means that only those institutions which are not *ad hoc*, formed to handle a specific case or a pool of cases after which they cease to exist, can be considered as ACAs. The institutions which are *ad hoc* – as for instance the so-called Special Public Prosecution of Macedonia⁴ – can be considered as anti-corruption authorities but not ACAs *stricto sensu*. They can neither be analyzed through the same methodology as the ACAs, nor do the principles for ACAs apply to them. They are not a rule but rather its exception. Finally, the fourth attribute of the ACAs is related to their competencies, i.e. the measures they can undertake or impose. It also serves as a basis for their classification into two groups: preventive and suppressive (classifications also devised by Tomić).⁵

Preventive ACAs focus primarily on education, keeping records, training and spreading information among citizens, while suppressive ACAs are vested with prosecutorial and investigative powers as well as, in certain cases, powers to impose fines for regulatory violations. There are cases when the preventive ACAs can carry out investigations too; however, they cannot indict a (natural or legal) person but must instead use soft mechanisms such as public warnings. In addition, if they suspect that a crime or a regulatory violation has been committed, they can, in most cases, file motions to the prosecution authorities or the competent courts. Of course, these are general characteristics of the two groups of ACAs. Regardless, if one is to decide if a certain ACA is preventive or suppressive in its nature, he/she would have to individually study its competencies and determine which mechanisms, the pre-emptive or the repressive, prevail. For instance, the ACAs which are analyzed on this occasion are considered preventive. Other preventive ACAs are, for instance, the Anti-corruption Agency of Serbia⁶, the Commission for Prevention of Conflicts of Interests of Croatia⁷, the Commission for Prevention of Corruption of Slovenia⁸, the Agency for Prevention of Corruption of Montenegro⁹ and the Agency for Prevention of

1 <https://www.un.org/sustainabledevelopment/peace-justice/>.

2 Slobodan Tomić, *Explaining Enforcement Patterns of Anticorruption Agencies: Comparative Analysis of Five Serbian, Croatian and Macedonian Anticorruption Agencies* (2016) (PhD thesis submitted to the London School of Economics and Political Science), <http://etheses.lse.ac.uk/3370/>.

3 Luis de Sousa, *Anti-Corruption Agencies: Between Empowerment and Irrelevance*, 53(1), *Crime, Law and Social Change* (2009), <http://cadmus.eui.eu/handle/1814/10688>.

4 The full title of the institution is the Public Prosecution for Persecution of Crimes Related with or Arising from the Content of Legally Monitored Communications.

5 Slobodan Tomić, *Explaining Enforcement Patterns of Anticorruption Agencies: Comparative Analysis of Five Serbian, Croatian and Macedonian Anticorruption Agencies* (2016) (PhD thesis submitted to the London School of Economics and Political Science), <http://etheses.lse.ac.uk/3370/>.

6 The Anti-Corruption Agency Act (original: Zakon o Agenciji za borbu protiv korupcije) of Serbia, Official Gazette of Serbia, 97/08, 53/10, 66/11; Decisions of the Constitutional Court of Serbia, Official Gazette of Serbia, 67/13 and 8/15.

7 Act on Prevention of Conflicts of Interests (original: Zakon o sprečavanju sukoba interesa) of Croatia, Official Gazette of Croatia, 26 (2011); 12 (2012); 126 (2012); 48 (2013).

8 Act on Integrity and Prevention of Corruption (original: Zakon o integriteti in preprečevanju korupcije) of Slovenia, Official Gazette of Slovenia, 45 (04.06.2010).

9 Prevention of Corruption Act (original: Zakon o sprečavanju korupcije) of Montenegro, Official Gazette of Montenegro, 53 (2014).

Corruption and Coordination of the Fight against Corruption of Bosnia and Herzegovina¹⁰. Suppressive ACAs are, on the other hand, the Lithuanian Special Investigative Service,¹¹ the Latvian Corruption Prevention and Combating Bureau,¹² the Hong Kong Independent Commission Against Corruption¹³ and the Singapore Corrupt Practices Investigation Bureau¹⁴ which – as numerous authors suggest¹⁵ – can be considered pioneers in the area. Yet, one should not, and most not, misunderstand what has been said so as to reach a conclusion that the suppressive ACAs only investigate and prosecute. They too can educate and train, especially when it comes to the administrative (public) servants of their state; however, unlike the preventive ACAs, this is not their core competence. To illustrate this more vividly, both the Singapore Corrupt Practices Investigation Bureau (suppressive ACA) and the Macedonian SCPC (preventive ACA) can carry out training. Nevertheless, the prior ACA has more power and responsibility (including the power to investigate) than the latter. For instance, the Singaporean ACA has its own special investigators who are armed and can even make an arrest, while the Macedonian SCPC has no investigators of its own and cannot even impose a small fine for regulatory offences. Finally, it has to be pointed out that a single country can have multiple ACAs of both a preventive and suppressive nature. This is the case with a large number of states, among which are some of the ones already enlisted. Respectively, Croatia does not only have the CCI but also the Office for the Suppression of Corruption and Organized Crime (commonly referred to as USKOK) within the Public Prosecution. If we apply the definition of ACAs above, this is one of the typical suppressive ones. Macedonia has the SCPC but also the Public Prosecution for Persecution of Organized Crime and Corruption which can also be deemed as ACA, while Montenegro has not just the referred Agency but also a Special Public Prosecution with jurisdiction over organized crime and high-level corruption – an ACA. Moreover, almost all nations have specific offices within their police services which are competent for corruption specifically. Simply put, the fact that a certain country has a preventive ACA does not mean that it does not have a repressive one as well.

