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MACEDONIAN
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CORRUPTION **ASSESSMENT** **REPORT**



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CORRUPTION ASSESSMENT REPORT FOR MACEDONIA

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List of Abbreviations:

CCC	Center for Civil Communications
CMS	Corruption Monitoring System
CRM	Central Registry of Macedonia
CSD	Center for Study of Democracy
CSO	Civil Society Organization
EC	European Commission
EU	European Union
FIU	Financial Intelligence Unit
FOSM	Foundation Open Society Macedonia
FP	Financial Police
GDP	Gross Domestic Product
GRECO	Group of States against corruption
IPA	Instrument for Pre-Accession Assistance
LCP	Law on Criminal Procedure
LSGU	Local Self-Government Unit
MCIC	Macedonian Center for International Cooperation
Mol	Ministry of Interior
OBI	Open Budget Initiative
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Co-operation and Development
OSCE	Organization for Security and Cooperation of Europe
POCC	Prosecutor for Organized Crime and Corruption
PPB	Public Procurement Bureau
PRO	Public Revenue Office
SAO	State Audit Office
SCPC	State Commission for Prevention of Corruption
SDSM	Social Democratic Alliance of Macedonia
SEE	South East Europe
SELDI	Southeast European Leadership for Development and Integrity
TM	Transparency Macedonia
UN	United Nations
UNDP	United Nations Development Program
USAID	United States Agency for International Development
VAT	Value Added Tax
VMRO-DPMNE	VMRO-Democratic Party for Macedonian National Unity

Preface

The Corruption Assessment Report is a comprehensive overview of the state and dynamics of corruption in the Republic of Macedonia. The basis of this report is the Corruption Monitoring System (CMS) developed by the Center for the Study of Democracy (CSD) from Bulgaria. The CMS relies on diverse sources of information and combines quantitative and qualitative methods for monitoring and the assessment of corruption. The CMS has gained acknowledgement from the United Nations (UN) as a best practice system for monitoring corruption at the national level. It is coherent with the UN victimization approach to measuring administrative corruption levels.

The report consists of seven chapters. The first chapter of the report analyzes the level of corruption in Macedonia based on two surveys done with the population and representatives of the business sector. Through seven indexes, an overview is given of the actual experience of citizens with corruption, their attitudes, and the perceptions for the spread of corruption. Anticorruption policies and the regulatory environment are presented in the second chapter, while institutional practice and enforcement of the law are covered in the third chapter. The fourth topic covered in this report is the role of the judiciary in the fight against corruption, while the fifth chapter deals with the environment and the effect of corruptive practices on the economy. The sixth and seventh chapters cover civil society's role in anticorruption, as well as international cooperation and support for anticorruption policies and measures.

The report was prepared by a team of people from the Macedonian Center for International Cooperation (MCIC) with assistance from the CSD, whose experts provided support throughout the process. The key benefit for us was learning from experienced experts in this field and the ability to understand all correlations that create a full picture of corruption in a country, in this case in Macedonia. We were supported in various ways, from training on the methodology, the design of questionnaires, to the analysis and methods of making conclusions, etc. Their contribution to the preparation of "Chapter 1 - Level of Corruption" was exceptional. We would like to express our gratitude to Ruslan Stefanov, Todor Jalamov, Maria Yordanova PhD, Dimitar Markov, Alexander Stoyanov PhD, Alexander Gerganov and Emil Cenkov PhD, all of the CSD and Vitosha Research from Bulgaria.

Besides colleagues from the CSD, support in the preparation of this report was also provided by local experts and representatives of civil society organizations (CSOs). We would like to extend

our gratitude to Sladjana Taseva PhD, Iliana Mangova Ana Janevska-Deleva, Suad Misini, Aneta Mostrova-Daneva, Nikica Mojsoska-Blazhevski PhD, and Ivana Todevska PhD.

Our involvement and sharing of experiences with 19 organizations in the region, which are part of the network - Southeast European Leadership for Development and Integrity (SELDI) - was another useful benefit to us.

MCIC prepared the Corruption Assessment Report as part of the USAID Macedonia Anticorruption Program. MCIC is grateful for the understanding and support provided by the USAID in the implementation of this program and its efforts to contribute to the development of democratic processes in Macedonia.

Emina Nuredinoska

Head of the Department for Civil Society

Executive Summary

The overall picture on the state of corruption in Macedonia is based on the two surveys mentioned above and is presented through three groups of indicators, composed of seven indexes (with values from 1 to 10):

- Actual experience (through indexes on pressure and involvement);
- Attitudes on corruption (awareness, acceptance and susceptibility); and
- Perceptions of corruption (likelihood of pressure and spread of corruption).

Corruption is ranked as the fifth top problem in the country (27.9%) after unemployment, poverty, low incomes, and high prices. For years, numerous polls showed that corruption was considered as one of the top three problems in Macedonian society.

The index of the spread of corruption in 2014 was 5.9, a whole point lower compared to 2002 when it was 6.8. While this should be viewed as a positive development, it should be noted that this is an indicator of perceptions and may be due to the lower media reporting.

The report concluded that susceptibility to corruption has been reduced (2.7 in comparison to previous levels of 3.1 and 3), which means citizens are less prone to resort to corrupt practices for solving private problems, although corruption pressure and involvement in corruption have slightly increased in comparison with 2001/2 when this survey was first conducted. The intensity of corruption pressure remained, although with the introduction of several important reforms, the number of contacts between citizens and the administration has significantly decreased (79% to 46%).

In Macedonia, there is a high level of awareness about corruption. Acceptability of corruption has slightly increased (2.6 versus 2.4 in 2002), but the majority of citizens (55%) still do not accept any form of corruption.

Finally, the index of practical efficiency of corruption (likelihood for involvement in corruption, which measures how many respondents perceive corruption as an effective solution to their problems, i.e. whether corruption pays off) is high, amounting to 5.3, although a decrease is observed in comparison to 2002 when it was 6 index points.

There are differences between perceptions and experience (victimization). While customs officers, judges, ministers, and tax officers are perceived as the most corrupt, on the other

hand, professions such as doctors, local authorities, police officers, and university professors are those who are actually most corrupt.

Anticorruption Policies

Macedonia has a comprehensive and relatively strong legal framework to combat corruption (including specialized law). The State Program for Prevention and Repression of Corruption (2011-2015), as a key document in this area, has been developed through a participatory process and contains 156 activities to address the 51 identified problems/ risk factors.

However, some of these measures/actions do not correspond to real needs, and in some areas significant improvements are possible (i.e. in the section “Media and Civil Society”, none of the 14 planned activities are fully completed).

As in other areas, a key challenge is to improve the implementation of anticorruption policies in practice.

Institutions and Practice

The State Commission for Prevention of Corruption (SCPC) is a specialized institution to combat corruption. Insufficient exposure in the public and a significantly reduced number of corruption reports (not counting from the election period) submitted to the SCPC in the past four years creates a perception of lower confidence in this institution.

Other state institutions have their roles and responsibilities in terms of corruption. The Ministry of Interior (MoI) is crucial in detecting cases, but significant responsibilities in the prevention and repression lie in the hands of the State Audit Office (SAO), the Financial Intelligence Unit (FIU), the Financial Police (FP), the Public Revenue Office (PRO), etc. The courts showed semi-efficiency in processing cases of corruption (86 solved out of 169 cases in 2012).

It is obvious that expectations for results in the fight against corruption are targeted too much towards the SCPC compared with other institutions. In particular, this refers to the FP, the FIU, the PRO, etc., which have higher budgets and more human resources. However, their role in the fight against corruption is not coming to the fore, although they have an equally important role in the overall anticorruption system.

The absence of open data creates great difficulties in analyzing the efficiency of the institutions in the fight against corruption.

Judiciary

Despite several amendments to the legal framework in terms of increased independence and integrity of the judiciary, the perception of high corruption in the judicial system remains very high. Approximately 74% of citizens believe that judges are corrupt, while 61% believe public prosecutors are corrupt.

This perception of citizens is a result of several features of the judicial system. By 2011, the Minister of Justice was a member of the Judicial Council with a right to vote. After numerous reviews and recommendations, in the current composition of the Judicial Council, the Minister is a member without a right to vote. This fact is just one of the indicators of existing connections between the executive power and the judicial system. Also, current practice suggests that the

budget for the courts is usually lower than required, which contributes to strengthening the influence of the court and the perception of heavy dependence of the courts on the authorities.

Citizens often complain about the work of the courts. In 2012, the Judicial Council acted upon 1,686 complaints from citizens and legal entities. However, complaints refer to dissatisfaction with the decision, or the length of the procedure, and not to the integrity of judges or corrupt practices.

Economy

The simulation for calculating the annual “cost” of a bribe given by the business community is 64 million Euro. This is 0.85% of the annual GDP of Macedonia, according to data from 2012.

Areas and situations in which bribes are usually given by companies are: during inspections by state institutions, obtaining permits and licenses, and obtaining building permits.

Most representatives of the business community who witnessed corruption do not take further action. In very few cases (0.25%), they filed a lawsuit with the court.

Existing legislation and practices are not sufficient to ensure a transparent budget process, and particularly to monitor the use of public funds. This is important when analyzing the distribution of subsidies, grants and all transfers from central to local level, and to certain areas/sectors such as agriculture, etc.

In the area of public procurement, there is a trend of growth in the number of allocated means through negotiations without an open call. This procedure in 2013 was used for the allocation of 11% of the total value of public procurement (5,936,324,555 days of 1,452 contracts), unlike in 2011 when it was 4%.

Civil Society

Civil society in certain periods played a significant role in the efforts of tackling corruption. It is worth noting its initiative to form the SCPC in 2002.

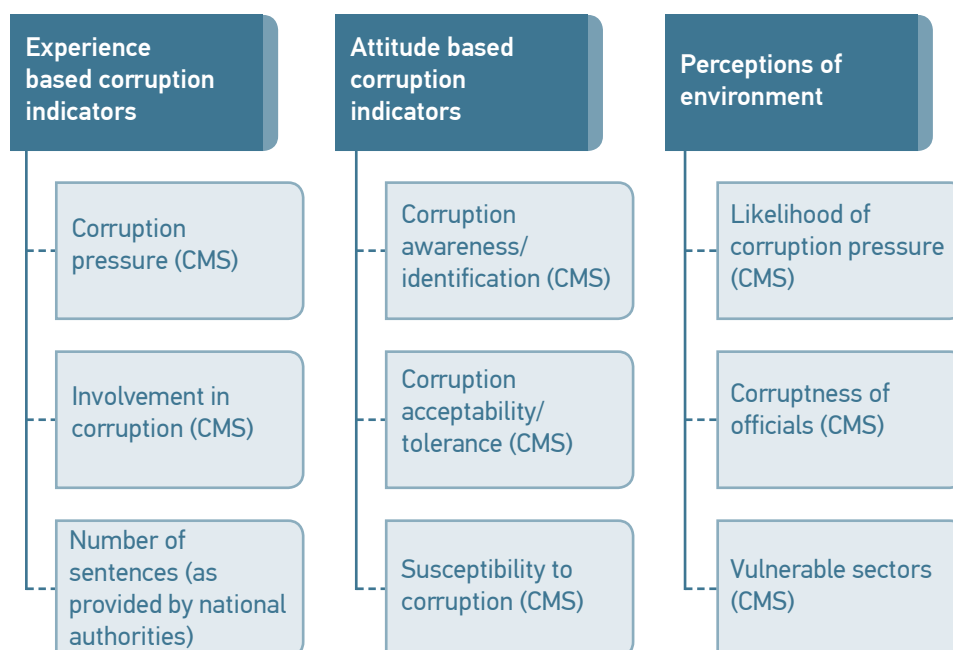
However, civil society did not continue to develop the debate on the fight against corruption and the role and capacity of CSOs to combat corruption with the expected intensity. Certain deviations in this state have been noticed in the past two years that strengthened the coordination between civil organizations in joint efforts to contribute to the fight against corruption.

According to the perception of citizens, civil society is one of three least corrupt areas. However, at the same time, transparency and accountability are not the strongest assets of CSOs.

Methodology

the UN victimization approach to measuring administrative corruption levels; relies on diverse sources of information; and combines quantitative and qualitative methods for monitoring and assessment.

Illustration 1: Principle corruption assessment indicators incorporated into the CMS



This system provides dynamic and cross-country comparability of the monitoring findings regarding the scope, areas, and forms of corruption. It consists of three groups of indicators which provide an overview of corruption through seven indexes (described in more detail in “Chapter 1 - Level of Corruption”) that are derived from the indicators.

The report used a multitude of secondary data, such as: the analysis of laws and bylaws, strategic programs, strategies and other documents, reports from relevant institutions and CSOs, and professional literature from local and international authors. Some of the data was obtained from the state administration through directly submitted requests for obtaining information of public character. The purpose of the secondary data is to provide a picture of the overall environment that affects corruption in Macedonia, especially the legal framework and the efficiency of institutions in several areas.



Level of Corruption

This part of the report is based on primary data obtained from the analysis of findings of the two surveys mentioned in the Methodology section, which provided the basis for the CMS.

1. Corruption Indexes

The CMS provides a systemic overview on corruption in the country through seven composite indexes constructed from corruption indicators described in the Methodology section. The seven indexes are recorded through the data obtained from the victimization-based survey conducted on the adult population and are divided into three groups:

1. **Actual experience** of corruption, comprised of indexes on pressure and involvement;
2. **Attitudes on corruption** analyzed through the indexes: awareness, acceptance and susceptibility; and
3. **Perceptions of corruption** based on indexes: likelihood of pressure and spread of corruption.

The three groups of indexes outline the corruption/anticorruption balance in the country. Experience fuels perceptions (higher actual corruption pressure is associated with higher perceptions of the spread of corruption) and attitudes (involvement might increase acceptability), while attitudes (susceptibility) might reiterate corruption experience and perceptions might shape attitudes.

The CMS provides a systemic overview on corruption in the country through seven composite indexes

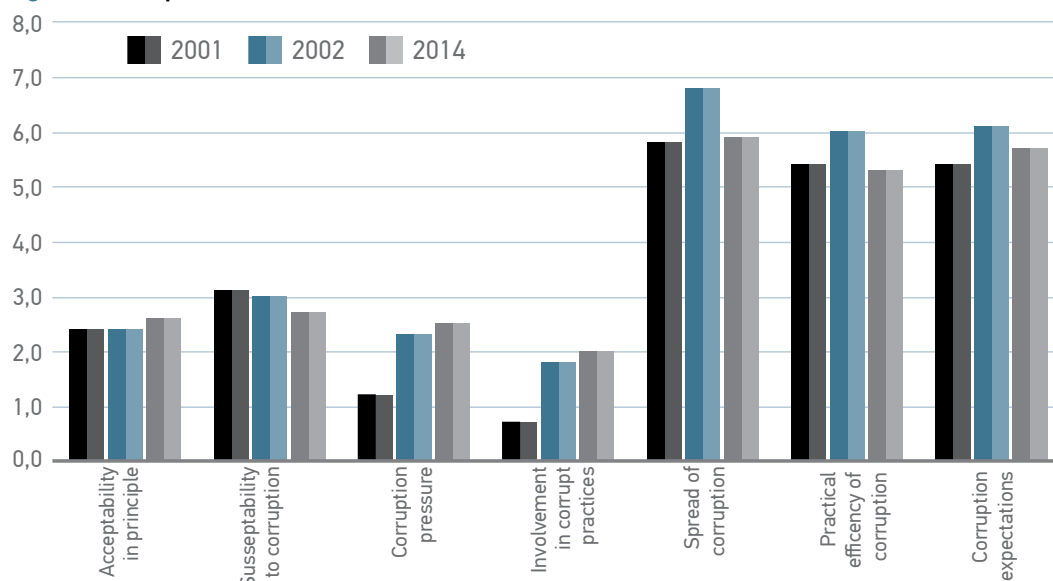


Susceptibility to corruption has decreased slightly, even though corruption pressure and involvement in corruption has increased marginally

The CMS corruption indexes take values between 0 (no corruption) and 10 (absolute corruption). But the values' interpretation varies between those related to experience and attitudes, and those related to perceptions. In experience and attitude indexes, values above 0.5% are already an indication of a serious corruption problem. In perceptions indexes, values higher than 5 indicate a serious corruption problem.

The indexes' values for Macedonia suggest mixed trends compared to a decade ago. Susceptibility to corruption, which is the inclination of citizens to resort to corrupt practices in addressing private problems, has decreased slightly, even though corruption pressure and involvement in corruption has increased marginally. Citizen perceptions of corruption, which throughout the South East Europe (SEE) region are quite alarming, significantly improved compared to 2002. Notably, the practical efficiency of corruption goes below the levels of 2001, which implies it has become more uncertain to get involved in corruption.

Figure 1: Comparison of CMS indexes for Macedonia between 2001, 2002 and 2014



Source: Corruption Monitoring System, 2014

2. Spread and Dynamics of Corruption

2.1. Spread of corruption

For Macedonian citizens, corruption is not among the top three problems that the country faces today. In 2014, Macedonian citizens identified unemployment and poverty as the top two problems, followed by low incomes and high prices. Corruption takes only the fifth place. For years, numerous polls showed that corruption, along with unemployment and poverty, was considered one of the most severe problems in Macedonian society. However, the fifth year of slow economic development following Europe's economic crisis has increased the significance of economic factors. While this is only natural, it is likely to decrease pressure on politicians for change, and in turn exacerbate economic problems, as corruption signals system inefficiencies in competition and social welfare, directly causing net social loss through higher prices, lack of funds for social services, etc.

Table 1: Macedonia: Key Problems, 2014 (share of the population who have identified the respective factor as a problem)

CATEGORY		2014	CATEGORY		2014
1	Unemployment	69,2%	6	Crime	12,3%
2	Poverty	47,1%	7	Ethnic Issues	11,6%
3	Low income	37,4%	8	Healthcare Protection	6,2%
4	High prices	32,5%	9	Environment Pollution	4,3%
5	Corruption	27,9%	10	Education	3,6%
6	Political Instability	18,6%			

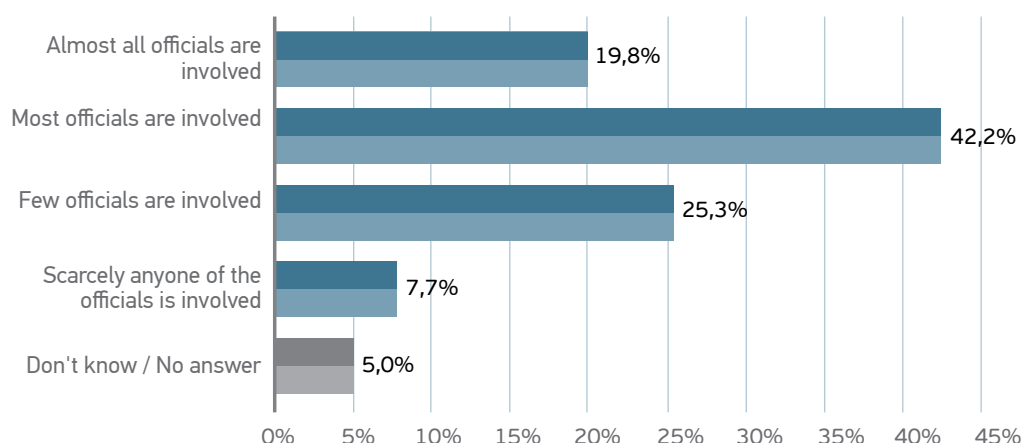
Source: Corruption Monitoring System, 2014

Similarly, in 2002, corruption was also ranked in the fifth place among the top problems. As was the case in 2014, unemployment was ranked first, followed by political instability as the second biggest problem, which can be understood as a consequence of the 2001 armed conflict. The third biggest problem was poverty, while the fourth, again as a consequence of the 2001 ethnic tension, were ethnic issues.

The index of spread of corruption in 2014 was 5.9, an entire point lower compared to 2002 when it was 6.8. While this should be viewed as a positive development, it should be noted that it could also be associated with greater media control, as perceptions are notoriously linked to edit reporting of corruption or to major political crises. Moreover, the index for involvement in corrupt practices does not show a similar decline. This improvement of citizens' opinion is confirmed by other measurements, such as the Corruption Perception Index of Transparency International.

Corruption signals system inefficiencies in competition and social welfare, directly causing net social loss through higher prices, lack of funds for social services

Figure 2. Citizens' perception on the spread of corruption among public officials



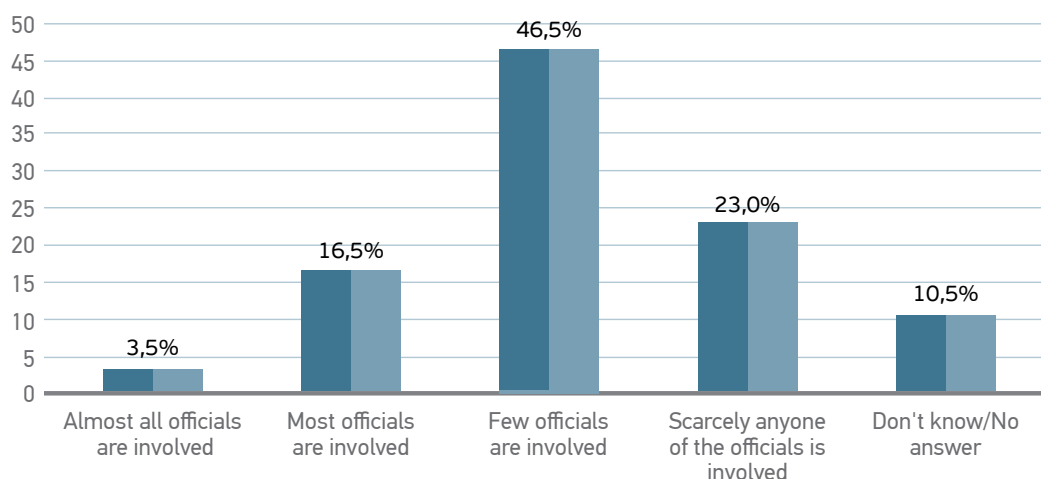
Source: Corruption Monitoring System, 2014

Almost 20% believe that all public officials are involved in corruption, and 42% view most officials as corrupt

Still, citizens' opinion is that corruption has deeply penetrated the public administration. Almost 20% believe that all public officials are involved in corruption, and 42% view most officials as corrupt. Only less than 7% perceive the public administration as practically corrupt-free. This is alarming as it reduces the chances of people reporting corruption.

Business perspectives on the corruptness of public officials is significantly more positive than the general population's view. The predominant perception is shifted from "most" to "few" officials involved in corruption, although the actual involvement in corruption is comparable between the two groups. Only a marginal share of businesses (five to six times less than compared with the general population) perceive "almost all" officials as corrupt.

Figure 3. Perception of businesses on corruption proliferation among public officials



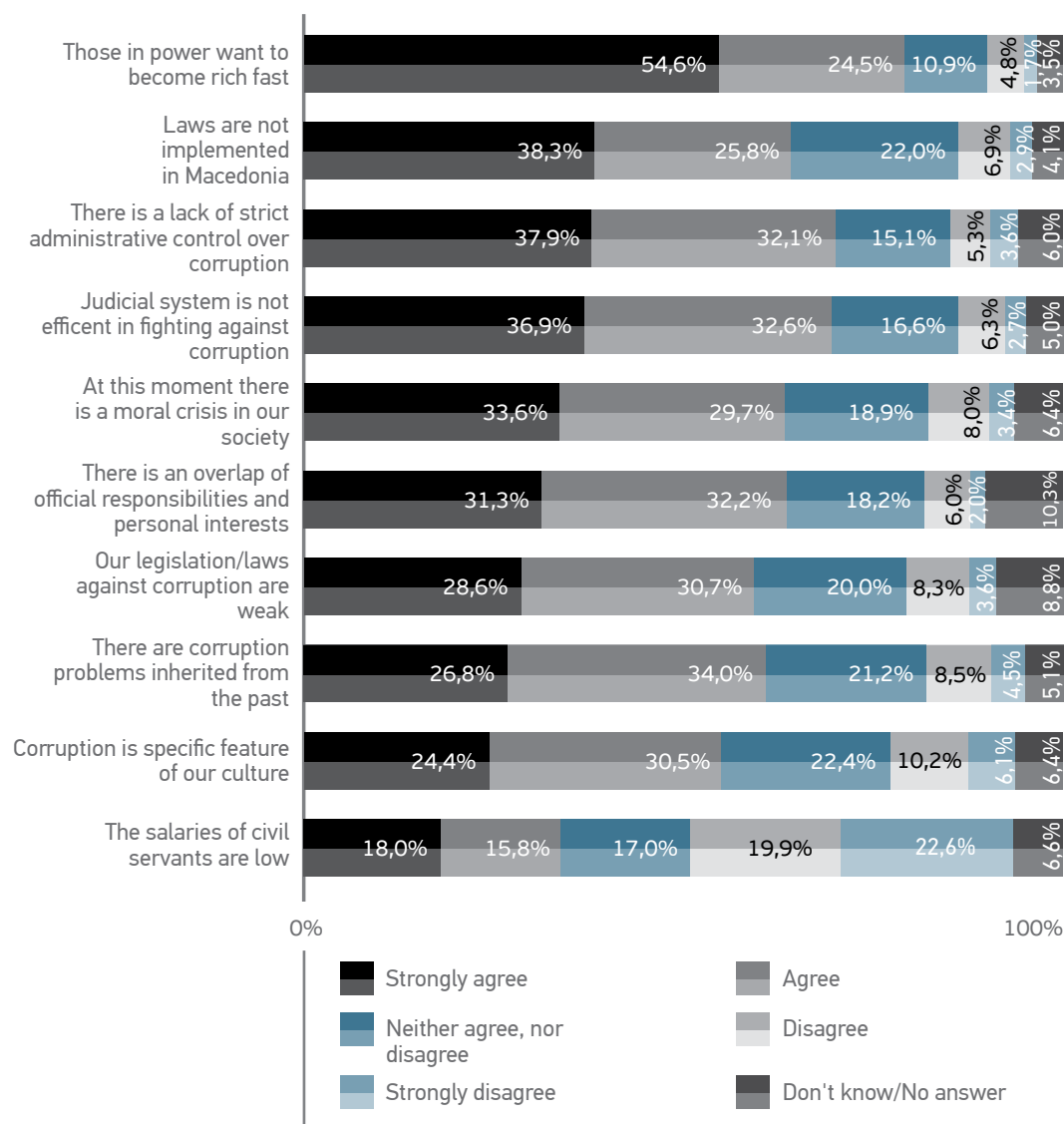
Source: Corruption Monitoring System, 2014

Factors that impact spread of corruption

For Macedonian citizens, the rapid personal enrichment of those in power is the leading determinant for the wide spread of corruption. The majority of the population (54.6%) said they fully subscribe to this statement, and another 24.5% said they agree. The cumulative sum of these two statements amounts to 79.1%, which is 15 percentage points higher than the next ranked cause for the spread of corruption, which is a lack of law enforcement in Macedonia. The majority of citizens subscribe to all suggested possible corruption causes. In all cases, the sum of statements of full agreement and agreement is over 50%, except for the statement that the salaries of officials in the public sector are low. The latter might prove problematic in

any efforts designed to reform the public administration through salaries for reform exchange. Moreover, citizens somehow expect and justify corruption among public officials as a specific characteristic of the local culture (54.9% agree with the statement).

Figure 4. Factors that impact spread of corruption in Macedonia



Source: Corruption Monitoring System, 2014

2.2. Involvement in corrupt practices (actual/real corruption)

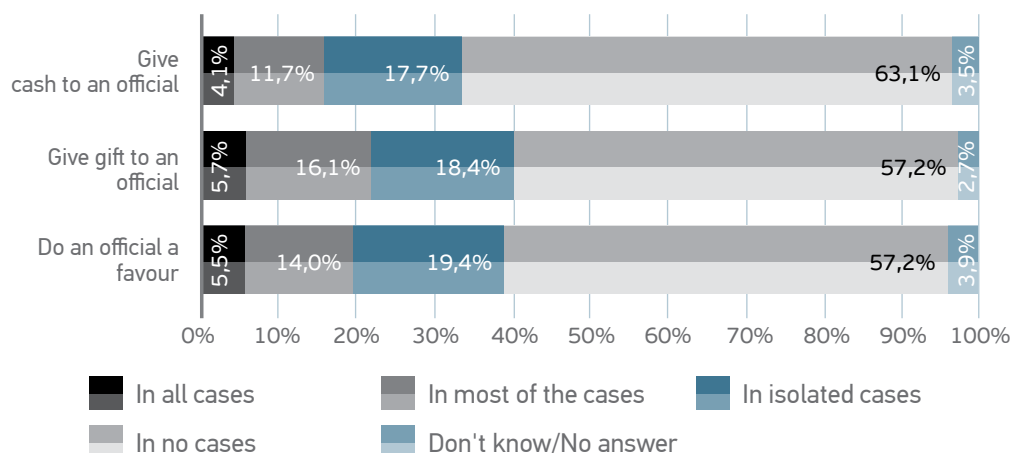
Contrary to perceptions about the spread of corruption, the victimization or the actual involvement in corruption and corruption pressure have much lower index values. According to citizens' statements regarding their actual involvement in corruptive exchanges (i.e. bribery), it can be concluded that the level of their participation in corrupt activities is low in 2014. Almost two-thirds of the population (63.1%) responded that they had no need to bribe, 17.7% had to do so in isolated cases, while only 4.1% claimed that they had to bribe in all cases of interaction with public officials. A similar proportion of statements apply for gift-giving or doing favors in return. However, if one considers any giving (in all cases, in most cases, and in isolated cases), a total of 33.5% or every third respondent was compelled to give something during their contact with officials.

Citizens somehow expect and justify corruption among public officials as a specific characteristic of the local culture

Higher pressure leads to higher involvement.

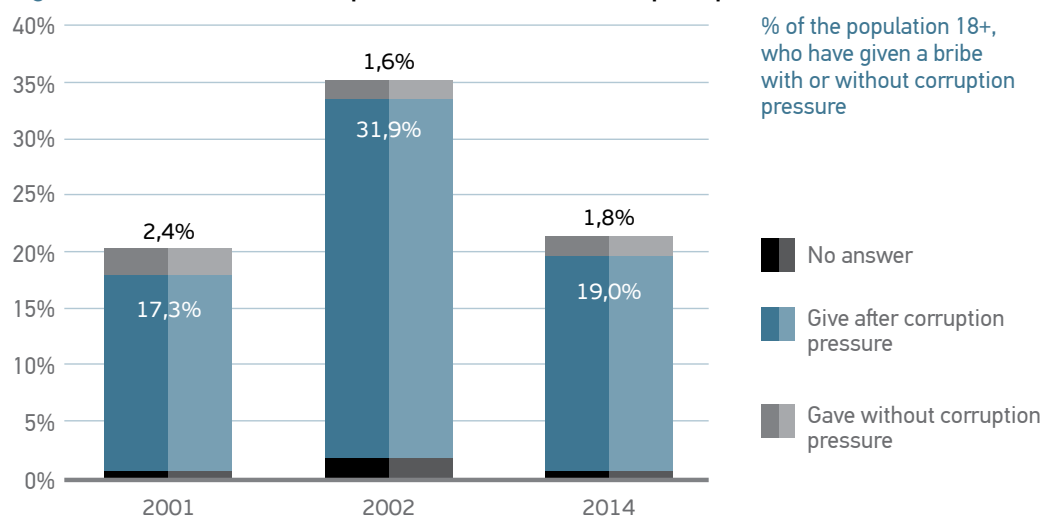
Involvement in corruption in 2014 significantly decreased compared to 2002 and remained comparable to 2001 levels. The increase in 2002 could be explained by the conflict in 2001 (the survey in 2001 was done before the conflict and it reflected more or less the behavior characteristic for 2000), which clearly led to less rule of law and heightened the feeling of impunity. The break-down of involvement by exercised pressure or not suggests a direct correlation between corruption pressure and involvement. Higher pressure leads to higher involvement. The bribery supply without pressure is limited to between 1.8% and 2.4%.

Figure 5. Experience with corruption



Source: Corruption Monitoring System, 2014

Figure 6. Involvement in corruption with or without corruption pressure



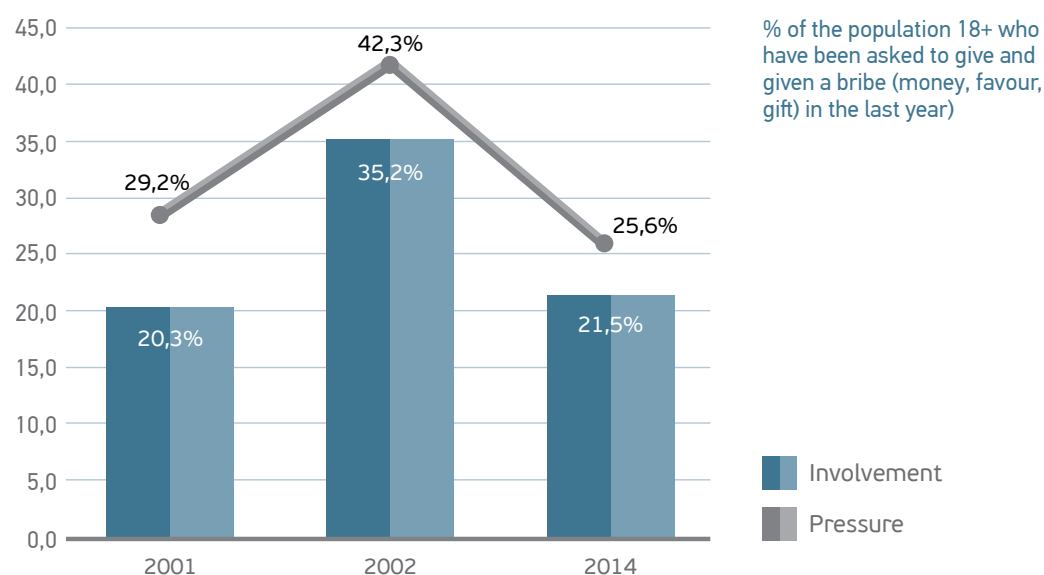
Source: Corruption Monitoring System, 2014

2.3. Corruption pressure (potential corruption)

An important characteristic for understanding the dynamics of corruption is corruption pressure, or potential corruption if all people would have given bribes if asked. This index measures the incidence of attempts by public officials to exert direct or indirect pressure on citizens in order to obtain money, gifts or favors. The pressure is accompanied by the clear demand (explicitly asked) or shown (through key phrases or signs) that the respective administrator expects something. Corruption pressure slightly increased in 2014 compared to 2002 as measured by the composite index, which looks at the share of people who were asked to pay a bribe from those who contacted the public administration. As the number of contacts were much higher

in 2002 compared to 2014, the overall experience of the population with corruption pressure declined in 2014 compared to 2002, but the pressure actually increased for those who came into contact with the administration. This shows that administrative reforms to ease the burden on citizens and contacts with the administration, such as introducing onestop shops, a simplification of administrative procedures, etc., reduce the overall corruption pressure on the population - significantly less people interacted with public authorities in 2014 (46%) compared to 2002 (79%) and 2001 (81%). This leads to a significantly lower share of people (25.6%) affected by corruption pressure compared to 2002 (43.3%). But the intensity of this pressure remained unchanged, demonstrating the need for improved and more efficient administration management, controls, and law enforcement.

Figure 7. Corruption pressure and involvement in corruption



Source: Corruption Monitoring System, 2014

Corruption pressure is of a different intensity and geography. Subject to constant pressure has been between 3% and 5%; often (in most cases) between 6% and 8%; and seldom (in isolated cases) between 9% and 10% of the population. This is significant and indicates a severe problem.

Table 2. Intensity of corruption pressure

How often?	Directly demanded cash, gift or favor	Not demanded directly, but showed that they expected cash, gift or favor
In all cases	3,0 %	4,6 %
In most of the cases	6,2 %	8,3 %
In isolated cases	8,5 %	10,3 %
In no cases	27,7 %	22,1 %
No contact in the last year	53,2 %	53,2 %
Don't know/No answer	1,4 %	1,3 %

Source: Corruption Monitoring System , 2014.

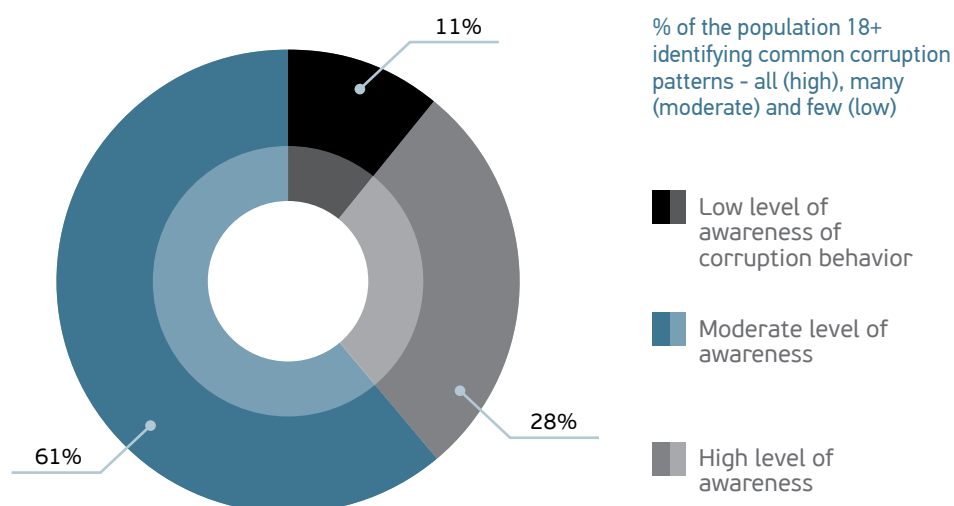
Administrative reforms to ease the burden on citizens and contacts with the administration reduce the overall corruption pressure on the population

Citizens have a high level of awareness and thus form a trustworthy source for conclusions from population surveys

3. Attitudes towards Corruption

The three major attitudes needed to understand the dynamics of corruptive behavior - acceptability, susceptibility and practical efficiency - are dependent on the awareness levels of corruption behavior and its sources among citizens, i.e. how well do citizens understand and recognize what is corruption. Data suggests that citizens have a high level of awareness and thus form a trustworthy source for conclusions from population surveys. Citizens recognize not just monetary bribery but also its other forms, as well as more complex forms of corruption, such as nepotism, clientelism, etc.

Figure 8. Awareness of common corruption patterns (2014)



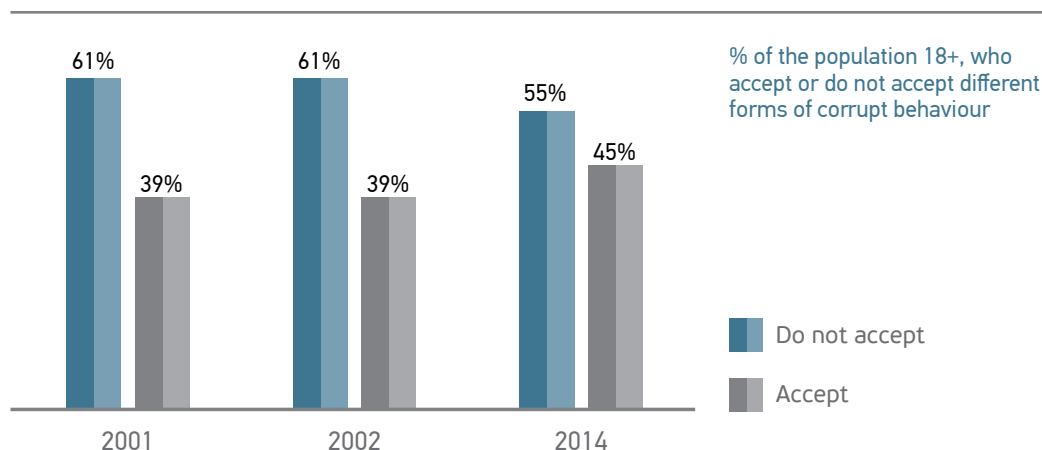
Source: Corruption Monitoring System , 2014.

3.1. Acceptability

The index of acceptability of corruption in 2014 is 2.6, which has slightly increased from 2.4 in 2002, yet it shows that the majority of citizens do not approve of corruptive behavior. The index reflects the extent to which corrupt practices or corruption is tolerated within the value system of society. It should be noted that while Macedonians do not preach ethical absolutism, their disapproval rises if money is included in the corrupt transaction. Acceptability has risen in 2014, which is consistent with the lower importance as a social problem that citizens attach to corruption.

For a small number of citizens, it is acceptable to have an interaction with Members of Parliament (MPs) and the Government, in order to solve a personal problem. Citizens are harshest about receiving cash to solve a personal problem, and 69.4% believe that it is not acceptable at all. Accepting a gift or service for half of the respondents is not acceptable at all. On the other hand, a third of respondents believe that MPs and ministers can accept a free lunch/dinner in order to solve one's problem. If all of the different forms of corruptive behavior are taken into account and control for who does not accept any form, it is 55% versus 45% who would accept at least one form of corruption (or unethical behavior). In the previous two surveys, this relation was starker, with 61% of respondents not accepting any form of corruption versus 39% who would.

Figure 9. Acceptability of corruption



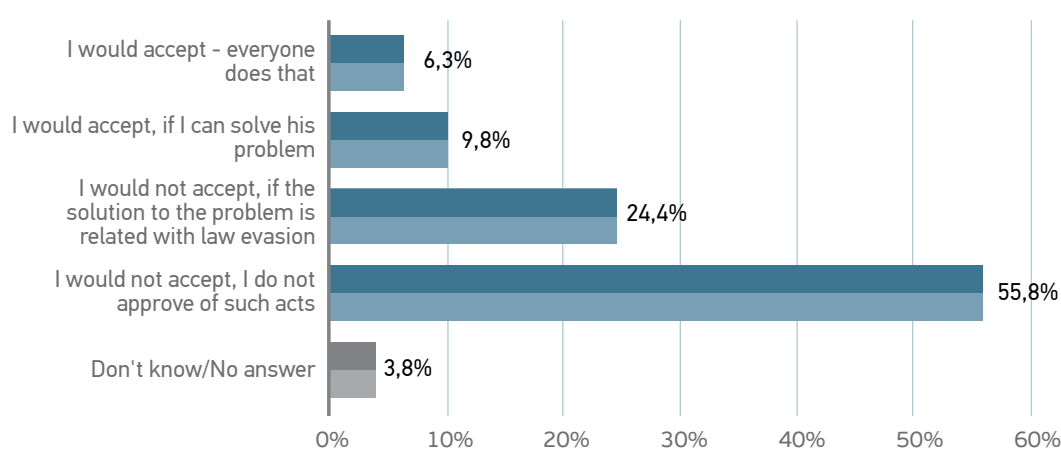
Source: Corruption Monitoring System , 2014.

3.2. Susceptibility

Susceptibility to corruption, as measured by the composite index, constantly decreases from 3.1 in 2001, 3.0 in 2002, to the index of 2.7. This index measures citizens' inclination to compromise on their values under the pressure of circumstances, i.e. when faced with real life situations, which require taking a decision on whether to use corruption or not, knowing that there will be immediate consequences for the decision-maker. This index is composed by the answers of two questions, referring to a situation of being asked to pay a bribe, give a gift or provide a service to resolve a problem; and second, a hypothetical situation of placing the respondent in the position of an underpaid civil servant, and then his/her conduct in relation to the offered money, gifts or service is assessed. When citizens found themselves in a position to be corrupt or to receive some compensation such as money, gifts or service, the majority of them (55.8%) said they would never do it because they do not justify such actions. Additionally, every fourth respondent would not accept a gift, money or service if the solution of an issue was unlawful. Justification for this act was given by 16.1% of respondents. The decline in susceptibility is a normal occurrence when incomes rise and the overall economic situation stabilizes.

When citizens found themselves in a position to be corrupt the majority of them (55.8%) said they would never do it because they do not justify such actions

Figure 10. Susceptibility to bribes (citizens)

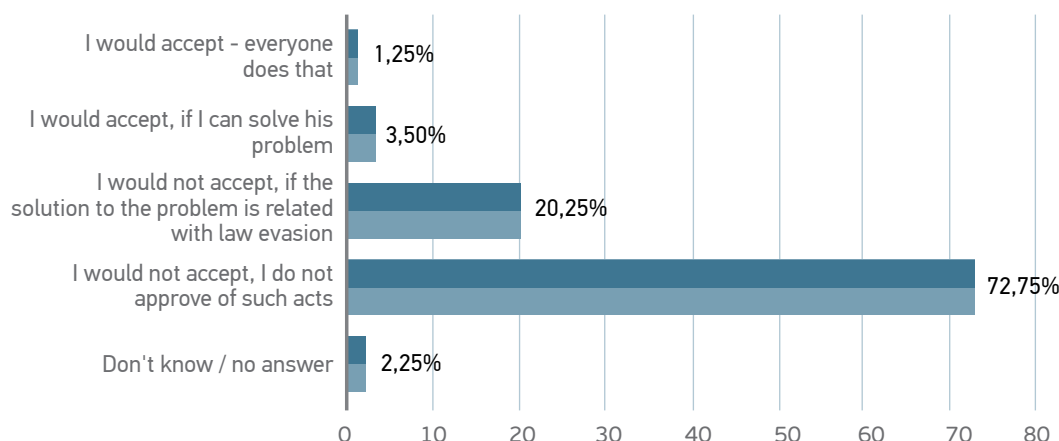


Source: Corruption Monitoring System , 2014.

Businesses have lower susceptibility to corruption pressure than citizens

Businesses have lower susceptibility to corruption pressure than citizens - 73% are strong opponents to such behavior among businesses compared to 56% from citizens. A marginal share of 1% from businesses would substantiate that behavior as a social norm ("everyone does that"), compared to slightly over 6% from citizens. There might be different interpretations as to what makes this huge difference between business people and citizens, whereby businesses have more funds and vested interests to corrupt than people in their private capacity. These would include fear to be open due to government's over-control or well-developed cronyism, which does not require bribing transactions on the spot; more efficient information processing; and ways to handle problems compared to citizens.

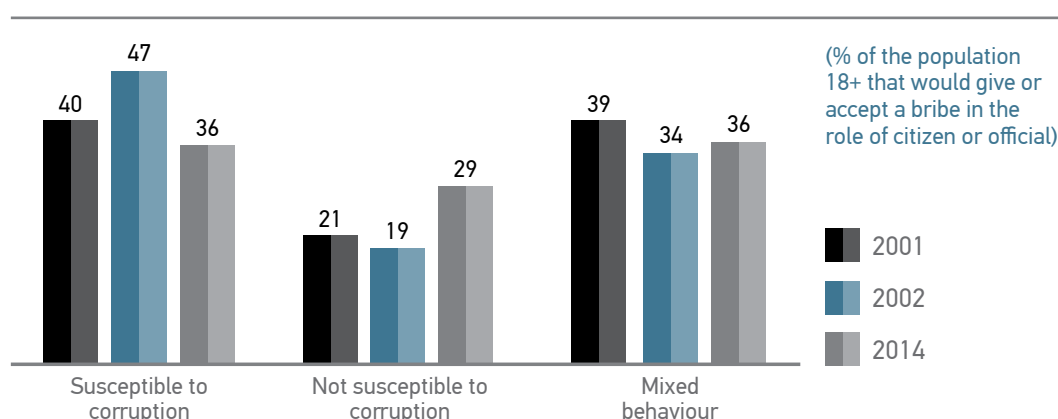
Figure 11. Susceptibility to bribes (businesses)



Source: Corruption Monitoring System , 2014.

However, if the answers from above are compared to a more real-life clash with corruption, such as if there were no other way to resolve a personal or family problem, people tend to lose their morals and become more susceptible to engagement in corruption. Just 29% (but by 10 percentage points more than in 2002) are firmly not susceptible to corruption even if there is no other way. This shows an increase in the social morals of Macedonians, which is an important prerequisite for the success of a time-corruption effort.

Figure 12. Susceptibility to corruption (citizens)

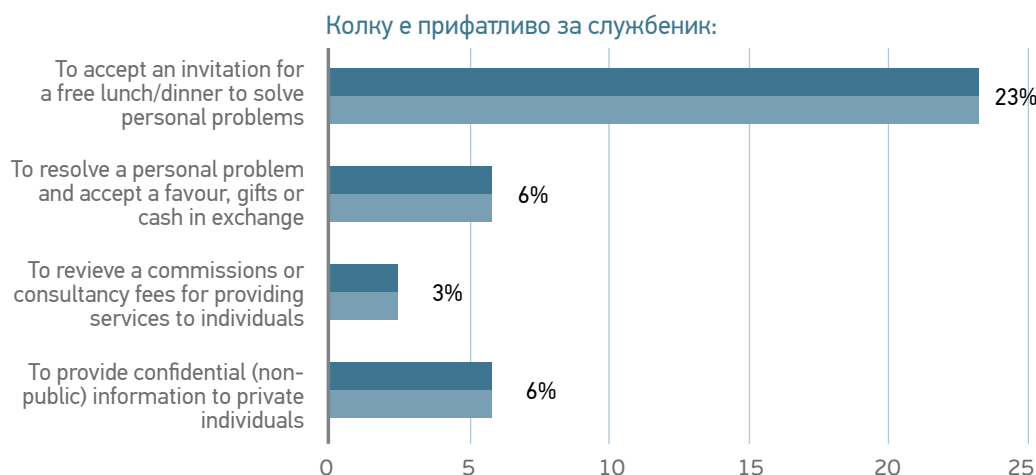


Source: Corruption Monitoring System , 2014

The share of 23% of businesses, which state that it is acceptable for a public servant to accept an invitation for a free lunch/dinner to solve a problem or to provide confidential information to private individuals (6%) and receive consultancy fees for providing services (3%), is generally in line with the provisional susceptibility (if they were in a clerk's position) from above. Yet

the real invitations are not that innocent, as they might add to the free lunch free excursions (promotional seminars) or other services that are not directly related to the main activity of the clerk

Figure 13. Susceptibility to corruption (businesses)



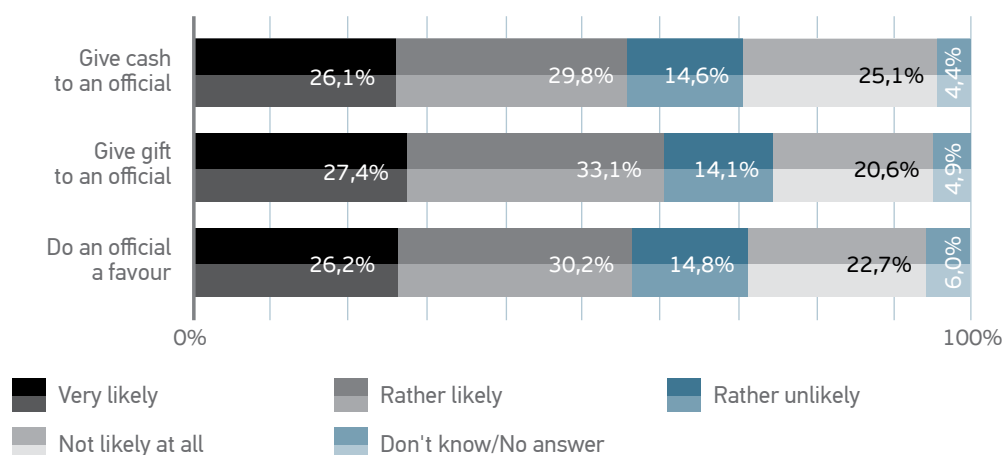
Source: Corruption Monitoring System , 2014.

3.3. Practical efficiency of corruption

Although the index for the practical efficiency of corruption is considerably high (especially compared with the other indexes) - it equals 5.3 - it decreased compared to 2001 and 2002 when it was 6 index points. The index measures to what extent respondents view corruption as an effective solution mechanism to their problems, i.e. whether corruption pays off.

The majority of citizens believe that there is a need to give money, gifts or a favor in return for solving their problems. Giving gifts (60.5%) is the most likely act that citizens believe a person should do for solving a problem, followed by doing a favor (56.4%) and giving money (55.9%).

Figure 14. Likelihood to engage in corruption



Source: Corruption Monitoring System , 2014.

The majority of citizens believe that there is a need to give money, gifts or a favor in return for solving their problems

4. Anticorruption

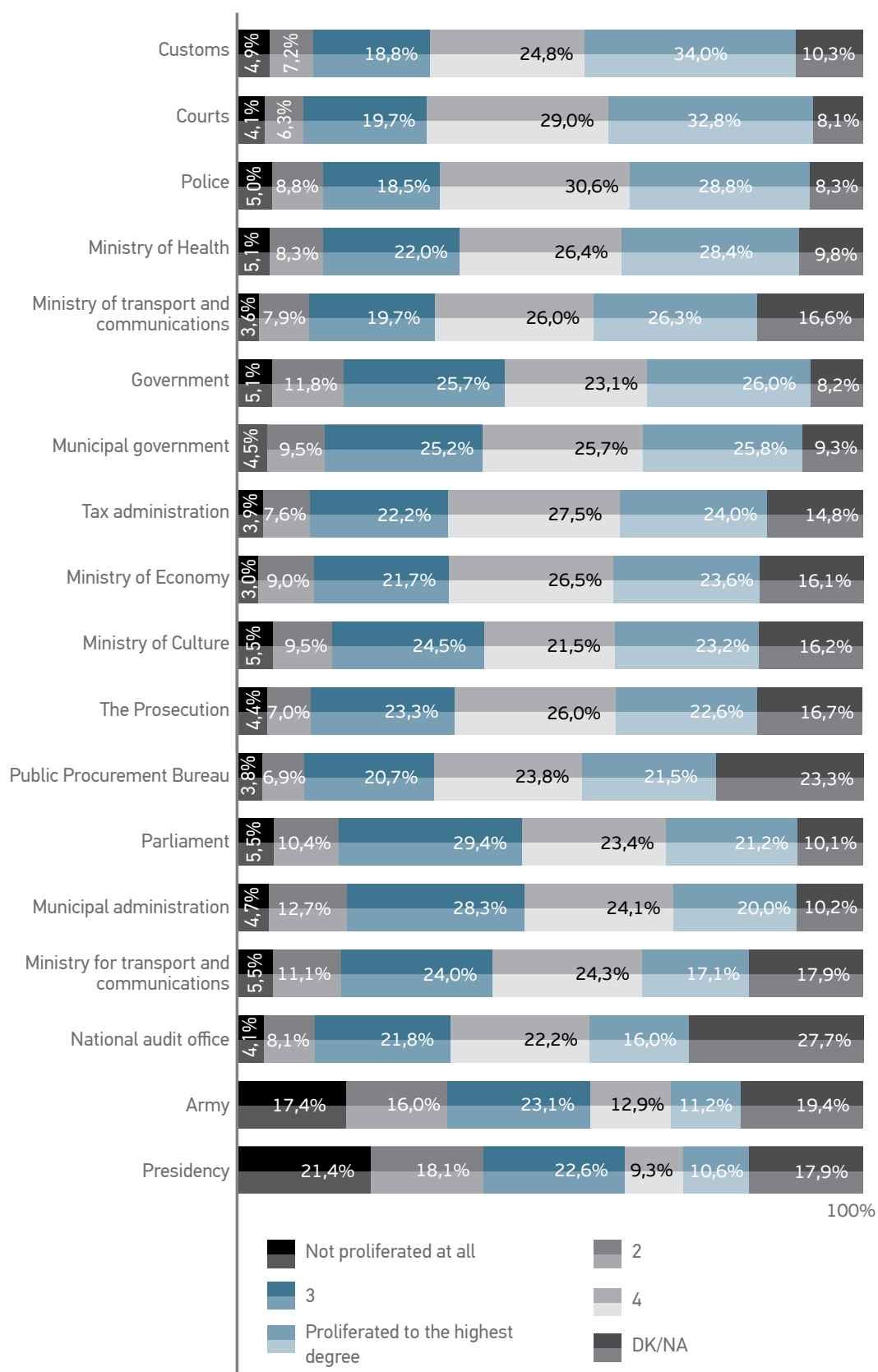
Anticorruption efforts can be measured through analyzing the corruptness of different state institutions both as perceptions of citizens and as a source of pressure, but also through the likelihood of corruption pressure and the assessment of feasibility of public policy responses to corruption. .

4.1. Corruption in state institutions

According to the respondents' perceptions, corruption is most prevalent in the Customs, Courts and Police. Following those is the Ministry of Health and the Ministry of Transport. Close to the top ranking is also the Government (as a cumulative, average image), local governments (as opposed to the central government average), and the tax office. Similarly, when asked about professions and holders of specific public positions, citizens put on top customs officers, judges, ministers, public prosecutors, tax officers, and political party leaders (not necessarily holding a public position). However, when the actual victimization is surveyed, citizens' experiences differ from their perceptions. Namely, regarding experienced corruption pressure, citizens claim that doctors, local government officials, police officials, and university professors are the most corrupt. These differences in actual victimization and perception might have to do with variations of the frequencies of interactions - naturally, citizens feel victimized by those whom they contact most often in their daily affairs. Perceptions are much more closely linked to the public image of professions, the general perception of corruption, and the higher media interest and exposure of corruption among certain professions.

According to the respondents' perceptions, corruption is most prevalent in the Customs, Courts and Police

Figure 15. Corruption in state institutions



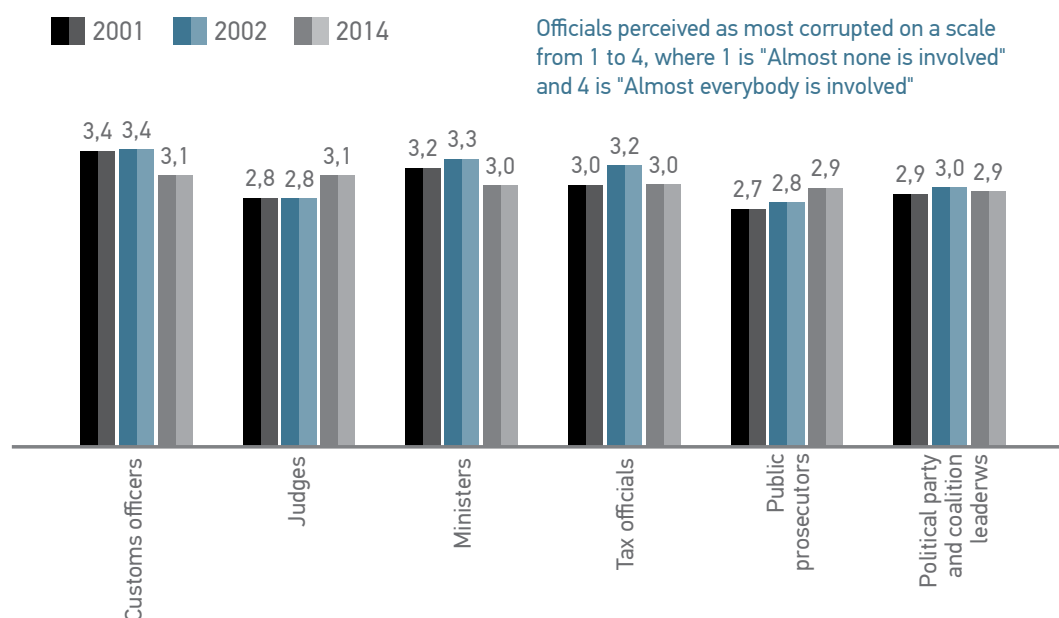
Source: Corruption Monitoring System , 2014.

A notable reputation loss comes for journalists - 0.73 index points

The dynamics of perception sends rather mixed signals to what is occurring in the public sphere. There is a general tendency of decreased corruptness perceptions of the most corrupt layer of society (and notably government institutions), and at the same time, an increase in corruptness in the least corrupt layer of society. The obvious outlier in the first group is the judiciary; only judges and public prosecutors among the most corrupt layer actually worsen their position in people's views in the past decade. In addition to that, the situation worsens for administration of the judicial system (second highest loss of reputation) and lawyers (fifth highest loss). This fact can be explained by the increased awareness of corruption, its negative social effects, and evidence that there is no adequate punishment for corruption-related crimes and fraudulent behavior leading to the visible and sizable enrichment of high-ranked officials.

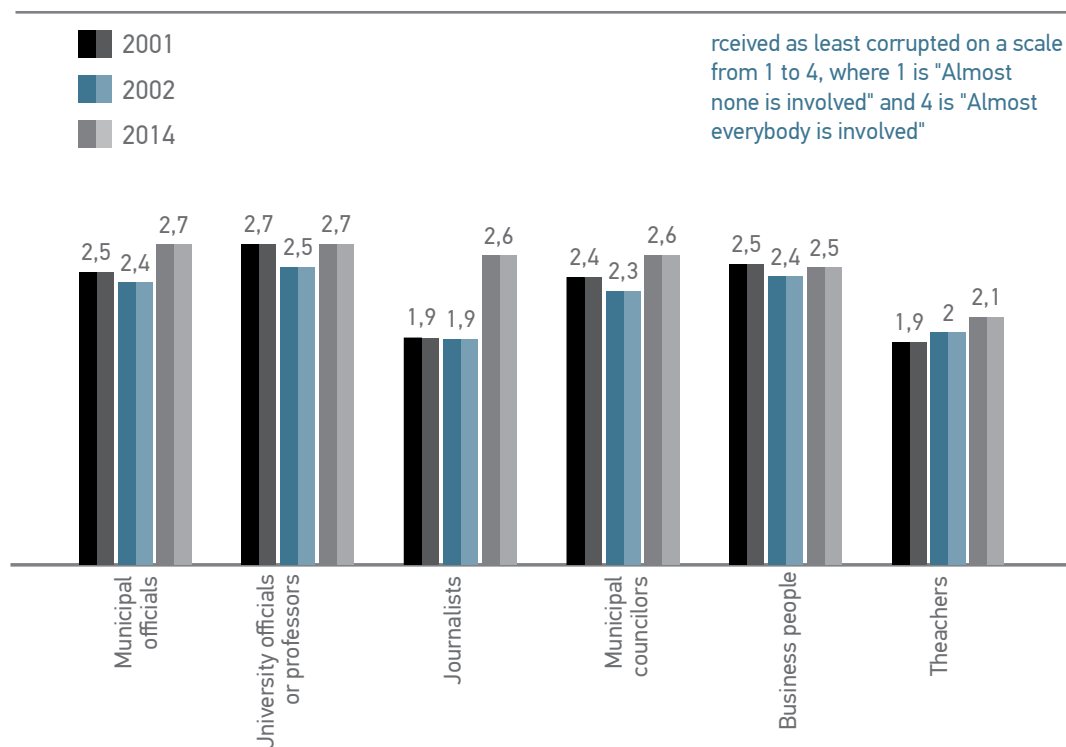
A notable reputation loss comes for journalists - 0.73 index points. Although additional studies are needed to identify if this is due to increased sensitivity to what is published (and what is not) in the media, or whether people view journalists as part of the crony loop of corrupt officials and businessmen. Still, this is a strong signal that media should take a rapid response.

Figure 16. Perceptions of corruptness according to profession – most corrupted



Source: Corruption Monitoring System , 2014.

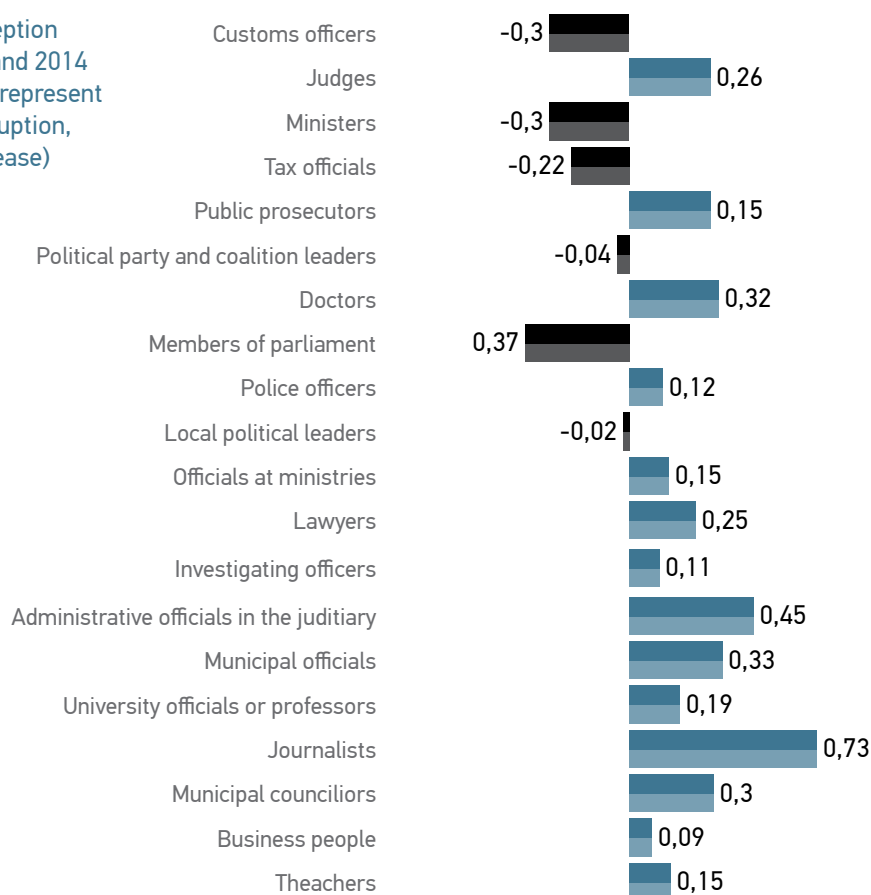
Figure 17. Perceptions of corruptness according to profession – least corrupted



Source: Corruption Monitoring System

Figure 18. Perceptions of corruptness of public officials – change in perception between 2002 and 2014.