This division of the two groups of ACAs explains their roles too. Due to practical purposes and the interest of this paper, we will limit ourselves to the preventive ones only. They are established to: (1) upgrade the country's ethical infrastructure; (2) facilitate communication between the victims of corruption and the perpetrators; (3) ease the access to information for citizens and investigative and prosecution authorities; (4) raise awareness and knowledge in general; (5) report corruption whenever individuals or legal persons are reluctant to do so. They do not substitute the traditional players when it comes to anti-corruption, the police and the prosecution services, but exist in parallel to them, contributing to the policy-building and decision-making. First of all, they carry

out research. Doing so, they detect the flaws of the anti-corruption legal framework so that they can point them out to the legislators and also to citizens (creating public pressure). Secondly, they provide advice. If a certain public authority or private person has questions about whether a potential action can be deemed as corruption, they may approach the preventive ACA and seek advice. Thirdly, they keep records. Namely, whenever a preventive ACA exists, it usually has the power to ask all public officials to provide it with declarations of assets and similar documents. This way, it can monitor whether a certain office-holder (e.g. a minister or director) has increased his/her assets to an extent that is not proportionate to his/her revenue. If such a case appears, the preventive ACA can undertake additional steps: namely, it can either inform the public prosecutor (file a motion), ask the authority which has appointed the respective office-holder to dismiss him/her and inform the press and the public. Fourthly, the preventive ACAs usually develop soft-law mechanisms – called codes of ethics or codes of conduct – and propose their adoption to other public authorities or private entities. Lastly, these agencies educate and train. It is often the case that preventive ACAs conduct training or other public events so that they can introduce people to the anti-corruption laws and by-laws, i.e. the consequences from being corrupt and the mechanisms for protection.¹⁶

Having said all of this, it cannot be disputed that preventive ACAs such as the SCPC are important in terms of the SDG16 – the development of effective, accountable and inclusive institutions. The best way to explain it is through what the United Nations Office on Drugs and Crimes (UNODC) has laid out in its press-release, *Combating Corruption to Achieve the Sustainable Development Goals*. Speaking of the United Nations Convention against Corruption (UNCAC) from 2003¹⁷ and its relation to the SDG16, the UNODC points out the importance of preventing corruption, saying that “[a]n entire chapter of the Convention is dedicated to preventing corruption with measures directed at both public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties.”¹⁸ To put it simply, the highest international authority in the respective area, the UNODC, clearly indicates that anti-corruption bodies (ACAs in our terminology) are one of the core endeavors to reach all SDGs, not just the 16th. Preventive ACAs can increase all three attributes of institutions: their effectiveness, accountability and inclusiveness. Firstly, they monitor the conduct of the heads of the institutions, the increase or decrease of their personal assets and the manner in which they spend public funds, bringing about higher accountability. This is even more applicable when bearing in mind that they initiate criminal investigations before other authorities as well. Secondly, these ACAs educate the public on how to recognize corruption and what their rights *vis-à-vis* the

10 Act on the Agency for Prevention of Corruption and Coordination of the Fight against Corruption (original: Zakon o Agenciji za prevenciju korupcije i koordinaciju borbe protiv korupcije) of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 103 (2009) and 58 (2013).

11 Act on the Prevention of Corruption (original: Lietuvos Respublikos korupcijos prevencijos istatymas) of Lithuania, Official Gazette of Lithuania, 57-2297 (2002).

12 Corruption Prevention and Combating Bureau Act (original: Korupcijas novēršanas un apkarošanas biroja likums) of Latvia, 42(2807) (18.03.2003); 96(2861) (27.06.2003); 206(3154) (24.12.2004); 25(3183) (15.02.2005); 101(3259) (30.06.2005); 180(3548) (09.11.2006); 183(3967) (25.11.2008); 200(3984) (23.12.2008); 100(4086) (30.06.2009); 193(4179) (09.12.2009); 169(4567) (26.10.2011); 57(5629) (22.03.2016); 30(5857) (08.02.2017); 253(6080) (20.12.2017).

13 Initially established in 1974 with the Independent Commission Against Corruption Ordinance no. 7 of 1974.

14 Established by the British colonial government in 1952.

15 For instance, Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, 8(1) The Journal of Economic Policy Reform, 69 (2005), <https://www.tandfonline.com/doi/full/10.1080/1384128042000328950>.

16 More on the roles of the preventive, but also the suppressive ACAs can be found in the paper: Patrick Meagher, *Anti-corruption Agencies: Rhetoric Versus Reality*, 8(1) The Journal of Economic Policy Reform, 69 (2005), <https://www.tandfonline.com/doi/full/10.1080/1384128042000328950>.

17 United Nations Office on Drugs and Crime, United Nations Convention Against Corruption (2004), https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/o8-50026_E.pdf.