Change in perception between 2002 and 2014 (positive values represent increase in corruption, negative - decrease)

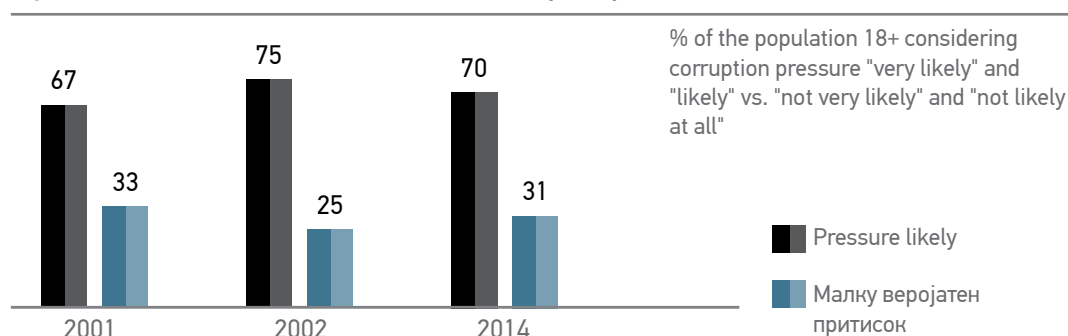


Source: Corruption Monitoring System, 2014.

4.2. Corruption/Anticorruption expectations

The last of the analyzed indexes refers to hope among citizens for tackling corruption successfully in the future. The index is high at 5.7 but registers a slight decline compared to 2002 when it was 6.1, which is a weak positive signal that Macedonians think corruption can be tackled in the future. Yet, a very high share of the population believes corruption pressure is here to stay. Another important barrier for more optimistic expectations about tackling corruption is the worsening of the reputation of the judicial system, police officers, and investigative officers – practically the entire law-enforcement system, which should be the champion in combating corruption.

Figure 19. Assessment of the likelihood of corruption pressure (%)

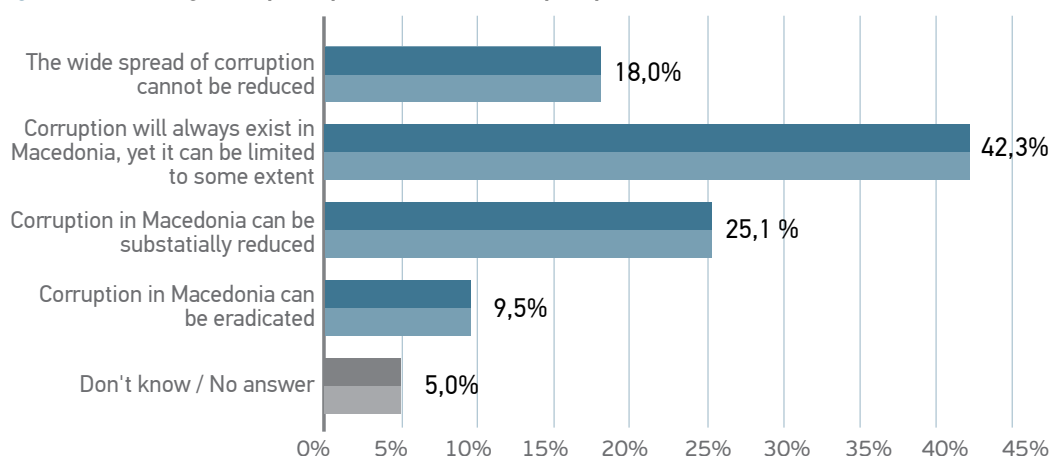


Source: Corruption Monitoring System, 2014.

Very high share of the population believes corruption pressure is here to stay

The most frequently given (and hence maybe the most realistic) response (42.3%) about the future of anticorruption measures in Macedonia is the statement that although corruption will always be present in the country, it could be limited to some extent. Data from other countries suggests that the limitation could take a form of limiting the most negative impacts of corruption, if not possible to overcome completely. Less than 10% of citizens are optimistic and believe that corruption could be fully eradicated. On the other hand, one should not neglect the opinion of 18% of citizens who believe that widespread corruption cannot be reduced at all. This pessimism is rather dangerous as it fuels higher rates of acceptance and susceptibility to corruption.

Figure 20. Curbing corruption potential (citizens' perspectives)

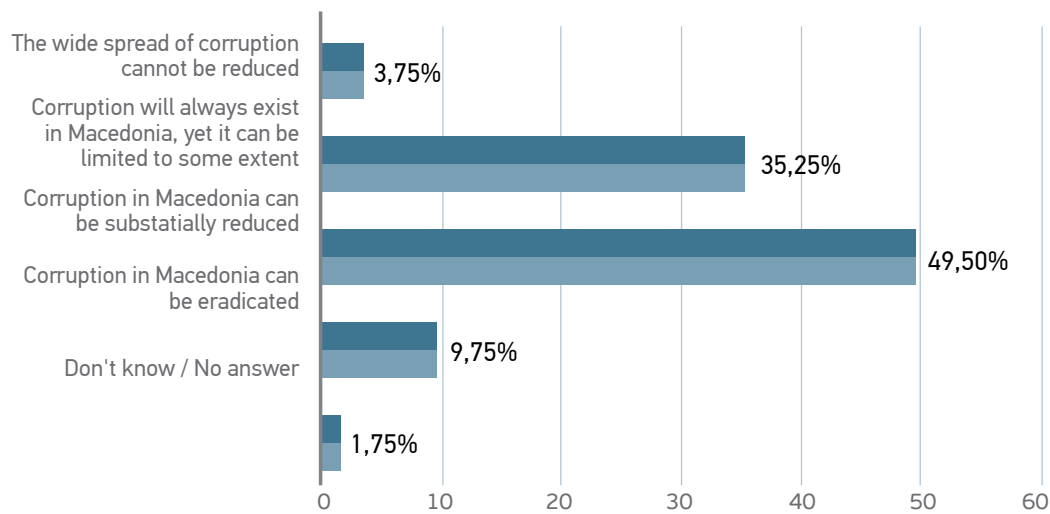


Source: Corruption Monitoring System, 2014.

More optimistic signals have come from business representatives, where the pessimism ("corruption cannot be reduced" or "it will always exist but can be limited to a degree") is significantly lower compared to citizens, and their relative optimism ("corruption can be

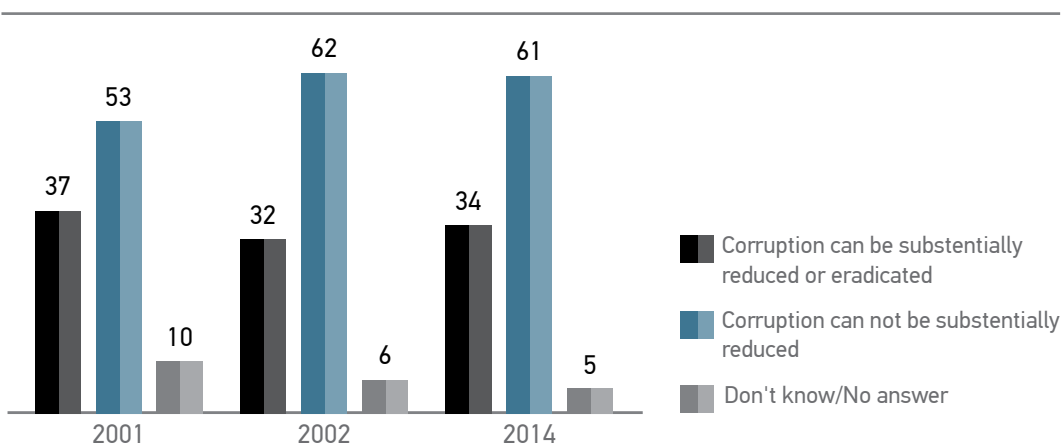
substantially reduced”) is higher compared to citizens. The real optimists among citizens and businesses are almost the same share - roughly 10%..

Figure 21. Curbing corruption potential (business perspective)



Source: Corruption Monitoring System , 2014.

Figure 22. Feasibility of policy responses to corruption (%)



Source: Corruption Monitoring System , 2014.

Conclusions and Recommendations:

Data from the CMS suggests that while Macedonia has made steady progress in corruption perceptions, the levels of corruption pressure and victimization remain similar to a decade ago. The Macedonian public does not perceive corruption among the top problems for the country, and remains prone to accepting corruption as a social norm.

Administrative reforms in the last decade and the relative economic and political stability have reduced the overall corruption pressure in the country, while citizens have become clearly more disapproving of any form of corrupt behavior. They remain, however, guarded pessimists that the future could bring much change, although they believe corruption could be contained further.

Macedonia could benefit from adopting a CMS-like system for monitoring corruption to complement and guide the country's anticorruption efforts. It would best be introduced as an annual instrument of the anticorruption commission carried out by partner CSOs. This could serve as a major reality check and a platform for public-private cooperation in anticorruption. This form of more thorough and regular monitoring of achieved progress could also be introduced for corruption risk areas such as customs control, police, etc.

Electronic services should be further encouraged, while direct contact with the administration should be discouraged. Key control agencies need to be modernized and reformed to reduce the corruption risk for citizens. Data suggest that the spotlight should be turned towards the judiciary, and its actions and capacity to counter corruption should be strengthened. At the same time, the judiciary's accountability to delivering on social expectations on anticorruption should be increased.

Anticorruption Policies and Regulatory Environment

1. National anticorruption strategies, action plans and programs

The main anticorruption policy document is the “State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest 2011-2015”, issued by the specialized anticorruption body in the country, the SCPC. As stated in the document, the program is a synergy of all past analyses, good practices and lessons learned, whose strategic goal is to establish a sustainable and complementary system for the prevention and repression of corruption.¹ The program analyses 11 different sectors (including political sector, judiciary, public administration, public sector, media, and civil society) with measures and activities foreseen for every sector. The SCPC is a coordinative body responsible for the overall implementation of the action plan of the program, together with the other relevant institutions, including CSOs, which are responsible for the monitoring of the program implementation.

Additional documents that target corruption are “Work Program of the Government of the Republic of Macedonia for the period 2011-2015”, as well as the “Strategic Plan of the Ministry of Justice for 2012-2014” and the “Strategy for Reform of Public Administration 2010-2015”, issued by the Secretariat of the Government of the Republic of Macedonia and the Ministry of Information Society and Administration. In the Work Program of the Government, the uncompromising fight against corruption and crime is identified as one of the five strategic objectives, while the fight against corruption and the prevention of conflict of interest also play a vital role in the other two documents as well.

The main anticorruption policy document is the “State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest 2011-2015”

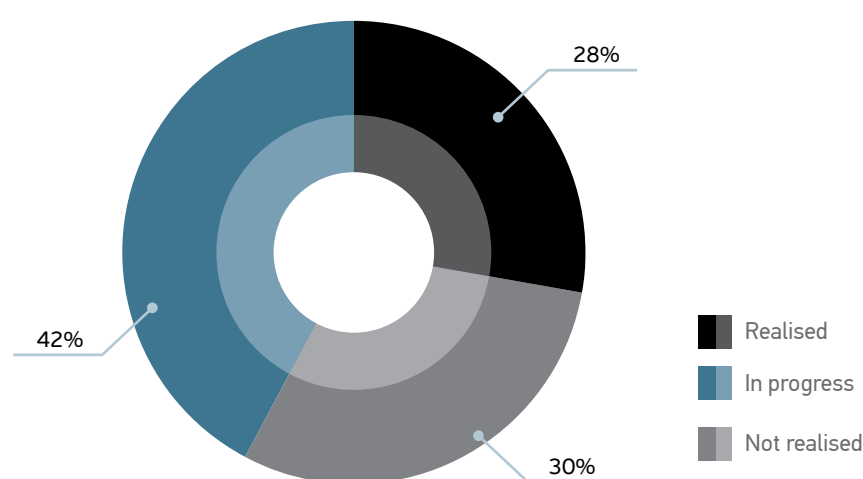
¹ State Commission for Prevention of Corruption (2011) State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest 2011-2015. Skopje, State Commission for Prevention of Corruption.

NAME OF THE DOCUMENT	RESPONSIBLE BODY
State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest 2011-2015	The State Commission for Prevention of Corruption
Work Program of the Government of the Republic of Macedonia for the period 2011-2015.	Government of the Republic of Macedonia
Strategy for Integrity and Fight against Corruption in the Custom Service in the Republic of Macedonia 2011-2014.	Customs Administration of the Republic of Macedonia
Strategic Plan of Ministry of Justice 2012-2014, Program for Fight against Corruption	Ministry of Justice
Strategy for Reform of Public Administration 2010-2015	Government of the Republic of Macedonia/Ministry of Information Society and Administration
MOI Anticorruption Program – 2014	Ministry of Interior (Mol)
Strategy for Integrity and Fight against Corruption in the Customs of Republic of Macedonia 2011-2014	Customs Administration of the Republic of Macedonia

Some of the proposed measures and activities could be substantially improved in terms of their adequacy and potential impact

The “State Program for Prevention and Repression of Corruption and Prevention and Reduction of Conflict of Interest 2011-2015”, as the main anticorruption document, was prepared in a participatory manner with the inclusion of various stakeholders (state institutions, CSOs, experts). All of the previous State Programs were prepared in a similar manner, and this inclusive process was regularly supported by the international community (UNDP, USAID, and EU). In the action plan of the current Program, 51 problems/risk areas were identified, with 156 activities for overcoming these problems/risk areas. Moreover, 220 indicators for the monitoring of the implementation of the planned activities were developed, together with 156 indicators for the monitoring of the implementation’s efficiency.

Figure 23. Implementation of the activities in the period November 2011-December 2013

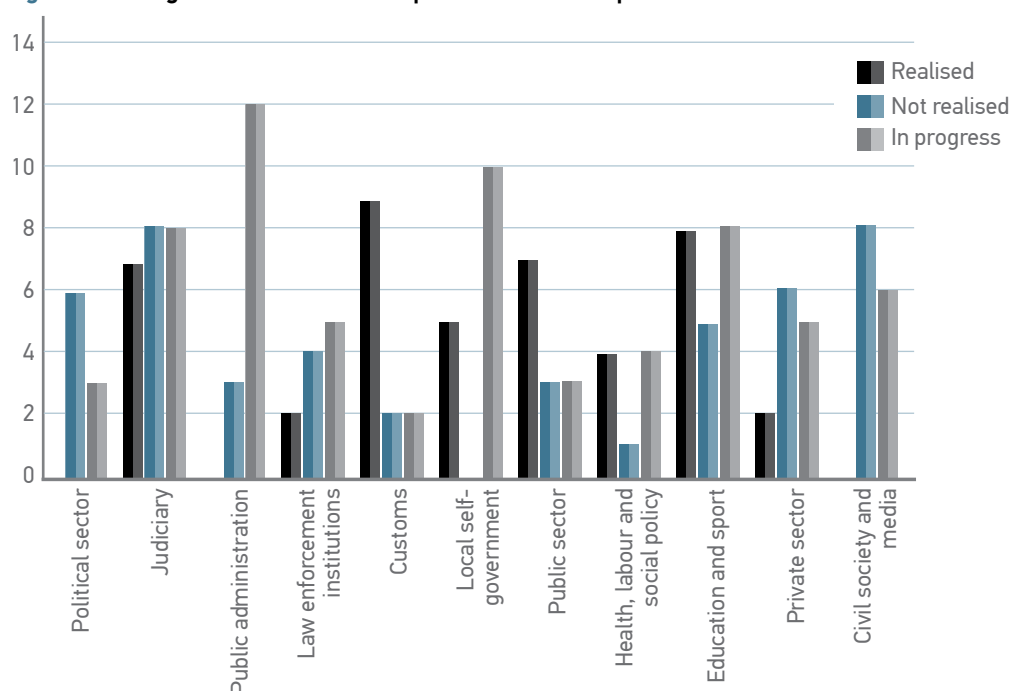


Source: Annual Report of SCPC for 2013, adapted to the needs of the CMS

Overall, the problems and the risk areas identified in the Program in most cases match actual needs. However, some of the proposed measures and activities could be substantially improved in terms of their adequacy and potential impact. This gap is most evident in sector 11 of the Program: Media and Civil Society, where the proposed measures and activities either do not

match the character of the sector, or are hardly achievable. This is visible even by a simple overview of the process of the implementation of the Program; this sector lags behind. Namely, from the monitoring conducted for the period 2011 to 2013, none of 14 planned activities for this sector were fully implemented. Only some progress was reported for six activities.

Figure 25. Progress of the activities per sector for the period 2011-2013



The Program is monitored and implemented based on clear indicators, which are easy to measure and provide the opportunity for a clear detection of underachievement of the institutions responsible for its implementation. What would make the Program stronger in the future is not only quantitative monitoring of the progress but also the regular (biannual, for example) revision of achievements and sector discussion with the involved stakeholders. Adopting more impact as opposed to output indicators in the Program, and the introduction of an independent civil society or external evaluator review, would also strengthen the credibility and sustainability of the process.

What would make the Program stronger in the future is not only quantitative monitoring of the progress but also the regular revision of achievements and sector discussion with the involved stakeholders

2. Anticorruption policies

During the last three years, several changes to national anticorruption policies were made as a result of the recommendations issued by GRECO in the four evaluation rounds. In the third evaluation round, the Republic of Macedonia had in total 13 recommendations for improvements in the areas of incrimination and transparency of party funding. According to the GRECO report², with the amendments to the Criminal Code³ introduced in April 2011, some of the recommendations were implemented.

With the amendments introduced in the period from 2011 to 2014, the Criminal Code is now harmonized with international standards. A major part of the Code is harmonized with the provisions of the Criminal Law Convention on Corruption of the Council of Europe⁴, as well as with the United Nations Convention against Corruption (UNCAC)⁵. The Criminal Code encompasses a large number of criminal offences related to corruption, which are recommended by the Convention. For instance, apart from the standard provisions concerning bribery, the Criminal Code envisages provisions to prevent trade of influence, abuse of public office, bribery in the public sector, etc. In total, the Criminal Code envisages 19 criminal acts of corruption.

Regarding the transparency of political party funding, in April 2011 the Electoral Code⁶ was amended in order to further implement GRECO's recommendations. Now there are specific obligations for election campaign organizers concerning party financial reports and reporting periods. For instance, apart from the standard provision where it was envisaged that election campaign organizers should complete financial reports covering the entire election campaign no later than 15 days after the end of the election campaign, the amendments now also envisage financial reporting during the campaign. Namely, on the eleventh day from the start of the campaign, organizers of the campaign should submit the first financial report on the income and expenditures of the election campaign, as well as bank account statements from the day they were opened until the end of the tenth day of the election campaign. Subsequently, one day before the second round of elections, they should submit the second report; and finally, after the end of the election campaign, organizers of the campaign should submit the third report for the second half of the campaign.⁷ Additionally, introduced amendments envisage that goods and services granted to election campaign organizers at discounted prices have to be accounted for at their market value, while the difference between the invoiced price and the market price should be accounted for as a donation. Finally, in January 2014, there were also a few important amendments to the Electoral Code⁸, addressing one of the most criticized issues of abuse of public resources during the time of the election campaign. The law now clearly envisages that during the time of the election campaign, political party activities should be separated from regular state (governmental or municipal) activities. Moreover, during the election campaign, it is now forbidden to start new publicly-financed projects, such as the construction of factories and roads or the opening of new facilities, funded by public money.

The Criminal Code encompasses a large number of criminal offences related to corruption, which are recommended by the Convention

2 GRECO, 2012. Third Round Evaluation Report: Compliance Report on "the former Yugoslav Republic of Macedonia". Strasbourg: Council of Europe.

3 Law on Amendments to the Criminal Code (Official Gazette No. 51/2011).

4 Criminal Law Convention on Corruption of the Council of Europe, ETS 173, Article 1-6 of its additional protocol (ETS 191) and guiding principle 2 (criminalization of corruption).

5 Law on ratification of the United Nation Convention against Corruption (Official Gazette No. 37/2007).

6 Amendments to the Electoral Code (Official Gazette No. 44/2011).

7 Ibid.

8 Amendments to the Electoral Code (Official Gazette No. 14/2014).

In November 2012, the Law on Financing Political Parties⁹ was amended with a provision which enabled transparency in financing political parties and the availability of data in the Party's Register of Donations. Political parties are obliged to publish on their websites every six months the register of received donations for the previous half-year period. Also, until April 30, they have to publish annual financial reports on their webpages. In order to increase compliance with the law, sanctions were introduced for a breach of legal obligations and deadlines to submit and publish the financial statements. The law now provides for the suspension of regular annual payments from the State Budget. The strictest sanction applies for not publishing the financial statements on the website, and that political party would be suspended for three months from receiving regular annual financing from the State Budget.

In order to increase the independence and responsibility of public prosecutors, in 2011, the Law on Council of Public Prosecutors¹⁰ was amended together with the Law on Judicial Council¹¹ so that the Minister of Justice is no longer a member of the Council of Public Prosecutors and the Judicial Council. This was in line with the recommendations from the European Union (EU) Progress Report for 2010¹².

In 2010, a new Law on Criminal Procedure¹³ was adopted, while its implementation started on December 1, 2013. The new law aims to improve the capacity to tackle complex organized crime and corruption cases by strengthening the role of the public prosecutor, establishing a judicial police, streamlining the investigation phase, and introducing new investigative techniques.

In December 2011, amendments to the Law on Public Procurement¹⁴ were introduced in order to prevent conflict of interest situations in the procedures for awarding a public procurement contract. Namely, the president, deputy president, members, and deputy members of the Public Procurement Commission, as well as other responsible persons, are obliged to sign a statement for the non-existence of conflict of interest. In the case of the existence of conflict of interest, the person shall withdraw from the work in the commission and shall be substituted by other persons.

The Minister of Justice is no longer a member of the Council of Public Prosecutors and the Judicial Council.

2.1. Specialized anticorruption law

The Law on Prevention of Corruption¹⁵ was enacted in April 2002 at the initiative of several domestic CSOs and experts, as well as by the international community. Prior to the adoption of the Law on Prevention of Corruption, there were no independent institutions for the prevention and repression of corruption. Moreover, there was no system of mutual and horizontal inter-institutional control (System for National Integrity), and there was an evident lack of engagement from civil society and the media in raising public awareness on the issue. Finally, at that time, significant portions of national legislation were not yet harmonized with international anticorruption standards.¹⁶

9 Amendments to the Law on Financing Political Parties (Official Gazette No. 142/2012).

10 Amendments to the Law on Council of Public Prosecutors (Official Gazette No. 100/2011).

11 Law on the Judicial Council (Official Gazette 60/2006).

12 European Commission (2010) EU Progress Report on Republic of Macedonia 2010. Brussels, European Commission.

13 Amendments to the Law on Criminal Procedure (Official Gazette No. 150/2010).

14 Amendments to the Law on Public Procurement (Official Gazette No. 185/2011).

15 Law on Prevention of Corruption (Official Gazette 28/2002).

16 State Commission for Prevention of Corruption (2003) State Program for Prevention and Repression of Corruption 2003-2007. Skopje, State Commission for Prevention of Corruption.

The law defines corruption as misuse of office, public authorization, official duty, and position for the purpose of gaining any benefit for oneself or others (Article 1a). The main aim of the law is to “regulate the measures and activities for prevention of corruption in the exercise of power, public authorizations, official duty and politics, measures and activities for prevention of conflict of interests, measures and activities for prevention of corruption in undertaking activities of public interest by legal entities related to execution of public authorizations, as well as measures and activities for prevention of corruption in commercial companies” (Article 1). Ten years after its implementation, the law has significantly contributed to the improvement of the legal anticorruption framework.

On the basis of this law, several other laws and strategic documents were subsequently enacted, such as the Law on Prevention of Conflict of Interest and several State Programs for Prevention and Repression of Corruption. Most importantly, the law envisaged the creation of the SCPC as an independent anticorruption body. Although, generally, the SCPC has achieved its tasks foreseen in the law, its operation so far has revealed some weaknesses, which could be tackled through respective changes in the legislation and in the SCPC mission. During the execution of its competences, it has been able to reveal only a very limited number of high corruption cases, such as the case ‘Bacilo’¹⁷. This case, as well as examples of the work of similar anticorruption bodies in Croatia and Slovenia, reveal that adding more executive powers to the commission and targeting specifically higher-level corruption cases might significantly improve its positive impact on society. Such a change would require increased independence of the SCPC from the executive power. Additionally, there are still several other open issues that need to be further addressed, such as those related to the development of systems for integrity and the procedure for the election of SCPC members based on their independence and competence.

2.2. Criminal law and procedure

Incrimination of corruption

In the Republic of Macedonia, corruption is incriminated and there are several provisions in the Criminal Code¹⁸ which set general legal constraints for corruptive behavior. Receiving and giving bribes are recognized as the most prevalent forms of corruption. However, the law recognizes several other forms of corruption-related behavior such as fraud (Article 247-250), blackmail (Article 259), extortion (Article 258), and abuse of official position and authorization (Article 353).

Both the taking and giving of bribes is forbidden, and according to Articles 357 and 358 of the Criminal Code¹⁹, can be penalized with up to 10 years imprisonment. Article 357 envisages that officials who are directly or indirectly involved in bribe-taking activities, in order to perform an official activity which should not be performed, shall be sentenced to imprisonment for four to ten years, while for officials who are engaged in bribe-taking activities in order to perform or not perform their official duty, the sanction is lower and they shall be sentenced to imprisonment for one to five years. Moreover, Article 357 envisages that the received presents or acquired property benefitted from various kinds of bribe-taking activities shall be seized. Similar provisions apply for persons who are willing to give a bribe; Article 358 envisages that everyone who directly or indirectly gives, promises or offers a gift or another personal benefit

¹⁷ More details on <http://www.akademik.mk/trial/bachilo>

¹⁸ Criminal Code (Official Gazette 37/1996).

¹⁹ Ibid.

to an official person, or benefit for another, in order for the official person to perform or not perform his/her official duty, shall be sentenced to imprisonment for one to five years. Again, the law envisages that the given present or property benefitted from the bribe-giving activity shall be seized. With the amendments to the Criminal Code²⁰ as of 2012, following GRECO recommendations, the Republic of Macedonia has annulled the provision allowing the court to decide on returning the bribe to the bribe-giver.

The Criminal Code²¹ has several provisions related to voting rights and election campaigns, including bribery during elections and voting. For instance, Article 162 envisages that everyone who offers, gives or promises a present or some other benefit to a person with a voting right, with the intention of attracting this person to perform, not perform or how to perform their voting right, should be sentenced to imprisonment for at least five years. The same sentence applies in the vice-versa situation if a person with a voting right requests for himself/herself a present or some other benefit, or who receives a present or some other benefit in order to perform, not perform or to perform their voting right in a certain manner. In regards to political party financing, Article 165a envisages that the organizer of the electoral campaign who abuses his entrusted authorization by law shall be sentenced with minimum imprisonment of five years. Also, the law envisages that all illegally obtained funds shall be seized.

Various forms of corruption

The lawmaker has also taken into consideration various forms of corruptive behavior, such as forms of clientelism, nepotism, and trade with influence. In order to support the fight against corruption, and because of the increased debate over the harmonization of the Criminal Code with international standards, several amendments to the Criminal Code were made in 2011.²² The idea behind this was to define new criminal acts, which would contribute to the fight against corruption and would also increase the measures and sanctions for the already defined criminal acts. Therefore, currently the Criminal Code in several articles has provisions on giving and accepting rewards for unlawful influence (Article 358a and Article 359). The Criminal Code was also amended with Article 253a that regulates unauthorized gift offering and accepting, while Article 358a envisages that everyone who directly or indirectly gives a reward, gift or another benefit, or promises or offers such a benefit in order to use its real or supposed influence and official or social position to intervene, motivate or in any other manner influence the performance of some official activity, shall be sentenced to imprisonment for up to three years. The reward, gift or other benefit of such an activity shall be seized. Similar provisions apply in the vice-versa situation when the person accepts a reward for unlawful influence (Article 359). Here the sanction might be imprisonment for up to five years. A novelty in the Criminal Code is the provision in Article 359a “Illicit enrichment and concealment of property”, making Macedonia one of the few countries that have implemented Article 20 of the UN Convention against Corruption on the incrimination of illicit enrichment²³, as well as Article 368a “Illegal influence on witnesses”, where paragraph 1 foresees active bribery, for which imprisonment of one to three years applies, while for the qualified form stipulated in paragraph 3, an imprisonment of ten years.

20 Amendments to the Criminal Code (Official Gazette No. 166/2012).

21 Ibid.

22 Amendments to the Criminal Code (Official Gazette No. 51/2012).

23 Article 20 of the UN Convention against Corruption – Illicit enrichment “Subject to its constitution and the fundamental principles of its legal system, each state party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.”

The lawmaker has also taken into consideration various forms of corruptive behavior, such as forms of clientelism, nepotism, and trade with influence

Anticorruption criminal processes

In regards to the degree of openness and transparency, the conclusions from the monitoring of judiciary efficiency in dealing with organized crime and corruption conducted by the coalition of CSOs “All for fair trials”²⁴ identified that there is a lack of accessible information that enables effective trial monitoring. Moreover, there is a practice of excluding the public whenever there is a presentation of evidence gathered by special investigative measures or when there is an examination of protected witness. Therefore, in their recommendations it was advised that this practice should be abandoned, because the public character of trials is an important guarantee of fairness and protection, especially against political show trials²⁵.

Viewing this from the aspect of judicial efficiency, there is a need for several organizational and other reforms in order to speed up procedures. Moreover, the possible delays caused by the absence of any of the subjects that participate in the trial should be seriously sanctioned.²⁶

2.3. Civil law and prevention of corruption

Business transactions and anticorruption

The State Program for Prevention and Repression of Corruption 2011-2015 acknowledged that although there are improvements of the legal framework in terms of harmonization with EU law, it is necessary to pay close attention to the protection of competition, support of the free market, and the implementation of good business practices towards promoting a healthy business climate in Macedonia. Special attention should be placed on further improvement of the legislation on public procurement, public-private partnerships, concessions, sponsorships and donations, because it currently is still not able to foresee and regulate every single circumstance that may arise in practice.

The current system for public procurements has been identified as one of the risk/problematic areas in the state program because it leaves room for corruption and conflict of interest. For instance, the program notes that there are non-transparent and non-standardized practices for concessions and public-private partnerships which makes the monitoring of the whole procedure very difficult, while officials who implement the procedures are often incompetent. Additionally, it has been identified that the relevant institutions still have high discretionary power over decision-making when awarding contracts. Another detected problem was the insufficient knowledge on corruption and conflict of interest in the private sector.

Until July 2014, there was no notable progress in the implementation of program activities planned in this area. Namely, from the overall 13 activities, only two were completed, while five activities are in the process of implementation and six have not even started.

There are several legal provisions which are intended to prevent potential corrupt activities in the business sector. For instance, the Law on Prevention of Corruption²⁷ provides for the prevention of corruption in commercial companies. Article 59 envisages that responsible persons in commercial and other legal entities must not use their position and receive any reward or any other benefit for themselves or for others, in order to create a monopoly status on the market or any other disturbance to the market which may cause damage to other natural

There is a lack of accessible information that enables effective trial monitoring

24 Kalajdziev, et al. (2013) Judicial Efficiency in Dealing with Organized Crime and Corruption. Skopje: Coalition 'All for fair trials' Skopje.

25 Ibid.

26 Ibid.

27 Law on Prevention of Corruption (Official Gazette Number: 28/2002).

persons or legal entities. Moreover, commercial companies or other legal entities should not establish business cooperation with another commercial company or legal entity when there is a conflict of interest. Consequently, agreements which are a result of corruption (i.e. obtaining illegal benefit for the legal entity) should be considered as null and void. The occurrence of implications for any of the previously mentioned situations are grounds for submitting a complaint by the injured party for a compensation of damages. Also, if the SCPC suspects the authenticity of the final balance sheet of some commercial company, the responsible state body should perform an inspection of the financial operations of that company. Moreover, the law envisages that there are sanctions between 1,000 and 2,000 EUR when a responsible person violates Article 59, while for the same offence, legal entities can be sanctioned with a fine between 4,000 and 5,000 EUR. Thus far, no cases have been identified where this legal provision was effectively applied.

Transactions between the public and the private sectors are mainly regulated by the Law on Public Procurement²⁸. This law is intended to ensure competition, equal treatment and non-discrimination among economic operators, transparency and integrity in the process of awarding public procurement contracts, as well as the rational and efficient utilization of public procurement resources (Article 4). The public procurement law shall apply when awarding public procurement contracts, including sector contracts and framework agreements. However, there are several exceptions for certain procurements in the field of defense (Article 6) and in cases when contracts are classified as 'state secret' by the competent bodies in accordance with regulations on classified information. (Article 7). Besides that, the law does not apply in cases of awarding public procurement contracts for a range of services listed in detail in Articles 8 and 9. Some of these are services such as arbitration, mediation, as well as notary services and the services of enforcement agents. Exemptions where the provisions of the Law on Public Procurement do not apply are services relating to employment contracts and research and development. The same applies on contracts for public procurement when the money is provided by international organizations or third parties, if they have their own public procurement conditions. These exemptions provided for in the law are mostly in compliance with international standards, however there is no independent assessment as to how consistently they are provided, as they could be abused to further corruption interests and should be under special additional supervision by the competent authorities. The current discussions for a possible change of this law are mostly directed towards the necessity for the increased independence of the Bureau for Public Procurement and the need for further definition of the possibilities for cancelation of procurement procedures.