18 United Nations Office on Drugs and Crime, combating corruption to achieve the sustainable development goals (2017), <https://www.unodc.org/unodc/en/press/releases/2017/November/combating-corruption-to-achieve-the-sustainable-development-goals.html>.

institutions are (especially in terms of information collection), therefore bringing about inclusiveness. In other words, only citizens which are knowledgeable can actively observe the (dis) honest behavior of officials and institutions. Thirdly, one of the preventive ACAs' tasks is to oversee political parties' financing and election campaigns. Doing so, they can not only inspect whether the institutional structures are misused but also if public servants are under pressure to become involved in the pre-election activities. Preventing such illegal activities, they increase the effectiveness of the institutions too. These are, of course, merely a few examples of the exceedingly important role of preventive ACAs. The details throughout the text below will make this picture even clearer. Nevertheless, the general remark would be that anti-corruption efforts are less likely to be successful without ACAs, while as Ugaz points out “[w]ith corruption, there’s no sustainable development.”¹⁹

The quoted press-release by the UNODC makes clear that the UNCAC supports the establishing of ACAs. These institutions are indirectly referred to in Article 6 and directly mentioned in Article 36, although the latter provision stipulates that the respective authorities should be “specialized in combating corruption through law enforcement”, indicating that they should be suppressive. The existence of ACAs is referred to in regional legal documents as well. The first one is the Criminal Law Convention on Corruption of the Council of Europe which entered into force in 2002²⁰ where Article 20 provides for “authorities specialised in the fight against corruption”. The provision is slightly broader than that of the United Nations Convention against Corruption since it does not stipulate that these authorities should fight against corruption via law enforcement. Another regional document is the Inter-American Convention against Corruption, adopted in 1996, where it is set out that each State Party should create, maintain and strengthen oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts (Article III, para. 9). This provision may be interpreted in such a manner that it obliges the State Parties to have a preventive and suppressive ACA or one that has characteristics of both kinds. Another note is that preventive ACAs can be established under the 8th paragraph of Article III of this Convention, as they can

be the institution which implements the “[s]ystems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities in accordance with their Constitutions and the basic principles of their domestic legal systems”.

3. THE STATE COMMISSION FOR PREVENTION OF CORRUPTION: PREVENTIVE ANTI-CORRUPTION AGENCY OF MACEDONIA

The SCPC of Macedonia is a preventive ACA. As already explained, it is not the sole ACA in the country. Besides the SCPC, the country also has a Public Prosecution for Persecution of Organized Crime and Corruption. However, the SCPC is the only preventive ACA and is, respectively, one with a number of tasks. The text below will contain an explanation of the SCPC's functions, institutional design and capacities. In certain aspects, the SCPC will be compared to similar institutions from other countries in Southeast Europe. This is going to be done in order to reach conclusions about whether certain aspects in respect to the SCPC's functioning can be improved.

3.1. Foundation, functions and powers of the State Commission for Prevention of Corruption in Macedonia

The SCPC of the Republic of Macedonia is founded with the Act on Prevention of Corruption from 2002 (Official Gazette of the Republic of Macedonia, 28/2002). Even though the legal act was adopted in April that year, its provisions provided that the members of the SCPC would be appointed within six months. As parliamentary elections were held that very year – July 2002 – there was little focus on appointing members of the SCPC immediately upon the introduction of the new legal act; the first members of SCPC were appointed in November 2002. Established as it was, the SCPC was clearly envisaged as a preventive ACA. Unlike the Singaporean, Lithuanian, Latvian and other suppressive ACAs, it was not vested with powers to investigate crimes related to corruption but was constructed as an institution with a significantly milder role. The legal act with which the SCPC was established, namely the Act on Prevention of Corruption, was amended several times over the years; nevertheless, the role of the respective ACA remained intact. Presently, the SCPC functions on the basis of four legal acts in total:

Table 1. Legal framework for the SCPC

Legal Act	Official Gazette of the Republic of Macedonia, no.
Act on Prevention of Corruption (APC)	28/2002, 46/2004, 126/2006, 10/2008, 161/2008, 145/2010, 97/2015 and 148/2015
Act on Prevention of Conflicts of Interests (APCI)	70/2007, 114/2009, 6/2012 and 153/2015
Lobbying Act (LA)	106/2008 and 135/2011
Financing of the Political Parties Act (FPPA)	76/2004; 86/2008; 161/2008; 96/2009; 148/2011; 142/2012; 23/2013 and 140/2018
Electoral Code (EC)	40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16 and 99/16
Protection of Whistleblowers Act (PWA)	196/2015 and 35/2018.

The functions of the SCPC are set out for these four legal acts, although the first one is the most relevant one from all aspects. In

the overview, we divide the tasks of the SCPC into several functions. In addition, we list the powers that the SCPC has in all situations:

¹⁹ José Ugaz is the Chair of Transparency International. More information on this quote can be found at: Transparency International, *No Sustainable Development Without Tackling Corruption: The Importance of Tracking SDG 16*, Transparency International (July. 17, 2017), https://www.transparency.org/news/feature/no_sustainable_development_without_tackling_corruption_sdg_16.

²⁰ <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/173>.