One of GRECO's recommendations (IV) referred to bribery in the private sector, suggesting that the Criminal Code should cover all persons that in any capacity work with entities from the private sector. These recommendations are not fully implemented.

Registration of companies and insolvency

The data on company registration and insolvency can be found in the Central Registry of Macedonia (CRM), as an independent body established by the Law on Central Register²⁹. In regard to company registration, in recent years, Macedonia has made numerous reforms which intended to minimize the red tape restrictions on businesses that are not only negative for the business environment, but also increase the risk for corruption in the public sector. Other reforms were introduced for a maximum decrease of the contact between clients (citizens and firms) and state officials, in order to decrease the risk of bribery and corruption.

28 Law on Public Procurement (Official Gazette 136/2007).

29 Law on Central Register (Official Gazette 50/2001).

Macedonia has made numerous reforms which intended to minimize the red tape restrictions on businesses

According to the
Doing Business
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ease of resolving
insolvency

In 2011, the Law on One-Stop-Shop System and Keeping a Commercial Register and Register of other Legal Entities³⁰ introduced the option for the electronic registration of legal entities. Consequently, applicants can carry out all types of entry in the Commercial Register and the Register of Legal Entities without having to personally go into the registration offices of the Central Register. Among other effects, this system contributes towards decreased corruption risks because of the decrease of direct contact between clients and CRM officials. The electronic registration encompasses several services such as the electronic submission of applications for the registration of establishment, change and delete, and the electronic payment of registration fees, as well as issuing confirmations for enrollment in electronic or paper version, etc.

Additionally, in 2013, the category of registration agent was introduced. A registration agent can be any authorized accountant who meets the criteria for registration agent. The background of this measure was explained by the Government as a simplification of the entire system for registration and communication with the CRM, as well as a decrease of costs and time saving.

As a result of these and similar legal amendments and policy reforms, in 2014 Macedonia stands at the seventh position in the ranking of 189 economies on the ease of starting a business³¹. Compared to its main peers from the region (Greece, Bulgaria, Montenegro, and Croatia), it is the best and above the average for the regional average (Europe and Central Asia). The 'Doing Business' Report acknowledges that since 2005, when the Law on One-Stop-Shop System and Keeping a Commercial Register and Register of other Legal Entities was adopted, Macedonia has made a further set of reforms to shorten the time necessary for starting a business.

In regards to company insolvency, Macedonia also performs well. In 2011, the Law on Bankruptcy³² was amended in order to speed up bankruptcy procedures by shortening the deadlines, cancelling the Bankruptcy Council as a body acting on complaints, introducing the electronic appointment of a trustee, introducing the electronic sale of the property in bankruptcy proceedings, introducing provisions on bankruptcy proceedings of low-value, and the introduction of reorganization before the opening of bankruptcy proceedings and continuation of the business. Additionally, provisions for reinforcing the education of trustees were introduced.

As a result, according to the Doing Business Report 2014³³, Macedonia stood at the 52nd position in the ranking of 189 economies on the ease of resolving insolvency. The average time to close a business is 1.8 years, which is better compared to the average for the region of Europe and Central Asia (2.3 years), and slightly worse than the average for Organization for Economic Co-operation and Development (OECD) countries (1.7 years). These figures show that quite a lot was done for the restriction of various administrative burdens, which previously were a fertile ground for corruption in the administration. However, it remains to be seen how these legal reforms impact business in practice and whether they are an effective tool for the decrease in corruption risk and the overall level of corruption as such.

30 Amendments of the Law on One-Stop-Shop System and Keeping a Commercial Register of other Legal Entities (Official Gazette 17/2011).

31 World Bank (2014) Doing Business 2014: Macedonia FYR. World Bank.

32 Law on Bankruptcy (Official Gazette 34/2006).

33 World Bank (2014) Doing Business 2014: Macedonia FYR. World Bank.

Impartiality of the court and speed of proceedings

The Constitution and all relevant laws emphasize the independence of the courts. According to the Law on Courts³⁴, the Basic Court Skopje I - Skopje is the specialized court competent for trying organized crime and corruption cases for the entire territory of Macedonia (Article 32). In the Law on Courts, it is envisaged that judges should decide impartially by applying the law on the basis of the free evaluation of evidence and that any form of influence on the independence, impartiality and autonomy of the judge in the exercise of the judicial office on any grounds and by any entity shall be prohibited (Article 11). Additional provisions which should guarantee impartiality can be found in Article 52, where there are restrictions on the activities of judges outside of their judicial offices; they should not be MPs or members of municipal councils, and they cannot hold public office or be part of a managing or supervisory board of legal entities which are established for profit purposes.

The Law on the Judicial Council³⁵ envisages that the Judicial Council shall ensure and guarantee the autonomy and independence of the judicial authority, through performing its function in accordance with the Constitution and the laws (Article 2), and that it should, through its work, prevent possible political influence in the judiciary (Article 3). After several recommendations and advocacy actions from domestic CSOs and experts, as well as recommendations from the international community, especially those mentioned in the European Commission (EC) Progress Report (2010), in 2011 this law was amended together with the Law on the Council of Public Prosecutors with the intention to limit the possible interference of the executive power of the Minister of Justice. Prior to the amendments, the Minister of Justice was a full member of the Judicial Council and the Council of Public Prosecutors, while currently, after the amendments, the minister is not a member of the Council of Public Prosecutors and is only a member of the Judicial Council without the right to vote.

Although the positive legal framework and the institutions are well-established in legal texts, the biggest problem remains the independence and impartiality of judges in practice. The key necessity in this relation is to increase the transparency and impartiality of the procedures for the selection of judges. Recently, important measures for addressing this issue were undertaken, especially within the Academy for Judges and Public Prosecutors. .

Although the positive legal framework and the institutions are well-established in legal texts, the biggest problem remains the independence and impartiality of judges in practice

2.4. Other legal instruments intended to combat corruption

Whistleblower protection

The existing legislation sets some provisions for whistleblower protection, incorporated in Articles 4 and 19 of the Law on Prevention of Corruption. At the time of writing this text (September 2014), there are (still) no provisions, which guarantee direct and comprehensive protection for whistleblowers.

In the Law on Prevention of Corruption³⁶, there are several provisions for indirect whistleblower protection. For instance, under the Principle of Equality, Article 4 envisages that “everyone, without suffering any consequences, shall have the right to prevent or to report an action which represents a misuse of office, public authorizations, official duty and position and serves for achievement of personal benefits or causes damage to others”. Also, the law envisages protection for persons who work in bodies for the detection and repression of corruption, who

34 Law on Courts (Official Gazette 58/2006).

35 Law on the Judicial Council (Official Gazette 60/2006).

36 Law on Prevention of Corruption (Official Gazette Number: 28/2002).

should have full independence for the purpose of the efficient execution of their authorizations and duties (Article 20).

The law also provides indirect support in the following provisions under the Principles of Publicity (Article 5) and Liability (Article 5a), as well as in the sections on Relief of the Obligation to Keep Classified Information (Article 18), Protection of Collaborators to Justice and Witnesses (Article 19), Protection of Public Media (Article 56), Abuse of Public Media (Article 57) and Financial Mismanagement (Article 58).

Besides these provisions, which partially protect whistleblowers, there is an evident lack of more precise provisions, which would increase legal protection for whistleblowers. Evidence for this can be found in several consecutive EC Progress Reports, where it was stated that “effective whistle-blowing mechanisms in the public and private sectors have yet to be established”³⁷. In the current State Program for Prevention and Repression of Corruption of the SCPC, this gap was identified as one of the several main problems which need to be addressed in the period of the implementation of the program (2011-2015). Accordingly, the Ministry of Justice prepared amendments to the Law on Prevention of Corruption. The proposed amendments³⁸ aim to establish direct legal protection for whistleblowers and a national system of integrity. However, after several interventions of CSOs, mostly from Transparency International Macedonia, the draft amendments were withdrawn after the first reading in the Parliament. .

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Conflict of interest

Conflict of interest is an issue closely related to corruption, especially in small countries such as Macedonia where this is one of the biggest challenges. Therefore, in order to pay special attention to this phenomenon, in 2007 a Law on Prevention of Conflict of Interests³⁹ was enacted, independently of the Law on Prevention of Corruption.

The Law on Prevention of Corruption⁴⁰ still sets certain provisions aimed at the prevention of conflict of interest, such as Articles 40 to 46 envisaging possible cases of unlawful requests of superiors (Article 40) and omissions to report criminal action (Article 41); prohibitions against exerting influence over others (Article 42); exercise of discretionary authorizations (Article 43); offer for bribery (Article 44); procedure in case of charges of corruption (Article 45); and annulment of legal documents and compensation of damage (Article 46).

In the Law on Prevention of Conflict of Interests, conflict of interest is defined as a “conflict between the public authorizations and duties with the private interests of the official, where the official has a private interest which impacts or can impact on the performance of his/her public authorizations and duties” (Article 3, line 1). The aim of this law is to prevent abuse of public authorizations and duties by officials committed for self-interest or the interest of affiliated persons and to ensure the prevention of the possibility of jeopardizing the public interest by the private interests of officials. In Article 3, line 2, the public officials which fall under the scope of this law are clearly enumerated. The SCPC is competent for the application of this law (Article 1).

37 European Commission (2012) EU Progress Report for Macedonia for 2012. Brussels, European Commission.

38

39 Law on Prevention of Conflict of Interests (Official Gazette Number: 70/2007).

40 Law on Prevention of Corruption (Official Gazette Number: 28/2002).

The law⁴¹ envisages that officials, while performing their public authorizations and duties, cannot be driven by personal, family, religious, political or ethnical interests, pressures or promises from their superiors (Article 5, line 1). Moreover, they must not:

- Accept or request benefits in return for performing his/her duties;
- Exercise or acquire rights by violating the principle of equality before the law;
- Abuse the rights arising from the performance of the authorizations;
- Accept awards or other benefits in return for performing the activities related to the public authorizations and duties;
- Require or accept awards or services in order to vote or not vote or to influence the adoption of a decision by a body or person, so as to gain benefits for himself/herself or benefits for his/her closely affiliated persons;
- Promise employment or exercise of any other rights by accepting a gift or a promise for a gift; or to
- Influence the public procurement decision making process.

Besides the general provisions and provisions on proceedings in case of conflict of interest, the law envisages the following provisions on: the possible exceptions (Articles 12 to 14); prohibitions on accepting gifts (Article 15 and 16); limitations after leaving the duty (Article 17); membership in governing and supervisory bodies (Articles 18 and 19); prevention of conflicts of interest during activity in citizens' associations and foundations (Article 20); statements of interest (Article 20a to 20e); as well as the competences and procedures of the SCPC (Articles 21 to 24). The final provisions are those on the obligation of notifying the public on cases of conflict of interests (Articles 30 and 31) and the misdemeanor provisions (Article 31a and 31b).

Particular attention provoked the provisions on the prevention of conflict of interest during activity in citizens' associations and foundations. The first version of the law (Article 20, line 2) stipulated that an official who is a member of a citizens' association cannot be a member of the governing bodies, nor have any other managing function in the association. However, the Constitutional Court of Macedonia repealed Line 2 from Article 20, giving the explanation that the existing solution is not in accordance with the Constitution, precisely with Article 8 concerning the rule of law as a fundamental value of the constitutional order and with Article 20 referring to the guarantees of freedom of association and citizens' free access to associations.⁴²

With this decision of the Constitutional Court, freedom of association was protected, which enabled public officials to keep their managing functions in the associations and foundations. Since both laws (Law on Associations and Foundations and Law on Prevention of Conflict of Interests) have provisions for the concept of conflict of interest, this means that systematically this issue is addressed for all citizens who are members of CSOs. Any further regulation only for the category of citizens who are members of the governance and executive bodies of CSOs do not have the constitutional justification and guarantee that conflict of interest would be prevented. In our opinion, additional measures for the protection of conflict of interest would be achieved in exceptional situations of conflict of interest when the public official and organization may be excluded from decision-making and further influence to it. The measures of *ex ante* control of this issue should be substituted with *ex post* control, while in the case of possible misuse, clear sanctions should be prescribed. Only in that way would freedom of assembly remain protected, while possible abuses by the public official would be prohibited, so that citizens' associations and the civic sector in general is not used for 'cheating' the laws. The

41 Ibid.

42 Constitutional Court Decision no. 142/2007 (Official Gazette 3/2008).

The SCPC, as the relevant institution for the implementation of the Law on Prevention of Conflict of Interests, has resolved 447 cases in the last three years related to possible conflict of interest and identified 198 cases (44% of the total) where conflict of interest existed

SCPC, as the relevant institution for the implementation of the Law on Prevention of Conflict of Interests, has resolved 447 cases in the last three years related to possible conflict of interest and identified 198 cases (44% of the total) where conflict of interest existed. Additionally, in 28 of those 198 cases, a 'public warning' was issued for officials who did not give up one of the two functions simultaneously performed.

Table 3. Overview of cases related to conflict of interest (2011-2013)

	2011	2012	2013
Number of resolved cases	128	123	196
Number of cases where conflict of interest was identified	37	29	132
Number of cases where public warning was issued	8	5	15

Source: Annual Report of the SCPC for 2013, adapted to the CMS needs

The conflict of interest issue is often discussed in public, and frequently abuses are pointed out. The most recent case that has corruptive elements (bribing journalists) was the case 'Visaris', whereby the Ministry of Health made a procurement agreement for the purchase of medical equipment with a firm whose owner is the mother of a well-known editor-in-chief of a daily newspaper and a national TV station. At the same time, both the daily newspaper and the national TV station are perceived as close to the government. The case was revealed by the opposition party Social Democratic Alliance of Macedonia (SDSM) and resulted in the announcement of the cancellation of the procurement contract by the Ministry of Health, as well as the withdrawal of a journalist from her position in one of the two media outlets. Very often in such cases, authorities dissociate themselves from responsibility; the minister did not resign, and the only consequence was the formal but not de-facto withdrawal and superficial 'sacrificing' of the journalist.

Box 1:

Member of legislative power acts as advisor in executive power

During 2014, one of the most obvious examples of conflict of interest was the appointment of an MP as an advisor to the Minister of Defense for a monthly remuneration of 30,000 MKD (approximately 500 Euro). In this case, the conflict of interest was detected in the fact that the MP had put her financial benefit before the public benefit, understood as parliamentary control (as MP) of the work of the executive branch.

Source: Transparency Macedonia, adapted to the CMS needs

The Law on Public Procurement⁴³ in Article 62 envisages that in the procedures for awarding public procurement contracts, the Law on Prevention of Conflict of Interests applies, and that in the procedures for awarding a public procurement contract, members of the public procurement commission, as well as the responsible person shall sign a statement for non-existence of conflict of interest, which should be part of the dossier for the implemented procedure. In a case of conflict of interest with the president, the deputy, the members and their deputies in

⁴³ Law on Public Procurement (Official Gazette 136/2007).

the public procurement commission, or the responsible person, the same shall withdraw from the work in the commission and shall be substituted by other persons. Article 63 envisages that when implementing the public procurement contract, the contractor cannot hire persons involved in the evaluation of tenders submitted in the respective procedures for awarding a public procurement contract. If this proves to be the case, the public procurement contract shall be considered null and void.

In regard to the possible conflict of interest in performing lobbying activities, the Law on Lobbying⁴⁴ envisages that the elected and appointed persons, who professionally perform functions determined by law in the legislative, executive and local authorities, are not allowed to carry out lobbying during their mandate and upon the expiry of one year from the end of their public duty (Article 9). Finally, lobbyists are obliged to act in accordance with the regulations referring to the prevention of conflict of interest and prevention of corruption (Article 20), while supervision over lobbying falls under the competence of the SCPC (Article 24). The adoption of the Law on Lobbying was criticized by CSOs, which considered that it limits their scope of work and restricts their access to decision-makers. They emphasized that continental legal systems such as in Macedonia are significantly different than Anglo-Saxon legal systems, and that the law would not decrease corruption and conflict of interest but would rather be used to fend off their public benefit work. These concerns seem to have been fully proven, because even after seven years of the enactment of the law (since August 2008), there is only one single lobbyist registered.

44 Law on Lobbying, (Official Gazette 106/2008).

Conclusions and Recommendations:

In general, Macedonia has a fairly well-developed and detailed legal framework for anticorruption. The domestic legislation encompasses most of the recommended international standards and best practices for anticorruption and the prevention of conflict of interest. Moreover, the Macedonian government has more than ten years of a track record of adopting and implementing programs for the prevention and repression of corruption and conflict of interest. While these programs have been seen as appropriately defining most of the core problems, they have not always provided the most appropriate measures for addressing these problems and risk areas. The main challenge for the national anticorruption policies and regulatory environment remains its insufficient implementation in practice. An additional challenge, which aggravates the problems of the implementation of legal norms, is the speed of change in the body of legal texts, which often is used as an argument by the judiciary and the public administration to claim the need for additional time to demonstrate results.

Future national anticorruption efforts need to be defined primarily as comprehensive policies and plans of action with measurable indicators and regular monitoring and evaluation, and not only as amendments to legislation, which are easy to tick off as achievements but difficult to implement in practice. The national anticorruption policy documents such as the state programs for the prevention of corruption need to feature more specific description of the targets and impacts which need to be reached, as well as more appropriate measures and activities that would lead to their achievement. There is a need to prioritize certain sectors, types of corruption or corruption risks, and methods of intervention on a biannual basis for example, which would enable a more efficient and impactful solution of the problems.

It is necessary that the institutions to which the measures of state anticorruption programs apply to develop special plans for the implementation of these measures, so that money from the national budget could be provided. In this way, anticorruption policies would not be understood only as declarative with no effect in improving the anticorruption environment and increasing the fight against corruption.

Although there are indicators for the monitoring of the progress of implementation of the state programs for the prevention of corruption, there is still a lack of a sustainable and coherent mechanism for the independent assessment of corruption risks for the country and the efficiency of anticorruption measures. The establishment of such a system would require:

- Precise and regularly-published statistical data for anticorruption efforts (investigations, initiated proceedings, administrative measures, etc.);
- Regular monitoring and analysis of the spread and forms of corruption in different public sectors by different independent entities and through formal evaluation procedures; and
- Definition of a set of indicators based on government statistics but also victimization surveys, and policy implementation monitoring⁴⁵.

The efficiency of anticorruption policies, among other ways could be monitored through different indicators such as:

- Number of initiated initiatives for draft laws and policies on anticorruption against the number of accepted draft laws (amendments) and policies;

⁴⁵ As an example of a comprehensive system of indicators for assessing corruption policies, see: Center for the Study of Democracy (2008) Monitoring Anticorruption Policies in Bulgaria. Sofia, Center for the Study of Democracy.

- Amount of budget funds earmarked for the implementation of anticorruption policies;
- Number of initiated, completed, suspended and cancelled corruption investigations, as well as the number of convicted persons and the number of convictions; and
- Finally, anticorruption policies could be evaluated through the number of judgments and acquittal verdicts and through the types and severity of the sanctions of corruption cases.

Institutional Practice and Enforcement of the Law

1. Specialized anticorruption institutions

At the central governmental level, the SCPC functions as a specialized independent anticorruption institution. The Commission is composed of seven members, elected by the Parliament with absolute majority for a four-year mandate and with a right to a maximum of two terms. The SCPC¹ has powers in regards to:

- **Policy making** - adopts the State Program for Prevention and Repression of Corruption and the Action Plan for its implementation; adopts annual programs and plans its work; prepares opinions on draft laws relevant for the prevention of corruption;
- **Monitoring and oversight** - proposes initiatives with competent bodies for conducting control of the financial and material operation of political parties, the union and citizens' associations and foundations; proposes initiatives for instituting a procedure before competent bodies for the dismissal, assignment, removal or undertaking other measures of liability against elected or appointed functionaries, officials or responsible persons in public enterprises or other legal entities disposing of state assets; proposes initiatives for criminal prosecution against elected or appointed functionaries, officials or responsible persons in public enterprises, public institutions and other legal entities disposing of state assets; acts in cases of conflicts of public and private interest, defined by law; registers and monitors the assets and the change in assets of elected and appointed functionaries and responsible persons in public enterprises and other legal entities disposing of state assets, in the manner defined by law;
- **Cooperation** - cooperates with other state bodies regarding the repression of corruption as well as with corresponding national bodies of other states and with international organizations in the field of the repression of corruption; and

The Commission is composed of seven members, elected by the Parliament

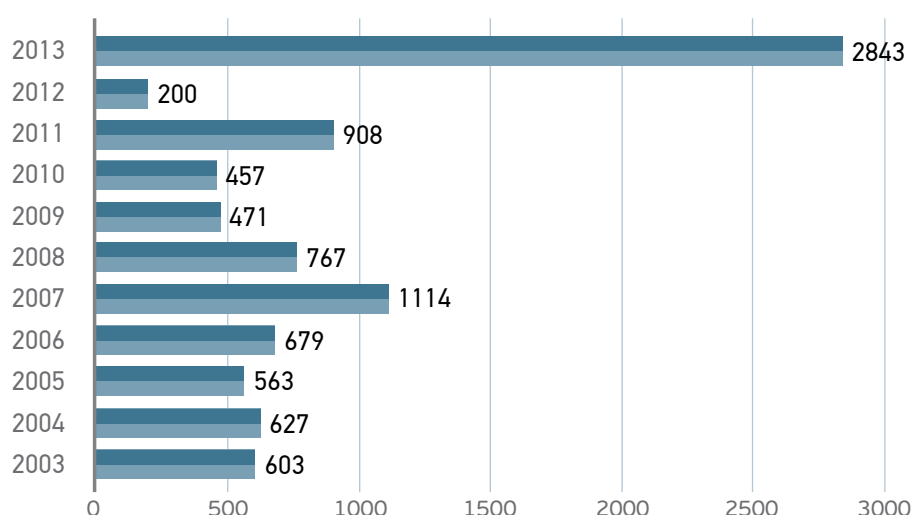
¹ Law on Prevention of Corruption (Official Gazette 28/2002).

- **Education and information** - undertakes activities related to the education of bodies competent for discovering and prosecuting acts of corruption and other types of criminal behavior; informs the public about the measures and activities undertaken and about their results.

The SCPC submits an annual report on its work to the Parliament, which is then discussed and put to a vote in a plenary session in the Parliament.

Based on the received number of appeals by citizens to the SCPC, citizens' trust in the institution has become very volatile after 2007. The number of appeals in regards to corruption that citizens filed to the SCPC has been approximately 600 annually in the first four years of its existence. Then the number almost halved in 2007. In 2012, only 200 appeals were recorded, while in 2011 and 2013, the numbers increased steeply to 908 and 2,843 respectively. Both of these were election years and more than two-thirds of the appeals were related to the elections.

Figure 25. Number of appeals on possible corruption submitted to the SCPC by citizens and legal entities



Based on the received number of appeals by citizens to the SCPC, citizens' trust in the institution has become very volatile after 2007

At some point in its work, the SCPC was largely present in the public, which created the perception among citizens that it was one of the key anticorruption actors. One indicator of that was the study on the trust in institutions and civil society in 2010.² When citizens were asked to mention one CSO that makes the largest contribution in the fight against corruption, most citizens named the SCPC as such an organization, although it is a state institution and not a CSO. However, only three years later, in a similar survey, the SCPC was no longer recognized as the entity that contributed the most to the fight against corruption. Another public opinion survey, conducted by the International Republican Institute (IRI) in May 2014, presented similar findings. On the question regarding citizens' trust in 15 different institutions, the SCPC was among the institutions with lower trust. In total, 42% of respondents declared distrust towards the SCPC. Less trusted institutions were only the trade unions and the courts, with declared distrust of 48% and 44% respectively.³ On the other hand, according to several surveys conducted during 2013 by the agency "Rating", citizens viewed the SCPC as the lead anticorruption institution which could most efficiently fight corruption. Citizens believe that the SCPC has the main role in combating corruption in sectors such as the media, civil society and education, and that it is among the lead actors that combat corruption in the political and

² Klekovski S., Nuredinoska E., Stojanova D. (2010). Trust in Macedonia. Skopje: Macedonian Center for International Cooperation.

³ International Republican Institute (2014), Public Opinion Survey Residents of Macedonia, May 23-29, 2014 and February 18-24, 2014.

private sectors. In the two latter cases, the SCPC was put in the company of whistleblowers, media, police and judiciary as the main anticorruption institutions.⁴ Although the results from the different public opinion surveys should be interpreted with care, they seem to suggest that the SCPC is indeed recognized by Macedonian citizens as the key anticorruption institution, but that its role is little understood and hence trust in the institution has declined.

Despite the strengthening of the administrative and technical capacity of the SCPC throughout the past decade, the commission has been visibly weakened in terms of political independence, proactive approach, and public presence. The legal stipulations, which allow the commission members to apply for a second term, create direct dependence from the parliamentary majority, which might naturally create bias towards the governing majority.

In addition, there has been criticism from several experts and CSOs based on different interpretations, understanding and expectations regarding the public availability of the asset and interest declarations of SCPC members. According to Article 50a of the Law on Prevention of Corruption, SCPC members should submit their declarations to the Committee on Election and Appointment Issues in the Macedonian Parliament and to the PRO. However, although SCPC commissioners fulfill this duty, these declarations are not public, which makes the probability of undue political influence event higher.

If the SCPC is to fully meet its competences and public expectations for its anticorruption role, its budget should be increased. While it is clear that the Macedonian state budget has very limited resources, and that there are many other underfunded services, if the government is to prioritize countering corruption, then additional budgetary resources should be provided. In 2013, the SCPC had a budget of 359,455 EUR (22,282,000 MKD) and functioned with 18 employees in the Secretariat.⁵ This implies that in 2013, for example, each employee had only three days to tackle each received appeal, which seems quite a stretch. Despite the received criticism, it should be noted that overall, the Secretariat of the SCPC, which provides expert, administrative and technical services to the commission, has sufficient quality expert capacity and knowledge for fulfilling its responsibilities.

2. Anticorruption mechanisms in the law-making processes

The Parliament does not have a specialized anticorruption committee. A Commission of Inquiry (CI) could be established in the Parliament if 20 of the overall 123 MPs raise an issue to determine the liability for corruption involving elected or appointed officials. Such a CI would have the authority to demand the submission of all documents or materials which might be relevant for the case of inquiry from any relevant legal entity or responsible person. However, as the sessions of a CI have to be public and its decisions are adopted by a simple majority of votes, this precludes access and debates on actions and documents with a higher security clearance, i.e. higher-level corruption cases might be excluded, and makes CIs a potentially dangerous weapon for crushing political opponents. To this day, such a CI has not been formed in the Parliament. Concerning the requirement that MPs publicly announce their assets, they should respect the same rules as well as elected and appointed officials.

The Parliament could also exercise an oversight function over the work of the SCPC. MPs could pose parliamentary questions and interpellation to the members of SCPC.

⁴ OSCE (2013) Promoting accountability and transparency of public institutions. Skopje, OSCE Mission to Skopje.

⁵ Ministry of Finance (2013) Budget of Republic of Macedonia for 2013. Skopje, Ministry of Finance of Republic of Macedonia.

In recent years, significant steps have been made to set legislation for improving the legislative process, which would increase its transparency and citizens' participation in it

In January 2010 the opposition party SDSM posed interpellation for the then president of the SCPC. The list of accusations against the president among other things referred to failing to act upon reports of the State Audit Office (SAO) on suspicion of the improper spending of state funds by the Government and some ministries, failing to act on suspicion of public procurement misuse in the Ministry of Defense, the project "Computer for each child", etc. After the discussion, the Parliament ruled out the convictions with a majority of votes.

MPs have to comply with the same rules as other elected and appointed officials in regards to the public disclosure of their assets and conflict of interest statements. The SCPC has been overseeing MPs' conflicts of interest and has issued warnings when boundaries have been crossed, though it seems that the commission's ultimate dependence on the votes of the Parliament might make proper investigating more difficult by encountering political difficulties. Throughout the years, there have been different cases of MPs failing to report changes in their assets. The last such examples that received strong media coverage were the cases of the coordinator of the parliamentary group of the ruling party VMRO-DPMNE and the vice-president of the opposition SDSM and MP, who were suspected of not reporting property acquisitions of significant value. After these allegations, the SCPC initiated a procedure for the review of asset declarations of these two functionaries.⁶

In recent years, significant steps have been made to set legislation for improving the legislative process, which would increase its transparency and citizens' participation in it. On the other hand, different analyses monitoring the legislative process have noted many problems which make full enforcement a challenge. The Rules of Procedure of the Government of the Republic of Macedonia introduced important amendments in 2008, which constituted the basis for developing a transparent system of policy-making, ensuring the possibility for public participation, and even more so for enabling a two-way communication in these processes by providing feedback of the responsible persons within the bodies carrying out the law and having a process for the comments and proposals given by citizens. Recent analysis⁷ on the monitoring of the Unique National Electronic Register of Regulation (ENER) showed that only part of all draft laws released for public revision (41%) were open for consultation to the public. With the practically unlimited opportunity for consultation, which the internet age provides to the Government, such a low level of open consultation seems inappropriate and increases corruption risk. In this respect, the website of the Parliament could be considered as more transparent than the website of the Government, since it is regularly updated with most public materials (transcripts, amendments, draft laws, bylaws, laws), which are available and easily accessible.

The relevant document that regulates the involvement of the public in parliamentary law-making procedures is the Rules of Procedures of the Parliament. Article 122 provides the possibility for the public, including scientific and civil society, to be invited to the working bodies of the Parliament to give their opinion. The article also provides CSO representatives and other stakeholders with the right to participate in the legislative processes of the Parliament. In the period of July 2011 to June 2012, seven debates, one oversight hearing and one public

⁶ Dimitrievski, A. (2014) SCPS examines property statements of Boneva and Sekerinska. Alfa TV, 26 February 2014.

⁷ Sazdevski M, Ognenovska S. (2012) Public participation in law making processes, Skopje: Macedonian Center for International Cooperation.

discussion were organized according to these rules.⁸ The overall participation of CSOs and experts in parliamentary committee meetings is still assessed as unsatisfactory.

Among others, the anticorruption mechanisms' relevance for the law-making processes and the work of the legislative power in general is the manner of regulating lobbying. As was already mentioned above, the legal regulation of lobbying is more typical for Anglo-Saxon systems and not for Continental and in particular for SEE countries. Therefore, although the Law on Lobbying was adopted in August 2008, there is no established practice of lobbyists' registration and activity. Lobbying, as regulated in the legislation, had not taken root and the usefulness of the law was brought into question.

The level of preparedness of one country to fight corruption significantly depends on the measures and provisions prescribed and undertaken in order to prevent corruption in the financing of political parties. Article 20 of the Law on Financing of Political Parties⁹ envisages that political parties cannot be financed by foreign governments or international institutions and organizations, nor by public institutions, public enterprises or other legal entities that manage state assets or are established by municipalities. Similar prohibiting provisions apply for enterprises that have at least 20% participation of the state and enterprises with mixed capital where a dominant owner is a foreign investor, as well as private enterprises that render public services to state bodies or public institutions. Finally, financing of political parties is prohibited by citizens' associations (non-governmental organizations), religious communities or religious groups, anonymous or unidentified sources. While these strict regulations limit the venues for corruption pressure on political parties from traditional private sector sources, they increase the price for compliance, making it easy for donations to be incriminated, which leaves parties at the mercy of state institutions and ruling majorities. In addition, this limits political competition, which increases the chance of ossifying the political system in the long-run.

The law also specifically forbids exerting any kind of pressure by legal entities and natural persons for the purpose of raising funds for a political party or promising privileges or benefits to a donor of a political party. In a case whereby a person learns about a matter of this kind, that person is obliged to inform the SCPC of the same matter. The SCPC is further obliged to assess the criminal or other liability of the misdemeanor in question, initiate a procedure, and submit a motion to the competent bodies.

Despite these strict legal provisions, which oblige political parties to be public in regulating their financing, the majority of parties fail to be public and transparent about their financing. In 2012, only 14 out of 48 registered political parties had fulfilled their obligation to submit their annual financial reports, and only 10 of them had submitted reports on donations.¹⁰ Among the submitted reports, it is noticeable that some of them fail to adhere to the prescribed form of the reports and omit required information. Serious questions can be raised in regards to the reliability and authenticity of the donation reports from during the campaign period. In several consecutive election periods, the governing party VMRO-DPMNE submitted donation reports which register the exact same amount from a large number of individuals. Later media reports informed that some of the individuals listed as donors had not been aware that they were listed as such.¹¹ On the other hand, in 2011, the SCPC opened a case about the financing

Despite these strict legal provisions, which oblige political parties to be public in regulating their financing, the majority of parties fail to be public and transparent about their financing

8 MOST (2013) My Parliament. Skopje: MOST.

9 Law on Financing of Political Parties (Official Gazette 76/2004).

10 Transparency Macedonia (2013) Money and Politics, Annual Report, Transparency in the Financing of the Political Parties. Skopje: Transparency Macedonia.

11 Fokus (2013) Samoil Malcevski: VMRO-DPMNE wrote that my family had given 550,000, while we have not donated a dime for the elections. Fokus No.948, 6 December 2013.