Table 2. Functions, tasks and powers of the SCPC

Function	Tasks of the SCPC or tasks of other persons vis-à-vis the SCPC	Powers of SCPC to impose sanctions or undertake actions (if applicable)
Development of anti-corruption policies and legislation	SCPC adopts a National Programme for Prevention of Repression of Corruption, as well as an Action plan for its implementation. The SCPC adopts a National Programme for Prevention of Conflicts of Interest and an action plan (Art. 49, APC and Art. 21, APCI)	N.A. ²¹
	The SCPC provides opinions about how certain acts relevant to the prevention of corruption and conflicts of interest should be constructed. (Art. 49, APC and Art. 21, APCI)	
Monitoring over electoral campaigns and elections	The SCPC oversees if any budget funds or other public funds are directly or indirectly used to finance the election campaign or a related political activity. (Art. 12, APC)	SPC informs competent authorities and provides special reports to Assembly.
	SCPC oversees if the political parties have illegal sources of funds for the elections (Art. 13, APC)	SCPC can seek an audit from competent bodies.
	SCPC oversees if the voters are bribed. (Art. 14, APC)	SCPC notifies the PPS. ²² PPS has to report on actions undertaken.
	SCPC can inspect all agreements, public procurements and other deals executed after the end of elections to check whether there have been privileges or discrimination. (Art. 15, APC)	SCPC can seek an audit from competent bodies and provides a report to the Assembly.
	SCPC oversees if a political party, or a representative of it, influences the employment of persons in the public sector, their assignment or their dismissal. (Art. 16-a, APC)	SCPC can ask for reexamination or annulment of the decision for employment, assignment or dismissal (the request is obligatory).
	The SCPC oversees if there have been breaches to the Electoral Code: (1) public sector employment during the period when it is forbidden, (2) misuse of means of the state authorities for campaigning purposes. (Art. 74 in relation to Art. 8-a and 8-b, EC)	No sanction that the SCPC can directly impose.
	Every participant in the electoral campaign needs to submit a report on its finances, along with a specification of costs, to the SCPC (Art. 84-b and 85 EC)	No sanction that the SCPC can directly impose.
Protection of whistleblowers	SCPC adopts the by-laws for protected reporting. (Art. 4, PWA)	SCPC reports to the Assembly how many persons approached it.
	Whistleblowers can report to the SCPC. (Art. 5, PWA) SCPC oversees if whistleblowers are sufficiently protected. (Art. 8, PWA)	No sanctions.
Continuous monitoring of elected and appointed persons, as well as political parties and keeping of records	An elected or appointed person may not perform any other duty which is incompatible with the office he/she holds. (Art. 21, APC).	SCPC can only report the case to the courts for regulatory violations.
	An elected or appointed person may not, during his/her service, establish business relations with certain legal entities. ²³ (Art. 22, APC)	SCPC can only report the case to the courts for regulatory violations.
	If a legal person founded by an elected or appointed person uses a state loan, the elected or appointed person needs to report that to the SCPC. (Art. 23, APC)	SCPC can only report the case to the courts for regulatory violations.

²¹ Stands for "non-applicable", meaning that for this function of the SCPC no additional power or step can be undertaken.

²² PPS stands for Public Prosecution Service.

²³ The legal entities which the person or his/her family members have founded and the legal entities which are managed by his/her family members.

	The elected or appointed person needs to report to the SCPC any transaction which involves state capital and implies entering into a legal relationship with a legal person founded by him/her or a member of his/her family or in which a member of his/her family is responsible. The elected or appointed person has to file the report to the SCPC in 15 days after it takes office. (Art. 24, APC)	SCPC can only report the case to the courts for regulatory violations.
	Whenever a public authority (including the units of local self-government) receives foreign donation or aid, it needs to report it to the SCPC along with a plan for disposal. They also need to provide the SCPC with a final report. (Art. 26, APC)	SCPC can only report the case to the courts for regulatory violations.
	If within three years upon the termination of the office an elected or an appointed person founds a commercial company which will do business in the same area in which he/she has been working, the SCPC has to be notified. (Art. 27, APC)	SCPC can only report the case to the courts for regulatory violations.
	During their term and three years after the termination, the elected or appointed persons may not become shareholders in commercial companies which are under the supervision of the public authority they were the head of. The only exception is the case of inheritance. If that happens, they must notify the SCPC. (Art. 28, ACP)	SCPC can only report the case to the courts for regulatory violations.
	The elected or appointed persons are obliged to notify the SCPC in case a member of his/her family is elected, appointed, employed or promoted in a public authority (including the local self-authorities) within 10 days. (Art. 29, ACP)	SCPC can only report the case to the courts for regulatory violations.
	<p>The elected or appointed persons are obliged to provide the SCPC with a declaration of assets as well as with a statement that the banks should no longer hold their accounts as a bank secret in 30 days after they take office. They also need to report any change in the state of their assets provided in the declaration. (Art. 33 and 34, ACP)</p> <p>The SCPC keeps records of all of the elected and appointed persons and their assets (Art. 35-b, ACP)</p>	SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction and it can also ask the Public Revenue Office to carry out an audit procedure. The PRO needs to report to SCPC for the procedure it has carried out. The declarations of assets will be published on the webpage of the ACA.
	Most of the elected or appointed persons (the excluded ones are enlisted in the legal act) are obliged to provide the SCPC with a written statement where they clarify if they have conflicts of interests in certain areas. (Art. 20-a, APCI) These persons also need to notify the SCPC if a conflict of interests arises during their term, or if they get employed in a commercial company three years after their term (Art. 20-v, APCI)	SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction.
	Any person can submit a notification to the SCPC if a political party gathers finances illegally. (Art. 22, FPPA)	SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction or to the PPS for a criminal indictment.
	SCPC can receive a number of other reports from citizens in the case of elected or appointed persons placing influence illegally, or in the case of them performing their discretionary competencies in a manner which, in their opinion, is a result of corruption. (Art. 42 and 43, APC)	SCPC can impose no sanctions. It can report the case to the courts for a regulatory violations sanction or to the PPS for a criminal indictment.

	SCPC carries out a procedure in which it determines whether a certain official person is in a conflict of interests. (Art. 23, APCI)	If SCPC determines that a conflict of interests exists, it can notify the respective person and ask him/her to undertake actions and resolve the disputed situation. If the person does not comply, SCPC can issue a public warning which is posted on its webpage and delivered to the media. If 15 days from the public warning have passed and the person has still not complied with what the SCPC has asked, it will initiate a procedure for his/her removal from office or for a disciplinary measure.
	The official persons are obliged to notify the SCPC in case they are a member of the managing or supervisory bodies within NGOs or foundations (they may not receive remuneration except for travel costs for the function). (Art. 20, ACPI)	The SCPC has no power to sanction the person if not notified. ACPI does not even provide a basis for the courts to sanction the person for a regulatory violation.
	If the SCPC needs to clarify certain issues during one of its procedures, it can summon the respective person and question him/her. (Art. 52, ACP)	The SCPC has no power whatsoever to sanction the person if he/she does not respond to the summoning. Unlike the police or the prosecution, the SCPC cannot force the person to attend questioning.
	The SCPC initiates procedures before the competent authorities to control the political parties', labour unions', NGOs' and foundations' financial operations. (Art. 49, ACP)	No sanctioning powers.
	The SCPC can initiate procedures for dismissal, reassignment, replacement, etc. for elected or appointed persons. It can also initiate procedures for criminal or other types of liability for these individuals (Art. 49, ACP)	No sanctioning powers.
Continuous control of lobbyists	Every registered lobbyist must provide an annual report on its activities to the Assembly of the Republic of Macedonia and the SCPC. (Art. 25, LA)	If the lobbyist does not provide its annual report, the SCPC can issue a public warning and, in some cases, erase the lobbyist from the register of lobbyists.
Providing advice and education	SCPC educates public servants and other employees of the authorities which are competent to prosecute and suppress corruption and other crimes. (Art. 49, APC) Whenever an official is uncertain if it is in a situation of conflicts of interests, he/she can address the SCPC and ask for advice (Art. 7 and Art. 11 of APCI)	N.A.
Awareness raising and disclosure of information to the public	This function has no specific tasks. It consists of the tasks enlisted above. We could use as an example the records of assets. Each citizen can check the data that the functionaries have provided in their declarations of assets since they are, per law, public character information. The SCPC also publishes the public warnings which are going to be elaborated on below.	N.A.

This comprehensive overview of the competencies of the SCPC brings us to several conclusions.

First and foremost, this ACA, although preventive in general, is unorthodox in some of its tasks, such as the monitoring of elections and the electoral campaigns. The comparative analysis – the Act on Election of Councilors and MPs of Montenegro,²⁴ the Act on

Election of MPs of Serbia,²⁵ the Act on Elections of MPs of Croatia,²⁶ and the National Assembly Elections Act of Slovenia²⁷ – indicates that none of the preventive ACAs in the region of Southeastern Europe have a task similar to this one. To that, we might rightfully ask if this is a competence that should fall in the “hands” of the SCPC, especially since the state has a specific – State Elections

24 Official Gazette of Montenegro, 16 (2000), 9 (2001), 41 (2002), 46 (2004). Decisions of the Constitutional Court, Official Gazette of Montenegro, 46 (2011), 14 (2014), 47 (2014), 12 (2016), 60 (2017) and 10 (2018).

25 Official Gazette of Serbia, 3520 (2000), 57(2003). Decisions of the Constitutional Court, Official Gazette of Serbia, 72 (2003), 18 (2004), 85 (2005), 101 (2005), 104 (2009), 28 (2011), 36 (2011).

26 Official Gazette of Croatia, 116 (1999), 109 (2000), 53 (2003), 69 (2003), 167 (2003), 44 (2006), 19 (2007), 20 (2009), 145 (2010), 24 (2011), 93 (2011), 120 (2011), 19 (2015), 104 (2015).

27 Official Gazette of Slovenia, 109 (2006); Decision of the Constitutional Court, Official Gazette of Slovenia, 23 (2017).

Commission founded to organize, implement and supervise the elections. Although it is true that the elections and the election campaigns motivate the involved persons to behave corruptly, it can be a real burden for the SCPC which anyhow has limited capacities (as will be demonstrated below).

Furthermore, despite being the only centralized preventive ACA in Macedonia, as well as the only institution competent to implement the APC and APCI, the SCPC remains a mild institution. If one examines the powers to sanction or undertake action, it is clear that the SCPC has almost no harsh instruments in its artillery. Namely, the only sanction this ACA can impose – if it can be deemed as such – is a public warning. Other than that, all the pecuniary fines (sanctions for regulatory violations) from the four enlisted legal acts are imposed by the judiciary. This tendency has only one exception - the power of the SCPC to ask for annulment or reexamination of a contract for employment, assignment or

dismissal of a public-sector employee. With this in mind, it is reasonable to ask whether such an institution is adequate for a country which has a long-lasting tradition of corruption (see Table no. 3 – Corruption Perception Index in Macedonia (Transparency International)²⁸ with numerous indictments of high-level politicians and officials such as the former Prime-Minister, the former Minister of Interior Affairs and the former Director of the Administration for Security and Counterintelligence. As a comparative example, we would point out the Commission for Prevention of Conflicts of Interest of Croatia which is entitled not only to publically warn the elected or appointed persons but to directly sanction them by decreasing their salaries. Art. 44 of the Act on Prevention of Conflicts of Interests allows the Commission to partially (between 270 and 5385 EUR) stop the payment of monthly salaries for an elected or an appointed person over the period of twelve months.