**In 2012, only
14 out of 48
registered
political parties
had fulfilled
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annual financial
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10 of them had
submitted reports
on donations**

of the election campaign of the opposition party SDSM. The SCPC identified violations, because according to the law, a bank credit cannot be a source of financing and such financing was not envisaged in the law. Subsequently, the SAO did not find any violation of the legal provisions, with the remark that credits as a source of financing are available to all legal entities including political parties as such.

The legal framework for political party financing¹² gives jurisdiction to several institutions to run the controlling mechanisms. Political parties ought to submit quarterly reports on received donations to the Ministry of Finance, the PRO, and the SAO. A crucial body is the SAO, which evaluates the annual financial reports of political parties, and if it determines irregularities in these reports, it is obliged to submit a request for the initiation of misdemeanor procedures or a charge to the Public Prosecutor's Office. Although when it comes to financial reports from election campaigns, the SCPC is one of the institutions to which political parties ought to submit their reports; in the case of regular political party financing, this law does not list the SCPC as one of the institutions to which political parties have to submit their donation reports.

¹² Ibid.

3. Other national level control bodies contributing to the fight against corruption

In the Republic of Macedonia, there are several other institutions that contribute to the fight against corruption at the national level.

3.1. State Audit Office (SAO)

The SAO is an independent state body responsible for conducting regularity and performance audits of public and state institutions. The SAO is headed by the General State Auditor, who along with a deputy, are appointed by the Parliament of the Republic of Macedonia for a nine-year term without the right to re-appointment. Their dismissal is also under the authority of the Parliament under conditions specified in the law. The law indicates all entities/institutions which are the subjects of an audit. However, not all of them are audited each year. Only the budget of the Republic of Macedonia is audited annually, while all other entities are put under scrutiny based on a timeframe defined in the annual work program of the SAO. The annual work program of the SAO is presented to the Parliament for information purposes. An annual report about the audits which have been conducted and the operation of the SAO is submitted and reviewed by the Parliament, while the other audit reports are also submitted but not discussed in the Parliament. In 2013, the SAO had envisaged conducting a total of 107 audits of regularity and performance¹³. The SAO is also a body responsible for the supervision of the financial and material work of political parties, and in a case when a political party is found responsible for a misdemeanor, it can propose that the party be suspended from its annual financing from the budget of Republic of Macedonia for a period of three months.

The SAO has the authority to examine documents and reports, as well as accounting and financial procedures and electronic data and information systems for the purpose of determining whether financial reports present an accurate financial position and financial activities. The SAO also has the authority to examine reports of the internal and public internal financial control and access reports of checks conducted by the financial management and control system. Finally, the SAO can also examine the financial transactions defined as public revenues and public expenditures and can assess the use of funds in terms of the achieved economy, efficiency and effectiveness, and the measures taken by the subject to audit.¹⁴

3.2. Public Revenue Office (PRO)

The PRO is a body within the Ministry of Finance, and it is a separate legal entity. It is in charge of the implementation of tax law, registration of taxpayers, administration of the single taxpayers' registry, collection and processing of tax returns, inspection, and monitoring and analyses of tax records. Within the PRO, there is a Tax Inspectorate for the prevention of corruption within the tax system. In 2013, the PRO had a budget of 19,726,200 EUR (1,223,763,000 MKD) and 1,307 employees.¹⁵ In 2010, the PRO implemented a twinning project financed by the EU in partnership with relevant institutions from Austria and Slovakia. The project aim was to strengthen the capacities and communication channels of the PRO in the detection and fight against tax evasion; and at the same time, through the experience of the EU countries, it was indicated how to access effective usage of competences, especially in the functioning of the Tax

The SAO is also a body responsible for the supervision of the financial and material work of political parties

¹³ State Audit Office (2013) Amendments of the Annual Work Program of the State Audit Office. Skopje: State Audit Office.

¹⁴ Law on State Audit (Official Gazette 66/2010).

¹⁵ Ministry of Finance (2013) Budget of the Republic of Macedonia for 2013, Skopje: Ministry of Finance of Republic of Macedonia.

Inspectorate for the prevention of corruption, but also in encouraging and supporting it in the implementation of special investigations following the example of these European countries. Concerning the ways of fighting corruption in its ranks, in 2012, the PRO adopted Guidelines for Anti-Corruptive Conduct of Employees of the PRO towards the development of methods and procedures for the prevention of corruption and research of corruption among its employees.

3.3. Financial Intelligence Unit (FIU)

The FIU is a body within the Ministry of Finance, and it is a separate legal entity. The FIU was formed in 2002, however it was previously known as the Directorate for Money Laundering Prevention and later as the Office for Prevention of Money Laundering and Financial Terrorism. It submits an annual report for its work to the Ministry of Finance and the Government of the Republic of Macedonia.

The competences of the FIU include the collection and analyses of financial, administrative and other data in regards to money laundering and financial terrorism, however, it can also raise misdemeanor charges or issue orders for halting financial transactions.¹⁶ The FIU was allocated a 573,040 EUR (35,550,000 MKD) budget in 2013. It has 30 employees.¹⁷

3.4. Financial Police (FP)

The FP is a body within the Ministry of Finance, which is a separate legal entity and is responsible for ensuring that financial, tax and customs operations are executed in a lawful and proper manner. Detecting and pursuing complex cases of organized financial crime is under its particular competence, and in that capacity, it works on the prevention and repression of corruption and organized financial crime. As such, it is an important link in the anticorruption system.

The FP has the capacity for investigating financial crime and is authorized to detect, investigate and document criminal deeds. It also carries out financial controls; the implementation of tax, customs and other financial regulations; collects and analyzes information and data on cash transactions; and audits money trails. In 2013, the FP was allocated a budget of 469,877 EUR (29,150,000 MKD), was equipped with 31 employees, and was projected to conduct 480 controls.¹⁸

The above-mentioned financial control institutions cooperate among themselves on issues of their competence including the fight against corruption. Cooperation exists between the FIU and the FP. Thus in 2013, out of 114 requests for exchange of information and data from other institutions to the FIU, 11 were from the FP and one from the SCPC. Most of the requests were submitted by the Ministry of Interior (95), three by the public prosecution, and one by the Customs Administration. In effect, the four institutions reviewed in this section form the backbone of the institutional infrastructure to prosecute complex economic crime, which in effect is corruption, in particular at the higher political levels. Their cooperation with the public prosecution and other state bodies is critical to uncovering and punishing the corrupt behavior of higher political and administrative circles. In this regard, it would be advisable to have an annual overview of the work and achievements of these institutions in tackling corruption.

16 Law on Prevention of Money Laundering and Other Proceeds of Crime and Financing of Terrorism (Official Gazette 4/2008).

17 Financial Intelligence Unit (2011) National strategy for fight against money laundering and financing terrorism. Skopje, Financial Intelligence Unit.

18 Ministry of Finance (2013) Budget of the Republic of Macedonia for 2013, Skopje: Ministry of Finance of Republic of Macedonia.

The FP has the capacity for investigating financial crime and is authorized to detect, investigate and document criminal deeds

4. General public administration and anticorruption

The scope of work and functioning of the public administration service is regulated by the Law on Civil Servants¹⁹ and the Law on Public Servants²⁰. A public servant has to carry out his/her duties in a professional, politically neutral, and impartial manner. He/she must not put in question his/her performance of the activities and tasks deriving from the status of a public servant because of political party membership or activity.

The Law on Civil Servants²¹ regulates the disciplinary procedure for a disciplinary offense in the case of:

- Illegal management of funds;
- Receiving gifts or other benefits contrary to the law;
- Abuse of status or breach of authorization in the execution of tasks;
- Creating a conflict between personal financial interest and the position and status of a public servant; and
- Preventing elections and voting, breach of the voting right, breach of the voters' freedom of choice, electoral bribery, breach of the secrecy of voting, destruction of electoral documents, or electoral fraud committed by the public servant as a member of an electoral body.

According to this law²², the following disciplinary measures shall be imposed for the above-mentioned disciplinary offenses:

- A fine in the amount of 30% of the monthly net salary paid to the public servant in the month before the disciplinary offense has been committed, in duration of one to six months; and
- Termination of employment if there are harmful consequences for the institution, and if, in the disciplinary procedure, no mitigating circumstances have been found for the public servant who committed the offense.

Each public entity whose budget is over 800,000 EUR is obliged to establish an internal audit unit.²³ By 2009, 85 such units had been established,²⁴ and its head is responsible to report on possible irregularities and suspicions of fraud and corruption, while all employees have a duty to report to the head of the entity and the unit if irregularities or suspicions of fraud and corruption are found. The report should be addressed to the Public Prosecutor's Office and the Ministry of Finance - the finance police and financial inspection of the public sector. For the coordination of the public internal financial control, a central unit for the harmonization of the system was formed, and this body operates under the scope of the Ministry of Finance.

In May 2013, the Law on Financial Inspection of the Public Sector²⁵ was enacted with the aim of protecting the financial interests of public sector bodies from poor financial management, fraud, and corruption. The actions envisaged in this law are implemented by the sector for financial inspection in the public sector. Among other competences, financial inspectors identify possible violations of the law, especially those related to fraud and corruption that caused financial damage to public sector bodies.

19 Law on Civil Servants (Official Gazette 59/2000).

20 Law on Public Servants (Official Gazette, 6p. 52/2010).

21 Ibid.

22 Ibid.

23 Law on Public Internal Financial Control (Official Gazette 90/2009).

24 State Audit Office (2013) Frequently Asked Questions for internal audit. [Internet]

25 Law on Financial Inspection in the Public Sector (Official Gazette 82/2013).

A public servant has to carry out his/her duties in a professional, politically neutral, and impartial manner

Public servants are obliged not to request and accept gifts, services, benefits or any other benefit that could affect their decisions or solutions that could corrupt their professional approach to their work

In April 2010, a Code of Ethics for members of the Government of the Republic of Macedonia and holders of public office appointed by the Government was adopted, while in September 2011, the Ministry of Information Society and Administration adopted two more codes: the Code of Ethics for Public Servants²⁶ and the Code of Ethics for Civil Servants²⁷.

In the Code of Ethics for members of the Government and holders of public office appointed by the Government, there are no sanctions for potential violations of the code. Such violations trigger only moral and ethical responsibility (Article 23). On the other hand, entities covered by this code may report irregularities, i.e. may report any request directed to them to act contrary to the provisions of the code. This report is submitted to the competent bodies defined by law.

The other two codes, the Code of Ethics for Public Servants and the Code of Ethics for Civil Servants, also do not envisage sanctions for possible violations. According to these two codes, public servants should not allow financial interest or any other form of interest for him/her, family members, relatives, friends, natural persons and legal entities who have or previously had business relations, to come into conflict with his/her status as a public official.

Moreover, according to these Codes of Ethics, public servants are obliged not to request and accept gifts, services, benefits or any other benefit that could affect their decisions or solutions that could corrupt their professional approach to their work. Additionally, public servants should not accept gifts or appreciation in material or financial type that could be considered as an award for work performed as part of their professional duty. While the multitude of codes add deterrence to the actions of those under review, it should be noted that the lack of sanctions might turn those codes into a back-door escape route for public administration offenders.

²⁶ Code of Ethics for Public Servants (Official Gazette, No. 129/2011).

²⁷ Code of Ethics for Civil Servants (Official Gazette, No. 133/2011).

5. Anticorruption and law enforcement

The Mol has the broadest competence and authority to investigate corruption. Among the Mol's central police services, the Department for Suppression of Organized and Serious Crime is responsible for investigating cases of corruption. This department has eight sectors and among them is the Sector for Corruption which encompasses two units:

- Unit for Corruption in Public Procurement; and
- Unit for Classical Corruption and Abuses in the Public and Private Sector

Internal corruption and irregularities in the work of the Mol is under the competence of the Sector for Internal Control and Professional Standards, which functions within the Mol. This sector works to prevent, educate and introduce public officials to the issue of conflict of interest, and undertakes measures to develop a system for the detection and suppression of corruption. International standards require that the internal anticorruption control unit of the Mol be one of the most stringent in the country, both because of its role in fighting corruption in the country in general, and because of the usually higher corruption risk among the police. In addition, detailed rules for cooperation and work with the financial intelligence and control agencies should be introduced if the work of the Mol is to tackle higher-level corruption involving financial transactions. Without such cooperation, results are unlikely to be sustainable.

The Mol has signed cooperation agreements with neighboring countries for cooperation in the field of repression of crime (Agreement with Bulgaria); cooperation in security, trafficking in human beings and drugs, border control, visa regime (Agreement with Albania); and cooperation in the fight against terrorism, organized crime and illegal drug trade (Agreements with Serbia, Montenegro, and UNMIK Kosovo). Macedonia is also part of the Southeast European Law Enforcement Center (SELEC) through which 12 states from this region cooperate and coordinate in the prevention and combating of serious and organized crime.

Each of the institutions involved in the anticorruption system has its own statistics on corruption-related crimes, which are gathered separately. As a result, statistical data is also presented in different forms. As part of the judiciary reforms and the implementation of the E-judiciary, the preparation of a single database center is being planned. This center will link different branches in the judiciary and enable the exchange of data and reports.²⁸

The Mol in 2013 collected the following statistics on more characteristic acts of organized and economic crime related to corruption²⁹:

Table 4. Mol Statistics for 2013.

Criminal Deeds	Cases	Perpetrators
Accepting bribery	9	14
Giving bribe	9	26
Money laundering	12	45
Criminal association	15	116
Abuse of official position and authorization	194	350
Tax evasion	43	87

²⁸ Ministry of Information Society and Administration (2014) E-judiciary [Internet].

²⁹ Ministry of Internal Affairs of Republic of Macedonia (2014) Statistics, More characteristic deeds in the area of organized and economic crime [Internet].

Internal corruption and irregularities in the work of the Mol is under the competence of the Sector for Internal Control and Professional Standards

From the registered cases, the biggest number (194) refers to abuse of official position and authorization, which usually implies the existence of corruption. In these 194 cases, 350 perpetrators were registered.

The Basic Court 1 with the special national-level Unit for Trial of Offences of Organized Crime and Corruption for the entire territory of the Republic of Macedonia is in charge of processing cases related to organized crime and corruption. In 2012, the unit registered a total number of 169 cases in the area of organized crime and corruption. Out of these, 72 were inherited from the previous year as unsolved cases. The efficiency in solving the cases is only partially complete. Namely, out of 169 received cases, only in 86 cases was a first instance verdict passed, while 83 cases were transferred to the following year (2013).³⁰

In the period between October 2012 and July 2013, the civil society coalition 'All for Fair Trials' monitored 37 court cases related to organized crime and corruption, for a total of 47 offenses and 438 defendants.

The data gathered by this CSO indicates that 69% of the 37 monitored cases were filed by the MoI, 28% by the Public Prosecutor's Office, and 3% by other institutions (i.e.. the FP and the PRO). For 41% (or a total of 15) of the monitored cases, judgment had been ruled and 205 persons had been convicted, 1 person had been acquitted, 181 persons had been sentenced to prison, while 23 had been released on probation.

³⁰ Basic Court Skopje 1, Skopje (2013) Summary review for the flow of cases in 2012 [Internet].

Conclusions and Recommendations:

There is a need for strengthening the independence and the pro-activeness of the SCPC and other national control bodies, in order to distance their work from any political interference. Among other things, there is a need for the higher financial independence of these institutions, especially concerning the SCPC. The SCPC and other national-level control bodies need to be more affirmative in enforcing obligations on political parties, which stem from the legal framework on financing political parties and campaigns.

There seem to be oversized expectations on results in fighting corruption by the SCPC, provided the multitude of other institutions in the country authorized and endowed to fight corruption. In this regard, there should be a better focusing of the authority and activities of the commission and definition of its place among and cooperation with other anticorruption institutions. There is a multitude of other specialized public administration services with higher budgets and personnel, which seem to not fall so directly under the limelight of society but have an equally important if not bigger role to play. Their roles in the future should stand out.

Oversight bodies, such as the SAO, need more institutional support and legal competences for the introduction of (higher) sanctions. The institutions that are subject to audit and the Parliament need to have a compulsory obligation to implement the remarks of the SAO. The SAO should have the mandate to make an audit on the management of EU funds as well.

The anticorruption burden needs to be shared more evenly among government bodies. This means preventing the quick channeling and escalation of the majority of corruption cases to the most expensive for the tax-payer and the heaviest in terms of sanctions and the slowest in time - the criminal justice system. Any ratcheting up of statutory incrimination should be offset by the enhanced capacity of all public bodies to address corruption in their ranks through administrative tools instead of “back-passing” responsibility to the police and prosecution. Criminal prosecution is the most expensive way of addressing corruption, which means that the general public administration bodies should act as gatekeepers by dealing with as many corruption cases as their administrative powers allow them.

All responsible institutions need to increase communication and information-sharing with the public in regards to the work they undertake in the area of anticorruption and in additional efforts they take to promote transparency and anticorruption.

A specialized body to combat corruption should be established within the Government, which would be responsible for the internal control of all ministries and other state bodies. Its role should be directed toward the discovery and suppression of all possible cases of corruption among public officials, as well as prevention and education on the subject of conflict of interest. This role could be coordinated by the central unit for the harmonization of public internal financial control and the sector for financial inspection in the public sector.

IV.

The Judiciary in Anticorruption

According to the Constitution, judicial power is exercised by the courts, which are autonomous and independent. The organization of the judiciary is unique. Extraordinary courts are prohibited.

The Supreme Court of the Republic of Macedonia is the highest court in the state and provides uniformity in the implementation of laws by the courts.

The types, mandate, creation, removal, organization and composition of the courts, as well as proceedings, are regulated by law, adopted with two-thirds of the vote out of a total number of MPs (Article 98/1(3) of the Constitution).

However, after more than 20 years since the adoption of the Constitution of the Republic of Macedonia as an independent state, which clearly defined the division of power and independence of the judiciary, one of the key criticisms is still a lack of functionality of the constitutional separation of powers into legislative, executive and judicial, as well as the influence of politics and executive power over the courts. By 2011, the Minister of Justice was a member of the Judicial Council with a right to vote. After numerous reviews and recommendations, in the current composition of the Judicial Council, the minister is a member without a right to vote. This fact is just one indicator of the relation between the executive power and the judicial system. In addition, although there is an independent judicial budget, it is approved by the Ministry of Finance upon the proposal of the Government and is voted on in the Parliament. The current practice suggests providing a lower budget for the court than that required, which contributes to reinforcing the impact on the court and to the perception of a heavy dependence of the courts on the authorities.

In the past five years, there have been significant changes in the legislation aimed at increasing the independence of the judiciary. However, a challenge regarding the role of the judiciary in anticorruption policies and measures is a lack of transparency or a lack of a feedback mechanism that would allow the public and CSOs to assess the integrity of the judiciary and its real efficiency and effectiveness in the implementation of anticorruption policies and its general tackling of corruption.

One of the key criticisms is still a lack of functionality of the constitutional separation of powers into legislative, executive and judicial, as well as the influence of politics and executive power over the courts

1. Legal framework on the composition, functioning and management of the judiciary

The types, competence, establishment, abrogation, organization, and composition of the courts and the procedures they follow are regulated by a law adopted by a two-thirds majority of MPs.

The Judicial Council of the Republic of Macedonia is an autonomous and independent judicial body, which ensures and guarantees the autonomy and independence of the judicial authority through performing its function in accordance with the Constitution and the law. The council consists of 15 members for a term of six years with the possibility of one re-election. By function, members of the council include the President of the Supreme Court and the Minister of Justice, who does not have a right to vote. Eight members of the council are elected by judges from within their ranks – three of them are members of non-majority communities. Moreover, three members are elected by the Parliament with the principle of double majority (Badenter). Finally, the President of the State proposes two members, which are elected by the Parliament.

Conditions for the election of the members of the council are: at least five years of judicial experience; and positive assessments in the previous three years of the performance of the judicial office by the Judicial Council. The result of this composition of the council, in which half of the judges are elected among themselves and the other seven (out of 15) members are political appointees or part of the council *ex officio*, threatens the full independence of the council and opens room for establishing connections with politics, political influences and pressures. Best European practices and recommendations from the relevant institutions are exactly in the direction of establishing councils that are exclusively or overwhelmingly made up of judges selected from within their own ranks.

The council appoints and dismisses judges and jury judges; determines the end of the juridical function; appoints and dismisses presidents of courts; follows and evaluates the work of judges; decides for the removal of immunity of judges; and proposes two judges for the Constitutional Court from the ranks of judges. An additional mandate of the Judicial Council, *inter alia*, is to decide on the disciplinary responsibilities of judges; determine the unprofessional and unethical exercising of juridical function; decide on the temporary removal of a judge; determine the end of juridical function on grounds of permanent incapability; debate and decide on complaints lodged by citizens and legal entities; and decide upon request for the detention of a judge.¹

In line with Article 41 of the Law on Courts², judges and presidents of the courts are elected and dismissed by the Judiciary Council of the Republic of Macedonia, under conditions and through procedures established by law. A judge is elected without restriction on the duration of the mandate, and a judge may not be transferred to another court without judges' consent. A judge is dismissed if he/she so requires or if he/she permanently loses the capacity of performing the judicial office, and he/she may demand a transfer to another department. A transfer against a judge's consent could be made by exception in cases stipulated by Article 39(8 and 9) of the Law on Courts by a written and elaborated decision by the president of a court. This decision could be appealed before the Judicial Council.

Criteria for the selection of judges stated in the Law on Courts³, *inter alia*, demand a candidate to be a graduated lawyer with a minimum average score of 8 out of 10 or to have a minimum

1 Law on Judicial Council (Official Gazette of the Republic of Macedonia, No. 60/2006).

2 Law on Courts (Official Gazette of the Republic of Macedonia, No. 58/2006).

3 Law on Amendments to the Law on Courts (Official Gazette of the Republic of Macedonia, No. 150/2010).

of 300 credits (in the European credit transfer system); to have passed the judicial exam; to actively use at least one of the EU languages and/or obligatory English language, proven by TOEFL or a similar certificate; to pass a general health test, a psychological test and an integrity test; to have social skills for juridical function; and to have computer skills. The necessary type of all of these tests is regulated by the Judicial Council.

Given the importance of the integrity of the person in this profession, a test of integrity is introduced as a mechanism for providing the ethics and morality of the judge, and thus contributes to preventing corruption and conflict of interest. However, the legal solution to Article 45a of the Law on Courts, according to which the certificate of integrity is obtained by collecting data and information from outsiders who have known the applicant for at least three years but are not next of kin to the candidate and have completed at least secondary education, was unacceptable for the Constitutional Court of the Republic of Macedonia. This was contrary to the constitutional principles of the rule of law and the protection of privacy, dignity and the reputation of a person, and they could hardly withstand a test of objectivity and impartiality⁴. After the abolition of this provision from the act, a new model for determining integrity was not proposed except for the anonymous test passed by each candidate. In the absence of more objective methods for the assessment of the morality and ethics of candidates for judges, establishing provisions for enhanced monitoring of the performance of their duties as judges by the Judicial Council should be a priority.

One of the main criteria for the election of judges is to attend the education/training at the Academy of Judges and Public Prosecutors and to pass the appropriate exam. The duration of the training is 24 months. There is an evaluation, and after passing the final exam, incumbents acquire the status of candidates for judges or prosecutors. As the new positions are announced, candidates are appointed following the rank list. If candidates fail to present themselves to two announcements, they lose their status; if they leave the post to which they were appointed before the expiration of five years of work, they also lose their status. In both cases, they are required to reimburse the education/training costs. In practice, the Judicial Council shall decide on all candidates with a two-thirds majority vote, although according to the amendments to the Law on Courts as of 2012, the candidate coming from the rank list to the academy is only a formality. A problem that often emerges is the proportion of candidates who completed the academy versus open job positions, especially as there is growing interest for the courts in Skopje. Hence, vacancies in other cities outside of Skopje remain unfilled, while the interest in Skopje courts is much higher. Additionally, in Skopje, issues such as providing an official apartment or employment for the partner is easier to resolve than in other cities. Such an unbalanced ratio of available positions, the interest of candidates (primarily for the courts in Skopje), and conditions on offer pose potential corruption pressure in the process of the selection of candidates.

This leads to a situation of vacancies in certain courts, and on the other hand, some of the candidates who graduated from the academy are still unemployed. For example, in 2012, the council appointed 39 judges to the basic courts, of which only four completed the training at the academy.

One of the main criteria for the election of judges is to attend the education/training at the Academy of Judges and Public Prosecutors and to pass the appropriate exam

⁴ Decision of the Constitutional Court of the Republic of Macedonia, No. 12/2011 (Official Gazette of the Republic of Macedonia, No. 39/12).

The Role of the Academy of Judges and Public Prosecutors

The Academy of Judges and Public Prosecutors was established by the Law on Academy for Training of Judges and Public Prosecutors⁵, adopted in 2006 and formally launched in November of that year. In 2010, the new Law on the Academy of Judges and Public Prosecutors⁶ was adopted, which introduced innovations in order to improve the work and role of the academy.

Through professional training, the academy should have a key role in strengthening the independence and competence of judicial institutions, and a key criteria for the selection of judges for basic courts is the training attended at the academy and successfully passed exams. As part of the program for judges and prosecutors, classes in ethics in the judiciary are foreseen. Among the several objectives of this part of the program are the understanding of professional ethics in the work of judges and prosecutors and the application of an ethical decision-making model in the profession. A special set of theoretical and practical lessons concern ethics and conflict of interest, ethics and corruption, as well as ethics and family connections in the judiciary.

Also within the continuous training organized by the academy, topics of corruption and conflict of interest are regularly present. In 2013, seven training sessions were organized for judges and prosecutors, five for judicial and prosecutors' officers, and two trainings for judges and jurors on topics related to ethics, ethical behavior, preventing conflict of interest, and anticorruption measures that prevent and combat corruption⁷. The acquired knowledge and practice in the subjects of ethics, morality, and integrity within the training of judges and prosecutors, as well as participation in continuous training in the subject combined with increased ex post monitoring and evaluation of the work of judges, may be a suitable solution for establishing one of the key conditions for exercising judicial function - integrity.

The Law on Judicial Council contains some more details on the procedures of appointment. Article 39 provides that the Judicial Council publishes an announcement in the Official Gazette and in at least two daily newspapers, with an application period of 15 days. After all of the exams and requirements (mentioned above), the council elects the judge(s) from the rank list provided by the Academy of Judges and Public Prosecutors, according to the attained score of the applicants.

The cancelation of judicial function is regulated by both the Law on Courts and the Law on Judicial Council. The grounds are, *inter alia*: upon request of the judge; permanent incapability to exercise the function (determined by the opinion of a competent medical commission); age, i.e. fulfillment of retirement conditions; when the judge is elected or appointed to another public function; or when the judge is sentenced to at least six months of prison for a criminal offence.

The Judicial Council may remove a judge on the grounds of (1) a heavy disciplinary offence, and (2) for unprofessional and non-ethical exercising of the function. A heavy disciplinary offence means a heavy violation of public order; a heavy violation of the rights of both sides or another participant in the proceedings that breach the dignity of judges and the court; a violation of the

5 Law on Academy for Training of Judges and Prosecutors (Official Gazette of the Republic of Macedonia, No. 13/2006).

6 Law on Academy of Judges and Public Prosecutors (Official Gazette of the Republic of Macedonia, No. 88/2010).

7 Academy of Judges and Public Prosecutors (2014) Report on the Work of the Academy of Judges and Public Prosecutors for 2013.

principle of non-discrimination on any ground; or failing to reach expected results for a period of more than eight months, relative to the average number of cases solved monthly, which is established by a Judicial Council decision.

The second ground refers to the unsatisfactory competence and non-ethical behavior of a judge that affects the quality and dynamics of the work, and more specifically: when within a calendar year, the Judicial Council finds non-efficient and non-effective management of judicial proceedings; when a judge exceeds the deadlines in more than five cases; when within a calendar year, 20% of verdicts are repealed; and when within a calendar year, 30% of verdicts are changed.

In 2011, six effective decisions were adopted for the dismissal of judges on the basis of insufficient expertise and reckless operation. Of these, five referred to judges from basic courts, while one referred to the President of the Court of Appeals in Skopje. In 2012, the Judicial Council made four decisions to dismiss judges on the grounds of unprofessional conduct of judicial function. In all four cases, they were dismissals of judges in basic courts, and requests are usually submitted either by the presidents of the basic courts or directly from the Judicial Council⁸.

A disciplinary measure may also be decided in cases when: there is a violation of the dynamics in handling cases; obstruction of oversight by higher courts; receiving gifts and other benefits; exercising political activities; exercising other public functions; failing to declare or hiding the possessions or changes in the possessions that a judge is due to fulfill according to the law. In line with Article 73 of the Law on Judicial Council, for an established disciplinary responsibility of a judge, the council may pronounce disciplinary measures, including a written warning, public reprimand, or a reduction of the wage in the amount of 15% to 30% of the judge's monthly wage.

In 2012, the Judicial Council found a serious disciplinary offense in the case of a judge of the Basic Court, who was fined with a cut in salary by 15% for a period of three months.

According to the Article 100 (Amendment XXVII) of the Constitution, a judge may not be subject to criminal charges for an expressed opinion and decision in verdicts. For any damage caused by a judge to citizens or legal entities by unlawful exercise of their duty, the Republic of Macedonia is held responsible. Nevertheless, if the judge is removed as a result of this unlawful exercising of duty, the Republic of Macedonia may launch a proceeding against the judge for the disbursement of damages paid by the Republic of Macedonia.

The Law on Courts and the Law on Judicial Council prescribe provisions for the promotion of judges or their appointment in higher court instances, as well as exercising the office of President of the Court. Often the criteria are associated with years of experience, but also with the evaluation of professional performance and the received score. Given that the performance evaluation is mostly related to the number of cases decided by the judge, the evaluation and the score are not always the true measure of the ability of judges. Namely, judges who work on "easier" cases (i.e. misdemeanor and not criminal cases) often have the best achievements. It often happens that there is a delay in the appointment of presidents of courts for a longer period of time, i.e. the appointment only of acting presidents. For example, in 2014, two larger and more important courts, such as the Court of Appeals in Skopje and the Basic Court Skopje 2, were led by acting presidents. In the absence of accurate data, we can only conclude that with this set of regulations and practices, appropriate corruption pressure can be detected in

⁸ Judicial Council of the Republic of Macedonia (2013) Report on the work of the Judicial Council in 2012. Skopje, Judicial Council of the Republic of Macedonia.

In 2012, the Judicial Council made four decisions to dismiss judges on the grounds of unprofessional conduct of judicial function

The EC states that the present system for the evaluation and promotion of judges puts greater emphasis on the productivity and achievement of targets than on the quality and resolution of problems

the way that judges are promoted and appointed in higher court instances. In addition, judges in the Administrative Court could be a person who had experience in the legal sector in a state institution. In the current composition of the Administrative Court, some of the judges come from the state administration, and some of them from institutions that do not have strong links with the judicial profession, such as the theater, penitentiary institutions, cadastral administration, etc. The question that needs extra consideration is whether this opportunity is problematic not only in terms of the expertise of these people in the exercise of their function, but also in terms of certain political influence in the selection of these persons.

The Law on Judicial Council, in Articles 98 to 131, describes the criteria and proceedings for the monitoring and evaluation of judges, which is done annually. The Judicial Council prescribes a form with all necessary data which is to be filled in monthly with quantitative criteria: data received through the automatic judicial-information system for case management, concerning the number, type and case decided relative to the ratio between the number of confirmed, repealed and changed cases vis-à-vis the total number of cases solved. There is also a continuous monitoring of the work of a judge, and an evaluation is established by taking into consideration all of the criteria.

According to the latest Report on the Progress of Macedonia (2013)⁹, the EC states that the present system for the evaluation and promotion of judges puts greater emphasis on the productivity and achievement of targets than on the quality and resolution of problems that might encourage a more formalistic rather than an independent adoption of decisions. The direct link between the evaluation of performances and the dismissal of judges should be eliminated.

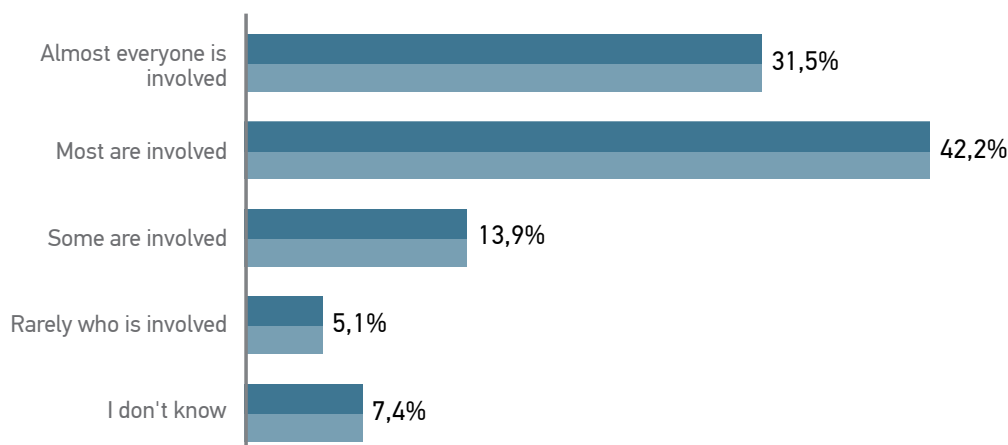
2. Corruption in the judiciary

According to the survey conducted by the USAID Anticorruption Program (February 2014), nearly three-quarters of citizens (74%) believe that corruption penetrates among judges (aggregated answers that almost all judges are involved and most judges are involved), which points to one general perception among the citizens of Macedonia on the corruption of judges. Unlike the perception, only 9.2% of citizens were asked by a judge to give something (cash, gift or some favor) in order to solve some of their problems. Moreover, the judiciary is an area/institution in which citizens believe that corruption is extensively widespread. Approximately 62% of citizens believe that in the courts, corruption is widespread. Widespread corruption at the highest level is located by one-third of citizens, while only 4% of citizens believe that corruption in the courts is not widespread at all.