Table 3. Corruption Perception Index in Macedonia (Transparency International)²⁹

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Score	36	38	41	39	43	44	45	42	37	35
Ranking	72	71	62	69	69	67	64	66	90	107

Lastly, aside from the fact that it lacks sanctioning powers, the Macedonian SCPC does indeed process an enormous amount of information. Limiting our research, for instance, only to the declaration of assets and the statements for changes in the assets

possession, we can see that in the past several years (from 2008 to 2016 as a selected period of time) the SCPC has processed precisely 9800 of them.

Table 4. Number of Declaration of Assets that the SCPC has processed in the past 10 years³⁰

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Processed	604	999	820	900	623	2170	1199	1132	1353	N.A.

It is indisputable that in order to examine such a high number of declarations of assets and statements, the SCPC needs serious human and technical resources. It is difficult alone to receive all these statements and check their accuracy, let alone to process cases to the courts for regulatory violations sanctions or request audits from the Public Revenue Office. Moreover, if human and technological resources are lacking, the SCPC can easily claim that it has not noticed the fact that certain high politicians have not provided their own declarations, or that it has requested judicial procedures for some elected or appointed persons but not for others due to objective factors. Such a case, in fact, appeared in the Republic of Macedonia. Namely, the Director of one of the most powerful services in the country, the Administration for Security and Counterintelligence, did not submit his declaration of assets to the SCPC in 2015; the case was not brought up to the courts. The council members of some of the poorest and rural units of local self-government, on the other hand, were sanctioned by the courts for that same omission.³¹

Of course, what was said for the quantity of tasks for the SCPC is even more applicable if other ones are borne in mind too: an

institution which is competent not only to monitor the every-day functioning of the elected or appointed persons, but also the finances of the political parties and the manner in which the electoral campaign has been conducted has to have strong capacities. For that reason, the following text will focus on the respective issue of its institutional design, human resources and budget.

3.2. De-facto capacities of the State Commission for Prevention of Corruption

3.2.1. Independence of the State Commission for Prevention of Corruption and Integrity of its Members

When analyzing the capacities of the SCPC, there are two initial concerns: (1) its independence, and (2) the integrity of its Commissioners (members). The analysis of the SCPC from a formal point of view leads to a deduction that it is an independent institution with members of high integrity and expertise. The ACP, respectively, stipulates that the SCPC answers to no other authority within the Republic of Macedonia, except for the Assembly (main legislative body). From a personnel point of view, the SCPC is comprised of seven members (Commissioners) each of which is

²⁸ The Corruption Perception Index is formulated in such way that 100 points mean that the country has no corruption at all, while 0 points mean that the country is deeply corrupt. It can be accessed at this link: <https://www.transparency.org/research/cpi/overview>.

²⁹ The Corruption Perception Index is formulated in such way that 100 points mean that the country has no corruption at all, while 0 points mean that the country is deeply corrupt. The rankings start from 1 – least corrupt country and end with 180 – most corrupt country in the world. It can be accessed at this link: <https://www.transparency.org/research/cpi/overview>.

³⁰ The data withdrawn from the Annual Reports of the SCPC is available at: www.dksk.mk/index.php?id=55. The annual report for 2017 is not available to the public.

³¹ This case was revealed by journalists of the Center for Investigative Journalism SCOOP. The article is available at <http://scoop.mk/%Do%Bo%Do%BD%D1%82%Do%B8%Do%BA%Do%BE%D1%80%D1%83%Do%BF%D1%86%Do%B8%Do%BE%Do%BD%Do%B5%D1%80%Do%B8%D1%82%Do%B5-%D1%81%Do%BE-%Do%B4%Do%B2%Do%BE%D1%98%Do%BD%Do%B8-%Do%Bo%D1%80%D1%88%Do%B8%Do%BD%Do%B8>.

appointed by the Assembly on the basis of a public call. The Commissioners' term lasts for four years and they cannot hold the office more than twice consecutively. Nonetheless, the APC is quite vague when setting out the criteria for selection of members of the SCPC. The only four standards laid down therein are:

- citizenship of the Republic of Macedonia;
- obtained diploma for high education in the areas of law, finance or anti-corruption;
- high reputation;
- eight years of working experience.

Out of the four standards, it is perhaps only the first and the last which are indisputable. As for the others, the ambiguity is more than evocative. The second criterion is problematic in respect to the "high education in the field of anti-corruption" as numerous social sciences and humanities study the issue of corruption from their own perspective (sociological, political, legal and economic). The third criterion, on the other hand, has no influence at all in the selection of the Commissioners— reputation can neither be measured nor properly assessed. This legal framework led, as can be believed, to the appointment of Commissioners who did not have the integrity needed for the office they held. The reason one can say this is that in March 2018 citizens of the Republic of Macedonia learned that members of the SCPC had been misusing the funds budgeted for the institution. Namely, the Public Revenue Office carried out an internal audit in the SCPC, the scandalous results of which were delivered to the media by a whistleblower. It was shown not just that the Commissioners have falsified travel warrants by adding additional kilometers to their trips (in order to reimburse a larger sum for travel costs), but that they had also reported business trips on days when they were present at the offices of the SCPC. As a result of this scandal, 5 of the 7 members of the SCPC resigned, leaving the institutional non-operational for the vast part of 2018.³²

Bearing in mind the aforesaid, we encounter another problem with the SCPC regime related to the dismissal of its members. It is a fact that the APC contained no provisions under which the term of a Commissioner could be terminated by the Parliament for misuse of power or non-ethical conduct. The only three bases for dismissal were as follows:

- request of the Commissioner himself/herself;
- criminal adjudication under which the Commissioner is sentenced to more than six months of prison;

- permanent loss of ability to work.

This construction of the APC brought about a situation in which the members of the Commission who misused funds could not be, except on the basis of the Constitution of the country and the procedure of interpellation, dismissed from office.

For the listed reasons, the Government of the Republic of Macedonia initiated a procedure for the preparation of amendments to the APC. Currently available on the Electronic National Registry of Legal Acts³³ of the Republic of Macedonia, these upcoming amendments (which are expected to be adopted by the Assembly soon) are a significant improvement of the existing framework in regard to the appointment or dismissal of Commissioners. As per the rules to be (currently there are two possible alternatives of the respective articles), the Commissioners have to fulfill several new criteria – aside from citizenship – such as: (1) high education in the area of law, political sciences or communicology (in the second alternative of the article); (2) experience in uncovering cases of corruption or prevention of corruption, good governance and the rule of law; (3) he/she has not been a part of the Government or the Assembly of the country in the last decade, nor a member of the managing structures of a political party (in the second alternative of the article. As for dismissal, the rules to be stipulate that any Commissioner may be dismissed from office if he/she breaches the APC, the code of ethics or the Rules of Procedure of the SCPC. Lastly, the new APC states that, as indirectly noted, the SCPC has to have its own code of ethics and that the Assembly of the Republic of Macedonia will carry out a significantly longer and more detailed procedure before appointing members of the respective ACA.

3.2.2. Budget and Human Resources of the State Commission for Prevention of Corruption

The second aspect when speaking of the capacities of an ACA is its budget. For the purpose of analyzing this in the case of the SCPC, i.e. in order to determine the (in)adequacy of the budget of this ACA, we will use the standards set out by TI in the publication *Strengthening Anti-Corruption Agencies in Asia Pacific*.³⁴ Evaluating the ACAs in the region mentioned, TI expresses the view that such an institution can function congruously if its budget is above 0.20% of the state budget. After cross-matching the information from SCPC's annual reports and the budgets of Macedonia in the previous years, we have found some devastating results.

Table 5. Proportion of the SCPC budget to the total government budget of Macedonia³⁵

Year	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Proportion in percent	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

Table no. 5 clearly demonstrates that the SCPC is not even near the standards provided by the TI which states that the budget of an ACA is below satisfactory if it does not comprise 0.10% of the total budget. Even the increase in the budget of the SCPC (illustrated in

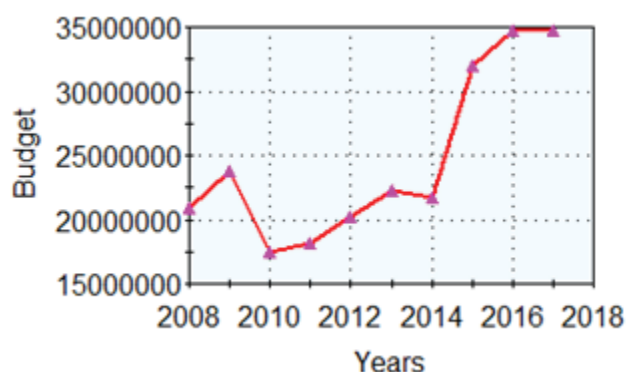
Graph no. 1 – Annual Budget of SPCP) is not a result of the allocation of more funds therein but is proportionate to the increase of the state budget as a whole.

32 This story was published by numerous media houses, for instance: <https://sdk.mk/index.php/makedonija/vo-antikoruptionska-si-zemale-pari-za-patni-troshotsi-lazhni-nalozi-nekoi-odele-ni-na-rabota/>.

33 An online database of all the legal acts which are not yet in force, i.e. are in the preparation process, is available at: www.ener.gov.mk.

34 Transparency International, *Strengthening Anti-Corruption Agencies in Asia Pacific* (Oct. 25, 2017), https://www.transparency.org/whatwedo/publication/strengthening_anti_corruption_agencies_in_asia_pacific.

35 The budgets of the Republic of Macedonia can be found in the country's Official Gazette, available at: <http://www.slvesnik.com.mk/besplatni-izdanija.nspj>.

Graph 1. Annual budget of SPCP³⁶

With this information in mind, it comes as no surprise that the SCPC has had a truly small number of employees over the years. That number is currently 22. Out of them, one person is Secretary General, one person is State Counselor (the second highest position in the administration of the Republic of Macedonia), one person is Head of the Department for Prevention of Corruption (within the SCPC), one person is Head of the Financial Department and the others are counselors for specific issues. The unsatisfactory conditions in this respect have been not only noted by the SPCP itself, as its By-law for Systematization of Work Positions³⁷ states that there should be 51 employees (meaning that only 43% of the work positions are fulfilled), but also by the Council of Europe's Group of States against Corruption (GRECO) which has pointed out that "[i]t is obvious to the GET that the human and budgetary resources currently available to the SCPC do not enable it to carry out its tasks in a sufficiently efficient manner". In addition, when speaking of the declarations that the SCPC has to process, GRECO stresses:

"two persons are in charge of the processing and verification of declarations of interest, whereas about 1000 declarations were received in the first quarter of 2013 alone, due to the local elections. If these systems have to be streamlined and scrutiny over the declarations reinforced . . . the provision of adequate resources will be critical."³⁸

What we would like to add to GRECO's observation is the fact that the SCPC also has only two or three employees who are tasked with following the state of assets and processing declarations of assets. Bearing in mind the numbers in Table no. 4, it is fair to ask if the SCPC can even go through all the received declarations, let alone perform any critical analysis.