Taking into consideration the answers of respondents related to the question of corruption being widespread among judges, the answers are presented in the table below. It shows that one-third of respondents believe that almost every judge is involved in corruption.

⁹ European Commission (2013) EU Progress Report for the Republic of Macedonia for 2013. Brussels, European Commission.

Figure 26. How deeply has corruption penetrated among judges (public opinion poll, February 2014)



The Laws on Courts and Judicial Council do not explicitly mention corruption nor organized crime. They deal with unprofessional and unethical behavior, as stated above. In line with the Law on Amendments of the Law on the Judicial Council of the Republic of Macedonia¹⁰, the rules and criteria are established, and the procedures for the monitoring and evaluation of the quality of judges' work are regulated. Having in mind that one may lodge a complaint to the Judicial Council and that the complaint may contain allegations of corruption, it is clear that the Judicial Council is the body that deals with corruption. The SCPC is another organ that deals with corruption in the judiciary, as it deals with "elected and appointed functionaries". Judges have an obligation to declare their assets, changes to their assets, and a declaration of conflict of interest, if such a situation occurs. In its work, the SCPC has initiated several actions to check the assets of judges both upon their own initiative and upon the application of citizens. In a few cases, some judges were dismissed after it was determined that their obligation to report assets was violated. One example is the purchase of a luxury vehicle by a judge, paid in cash, which was not registered in the declaration of assets.

From a total of 123 convictions for offenses related to corruption in 2012, most cases referred to abuse of public office, but the available data does not suggest whether judges were involved in these cases. In none of the reports for 2012 relating to corruption (Basic Court Skopje 1, Court of Appeals Skopje) is there a mention of judges who were subject to criminal charges. In previous years, in some of the major cases, judges were dismissed. One example is the judge in the "Bachilo" case, who in 2004 decided in favor of the plaintiff, a decision that was detrimental to the state, i.e. the Ministry of Defense. The judge was dismissed in 2007.

In 2012, the Judicial Council acted upon 1,686 complaints from citizens and legal entities, complaining of the work of courts and judges. Of these, 1,329 complaints were concluded. Most of the complaints referred to dissatisfaction with the performance of judges, i.e. the decisions brought by them. A large number of comments related to the length of procedures, i.e. disrespect of deadlines. From the available data, it cannot be concluded whether there were any and what was the number of complaints accusing judges of corruption.

There is a scarcity of officially published or available statistics and breakdowns. There is also a relative reluctance of judicial authorities to disseminate data. Occasionally, there is information about disciplinary measures and removals, as explained.

¹⁰ Law on Amendments of the Law on the Judicial Council of the Republic of Macedonia (Official Gazette of RM No.150/10).

Nearly three-quarters of citizens (74%) believe that corruption penetrates among judges

One of the most characteristic cases of the dismissal of a judge is from 2011 when the President of the Court of Appeals in Skopje was dismissed. The judge made a decision for house arrest with a provision of a guarantee amounting to 1.4 million Euro for the first suspect in one of the largest cases of organized crime in Macedonia called “Ashes”. The public prosecution reacted to this decision, and the President of the Supreme Court submitted an initiative to the Judicial Council for the dismissal of the judge. The grounds for dismissal were the judge’s incompetence and recklessness. Additional details of corruptive actions are not known, but at the same time, further investigation was not initiated related to corruption in the case of any another competent authority.

One of the mechanisms for providing the integrity of judges and handling corruption within their ranks is the Code of Ethics, adopted by the Association of Judges. In its preamble, it states that the basis of the code is international human rights standards, and that the five principles are independence, impartiality, integrity, equitability, and professionalism and diligence. The type of sanctions and procedures for establishing violations of ethical principles of conduct of this Code of Ethics are established by separate Rules of Procedure.

Extraordinary courts are forbidden by the Constitution (Article 98(3), Amendment XXV). As stated in Article 32 in the Law on Courts, within the Basic Court Skopje 1, a specialized Department on Organized Crime and Corruption is established and mandated to try cases in the area of organized crime and corruption in the entire territory of Macedonia. It is a first instance criminal court on organized crime and corruption with a basic and enlarged mandate. The reason for its establishment was to provide a better quality of work on managing criminal cases on corruption and organized crime only. The repartition of cases becomes more structured, and they are taken by judges who deal only with that matter. During the election of judges, the particular posts for judges for corruption and organized crime are announced, and those elected judges do not deal with other types of cases. In a way, they sub-specialize this matter, upgrade their knowledge and experience, and allegedly provide improved quality in dealing with this type of cases. The department operates in the completely same manner as the rest of the court. There is only a specific redistribution of cases; it is known which judges deal with organized crime and corruption within the department. Their number is determined as for any other courts, by an assessment made by the Judicial Council. At the moment, there are eight judges responsible for corruption and organized crime.

Currently, there is no official data in order to establish the ratio between indictments and convictions.

The table below presents the number of incoming and solved cases within the Department on Organized Crime and Corruption as of 31 December, 2012.

Currently, there is no official data in order to establish the ratio between indictments and convictions.

Table 5. Number of incoming and solved cases of the Department on Organized Crime and Corruption

Type of cases	Unsolved as of 01.01.2012	Received new cases	Total to process	Closed cases	Remaining unsolved cases
Organized crime (and corruption)	72	97	169	86	83
Various criminal cases	57	874	931	897	34
Investigations in organized crime	28	72	100	68	32
Various investigative actions	0	4	4	0	4
Other investigative actions	0	564	564	564	0
TOTAL	157	1.611	1.768	1.615	153

The data of the Basic Court Skopje 1 (table above) suggests that the court dealt with 1,768 cases of organized crime (including 97 on corruption), of which 1,612 were solved. No data is available regarding the solved corruption cases.

The Court of Appeals of Skopje reported in 2012 that there were 100 cases of organized crime and that 87 of them were solved. In the most recent report from the Court of Appeals from 2013, out of 101 cases of organized crime, 85 were finalized. Again, there is no information on how many of the cases of organized crime are related to corruption.

The Court of Appeals of Skopje reported in 2012 that there were 100 cases of organized crime and that 87 of them were solved

3. The role of Public Prosecution in the fight against corruption

The Public Prosecution is one of the key institutions dealing with corruption. As an independent institution, the Public Prosecutor of the Republic of Macedonia is appointed and dismissed by the Parliament. The duration of his/her mandate is six years with the possibility for re-election. Public prosecutors are elected by the Council of Public Prosecutors (CPP) without limitation of their mandate.

The competence, composition and structure of the CPP, the mandate and structure of its members, as well as the grounds and procedures for the discharge and dismissal of a member of the council is regulated by the Law on the Council of Public Prosecutors of the Republic of Macedonia¹¹.

The council is composed of 11 members, of whom the Public Prosecutor of the Republic of Macedonia is a member of the council *ex officio*; one member of the council is appointed by the public prosecutors in the Public Prosecutor's Office of the Republic of Macedonia; from their own ranks, public prosecutors from the areas with higher public prosecutor offices in Bitola, Gostivar, Skopje and Shtip appoint one member each; and one member of the council, representative of a community which is not a majority in the Republic of Macedonia, is appointed by all public prosecutors of the Republic of Macedonia. Furthermore, four members of the council are appointed by the Assembly of the Republic of Macedonia, from the ranks of university professors in law, solicitors and other eminent lawyers, of whom two are representatives of communities which are not a majority in the Republic of Macedonia.

Besides the Public Prosecutor of Macedonia, the system is organized in a way that there are four Higher Prosecutors (linked with the four Courts of Appeal), 22 Prosecutors (linked with the Basic Courts in the country), and the Prosecutor for Organized Crime and Corruption (POCC). The POCC covers the entire country and is naturally linked with the Department for Organized Crime and Corruption from the Basic Court Skopje 1. Prosecutors in the POCC report to the Chief Prosecutor of the POCC, and he/she is responsible directly to the Public Prosecutor of the Republic of Macedonia. Article 29(4) prescribes that the POCC acts before a basic court that has a specialized department to carry out judicial proceedings against organized crime and corruption. The POCC is mandated to prosecute criminal acts described in Article 31 of the law, which are committed by structured groups, and all state institutions are due to cooperate with him/her.

The council elects the higher prosecutor, the basic prosecutor and the POCC with a four-year term and from the ranks of existing prosecutors. Beyond the general requirements for selection, the candidate must have previous work experience of four years as a prosecutor with a positive track record (Article 44(6)). Prosecutors who do not renew their mandates remain to work as basic prosecutors. This specialized unit deals with and prosecutes cases of organized crime and corruption.

In 2013, the Council of Public Prosecutors dealt with 120 complaints and appeals by citizens that were resolved in the reporting year.

The funds for the work of public prosecutors are provided from the budget of the Republic of Macedonia through the budget beneficiary, the Public Prosecutor of the Republic of Macedonia. The Ministry of Finance proposes the budget intended for public prosecution, but it is required prior to its adoption and vote in the Parliament to submit the proposal to the Public Prosecutor of the Republic of Macedonia.

¹¹ Law on the Council of Public Prosecutors of the Republic of Macedonia (Official Gazette of the Republic of Macedonia, No. 150/2007).

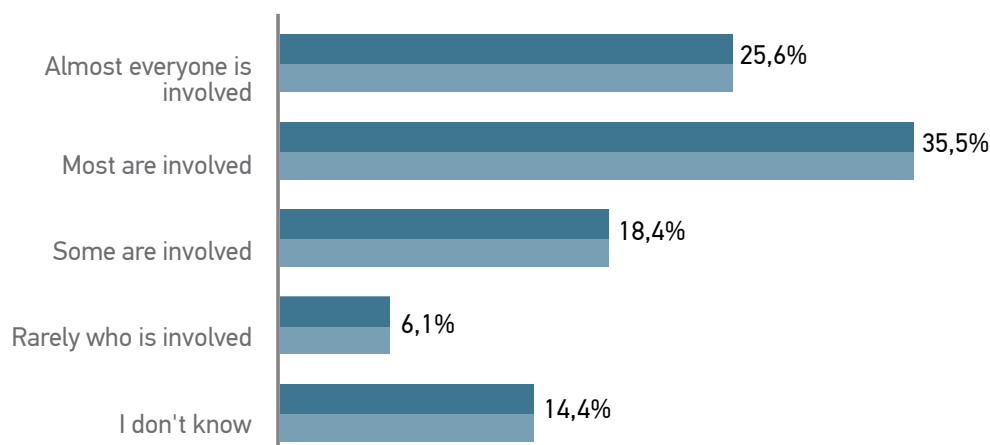
In 2013, the Council of Public Prosecutors dealt with 120 complaints and appeals by citizens that were resolved in the reporting year

The new Law on Criminal Procedure brought different solutions in terms of the work of the public prosecution where the legislature has entrusted and placed under the authority of the Public Prosecutor the overall pretrial investigation procedure. Therefore, the work which was previously in the hands of investigative judges in the area of investigation has been transferred to the public prosecutor and now he/she is responsible for the investigation, which strengthens the role of the public prosecutor in the fight against offenders who are prosecuted *ex officio*. A novelty in the Law on Criminal Procedure is the establishment of investigative centers in the prosecution and judicial police. For the purposes of criminal proceedings, investigative centers are established in the territory of one or more public prosecutors, upon a decision of the Public Prosecutor of the Republic of Macedonia.

Although the application of the Law on Criminal Procedure was delayed in order to provide conditions and to make necessary preparations, the Public Prosecutor does not have the resources necessary for exercising his/her new position.

Taking into consideration the answers by respondents related to the question on the penetration of corruption among public prosecutors, their answers are shown in the table below. It shows that 61% of respondents believe that there is corruption among public prosecutors (total number of answers that everyone and almost everyone is involved in corruption). The perception is that public prosecutors are less involved in corruption compared with judges (74%). The difference is 13 percentage points.

Figure 27. How deeply has corruption penetrated among public prosecutors (public poll opinion, February 2014)



Source: Corruption Monitoring System, 2014

Conclusions and Recommendations:

The judiciary and prosecution are holders of statutory powers to act in criminal cases of corruption, which they constitute and are the key institutions in the fight against corruption. Hence, they should observe the highest standards for transparency and accountability in their operations. Currently, there is little available data on the operation, capacity and efficiency of these two systems. This must thoroughly change in order to allow the adequate supervision by the public over their work. Data from police, prosecutors and judges should ensure monitoring results in law enforcement in the country.

In view of the internal integrity and strengthening of the system, it is better to report on cases of disciplinary proceedings and the dismissal of judges. While an understandable part of the data is not made public in order to protect the full picture of the system, it is necessary to follow procedures to be made available, which would allow the easy verification of results.

The Judicial Council and prosecutors play a key role in enabling the proper operation of the system. They should be responsible for the work of these two sectors and the need to provide comprehensive annual reports on their activities, which should have a version available for the public, published on their webpages.

Public trust in the courts and prosecutors is low, and citizens consider these two professions as highly corrupt. Hence, it is necessary for the selection procedures to be additionally liberated from any interference by the executive power. At the same time, the financial independence of the courts and prosecutors' offices should be strengthened.

Corruption and the Economy

1. Impact of corruption on the business environment

According to the World Economic Forum's 2013-2014 Global Competition Report¹, interviewed business executives stated that besides access to financing and insufficient infrastructure as the most problematic factors for doing business, corruption was also one of the biggest obstacles. Respondents said the level of confidence in politicians' ethical standards is relatively low and that sometimes bribes are offered for conducting public services, such as the special treatment for export or import, public services, reducing or delaying the payment of annual taxes, and awarding public contracts and licenses.

The US Department of State in 2013² also noted that Macedonia is facing both grand and petty corruption in business and in legal regulations, and that private businesses had reported that they were asked for bribes, especially with regards to public procurement and governmental projects. Bureaucracy is also conducive to corruption in the administration, where public officials ask for small payments "to get the job done". The Department of State goes on to explain that this kind of corruption is usually related to a lack of individual capacity, as well as a lack of institutional responsibility.

The United Nations Office on Drugs and Crime (UNODC)³ report on business corruption in 2013 reveals "a significant percentage of businesses paid bribes to public officials repeatedly over the course of the year." Namely, 6.5% of all businesses that had contact with a public official in the 12 months paid a bribe. The report notes that "the prevalence of bribery is slightly higher among small businesses than among businesses of other sizes."

Macedonia is facing both grand and petty corruption in business and in legal regulations

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- 1 World Economic Forum (2013) Global Competition Report 2013-2014. Geneva, World Economic Forum.
 - 2 United States Department of State (2013) Investment Climate Statement - Macedonia 2013. Washington: US Department of State.
 - 3 UNODC (2013) Business, Corruption and Crime in the Former Yugoslav Republic of Macedonia. Vienna, United Nations Office on Drugs and Crime.

The data which should raise a red light for the acceptance of a bribe and corruption as a “regular” part of doing business in Macedonia

Most often the bribe is paid to the public official in the form of food and drink (52%), by the provision of goods in exchange for the illicit “favor” (27.6%), and 16.6% bribed the public official in cash. According to the report, the average amount paid in cash by businesses is 689 Euro.

The data which should raise a red light for the acceptance of a bribe and corruption as a “regular” part of doing business in Macedonia, is the fact that in 57.5% of the cases, the bribe is offered by a representative of the business without a prior request being made. The other link in the corruption chain is public officials who requested the payment of a bribe in 36.1% of cases (requested explicitly in 8.9%, implicitly in 8.7%, and requested by a third party in 18.5%). Also alarming is the fact that the most common reason for giving a bribe was to “speed up business-related procedures” (50.2% of all bribes paid) and “making the finalization of a procedure possible” (9.6% of all bribes paid). This might lead to the clue that public officials use their positions for “hidden” pressuring on businesses in order to get the bribe. Another fact which confirms once again the situation where bribes and corruption are considered as a “regular” part for doing business “more smoothly” when it comes to the interaction with public officials, is that 22.2% of bribes paid served no specific immediate purpose for the businesses paying them. However, this could have a positive aspect, because a strategy to combat corruption could be developed through the restructuring of the administration and the institutionalization of official payments for the faster completion of procedures.

The survey on corruption in the business sector conducted within the USAID Anticorruption Program, which is one of the primary sources of data for this report, shows a similar dispersion of responses regarding the bribery of clerks, similar to survey data from the UNODC.

Box 2:

Annual “cost” of bribe

Having in mind that according to the data of the State Statistical Office, the number of active businesses in the Republic of Macedonia in 2013 was 71,290, and that on average, each company allocated 900 Euro for bribes on an annual level, meaning that 64 million Euro are outflows generated through bribery. That is 0.85% of the annual GDP of the Republic of Macedonia, according to the data for 2012.

Source: Corruption Monitoring System , 2014

According to this survey, 32% of representatives from the business sector replied to the question on how much money should an average company pay annually in the form of a bribe, in order to do its business. On average, the business sector considers that it needs to pay approximately 56,178 Macedonian Denars (MKD) annually, which is about 900 Euro. The highest bribe indicated was 600,000 MKD or about 10,000 Euro annually.

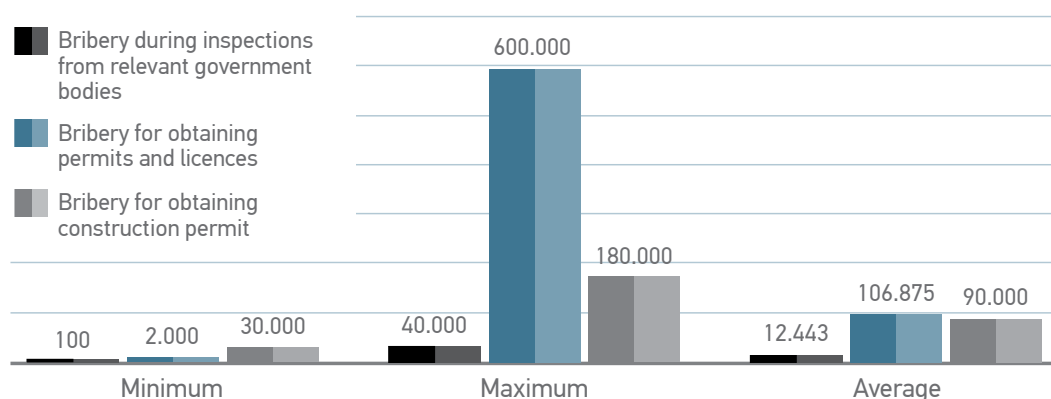
Representatives of the business sector mentioned payments (gifts) during inspections by relevant governmental bodies as the most common informal payments. Namely, 3.5% of business sector representatives have encountered such corruptive activities. Following that are unofficial payments or gifts for obtaining permits or licenses (2.5%) and getting construction permits (2%).

Table 6. Areas in which bribes are most commonly offered

Should have paid or offered a gift for: % Yes	% Yes	% No	% No answer
Obtaining a construction permit	1,75	98,25	0,00
Obtaining permits, licenses	2,50	96,75	0,75
Company/Firm registration	0,25	99,25	0,50
Receiving bank credit	1,75	97,75	0,50
During legal procedures	1,0	98,75	0,25
Registration of ownership rights	0,25	99,00	0,75
Winning a public procurement contract	1,25	97,75	1,00
Executing customs payments	1,25	98,00	0,75
Paying taxes	0,25	99,50	0,25
Signing contracts with large enterprises/companies	1,00	98,25	0,75
Getting connected to the grid by a utility	1,25	98,50	0,25
Getting connected to the grid by a utility	3,50	94,75	1,75

Source: Corruption Monitoring System, 2014

Regarding the amount that had to be paid, significant differences were reported. During inspections of relevant governmental bodies, respondents said their companies had to pay a minimum of 100 MKD as a gift and a maximum of 40,000 MKD. The data indicates an average of 12,443 MKD that the business sector pays as a counter favor during an inspection by relevant governmental bodies. For obtaining permits or licenses, the amount is much higher, reaching 106,875 MKD (about 1,737 Euro). The minimum amount mentioned was 2,000 MKD, while the maximum amount was 600,000 MKD (about 10,000 Euro).

Figure 28. Amount of payment/bribe for obtaining licenses, building permits, and in cases of inspection controls

Source: Corruption Monitoring System , 2014

For obtaining a construction permit, unofficially, the minimum amount paid by business sector representatives was 30,000 MKD (about 500 Euro), while the maximum amount paid was 180,000 MKD or about 3,000 Euro. On average, the amount that business sector representatives had to pay in order to obtain a construction permit was 90,000 MKD or about 1,500 Euro.

Almost one-quarter of surveyed businesspeople (24%) stated that in the past year, public officials have indirectly indicated that they expect cash, gifts or favors

Approximately 10% of business sector representatives have performed some kind of favor for a public official regarding the activities of their company, and the same percentage applies for business sector representatives presenting gifts to public officials in the past year (aggregated responses: in all cases, in most cases, and in isolated cases). The percentage of business sector representatives paying cash (money) to public officials regarding their company's activities is smaller (6%).

On the other hand, the survey provides a different dimension regarding corruption faced by the business community in their operations. Almost one-quarter of surveyed businesspeople (24%) stated that in the past year, public officials have indirectly indicated that they expect cash, gifts or favors (aggregated responses: in all cases, in most cases, and in isolated cases). A smaller percentage of the business community (9%) has experienced a direct request for cash, gifts or favors related to the company's activities (aggregated responses: in all cases, in most cases, and in isolated cases).

Table 7. Intensity of corruption pressure

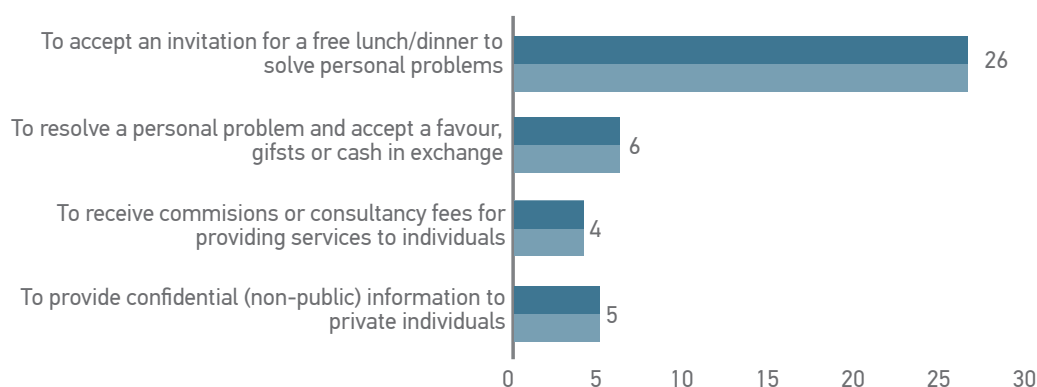
%	In all cases	In most of the cases	In isolated cases	In no cases	No contact in the last year	DK/NA
Directly demanded cash, gift or favor	0,3	2,0	7,0	85,8	4,3	0,8
Not demanded directly, but showed that they expected cash, gift or favor	1,5	7,5	15,3	71,3	3,8	0,8

Source: Corruption Monitoring System , 2014

It is worrying that an average of one-fourth of the business community considers it acceptable or somewhat acceptable for an MP or a government representative (26%) or a ministry, municipality or city official (23%) to accept an invitation for a free lunch/dinner to settle personal issues.

The views of the business community regarding MPs and ministers are almost the same as with civil servants, although a little tougher for civil servants compared with MPs and ministers in terms of accepting invitations to lunch/dinner and getting provisions/advisory fees.

Figure 30. Acceptability for offering counter favor to MPs or Ministers

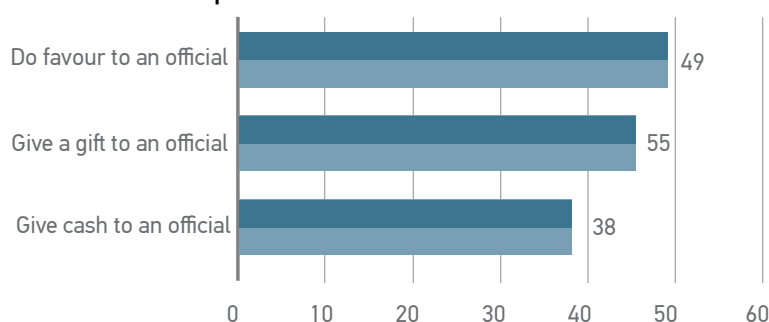


Source: Corruption Monitoring System , 2014

Very often and in reality, all of these mechanisms are linked to money laundering, which 16% of companies view as fairly common behavior in the economy. Bribes in cash given on the spot are less used and have been gradually replaced by conflicts of interest and complex financial transactions to transfer money that cannot be easily tracked by investigative journalists, tax authorities, or the secret services.

Just like citizens, representatives of the business community also consider that it is very or somewhat probable that the public official should be given a gift (55%) in order to successfully solve a certain problem, while 49% believe that it is very or somewhat probable that a favor should be provided to the public official in order to solve a certain problem. A somewhat smaller percentage of business community representatives (38%) consider that an official should be given money in order to solve a certain issue. These levels are relatively lower than those of citizens, but unlike in bribes given by an average citizen, in these cases it is assumed that usually the presents are not as small as souvenirs, but are expensive items, watches, mobile phones, and other luxury goods.

Figure 31. Activities taken in cases of corruption

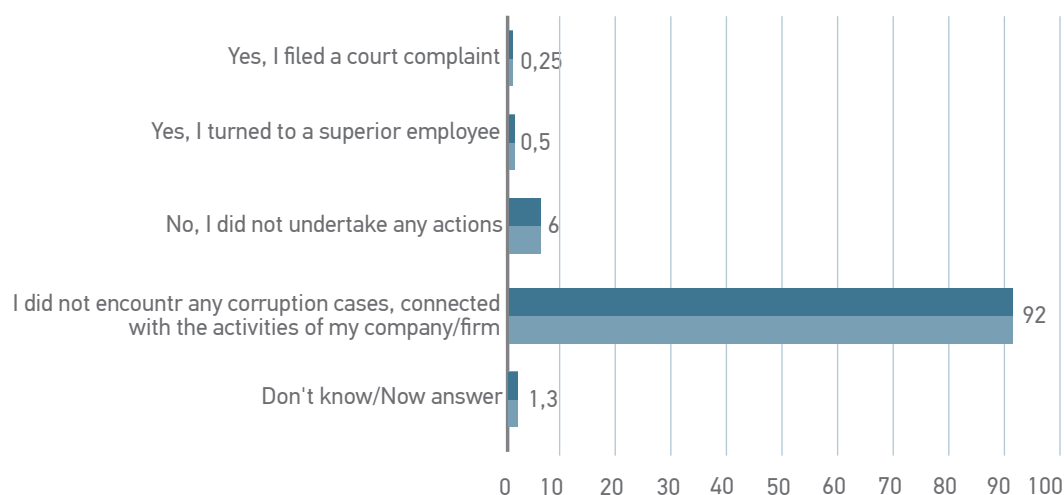


Source: Corruption Monitoring System , 2014

The fact that cash is less common than other mechanisms, but where obviously there is a cash equivalent to the service or gift, might lead to the conclusion that corrupt networks in Macedonia are more effective than a quasi-market for the provision of a bribe spot. However, expectations for cash are so high, which reveals a systematic problem and which should first be reduced and then redirected through corrupt networks through which gifts and services circulate. In many cases, it is difficult to report corruption incidents; firstly, because there is not enough data or because the court would not consider these data as evidence, and secondly, people have very low confidence in the judiciary and may be afraid of the consequences. The vast majority of people who witness corruption do not take further action, except that they only talk about it in their social circles. In exceptional cases, they complain to their superiors or the courts.

Bribes in cash given on the spot are less used and have been gradually replaced by conflicts of interest and complex financial transactions to transfer money that cannot be easily tracked by investigative journalists, tax authorities, or the secret services

Figure 32. Activities taken in cases of corruption



Source: Corruption Monitoring System , 2014

Out of those who have not taken any activity in disclosing the corruption case they faced, 42% considered they would not have achieved anything with their activity, while 38% were afraid of negative consequences.

Table 8. Reason for not reporting corruption by businesses

A25 In case You did not undertake any actions, what was the main reason? 6%	
Did not know who to turn to/ who to contact	4
It will take a lot of time which I cannot afford to waste	4
My actions will not accomplish anything	42
I am afraid of negative consequences	38
Other reason	8
DK/NA	4

Source: Corruption Monitoring System , 2014

Business sector representatives form their opinions about the expansion of corruption in Macedonia mostly from conversations with relatives and acquaintances (40%), the media (34%), and based on their own experiences (14.5%).

2. Grey economy in Macedonia

There are several studies that measure the size of the grey economy in Macedonia. The main causes of the grey economy are considered to include taxes, unemployment, regulation intensity, bureaucracy, social transfers paid by the government, etc. The estimates, depending on the method used, range from approximately 12% to 40%. For instance, the GDP in 2011 was corrected by 11.8% for non-observed activities/economy (State Statistical Office, 2013). On the other hand, other studies show a considerably larger share of the grey economy. For instance, Novkovska⁴ estimates the size of the grey economy between 2009 and 2011 at approximately 35% of GDP, measured by the electricity consumption method and the latent variable approach. Garvanlieva⁵ et al. estimate the grey economy at 24% in 2010 and 47% in 2011⁶ (using another approach), showing large variations depending on the method used. In a comparative perspective, Macedonia has a high share of informal activity in industry, domestic services, green markets⁷, etc. However, all available studies show a declining trend of the size of the informal economy since 2004 onwards.

Similarly, data on informal employment (based on a Labor Force Survey) show that about one-quarter of all jobs in the country are informal. As of 2009, the share of informal employment in total employment declines, which could be attributed to gross wage reform that at the same time reduced labor taxation, and the possibility for tax evasion through the introduction of an integrated collection of personal income tax and social benefits.

This problem is also highlighted in the latest EU Progress Report on the country for 2013, which states that “employment in the grey economy has not diminished, and cooperation and coordination between enforcement bodies is weak.”

The Government prepares annual action plans for the fight against the informal economy. In 2013, the responsibility for the preparation of the plan was switched from the Ministry of Economy to the Ministry of Labor and Social Policy, given the policy focus on reducing informal employment in the country. Initially, the plans were dominated by increasing inspection activity and penalties, whereas in 2013 and 2014, besides inspections, the focus of planned activities was also on educating citizens and businesses, measures to support the formalization of businesses, increased cooperation and coordination between several public inspection bodies, etc. The institutions envisaged as responsible for the implementation of measures are the Ministry of Labor and Social Policy, along with the State Labor Inspectorate, the Ministry of Economy, the Ministry of Finance, the Employment Agency of the Republic of Macedonia, the PRO, and Customs.

Although the state adopted a set of documents to combat the grey economy, efforts need to be further intensified, as was also stated in the latest EU Progress Report. The latest published analysis on the grey economy was conducted by the Center for Economic Analyses (CEA) in 2012⁸. According to the results, the relative size of the grey economy decreased over the last

Macedonia has a high share of informal activity in industry, domestic services, green markets

4 Novkovska, B. (2012) Prevalence and measurement of grey economy in the Republic of Macedonia. PhD dissertation at the University “Ss. Kiril and Methodius” – Faculty of Economy, Skopje. October 2012. (Doctoral Thesis, available only in Macedonian).

5 Garvanlieva, V., Andonov, V. and Nikolov, M. (2012) Shadow Economy in Macedonia. Skopje, Center for Economic Analysis.

6 Risteski, H. (2009) Assessing Handicraft Shadow Economy in Macedonia. Skopje, Center for Economic Analysis.

7 State Statistical Office (2013) Gross Domestic Product 2011. Statistical Review: National Economy and Finances.

8 Garvanlieva, V., Andonov, V. and Nikolov, M. (2012) Shadow Economy in Macedonia. Skopje, Center for Economic Analysis.

decade (2000 to 2010) from 34% of GDP in 2000 to 24% of GDP in 2010, measuring almost 1.7 billion Euro in 2010.