As a positive comparative example in this case, we would like to point out the ACA of Montenegro which, although operating in a smaller country with fewer capabilities, has a larger number of employees, i.e. 55.³⁹

3.3. Legitimacy of the State Commission for Prevention of Corruption and effectiveness

A combination of factors – the level of corruption in the country generally, the unlawful conduct of the Commissioners in recent

years, and the lack of public presence of the SCPC – has led to a situation where, according to studies of the NGO sector in the third quarter of 2017,⁴⁰ the citizens do not legitimize the respective ACA:

- From the survey, 63.7% of the participants in the survey⁴¹ believe that the SCPC protects the interests of the politicians, while only 12.7% believe that it protects the interests of the citizens. The others have not responded;
- also, 72% of the participants in the survey believe that the media does not contain sufficient information on the work of the SCPC;
- While 77.6% of the participants in the survey believe that the information about the SCPC in the media does not provide an opportunity for them to be "up to date" with the institution's work.

These results are not surprising when taking into account the ineffectiveness of the SCPC and its inability to cope with its own tasks. The SCPC has only once fulfilled its task to provide the Assembly with a special report on the elections (Art. 12, APC). In the third quarter of 2017, the SCPC did not receive declarations of assets from all of the elected or appointed persons. In fact, for the majority of them; the SCPC registry has no data for 79.14% of respective persons. In addition, the SCPC has not been publicly present, either in the mainstream media or with its own announcements. Furthermore, if one analyzes the last annual report from 2016, it is clear that the SCPC overburdens the document with technical data while failing to compare it to the annual programme (so it can be seen if what was planned has been implemented). Finally, speaking of education, it is quite devastating to learn that in 2016 the SCPC carried out just 4 training sessions for 54 administrative servants in the country (the Republic of Macedonia has 1299 public institutions which hire administrative servants).⁴²

These and multiple other findings speak of the incompatibility of the SCPC, the lack of resources and political will and the structural problems of the legislative and institutional framework related to this institution. Bearing in mind that not all the data could be evidenced, we find that there are several conclusions for this preventive ACA of Macedonia.

4. CONCLUSIONS

The SCPC is the only preventive ACA of the country and an institution which can be exceedingly beneficial for the country at hand. Its competencies are impressive, as well as the fact that it is the institution which has jurisdiction to implement, comprehensively or partially, 5 legal acts. Nevertheless, analysis of the SCPC leads to a few observations. Firstly, the SCPC seriously lacks powers or, in other words, enforcement tools. While it has great monitoring and other competencies, it can only issue public warnings in two cases and ask for the annulment of employment

³⁶ The budget is expressed in the local currency of the Republic of Macedonia (denar, MKD). One EUR is approx. 61.5 MKD.

³⁷ Under the legislation of the Republic of Macedonia, every public authority has to have such an act which is adopted on the basis of the Act on the Public Sector Employees.

³⁸ GRECO Fourth Evaluation Round, Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors, Evaluation Report on "the Former Yugoslav Republic of Macedonia" (March. 17, 2014), <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9ab5>.

³⁹ The Montenegrin ACA, The Annual Report of the Montenegrin ACA for 2017 (2017), http://www.antikorupcija.me/media/documents/Izvie%C5%9Ataj_o_radu_Agencije_za_2017_godinu.pdf.

⁴⁰ The NGO Macedonian Center for International Cooperation publishes quartile reports on the work of the SCPC. This is done in quarterly reports. The quoted one is the 5th Report covering the period between October 1 and December 31, 2017, available at: <http://www.mcms.mk/images/docs/2018/sledenje-na-dsk-kvartalen-izvestaj-br-5.pdf>.

⁴¹ As per the statistical methodologies, 1001 persons in total participated in the survey.

⁴² The Ministry of Information Society and Administration, Annual Report (2017), http://arhiva.mioa.gov.mk/files/pdf/dokumenti/IzvestajReg2017_v1.02.pdf.

contracts in another. All of the other capabilities of the SCPC result in reports, either to the Assembly of the country or to the official bodies competent to investigate. Secondly, there is a serious discrepancy between the competencies and the capacities of the SCPC. While, as said, the institution needs to implement 5 systematic acts, it has only 22 employees and, currently, no members (Commissioners). While the situation with the Commissioners can easily be resolved with the appointment of new ones, the capacities of the SCPC can permanently be increased only if the number of employees increases. Finally, the Republic of Macedonia needs to carry out an all-inclusive review of its legislation and decide whether the SCPC should be responsible for the implementation of all legal acts concerned or whether its competencies should be decreased. That way, although formally a less powerful one, the SCPC can build-up to become a thorough ACA in the sense of the international conventions and other documents cited.

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