The costs associated with the grey economy could be: unfair competition for formal businesses through higher tax and administrative burdens; a larger budget deficit or higher tax rates; slow economic progress as informal businesses are less productive and more inefficient; incorrect statistical data leading to suboptimal policies^{9 10}, etc. Moreover, some parts of the grey economy might generate bribes. Data from the World Bank's Enterprise Survey shows that informal businesses pose large costs to Macedonian (formal) companies in terms of unfair competition (see table below), although there was large progress in this area between 2009 and 2013.¹¹

Table 9: Informal economic activity and corruption

Indicator	Macedonia 2009	Macedonia 2013	Eastern Europe & Central Asia	All countries
Percent of firms competing against unregistered or informal firms	73,9	55,6	39,1	54,4
Percent of firms formally registered when they started operations in the country	99,2	98,9	97,9	88,2
Percent of firms identifying practices of competitors in the informal sector as a major constraint	54,9	34,8	20,7	27,9
Bribery incidence (% of firms experiencing at least one bribe payment request)	14,7	7,2	17,3	17,1
Bribery depth (% of public transactions where a gift or informal payment was requested)	9,5	3,6	13,5	13,1
% of firms identifying corruption as a major constraint	27,1	13,4	22,2	33,9

Source: World Bank, Enterprise Survey, 2012, 2013

On the other hand, Macedonia fares comparatively well on the indicators of bribe and corruption (see Table 9). In particular, the incidence of bribery, the depth of the bribery and the constraint the bribery poses to businesses is lowest in comparison to the average of the countries of the Eastern Europe and Central Asia, as well as to the overall average (a set of 130 countries). This might show that there is no strong link between informal economy and bribes (corruption) in the country.

9 Schneider, F. and Enste, D. (2000) Shadow Economies around the World: Size, causes and consequences. IMF Working Paper, No. 26/2000.

10 Spiro, P. (2005) Tax Policy and the Underground Economy. *Size, Causes and Consequences of the Underground Economy*, in Christopher Bajada and Friedrich Schneider (Eds.), Ashgate Publishing, 2005.

11 The survey is conducted on 130,000 companies from 130 countries in 2012 and 2013.

3. Government budget spending and redistribution

3.1. National budget process and spending transparency measures

The process of the preparation, adoption, and execution of the budget of the Republic of Macedonia and the budgets of local self-government units (LSGU) and the City of Skopje is regulated by the Budget Law¹². The preparation of the annual budget is based on the strategic priorities of the Government, fiscal strategy, the proposed strategic plans of budget users, and the budgetary policies and priorities of municipalities.

The transparency of the process for the preparation of the budget is insufficient, as the preparation of the draft budget and final accounts are not covered in the methodology for regulatory impact assessment, which ensures public involvement from the early phases of law-making processes.

In the EU Progress Report on the Republic of Macedonia from 2012, budgetary planning and execution was qualified as deteriorated and the quality of public spending as low. Additionally, it was assessed that the budgetary process continues to be plagued by overly optimistic revenue estimates, lack of midterm planning, short-term oriented spending decisions, and a deterioration in public spending management, resulting in increasing payment arrears, further reduced transparency in spending decisions, and weakened reliability of public sector accounts. The mid-term budgetary planning was resolved with the preparation of “Fiscal Strategy 2014-2016” by the end of 2013.

According to the latest audit on the national budget for 2012, conducted by the authorized state auditors, two main issues were raised: one regarding the documents based on which the national budget is prepared, and the second regarding the alignment of budget requests by budget users. Similarly, the EC (2013) acknowledges the need for greater transparency in the budget preparation, as well as for enhancing the capacities for strategic planning in the budget sphere. However, the main issues in the budget preparation, as assessed by the EC (2013), are related to a lack of capacity for strategic planning rather than to other factors (including corruption). Although required by law, the mid-term fiscal strategy, based on which the budget should be prepared, was not adopted when preparing the 2012 budget. On the other hand, the fiscal strategy (2014-2016) was submitted to the Parliament in September 2013, along with the budget proposal for the following year, although the deadline for submission is 31 May of the current year (Article 16 of the Law on Budgets) for the next year.

The process of budget adoption might be described as the usual position/opposition debate regarding the budget projection and implementation of government strategy. The exception was the 2013 budget adoption when the budget debate was accompanied with violence. In particular, the debate on the 2013 budget was effectively stopped with the forcible removal of a large number of opposition MPs and journalists following a few weeks of tense debate and 1,225 amendments submitted by opposition MPs. After a few months of political crisis, the Parliament’s rules of procedure were revised, with the aim of limiting committee discussions on future budgets, and were further amended in line with the recommendations of the Committee of Inquiry.

The Budget Law regulates the transparency of the budget (Articles 53 and 54). It is also important to emphasize that the law regulates that reports for budget execution should be published on a monthly basis on the webpage of the Ministry of Finance, as well as the semi-annual budget execution report. On the other hand, Article 54 regulates that the Executives

12 Law on Budgets (Official Gazette, No. 64/2005).

The transparency of the process for the preparation of the budget is insufficient

According to the Open Budget Index, Macedonia is at 68th place out of 100 countries, with the lowest number of points from the countries in the region

Budget Proposals and Year-End Report should be published only in the “Official Gazette” without the obligation to be published on the webpage of the ministry, which happens in practice. The monthly budget execution reports are published on the webpage of the ministry, but it should be noted that presented data is for the consolidated total budget and not on a budgetary user’s level. The other limiting factor is that the Ministry of Finance publishes only the Chapter I General Part of the budget (which is published in the Official Gazette) and not the Chapter II Special Part, in which the detailed budgets of the institutions are presented. The entire version of the budget may be obtained only from the website of the Parliament¹³, since it publishes all of the documents it receives for adoption. Although the Law on the Execution of the Budget and the Year-End Report, which enter into the Parliament procedures, also contain the detailed budgets of all 81 local self-government units, these are not published all in one place, but each municipality is obliged to publish it in their Local Gazette¹⁴. Municipalities do not have a legal obligation to publish it on their webpages. This additionally hinders transparency and citizens’ understanding of the budgets, as the municipalities rarely publish their budget on their websites.

The Open Budget Initiative Survey for 2012¹⁵ confirms the situation whereby the public, both general and professional, is limited in doing in-depth research on budget spending due to the lack of available data and its low usability levels. According to the Open Budget Index, Macedonia is at 68th place out of 100 countries, with the lowest number of points from the countries in the region: Bosnia and Herzegovina, Croatia, Serbia, and Slovenia. The result decreases from 49 (in 2010) to 35 (in 2012), suggesting deterioration and providing minimal information to the public in its budget documents.

3.2. Enforcement of fiscal rules

The EU Progress Report on Macedonia for 2013 notes that fiscal discipline and the sustainability of public spending should be enhanced. It is emphasized that consistency and transparency in the area of fiscal policy have worsened.

The budget is revised almost every year. Since 2008, the national budget was executed as originally planned (without revision in 2011). Except in 2009, when it was amended twice, in other years it underwent one rebalancing process. In 2009, the first revision was due to the under-collection of planned revenues (as at the time of the budget preparation, there were no signs that Macedonia would be hit by the global crisis), and the second one was related to a downwards revision of the GDP projection. As a result of the revisions in 2009, there was a decrease in income and expenditures and a slight decrease of budget deficit; while in 2010, the result was a slight increase in deficit. This frequent need for budget revisions is again related to capacities for budget planning and execution, as well as to the macro forecasts which serve as a basis for budget preparation.

In 2013, the rebalance resulted in a budget deficit increase of 9%. As presented in the narrative part of the budget, the increase was due to adjustments and a reallocation of funds to Pension Funds. Such a measure was explained as the result of an increased number of new users who fulfilled the condition for exercising the right to retirement and a rise in the cost of living.

However, when analyzing the data, part of the increase of total expenditures (47.5 million Euro)

13 Website of the Assembly of the Republic of Macedonia <http://www.sobranie.mk/materijali.nspix>

14 Law on Budgets (“Official Gazette” no. 64/2005).

15 Open Budget Initiative (2012) Open Budget Index. Available at: <http://internationalbudget.org/wp-content/uploads/OBI2012-MacedoniaCS-English.pdf>

is due to the increase in capital expenditures (23.8 million Euro). Changes to budget categories are provided in Table 10.

Table 10. Budget rebalance for 2013

48 Capital Expenditures	Budget Plan	Budget Rebalance	Absolut change
40 Salaries and Allowances	379.188	376.971	-2.217
41 Reserves and Non-Defined Expenditures	1.967	1.967	0
42 Goods and Services	602.771	605.229	2.457
44 Current Transfers to Local Self-Government Units	256.479	256.479	0
45 Interest Payments	67.447	67.608	161
46 Subsidies and Transfers	201.470	212.970	11.500
47 Social Subsidies	899.631	911.310	11.679
48 Capital Expenditures	306.630	330.419	23.789
49 Repayment of Principal	258.526	258.694	169
TOTAL	2.974.109	3.021.646	47.538

Source: Ministry of Finance, Amendments to the Law on Budget of the Republic of Macedonia for 2013, adapted to the needs of the CMS

3.3. Budget subsidies and grants

In 2014, total expenditures under the budget lines “46 Subsidies and Transfers” and “47 Social Subsidies” equaled almost 212 million Euro or 6.8% of the total budget. Expenditures on subsidies and transfers included a total amount of 140 million Euro earmarked for supporting agriculture (66% of total subsidies), which was increased by an additional 5 million Euro compared to the previous year.

During the last election period¹⁶ in 2014, the issue was raised of using the payments of the subsidies for vote buying. According to the Election Code, the budget subsidy payments, which are not regular monthly payments, may be paid at the latest 20 days before the election. According to the February monthly report of Transparency Macedonia (TM), subsidies were provided in February in the amount of almost 44 million Euro, which were not regular monthly payments but arrears from the previous year.¹⁷ In early April 2014, subsidies were fully paid to tobacco farmers.¹⁸

When it comes to budget support through subsidies/grants, despite the support per sector, it is important to analyze allocations from the central budget to municipalities. The share of budget subsidies in the overall budget may indicate a particular favoritism or neglect of community development and could be an indication of corruption risk.

Given the fact that the vast majority of municipalities in Macedonia are managed (mayor and council) of representatives of the ruling coalition, it is hardly possible to prove the difference in grants based on belonging to a ruling or opposition leadership of the municipalities. The MCIC

¹⁶ Presidential elections on April 23, and early parliamentary election on April 27, 2014.

¹⁷ Transparency Macedonia (2014). Monthly Report for February 2014. Skopje, Transparency Macedonia.

¹⁸ Transparency Macedonia (2014). Monthly Report for April 2014. Skopje, Transparency Macedonia.

research on the Ohrid Framework Agreement as of 2011¹⁹ established that there is no clear picture of injustice in fiscal decentralization in terms of the party affiliations of mayors in the period between 2005 and 2009; the only exception was the municipality of Centar.

Box 3:

There is no clear picture of injustice in the distribution of transfers

There is no clear picture of injustice in fiscal decentralization in the period of 2005 to 2009, i.e. the distribution of transfers from the central government to municipalities, based on the level of social inclusion, ethnical belonging to majority population, and party affiliation of the mayor.

Higher average transfers to the City of Skopje and Centar Municipality

In 2009, the average transfers from other levels of government for all 84 municipalities amounted to 7,124 MKD/per capita. For municipalities in Skopje, the cumulative income per capita to the municipality and the city in 2009 amounted to 10,989 MKD/per capita and are over 54% above the country average. The highest transfers from the central government per capita was to the municipality of Centar (26,303 MKD/per capita). This municipality is an exception in transfers, and the assumption is that this is due to transfers from the budget of Macedonia related to the implementation of projects in the municipality of Centar.

Source: MCIC (2011) Ohrid Framework Agreement – case study

A similar situation occurs in the analysis of data for the period from 2009 to 2013 in three municipalities in Skopje, one of which was in opposition (Karposh) and two were affiliated to the ruling party (Aerodrom and Centar). Namely, one can notice the difference, but the percentage of transfers from other levels of power²⁰ to the municipalities of Aerodrom and Karposh is more balanced compared with the transfers made to the municipality of Centar. What makes the municipality of Centar much different is the project “Skopje 2014”, which was predominantly implemented in the period from 2009 to 2013.

Table 11. Ratio of transfers from other levels of government and the total budget of the municipality of Centar.

In 000 MKD	2009	2010	2011	2012	2013
Total	1.322.092	1.283.926	1.533.639	1.682.922	944.495
741 Transfers from other levels of government	928.477	807.169	1.058.639	1.070.664	434.201
Participation of grants in the overall budget	70 %	63 %	69 %	64 %	46 %

Source: Ministry of Finance, draft final balance statement of the Budget of the Republic of Macedonia for 2009-2012, submitted to the Assembly, Municipality of Centar, Final balance sheet of Municipality of Centar for 2013, adapted to the needs of the CMS

The high percentage of the implementation of grants from the central government or transfers from the budget line 741 make the municipality of Centar distinctive. The implementation is highest in 2010, when the plan was surpassed by almost 30% (or a total of 128%), while the lowest was in 2013 (52%).

¹⁹ MCIC (2011) Ohrid Framework Agreement – case study.

²⁰ The analysis does not take into account funding which is part of budget line 741 “Transfers from other levels of government” as block grants.

Table 12. Budget line 741 “Transfers from other levels of government” in 000 MKD (budget income without self-financing activities, grants, donations and credits) of municipality of Centar

In 000 MKD	2009	2010	2011	2012	2013
Planned	928.356	628.352	1.413.624	1.502.913	838.262
Realized	928.477	807.169	1.058.639	1.070.664	434.201
% of realized	100 %	128 %	75 %	71 %	52 %

Source: Ministry of Finance, draft final balance statement of the Budget of the Republic of Macedonia for 2009-2012, submitted to the Assembly, Municipality of Centar, Final balance sheet of Municipality of Centar for 2013, adapted to the needs of the CMS

Unlike the municipality of Centar, the municipality of Aerodrom which is also managed by a mayor and a majority municipal council from the ranks of the ruling party, the situation is significantly different.

Table 13. Ratio of transfers from other levels of government and the total budget of the municipality of Aerodrom

In 000 MKD	2009	2010	2011	2012	2013
TOTAL	255,900	556,469	493,141	641,567	521,061
741 Transfers from other levels of government	99,486	56,293	27,551	193,638	103,449
Participation of grants in the overall budget	39%	10%	6%	30%	20%

Source: Ministry of Finance, draft final balance statement of the Budget of the Republic of Macedonia for 2009-2012, submitted to the Assembly, Municipality of Aerodrom, Final balance sheet of Municipality of Aerodrom for 2013, adapted to the needs of the CMS

Table 14. Ratio of transfers from other levels of government and the total budget of the municipality of Karposh

In 000 MKD	2009	2010	2011	2012	2013
TOTAL	306,994	485,410	396,475	634,036	398,360
741 Transfers from other levels of government	27,284	18,166	15,696	15,755	29,667
Participation of grants in the overall budget	9%	4%	4%	2%	7%

Source: Ministry of Finance, draft final balance statement of the Budget of the Republic of Macedonia for 2009-2012, submitted to the Assembly, Municipality of Karposh, Final balance sheet of Municipality of Karposh for 2013, adapted to the needs of the CMS

The SAO is the institution responsible for checking the financial reports of municipalities. Article 38 of the Law on State Audit²¹ regulates the performance of the external regular annual audits by the SAO. In practice, the annual audits are performed on a certain number of municipalities, and this is determined by the annual program of the SAO. In 2014, it was planned to audit 21 municipalities, compared to 2013 when only four municipalities out of 81 LSGU were audited.

21 Law on State Audit (Official Gazette, No. 66/2010).

The SAO is the institution responsible for checking the financial reports of municipalities

The State Audit Report for the audits conducted in 2012²² addressed several issues regarding municipality budget planning and implementation:

- Laws governing the area of concessions of mineral resources do not foresee the participation of municipalities in the procedures for granting concessions and the monitoring of contracts and the collection of revenues. Due to this, municipalities are facing a shortage of information on expected revenues based on concessions, which influences the planning of the municipal budget, and the validation of the full revenue that was paid to their bill;
- Some of the audited LSGU did not establish internal controls and in cases where they were established, they were not functioning, and there was a lack of written procedures and segregation of jurisdiction. This ineffective internal control brings a risk of payments by documentation that is incomplete and unauthorized by the responsible persons, and the incomplete and untimely collection of revenues;
- Low incomes of LSGU are due to incomplete and outdated records on taxpayers, as well as a failure of taking all legal measures to collect the tax debt; and
- A small part of the audited LSGU still have not fully completed procedures for the identification, assessment, and recording of the value of property for transferring the right of ownership of real estate of the Republic of Macedonia to the municipality.

22 State Audit Office (2012) Annual Report for 2012. Skopje, State Audit Office.

4. Public procurement and corruption

4.1. Legal framework and current situation

In the Republic of Macedonia, the system of public procurement marked its beginning in the year 1996, with the adoption of the first regulation; while in 1998, the first Law on Public Procurement was adopted. One of the main ideas for the establishment of a just system was precisely for the prevention of corruption.

The competent state institutions, which are involved in the monitoring and controlling processes of the aspects of corruption in the public procurement system include the State Appeals Commission on Public Procurement, the Public Procurement Bureau (PPB), the SCPC, and the SAO.

In 2014, the Law on Public Procurement was amended with the aim of improving the quality and transparency of the entire public procurement process. In order to increase competition and reduce opportunities for corruption, new amendments now stipulate that anybody issuing a public tender should have at least five foreign and five domestic companies meeting the tender documentation conditions concerning services and products, unless it concerns a product manufactured by only two to three producers in the world. Additionally, the Public Procurement Council's responsibilities were better defined.

According to the data from the PPB's reports²³, in 2013, there were a total of 8,793 contracting parties, out of which 6,944 are active. On the other hand, 9,000 economic operators were registered as potential bidders offering certain products, services or works. The total value of realized funds through public procurement in 2013 was 52,491,650,489 MKD (about 850 million Euro), and in the past three years, there was a decrease in the total amount of funds awarded in this manner. Table 15 offers a comparative overview from 2008 to 2013 on the value of awarded public procurement contracts and their share of the budget and GDP.

Table 15. Comparative overview of the value of awarded public procurement, 2008-2013

	2008	2009	2010	2011	2012	2013
Awarded public procurement contracts	22.053	22.789	24.248	23.862	23.732	20.645
Total value	27.553	47.713	45.704	59.183	56.363	52.492
Public procurement as % of GDP	7 %	12 %	11 %	13 %	12 %	11 %
Public procurement as % of the State Budget	21 %	32 %	35 %	45 %	35 %	31 %

Source: Annual Reports of the Public Procurement Bureau, adapted to the needs of the CMS

Concerning procedures, the most often used tendering procedure, according to the value of concluded contracts in 2013, was the open procedure with 68% of the total value of public procurement. The second most often used procedure was the negotiated procedure without publication, which was used in 11% of the total value of the public procurement (5,936,324,555 MKD in 1,452 contracts). There is an increasing trend of the use of this procedure. Table 16 offers a comparative overview since 2010 on the increasing value of contracts awarded using this procedure and their share in the total amount of awarded funds. It is also noted that the average value of signed contracts is increasing, despite a reduction in total assets.

²³ Public Procurement Bureau (2014) Report on the activities of the Public Procurement Bureau in the operation of public procurements for 2013. Skopje, Public Procurement Bureau.

In 2014, the Law on Public Procurement was amended with the aim of improving the quality and transparency of the entire public procurement process

Table 16. Negotiated procedure without publication of public call

	2010	2011	2012	2013
Value of awarded contracts	2.139.757.077	2.547.834.151	4.410.568.311	5.936.324.555
Number of awarded contracts	827	904	1162	1452
Average value of awarded contracts	2.587.373	2.818.401	3.795.670	4.088.378
% of the total value of public procurement in Macedonia	5 %	4 %	8 %	11 %

Source: Annual Reports of the Public Procurement Bureau, adapted to the needs of the CMS

Table 17. Most often used reasons/legal grounds for using the negotiated procedure without publication

	2010	2011	2012	2013
When in an open procedure, a restricted procedure, a negotiated procedure with publication and a request for offers procedure, the Contractor cannot hold an e-auction as there is no sufficient competition	/	/	986.547.060	2.911.682.503
Due to urgency caused by events that the Contractor could not have foreseen, and that they cannot be held accountable for	967.337.368	502.888.601	1.300.131.547	880.369.233
Those additional works or services cannot be separately (for technical or economic reasons) tendered from the basic tender without major problems to the Contractor	220.664.889	1.176.426.274	1.213.167.626	943.145.852
Due to technical or artistic reasons, i.e. reasons related to exclusive rights/ copyright (patent etc.), the Contract can be performed only by a certain economic operator	302.393.503	370.662.924	274.979.387	895.840.585
TOTAL	1.490.395.760	2.049.977.799	3.774.825.620	5.631.038.173
% of the total amount of Contracts with a negotiated procedure without publication	70 %	80 %	86 %	95 %

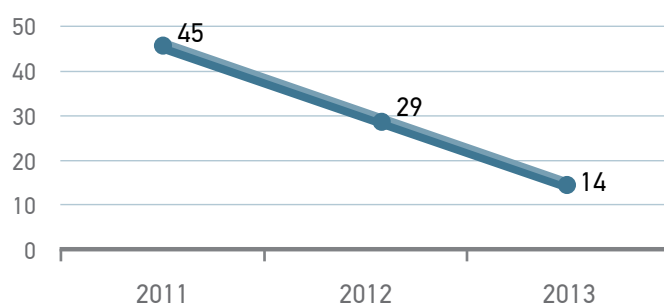
Source: Annual Reports of the Public Procurement Bureau, adapted to the needs of the CMS

In all of these years, one of the most quoted reasons for using this procedure was the urgency caused by events that the contractor could not have foreseen, and that they could not be held accountable for. In 2013, the most often used reason/legal grounds for using this kind of procedure was that the contractor could not hold an e-auction, since there was not enough competition; almost half of the awarded contracts (49%). Table 17 provides an overview since 2010 on the value of awarded contracts using these procedures, according to the three most often used reasons/legal grounds for using these procedures. As stated in the report of the PPB, the increase in usage of negotiated procedures without publication as compared to 2012

was mostly due to the possibility for using this kind of procedure, when the contractor could not hold an e-auction because there was not enough competition.

According to the 2013 report of the PPB and the SCPC, from the total of 201 received reports about possible corruption in public procurement, 14 refer to the possible corruption in the public procurement field. In six of the reports, the SCPC found sufficient grounds for the committed crime of the misuse of position and authority by responsible persons from implementing bodies, after which an initiative for criminal charges was raised to the Public Prosecutor's Office of the Republic of Macedonia.

Figure 33. Number of reports to the SCPC on corruption in public procurement 2011-2013



The number of reports on the existence of suspicion of corruption in public procurement was reduced from 45 reports in 2011 and 29 reports in 2012 to 14 reports on possible corruption in 2013. The aforementioned data suggest that the dynamics of corruption is formally decreasing, although this data may also indicate the conclusion that people have less confidence in the institutions responsible for combating corruption and are a lot less willing to report corruption.

The Center for Civil Communications (CCC) has been monitoring public procurement processes since 2008. According to the research published in January 2014²⁴, in nearly one-third of the tenders, the contract for public procurement was concluded with the company that appeared as the only bidder. Under such conditions, the tender did not end with electronic competition in order to reduce the prices of the so-called e-auction. Hence, these procedures had an increased risk that the contract was concluded at a higher rate than those on the actual market. Furthermore, the research states that each fourth tender was unsuccessful. The most frequent reason for cancellation was the lack of a single acceptable or appropriate offer.

Box 4:

Estimation of annual unofficial payments for obtaining public procurement agreements

Taking into account the results of the survey and the average amount of contracts which should have been paid unofficially by respondents, the annual value of unofficial payments for 2013 was almost 40 million to 65 million MKD (from 640,000 to almost 1.1 million Euro). It is assumed that of the 20,645 contracts for public procurement in 2013, in 1.25% cases a bribe was given to receive the contract. The average value of the contracts was 2.5 million MKD, while the average percentage of bribery according to the survey was 6% to 10%.

The latest report of the CCC, for the period of April to June 2014, states that the new legal regulations which came into force in January 2014 provided the expected results with regards

²⁴ Center for Civil Communications (2014) 19th Quarterly Report for 2013. Skopje, Center for Civil Communications.

In nearly one-third of the tenders, the contract for public procurement was concluded with the company that appeared as the only bidder

to decreasing negotiations without previously publishing the public announcement, but are still inefficient with regards to decreasing cancelations. A large percentage of companies participating in tenders failed to reach the evaluation phase. The most common reasons for rejecting their offers were administrative mistakes, as well as not meeting the tender documentation pre-conditions. The competition in the tenders was still not on a satisfactory level in the monitored timeframe.

A part of the primary research on corruption with representatives from the business sector covered the topic of public procurement - the experience and perception of businesses on corruption in public procurement in Macedonia.

To the question “on average, what kind of percentage of the contracted amount did you have to pay unofficially, in order to for you to obtain a public procurement contract”, only 1.25% of business sector representatives stated a certain percentage of the contract value. Namely, 0.75% stated that they had to pay 3-5% of the contract value; 0.25% had to pay between 6-10%; and the same percentage of the business community (0.25%) stated that they had paid 11-20% of the contract value. Approximately 35% of business community representatives stated that they did not have to pay anything in order to obtain a public procurement contract, while most interviewees (59%) had not obtained any public procurement contracts. A further 5% did not respond to the question.

Box 5:

Real number of unofficial payments much higher than 1.25%

When asked to talk about their company's experience, only 1.25% of respondents gave an estimation of the percentage of the unofficial payment; however, when asked about the perception in their economic sector, 12% gave an answer. This may lead to the conclusion that the real number of those who experienced unofficial payments for obtaining public procurement contracts may rise to 12%.

In that case, the aforementioned estimation of the annual amount of unofficial payments for obtaining contracts may rise to 650 million MKD (almost 11 million Euro).

Although bribery is perceived as a regular activity, it is not simple to assess it, and participants had a problem in assessing the value of the bribe needed to get the public procurement contract. Nearly two-thirds of all respondents did not answer the question requiring them to make an assessment of the average value of the bribe given by others, which is a signal of the inefficiency of the corruption system.

With regards to the business community's perception of the unofficial amount paid by companies to obtain a public procurement contract, 12% of the companies stated a certain percentage of the total value (1.5% deem that 2% needs to be paid; 2.75% consider that this percentage is 3-5%; 5.25% of the companies consider that the unofficial amount paid is 6-10%; while 2.5% of business community representatives consider that the amount that must be paid is between 11-20%). A quarter of business community representatives consider that companies do not have to pay anything in order to obtain a public procurement contract, while most interviewed companies (63%) stated that they do not know/or do not have a response to this question.

Table 6p. 18 Unofficial payments for obtaining public procurement contract

In your opinion, how many companies in your sector unofficially pay to get public procurement contract?	
Up to 2% of the contract's value	1,50 %
3-5% of the contract's value	2,75 %
6-10% of the contract's value	5,25 %
11-20% of the contract's value	2,50 %
Companies in my sector do not have to pay	25,00 %
Do not know	63,00 %

Source: Corruption Monitoring System , 2014

Companies have most often encountered canceled and re-published tenders at a later date (17.75%); followed by tenders containing certain technical specifications that only one specific company could meet (11.75%); and one-bidder tenders and tenders modified after being published were stated by 9.75% of business community representatives.

When such a situation occurs of exceptionally low levels in the ability to assess the cost of corruption in public procurement, a common explanation is that the role of networks and political connections are more important than the quasi-market bribery on the spot.

Besides the PPB and the SCPC, the SAO, in accordance with legal responsibilities, also has a major role in preventing corruption in public procurement. The SAO, within its planned audits, reviews public procurement procedures in the entities subject to audit. The auditing of public procurement procedures covers the planning, implementation and execution of the public procurement process. In 2013²⁵, in 26 out of 100% of the cases audited, the following irregularities were identified as the most common:

- Purchased goods without a procurement procedure / purchases made before signing the contract / purchases made on the basis of old contracts in previous years - 13%;
- Deficiencies in the phase of concluding contracts (contracts not signed with selected bidders; contracts signed with prices, terms and other elements different than those offered; signing contracts for a term shorter than that legally prescribed, etc.) - 11%;
- Deficiencies in the implementation phase of the concluded agreements (warranties, prices, quantities, terms of payment, and other terms that are not defined in the contracts) - 8%; and
- Disadvantages relating to the tender documents, which either do not contain elements specified in the Law on Public Procurement or is not prepared at all - 8%.

Although each year, entities that are subject to auditing are usually not the same²⁶, it is noticeable that in the last three years the most common deficiencies were the same. Namely, in all three years, the most common irregularities were associated with purchases without implementing the procedures, or the purchase was made with delay or based on old contracts.

There are obvious weaknesses in terms of the planning stage of procurement, in the evaluation of bids, scoring, ranking, the presentation of the proposal for the selection of the best bidder,

There are obvious weaknesses in terms of the planning stage of procurement, in the evaluation of bids, scoring, ranking, the presentation of the proposal for the selection of the best bidder, etc

²⁵ State Audit Office (2014) Annual Report for 2013. Skopje, State Audit Office.

²⁶ According to the Law on State Audit, mandatory revisions are required of the budget of the Republic of Macedonia and the budgets of the funds, while the audits of other entities that are covered by the law are done in terms defined in the annual work program of the SAO (Art. 23 paragraph 1).

etc. Despite the detailed recommendations on the need for improving public procurement in Macedonia stated in the EU Progress Report for 2012, the Government has not taken any action. Therefore again in the EU Progress Report for 2013, the EC reiterated almost the same recommendations as in 2012.

However, with the amendments to the Law on Public Procurement in 2014 improvement is expected in certain segments that will increase transparency and avoiding corruption risks.

4.2. Most notable cases of corruption

According to the report for the year 2012, the SCPC initiated six cases for raising criminal charges concerning public procurement procedures to the Public Prosecution and the Primary Public Prosecutor for Organized Crime and Corruption. The cases were mainly related to the misuse of official duty and authorization, as well as reckless work on duty on behalf of the responsible persons (directors). Four of these six cases related to abuses by the responsible persons in health and educational institutions. Two cases in the health sector were raised against responsible persons in the University Clinic for Infectious Diseases and Febrile Conditions in Skopje, and the Health Center in Bitola. The responsible person at the University Clinic for Infectious Diseases and Febrile Conditions in Skopje was charged with a failure to provide the legal use and protection of the property of the clinic, thus damaging the public health institution, and acquiring considerable property for someone else or for personal needs.

The second case involved the directors of the Health Center in Bitola regarding the management, advocacy and representation of the institution, and during the management of the assets of the center within a public procurement procedure, they did not provide the proper and lawful use and protection of the assets of the institution, which caused damage and created the opportunity for significant illegal proceeds.

In the case of the director of the elementary school “Kiril Pejcinovikj”-Skopje, while managing the assets of the institution and conducting public procurements procedures, the director established business relations with a legal entity whose founder/the owner was her husband, and she failed to provide the legal and proper usage and protection of budget assets, thus creating the possibility for obtaining unlawful property gains, for themselves or for others.

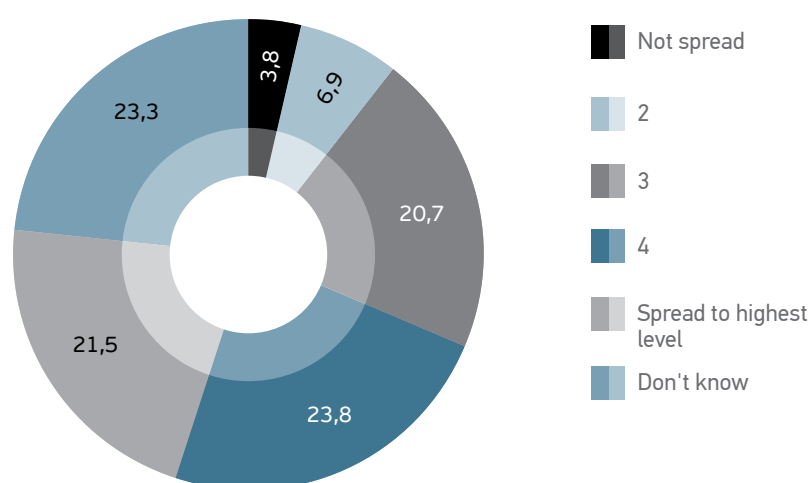
In the case of the state student’s dormitory “Pelagonija”-Skopje, a procedure was initiated against three official persons, former officials, acting directors and other official persons, due to suspicions that in the period from 2007 to 2009, while being responsible for the management of assets and conducting procedures for public procurement, they abused their official duty and authorizations, causing significant damage, and obtained significant proceeds in the amount of almost 30 million MKD (500,000 Euro).

In 2013, the SCPC had seven initiatives before the Public Prosecutor, and six of them related to charges relating to unlawful conduct in public procurement. Two of these initiatives to start proceedings for prosecution before the Public Prosecution concerned two former mayors. The first initiative was to start criminal proceedings to prosecute the former mayor of the municipality of Struga (2009-2013), for whom there were grounds of suspicion for committing several crimes during 2009. One of the crimes was that during public procurement proceedings and the awarding of procurement contracts, he did not provide the legal use, collection and protection of the resources of the municipality, and he damaged the budget of the municipality and the budget of the Republic of Macedonia in the amount of 65,775,000.00 MKD.

The second initiative was for the former mayor of the municipality of Ohrid (2005-2013). Namely, according to the findings of the SCPC, the former mayor, while being responsible for the assets of the municipality of Ohrid and the implementation of public procurement and awarding public contracts, did not provide the legal use and protection of assets owned by the municipality in the total amount of 307,916,000.00 MKD.

It is worth noting the population survey data and the results from the assessment of the perception of the prevalence of corruption in the Bureau of Public Procurement. The average score is 3.68, which means that the public perception is that the level of corruption is high. The following alternatives were provided as a response: “1” which means that it is not widespread at all and “5” that the prevalence is at the highest level. Figure 33 presents the distribution of answers.

Figure 33. The extent of the prevalence of corruption in the Bureau of Public Procurement



Source: Corruption Monitoring System, 2014

4.3. EU funds management

The Law on Audit of the Instrument for Pre-Accession (IPA)²⁷ regulates the subjects of the audit, the organization, and the competences of the audit body responsible for auditing the IPA in the Republic of Macedonia. According to the law, the reports of the audit body cannot be published on their webpage, but are submitted to the EC. Although the audit body has its own website, there is not much useful information regarding the IPA funds management assessment.

The transparency issue is reflected in the “Increasing parliamentary scrutiny over the use of EU funds in the Republic of Macedonia” analysis²⁸. Namely, it states that: *“There are no publicly available information on total allocation of funds per Project, level of national co-financing, implementation status (monthly reports) and level of realized payment transfers. The overall situation necessitates increased transparency and inclusion of other relevant stakeholders in the EU Funds monitoring.”*

In the 2012 annual report on financial assistance for EU Accession²⁹, one general remark is that the capacities of national institutions managing IPA funds are not evenly distributed, which

27 Law on Audit of the Instrument for Pre-Accession (IPA) Official Gazette nr. 66/10.

28 Jovanovski, A. (2013) Increasing parliamentary scrutiny over the use of EU funds in the Republic of Macedonia. European Policy Institute-Skopje (EPI).

29 European Commission (2013). Annual Report on Financial Assistance for Enlargement. Brussels, European Commission.

leads to repeated procrastination in the procurement process and a low rate of signed contracts and payments. It is worrying that in 2012, the EC halted payments twice, due to insufficient human capacity and managerial competences in the key institutions, especially those having a controlling role, such as the SAO and the National Authorization Coordinator's Office (NAO).

Box 6:

As a result of a misuse of funds from the EU programs "Youth in Action" and "Lifelong Learning" by the Agency for European Educational Programs and Mobility, the use of these funds for Macedonia was suspended by the European Commission for a year and a half.

One of the major and more important cases on the misuse of EU funds involved the Director of the Agency for European Educational Programs and Mobility, due to the illegal use of money from the program "Youth in Action". The publicly available information indicates that the project was assigned to the nongovernmental organization "The Youth Creative Centre" from Veles, in which the members are the mother, father and brother of the wife of the agency's director. The brother of the wife just prior to getting the project was also the president of this CSO. The Agency for European Educational Programs and Mobility also awarded a project to the CSO "Okò" from Struga, which was previously led by the director of the agency. This case was first revealed in the media in 2010³⁰. That led to the dismissal of the director from office. As a result, the government conducted an internal audit control, while the EC opened an investigation, as well as the European Anti-Fraud Office (OLAF). According to Balkan Insight³¹, the case is still unresolved.

However, in 2013 and 2014, improvements were made by amending the Law on Public Procurement. But the problem of the efficient and timely control and supervision of public procurement still remains, as well as the fact that it does not provide administrative sanctions for the violation of administrative rules, while criminal charges and convictions for the abuse of procurement rules though more frequent are still very rare.

The Law on Prevention of Corruption has provisions to encourage cooperation with the competent authorities in the fight against corruption, and the persons who report corruption are protected.

30 Kostovska, I. (2010) Another investigation of Brussels about European funds in Macedonia. Nova Makedonija No. 21893. 26 January 2014.

31 Gadzovska, Spasovska, Z., Ozimec, K. (2014) EU Cash Enriches Macedonia's Shady 'Youth' NGOs – Analysis. Balkan Insight.

Conclusions and Recommendations:

Improvements are needed in all three analyzed areas above:

It is necessary to improve the business environment by enhancing state supervision over (natural) monopolies. With an aim to improve the business environment, it is also necessary to provide training to inspection services and judges to acquire technical knowledge on new types of fraud in the business sector and in the area of public procurement, in order to detect where the technical specifications in open calls restrict free competition.

The budget process would improve if it involved detailed explanations in the draft budget, in both qualitative and quantitative terms, on the impact of newly adopted policies for budget revenues and expenditures. The links between budget items and strategic fiscal policy goals in a multiple-year period should be clearly elaborated.

In order to improve the entire public procurement system, all concluded public procurement contracts and annexes, including direct agreements, should be made publicly available in electronic form.

Implementation in practice should be monitored, and based on the monitoring, to continue the trend of improving policies and reducing the share of public procurement tenders with only one bidder and thereby enhancing competition.

For increasing transparency, all compliance bodies should be required to publish annual reports on their operations and the results of their inspections, and to make the results available to the public.

It is necessary to improve the oversight of procurement by large public procurers (state-owned enterprises and utility companies) to maximize efficiency and reduce irregularities.

Civil Society and Anticorruption

1. Overview of the civil society sector in Macedonia

The civil society sector in Macedonia is diverse. Organizations work in different areas such as: democracy and rule of law, human rights protection and non-discrimination, protection of marginalized groups, gender equality, environmental protection, education, culture, art, youth, protection of disabled persons, etc.

Civil society development is predominantly driven by the current needs in society, but in certain periods, agendas for action are built and based on donor strategies. In the early 1990s, organizations promoting women's rights and gender equality, as well as environmental organizations, dominated. Following the Kosovo crisis in 1999 and the internal conflict¹ in 2001, a greater number of organizations focused their activities on socio-humanitarian aspects, with organizations actualizing issues of interethnic and interreligious relations, equality, and the protection of human rights. With the stabilization of the country in the post-conflict period, the civil society sector gave significant attention to issues related to democracy, the rule of law, sustainable development, European integration, civic activism, and participation in policy creation. Hence, while the civil society sector is still not sufficiently included, it is exceptionally important in helping Macedonia towards EU membership, as being the holder of values that reflect its actions, such as participation, inclusion, equality, transparency, and accountability. Conversely, the process of Macedonia approaching the EU and the subsequent change in the strategies of foreign donors and their withdrawal, inevitably results in the challenge of the sustainability of civil society and its further rooting.

Organized civil society in Macedonia is mostly comprised of CSOs, i.e. associations and foundations. In 2013, the number of registered associations and foundations totaled 13,021

In 2013, the number of registered associations and foundations totaled 13,021 or 6.5 organizations to every 1,000 citizens

¹ The conflict in 2001 was a clash between the state armed forces and paramilitary groups of ethnic Albanians in Macedonia. The conflict started in February 2001 and ended in August the same year with the signing of the Ohrid Framework Agreement.

**Most CSOs either
have no paid staff
or their number is
small**

or 6.5 organizations to every 1,000 citizens. Of these, 4,574 have re-registered² under the Law on Associations and Foundations of 2010. According to this data, if one excludes sports associations (almost 30% of all associations and foundations), there are approximately 1,000 active organizations in different sectors and regions.

Besides sectorial differences in the activity of CSOs, there are large geographical differences at the national level, but also within the regions and between urban and rural areas. Thus, in 2013, 39% of associations and foundations were registered in the Skopje region with 8.8 organizations per 1,000 residents. Except in the Pelagonija region (13%), in the other six regions there are less than 10% of CSOs. Half of donor support in the past 10 years went to organizations registered in the Skopje region, but one must take into account that most national organizations are registered in Skopje, therefore some of these funds were also earmarked for activities in other regions.

Most CSOs either have no paid staff or their number is small. In 2012, the number of employees in associations and foundations was 1,839, which is the lowest since 2006. Around 88% of CSOs are based on voluntary support. Finances are stable, but the biggest challenge would be the withdrawal of major traditional donors from Macedonia, in a situation whereby state funding, individual donations, and donations from the business sector are low. Total revenues in 2012 amounted to approximately 110 million Euro. However, a very important fact is that the majority (85%) of organizations have annual budgets of up to 1,500 Euro (less than 100,000 MKD). About half of the employees and two-thirds of total revenues belong to the richest 100 organizations.

The latter organizations should be leaders in implementing values of good governance, transparency and accountability, and to contribute to the prevention of corruption. However, one should take into account the risk of the possible conflict of interest and corruptive pressure towards the institutions and vice-versa. It is not rare for some experts and responsible institutions (such as the SCPC) to point out the civil society sector as a risk for corruption, so one of the measures foreseen in the “State Program for Prevention and Repression of Corruption 2011-2015” refers to amending the legislation so that the leadership of these organizations would also be required to submit asset acquisition forms. This measure has been disputed by CSOs themselves, but also in general by civil society experts. Moreover, international practice does not cover representatives of CSOs in the definition of “clerks”, which are subject to anticorruption laws.

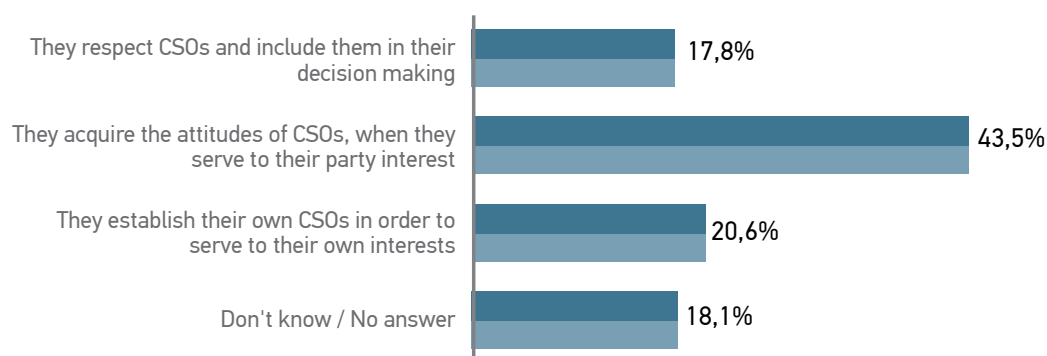
Recently, there is a positive trend of a moderate increase of trust in civil society. The last survey on Trust in Civil Society noted that trust in CSOs (associations and foundations) had an increase of nearly 17%, which is the greatest upward movement compared to 2010 (42.5%)³. Specifically, associations and foundations have the trust of 59.3% of respondents in the research that the MCIC conducted in June 2013, which indicates for the first time since 2006 (when it was 50.3%) a majority trust by citizens. Although the trust of citizens in civic organizations has increased, negative attitudes still prevail over the positive ones about CSOs. Most citizens believe that CSOs serve as a means to satisfy personal interests, rather than an opportunity for the exercise of public interest (44.1% versus 42.6%). Furthermore, they consider that the organizations are not sufficiently transparent, i.e. 44.2% reported that organizations were not transparent in their operations, while 33.3% of citizens believe that organizations are transparent and accountable.

² Data from the Central Register of Macedonia, obtained by MCIC in the period 2006-2014.

³ Nuredinoska, E., Krzalovski, A., Stojanova, D. (2013) Trust in civil society. Skopje. Macedonian Center for International Cooperation (MCIC).

The largest difference appears regarding the issue of whether political parties abuse civic organizations by making them adopt their views and using them as their mouthpieces, versus respect for the views of CSOs and their involvement in policy-making.

Figure 35 Attitudes of citizens about the relation of political parties and their leaders toward civil society organizations



Source: Trust in Civil Society (MCMS, TACSO 2013)

In general, civil society in Macedonia is moderately well-developed. The level of organizations and practice of values constitute the strong side of civil society.

The issue of anticorruption appeared on the agendas of CSOs, especially following the conflict in 2001. The first comprehensive survey on the state of corruption in Macedonia was conducted in 2000 and released in 2001. The survey was conducted simultaneously in other countries in the region as part of a SELDI initiative. Transparency Macedonia was founded in November 2001, which explicitly decided to focus public attention on corruption in Macedonia. The turning point in combating corruption in Macedonia - i.e. the moment when the civil society sector was unambiguously pointing out the level of corruption in Macedonia and the need to cope with it, while at the same time indicating numerous deficiencies in legal regulations and the institutional framework - was the foundation of the informal coalition "Macedonia Free of Corruption" in 2002. This coalition consisted of CSOs and renowned individuals and experts who publicly called on the then Prime Minister to start serious actions to cope with corruption and to disclose corruption in the highest government ranks. Frequently, the reason for the change of power in 2002 is also attributed to the voice raised by the civil society sector regarding the appalling level of corruption in Macedonia.

Following the request by the civil society sector and the international community, the Law on Prevention of Corruption was adopted in 2002, and the same year the SCPC was established. The first president of the SCPC was from the ranks of the civil society sector, the then president of Transparency Macedonia. During that period, the government demonstrated openness and cooperation with all stakeholders in their efforts to prevent corruption.

However, the civil society sector failed to continue to develop the debate on combating corruption and on the role and capacities of CSOs in combating corruption with expected intensity. During the years that followed, only a small number of organizations continued to keep corruption on their agendas. Except for two organizations - Transparency Macedonia and Transparency International Macedonia, which in general addressed issues of corruption and conflict of interest - the other organizations initiated issues within this sector, such as public procurement, transparency of the election process, financing of political parties, etc. Among them, certain stood out: the Center for Civil Communications (CCC), MOST, the Institute for

Transparency Macedonia was founded in November 2001, which explicitly decided to focus public attention on corruption in Macedonia

Democracy Societas Civilis-Skopje (IDSCS), the Research Center for Civil Society (RCCS), and the Coalition "All for Fair Trials".

During the past five years, some of the organizations paid attention to the rule of law and the principles of good governance, so that several organizations using different tools monitored the openness of institutions and their accountability and transparency. In addition, a debate was opened on the budget process and transparency in spending public money. The MCIC, the Foundation Open Society Macedonia (FOSM), and the Center for Economic Analysis (CEA) were the forerunners in addressing and debating these issues. These initiatives influenced the creation of priorities regarding support by the EU, so that one of its priorities in the last IPA grant scheme (local support) was combating corruption and organized crime. This possibility opened room for the greater inclusion of a larger number of CSOs in combating corruption and conflict of interest both at national and local levels.

2. Major areas and stakeholders of civil society engagement in anticorruption

The SCPC established a practice by which programs for the prevention of corruption needed to be prepared in cooperation with CSOs. Such was the case during the preparation of the program for the period of 2007 to 2011 and the Program for Prevention of Corruption and Conflict of Interests for the period of 2012 to 2015. Moreover, specific legal changes were made upon an initiative by CSOs, and they were included in the working groups preparing the changes and amendments. For example, the Ministry of Justice, during its preparation of changes and amendments to the Election Law and the Law on Financing Political Parties, included CSOs in the working groups.

3. Anticorruption best practices

In most cases, CSOs in Macedonia are focused on monitoring the situation with corruption. Namely, Transparency Macedonia publishes monthly reports on combating corruption and the situation with transparency in Macedonian society, in the area of the operation of state bodies and other social and political institutions in the Republic of Macedonia. Through these reports, Transparency Macedonia points out and warns about irregularities and disrespect of procedures, as well as good practices when implementing public policies and spending public money. The intention of these monthly reports, which have been prepared on regular basis since 2007, is for stakeholders in Macedonian policy, as well as citizens to consider such remarks constructively and as an ongoing and objective mechanism for monitoring the situation in the Republic of Macedonia in the area of transparency and combating crime and corruption.

The Advocacy and Legal Advice Center (ALAC) within Transparency International Macedonia is also an example of positive practice in combating corruption, whereby the victims and witnesses of corruption report cases and receive practical advice that enables them to file official complaints to the relevant institutions. The center motivates the active inclusion of citizens in combating corruption by providing simple, accurate and sustainable mechanisms. The center offers direct assistance in the form of legal support, but at the same time it uses the information received from citizens and their complaints, in order to identify weaknesses in the fight against corruption in the system itself and to strive for reforms based on concrete evidence presented in the complaints by citizens. This center operates as a mediator, making it

possible for ordinary citizens to hold institutions responsible and for transferring their concerns into changes in the system. In the period from 16 July 2012 to 16 July 2014, through its daily work, the ALAC recorded a total of 1,032 reports from 678 clients and significantly contributed to empowering people for a more efficient fight against corruption at national and local levels.

Sharing experiences from other countries and learning based on the practices experienced by others is also a useful practice in combating corruption. For the purpose of alerting on specific situations that might happen in Macedonia, and at the same time to identify efficient mechanisms to deal with corruption, the MCIC organized a study visit to Bulgaria in 2010. The participants were representatives from relevant state institutions: the SCPC, the MoI, the Public Prosecutor's Office, the Judicial Council, MPs, as well as representatives from CSOs.

The monitoring of public procurement was another area in which CSOs were also very active. Namely, the Center for Civic Communications has been researching on the situations and processes of public procurement at national and local levels since 2005, and at the same time, proposing a series of measures for changing legislation and practice in this area. In addition, an integral part of its activities is the regular monitoring of public procurement and the preparation of reports. Furthermore, some of CCC's activities are focused on strengthening the capacities of journalists to investigate and report on corruption.

4. Public-private anticorruption partnerships

Regarding public-private anticorruption partnerships, there are no successful examples that could be singled out. One of the important steps initiated by the SCPC was the signing of a Memorandum of Understanding for mutual support in the prevention of corruption and conflict of interest signed by the SCPC and 21 CSOs in December 2010. Although this memorandum had an excellent initial intention of setting up a framework for cooperation, in the years to follow, additional essential coordination failed to materialize. There was no initiative either by the SCPC or by the CSOs. One year following the signing of the memorandum with the CSOs, the SCPC also signed a similar Memorandum of Understanding with an association of private sector entities, such as chambers of commerce.

5. Corruption within civil society

In the Report on the Civil Society Index⁴, it is pointed out that corruption in the civil society sector in Macedonia is not prevalent. The majority of surveyed CSOs (66.6%) believe that this phenomenon is rare, rather rare or non-existent at all, opposed to the 33.3% who believe that it is frequent or rather frequent.

In favor of the conclusion from the Civil Society Index is also data from the Global Barometer on Corruption⁵, according to which the civil society sector is at the bottom of the list of corrupted, i.e. one of the least corrupted sectors.

Additional confirmation is data from the population survey conducted within the USAID Anticorruption Program, according to which the civil society sector is among the three sectors (out of 21) for which citizens believe that corruption is least widespread.

4 Klekovski S., Stojanova D., Jakovleska G., Nuredinoska E. (2011) Long road to higher civic engagement (Index of Civil Society). Skopje, Macedonian Center for International Cooperation.

5 Transparency International (2007) Global Corruption Barometer. [Internet].

Together with the question on corruption in the civil society sector, a question on the accountability and transparency of CSOs is also raised. A simple overview of the websites of the organizations shows that only a few of them publish their financial data and reports. Moreover, only a small number of organizations make financial audits of their financial operations.

In favor of these remarks is also the fact that even after several efforts, very rarely can one witness a code of ethics in the civil society sector that would be supported by a group of organizations from a given sector, network or platform of organizations. We are familiar with the effort made in 2007 within the Civic Platform of Macedonia, one of the leading networks that had organizations from different sectors as its members, to prepare a draft code of ethics that was never adopted. It is interesting to note that bigger organizations which, in principle, have different mechanisms and systems for reviewing their business operations (such as MCIC, FOSM, CIRA, and the CSID Forum), supported the adoption of this code of ethics, but this initiative was not supported by other organizations. Additionally, the practice of publishing audit reports in print media, as a voluntary act of transparency, has only been adopted by a few organizations. Apart from MCIC, FOSM, and the Macedonian Enterprise Development Foundation (MEDF), other examples are unknown.

Conclusions and Recommendations:

The sensitivity of issues related to corruption is a big obstacle for having a more serious approach by CSOs which are addressing corruption. However, during the last few years, there has been a group of CSOs which are audibly pointing out the degree of corruption in Macedonia. Nonetheless, the expertise and knowledge of the problems are also a deficiency that should be overcome.

One of the most important measures is the integrity of CSOs. In order to achieve this, it is necessary to facilitate an open debate in the civil society sector on the importance of practicing principles of transparency, accountability and democracy within CSOs, because only organizations with their own integrity would have the credibility to highlight corruptive acts in the public sector.

In order to be more efficient and analyze and research the situation with corruption in Macedonia, CSOs should have access to information, such as access to data available to anticorruption institutions, free access to public procurement data, as well as free data from the CRM. By obtaining such information, they could establish their priorities and the most urgent areas in which they should react, and at the same time they would draw their legitimacy and credibility for intervention from such established facts and findings.

The support for the networking and cooperation of CSOs would also be of great importance in the efficient fight against corruption and cooperation with institutions. Namely, the establishment and functioning of a coalition of CSOs for combating corruption would demonstrate unity and audibility in emphasising key problems, and at the same time, ensure the greater security and solidarity among the organizations themselves.

Furthermore, the expertise of the civil society sector on these issues related to different aspects of corruption should be improved through the increased know-how for monitoring the state of corruption, analytical capabilities, research skills, etc. This implies the provision of financial means for individuals from the civil society sector for their training and advanced training at eminent European schools.

Consequently, more financial means are needed for the civil society sector that would come from independent sources, primarily from the EU and the USAID. This would provide the certain independence and confidence of CSOs to be able to articulate the key problems and point out particular examples of all forms of corruption. Additionally, focusing attention of national policies towards the approximation with European legislation and practices falling in this area should be a priority for the EU's support in the forthcoming period (IPA 2014-2020), and CSOs should play the leading role in these processes and initiatives.

VII.

International Cooperation

The success of Macedonian anticorruption efforts depends to a large extent on international cooperation and assistance. International institutions have an important impact on anticorruption developments in the country from multiple perspectives, ranging from overall monitoring and evaluation to institution-building and civil society support.

1. Harmonization with international anticorruption instruments

The Republic of Macedonia, as part of its legal and institutional framework, has ratified several international anticorruption instruments. An important step was the ratification of the UN Convention against Corruption (UNCAC) in 2007, which was followed by the ratification of the UN Convention on Transnational Organized Crime (UNTOC) in 2014. These developments completed the already adopted Council of Europe instruments; the Criminal Law Convention on Corruption was ratified in 1999, while the Civil Law Convention against Corruption was ratified a year later. In addition, in 1999, Macedonia ratified the European Convention on Mutual Assistance in Criminal Matters and its second supplementary Protocol, as well as the Council of Europe Convention on Money Laundering, Seizure and Confiscation of the Proceeds from Crime, which was ratified in 2000.¹

The Republic of Macedonia has ratified several international anticorruption instruments

¹ SCPC, State Program for Prevention and Repression of Corruption 2011-2015.

2. The role of the EU in monitoring anticorruption policies

The introduction of EU anticorruption monitoring provided both local politicians and civil society with an important tool in assessing corruption-related problems and the impact of anticorruption measures.

The last two EC Progress Reports for the Republic of Macedonia (in 2012 and 2013) identified several vulnerable sectors where corruption represents “a serious problem”. While the legislative framework is largely in place, the reports claim, their implementation remains questionable, which points to the necessity of undertaking greater anticorruption efforts aimed at producing concrete impact.

The introduction of EU anticorruption monitoring provided both local politicians and civil society with an important tool in assessing corruption-related problems

The latest EC Progress Report (2013)² pointed to the insufficient administrative capacity of anticorruption bodies, despite slight improvements detected. For instance, it was noted that the SCPC and the Anticorruption Unit of the Mol remain understaffed and underfunded, while the SAO still did not have adequate human and financial resources to efficiently perform its new functions of financial supervision of political parties and election campaigns. Moreover, the limited powers of the SCPC seriously hamper its development into an effective anticorruption body. On the other hand, it noted the progress in establishing track records of investigations, prosecution proceedings and convictions, which was recommended in the 2012 EC Progress Report.

In the area of the judiciary, the EC Progress Report for 2013 reiterated the commission’s concerns first raised in its previous report, about the professional capacity and impartiality of both magistrates and law enforcement officials in dealing with corruption cases, especially those involving high-level personalities. The report recommended that specific measures be taken to address these concerns and pointed to the pressing need to increase mutual cooperation between law enforcement institutions and supervisory bodies, the latter taking a more vocal and proactive posture.

Public procurement is another corruption-prone area which benefited from closer EU monitoring. The last two reports (2012, 2013) raised concerns over the lack of institutional framework and measures to effectively address the existing problems in this key sector. The Progress Report for 2012 focused on the need to amend existing legislation that would permit increased transparency in public funding allocation and introduce effective whistle-blowing mechanisms. The next report noted the absence of administrative sanctions for transgressing existing regulations, in addition to the paucity of criminal investigations and convictions for the abuse of public procurement rules. Specific recommendations were made to improve the institutional framework to tackle this problem efficiently.

In the Progress Report for 2012, it was emphasized that existing legislation required further improvement to address corruption risks and increase transparency in public procurement as well as establishment of effective whistle-blowing mechanisms.

Finally, the last two EC Progress Reports drew special attention to the lack of sufficient transparency in political party financing. One example is that throughout the year of 2012, the SAO refrained from taking any action, despite obvious breaches in reporting obligations by political parties (only 16 out of over 40 registered parties provided the SAO with their financial statements due under the 2011 party finances legislation). In addition, the 2013 report referred to OSCE/Office for Democratic Institutions and Human Rights (ODIHR) concerns over the

² European Commission (2013). EU Progress Report for the Republic of Macedonia for 2013. Brussels, European Commission.

misuse of state resources during the 2013 local elections and the failure of relevant institutions to take appropriate counter measures. The report concluded that the implementation of the legal framework on political party funding remains deficient.

Each year, the EC's Progress Reports attract significant attention in Macedonian public discourse. While the government and pro-government media tend to interpret the findings of the reports in a positive light, the opposition and some experts concentrate on the negative aspects of the reports. The comments of the EC on the weakness of the Macedonian anticorruption system are often discussed by some CSOs which note that the remarks concerning the anticorruption system are repeated several years in a row³, which indicates a lack of political will and may seriously jeopardize the overall integration process into the EU.⁴

3. EU anticorruption assistance

The EU has provided valuable assistance in the field of anticorruption in the framework of institution-building and civil society development. According to the Macedonian Central Donor Assistance Database⁵, the overall value of all EU-funded programs in the field of good governance and anticorruption for the last six years (since 2008) amounted to 8,795,000 Euro.

Its prime beneficiary was the EU-funded wide international consortium implementing the regional project "Fight against organized crime and corruption: Strengthening the Prosecutor's Network", worth 5,263,158 Euro. The overall project objective was to contribute to improved cross-border and international judicial cooperation for the beneficiaries to investigate and prosecute cross-border crime, with a focus on organized crime and corruption in particular. It covered the region of the Western Balkans and lasted 24 months. However, only a small part of the project budget was used for enhancing the capacity of the Macedonian Public Prosecutor's Office itself.

Another EU-funded project is "Support to tax reform" (1,271,500 Euro⁶). It aims to improve the performance of the PRO and the Ministry of Finance with regard to revenue collection, services to taxpayers, and the fight against corruption through further harmonizing the legal framework with the EU *acquis*, and reinforcing institutional capacity to collect taxes.

Recently, the implementation of a new Twinning Project IPA 2010: "Support to Efficient Prevention and Fight against Corruption" kicked off. This project started in June 2014, and in the next two years will be implemented by the SCPC and the German Federal Office of Administration. The project goal is to empower normative and institutional capacities for the efficient prevention and fight against corruption in the Republic of Macedonia.

The EU has provided direct support for CSOs working on anticorruption as well. It is worth noting that one of the priority areas in the 2012 IPA-I call for "Support to Enhancement, Sustainability and Development of an Active Civil Society" was the fight against corruption and organized crime⁷. This was an indication that the EU had started to appreciate the role of civil society in this policy area, primarily considered within the state institutions' remit.

3 Macedonian Center for European Education (2013) Comparative analysis of European Commission report 2010-2013, Fruits of the Orange Revolution. Skopje: Macedonian Center for European Education.

4 Transparency Macedonia (2012, 2013) Monthly Reports for October 2012 and October 2013.

5 Central Donor Assistance Database.

6 Central Donor Assistance Database.

7 Central Financing and Contracting Department (2012) National program for transition assistance and institution building.

Each year, the EC's Progress Reports attract significant attention in Macedonian public discourse

4. Corruption and anticorruption monitoring by other international institutions

In addition to EU monitoring, several other relevant international organizations and bodies have continuously monitored and reported on the progress of the Republic of Macedonia in combating corruption.⁸

The latest GRECO evaluation report No. IV (2013) was dedicated to “Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors”.⁹ The evaluation report concluded that the legal framework is well-developed and sufficiently covers most of the areas of GRECO interest. However, it also stated the need for a more effective implementation and enforcement of recently introduced legislation, reiterating concerns expressed in the EC Progress Reports. It pointed to the fact that despite the existence of clear and strict rules on incompatibilities and accessory activities for MPs, current arrangements for monitoring the content of these statements must be further improved. As for the judges’ and prosecutors’ activities, the report noted that they do not enjoy the required public confidence and are not sufficiently transparent. Finally, the report concluded that the ability of the SCPC to oversee the work of MPs, judges and prosecutors is hampered in practice by budgetary and staff constraints, which reflect negatively on its activity.

Although most of the necessary laws are in place, legal enforcement is weak and the public is skeptical of the government’s willingness to prosecute corrupt officials within its ranks

The US State Department in 2013¹⁰ also outlined the problem of insufficient and selective law enforcement as a major anticorruption problem. “Although most of the necessary laws are in place, legal enforcement is weak and the public is skeptical of the government’s willingness to prosecute corrupt officials within its ranks”¹¹. Critical remarks were raised over the judicial administration not always being uniform, as courts were often slow, inefficient, and without adequate resources. Similar critiques were raised over the lack of transparency, corruption, and political pressure within the Mol as a significant constraint on the police, which hinders national efforts to fight crime. In the business sector, the State Department noted that investors and businesspeople often complain that they are exposed to bribes, mainly when they are involved in public procurements for government-funded projects. Moreover, bureaucratic red tape is still a source of administrative corruption, where bribes are solicited by public officials for “getting things done”.¹² On the other hand, the US State Department acknowledged government reforms towards more e-government systems as a positive trend that reduces opportunities for corruption in administration.

On the other hand, the Worldwide Governance Indicators¹³ developed by the World Bank provide tangible and easy-to-read international monitoring data on the quality of governance and the control of corruption in particular. The Governance Score is measured on a scale from -2.5 (lowest) to +2.5 (highest) encompassing a large amount of indicators within. The most recent Score for Control of Corruption in the Republic of Macedonia (2012) was +0.02, which was an improvement in comparison with the results for 2007 when the score was -0.36, and that for 2002 when the score was -0.88. In comparison with other measured areas, this progress is the highest of all six indicators measured in all three evaluation cycles (2002, 2007, and 2012).

8 SCPC (2011) State Program for Prevention and Repression of Corruption 2011-2015. Skopje, State Commission for Prevention of Corruption.

9 GRECO (2012) Third Evaluation Round - Evaluation Report: Evaluation Report for “The Former Yugoslav Republic of Macedonia”. Strasbourg: Council of Europe.

10 US Department of State (2013) Investment Climate Statement - Macedonia 2013. Washington: US Department of State.

11 Ibid.

12 Business Anticorruption Portal (2014) Macedonia Country Profile. [Internet].

13 World Bank (2012) Worldwide Governance Indicators [Internet].

5. Major foreign assistance in the field of anticorruption

Apart from the significant EU assistance already reviewed, Macedonia has also received other international multilateral and bilateral assistance. According to the data from the Central Donor Assistance Database, in the last six years (since 2008), there were several projects with an overall value of 1,411,258 Euro¹⁴. Some of the main donors are USAID, UNDP, the Government of the Kingdom of Norway, and Transparency International.

This assistance is aimed at enhancing administrative capacity and building a credible civil society as an important anticorruption actor. For instance, the UNDP project “Support to strengthening the national and local integrity systems in Macedonia” is assisting the SCPC in cooperating with other national and local institutions to introduce and sustain effective solutions to address integrity/corruption risk, with a particular focus on fostering meaningful civic engagement and partnerships across different segments of society.¹⁵

¹⁴ The aggregate amount is converted in Euro from different currencies, according to the average currency rates on 13 May 2014.

¹⁵ Central Donor Assistance Database.

Conclusions and Recommendations:

Although significant donor support for the fight against corruption is present in the Republic of Macedonia, it is still mostly focused on strengthening state institutions as the major anticorruption actors. CSOs do receive a small segment, even though their activities mostly depend of this donor support. Therefore, direct cooperation between the donor community and the civil society sector is necessary for wider anticorruption access, aiming for the greater involvement of CSOs, besides state institutions, in order to provide wide and comprehensive civil action against corruption.

This type of support for CSOs should specifically be expressed in encouraging mutual initiatives that encompass public-private partnerships among the more relevant societal stakeholders. These initiatives are mostly insufficiently developed in SEE countries, and this exact type of independent external support should be directed towards their further development.

Finally, in the process of implementing anticorruption projects, it is necessary for the focus to be results-oriented, rather than only administering the projects themselves. Considering that anticorruption is a specific subject, it is of a great importance for donors to understand the big picture and to be innovative and open to new ideas, aimed at directing their support towards initiatives with clear and unbiased goals in their uncompromising fight with corrupted layers of society.

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