

**Marina MATIĆ BOŠKOVIĆ, PhD,**  
**Research Fellow\***  
**Institute of Criminological**  
**and Sociological Research**

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## **EFFECTIVENESS OF ANTI-CORRUPTION BODIES IN SUPPRESSION OF CORRUPTION IN SELECTED COUNTRIES**

*Many countries have established Anti-Corruption Agencies (ACA) in various forms, given them differing mandates and powers, and obtaining equally mixed results. The traditional anticorruption functions are prevention, including education and public awareness; investigation of corruption cases; prosecution of corruption cases and policy; and research and coordination.*

*The aim of the article is to examine effectiveness of preventive Anti-Corruption Agencies in Western Balkan countries (Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia), and their achieved results. The different circumstances in these countries, the different strategies pursued by the agencies, and their different degrees of success, have yielded some useful suggestive insights, even though there are too many variables and too few data points for any definitive statistically significant conclusions.*

*Factors that determine an Anti-Corruption Agencies effectiveness are political support from the country's leadership and a clear and comprehensive legislative framework that delineates its powers and relationship with other policy agencies. Additional factors for successful*

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\* e-mail: maticmarina77@yahoo.com

*functioning of ACA are guarantee of adequate resources and independence, accountability and relationship with citizens and media. The Western Balkan ACAs were assessed against these factors and accomplished track-record. The article is based on the desk research, analysis of statistical data published in Annual reports, finance and human resources data.*

**Key words: corruption, anti-corruption authorities, resources, standards**

## **1. Development of Anti-Corruption Agencies**

As corruption infiltrates the political, economic and social spheres of countries, the stability and security of individual countries and of the international community are threatened and there can be few prospects for development and prosperity. Specifically, corruption undermines democracy and the rule of law, leads to human rights violations, distorts markets, erodes quality of life and allows organized crime, terrorism and other threats to human security to flourish. Affecting developed and developing countries alike, corruption has become a global concern. The 2005 World Summit<sup>1</sup> emphasized the need for solid democratic institutions responsive to the needs of people and the need to improve the efficiency, transparency, and accountability of domestic administration and public spending and the rule of law, to ensure full respect for human rights, including the right to development, and to eradicate corruption and build sound economic and social institutions.

According to the World Bank (WB) more than 1 trillion US dollars is paid in bribe every year.<sup>2</sup> The overall damage created by corruption is estimated at four trillion US-Dollars or around twelve per cent of the global gross production (Gabriela, 2014: 17). According to the Office of the High Commissioner for Human Rights (OHCHR), the money lost to corruption would suffice to provide food 80 times over to all the people of the world suffering from hunger.<sup>3</sup>

Preventing and combating corruption requires a comprehensive and multidisciplinary approach. States and international bodies have recognized this and drawn up regulatory frameworks to prevent and fight corrupt practice.

Over the past few decades the establishment of anti-corruption authorities (ACA) has widely been considered to be one of the most important national initia-

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1 A/RES/60/1

2 World Bank, 2013, Six Questions on the Cost of Corruption with World Bank Institute Global Governance Director Daniel Kaufmann, available at: <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190295~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html> accessed on 15 November 2018.

3 OHCHR, 2013, The Human Rights Case against Corruption, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/HRCASEAgainstCorruption.aspx> accessed on 15 November 2018.

tives necessary to effectively tackle corruption (Heilbrunn, 2004: 1). This belief was largely popularized by the successful models of the Corrupt Practice Investigation Bureau of Singapore (CPIB), established in 1952 and of Hong Kong's Independent Commission Against Corruption, established in 1974.<sup>4</sup> Both institutions were widely considered to be effective in reducing corruption in their countries.<sup>5</sup> During the 1990s and 2000s, specialized anti-corruption agencies were established in many countries and today there are nearly 150 ACA in the world (Jaegere, 2012: 79-121).

However, although they are often established with high levels of optimism, experience has shown that the efficiency of anti-corruption agencies varies from country to country. This approach has had far less success in countries where corruption problems were of a more systemic nature (Pope, 1999).

Considering the number of anti-corruption authorities worldwide, their various functions and actual performance, it is difficult to identify all main functional and structural patterns. The Organization for Economic Cooperation and Development (OECD) defined different models of specialized anti-corruption according to their main functions: multi-purpose agencies with law enforcement powers and preventive functions; law enforcement agencies, departments and/or units; and preventive, policy development and co-ordination institutions.<sup>6</sup>

There is no clear indication on which model is the most effective for combating corruption, and there is no blueprint for effective anti-corruption infrastructure. The legal and institutional environment needs to be supportive, with a robust legal framework supporting effective prevention and detection of corruption.

Having in mind that it is difficult to compare performances of different models the analysis will focus on preventive authorities. Preventive anti-corruption authorities are specialized institutions established to fight the corruption by implementing preventive measures. In some countries, an institution such as anti-corruption agency can be a central anti-corruption body with broad powers including formulation, coordination and oversight of the anti-corruption policies.<sup>7</sup>

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4 For more information see: Quah, J.T (1982) Bureaucratic corruption in the ASEAN countries: a comparative analysis of their anti-corruption strategies. *Journal of Southeast Asian Studies*, 13(1), pp. 153–77; Quah, J.T (2000) *Confronting Corruption: The Elements of a National Integrity System*. Berlin: Transparency International; Doig, A, Riley S. (1998) Corruption and anti-corruption strategies: issues and case studies from developing countries. In: *Corruption and Integrity Improvement Initiatives in Developing Countries*. New York: United Nations Development Program, pp. 45–62.

5 UNDP (2011) *Practitioners' Guide: Capacity Assessment of Anti-Corruption Agencies*, 9.

6 Specialized anti-corruption institutions: Review of Models, OECD, 2008.

7 In other countries, these functions can be performed by several institutions, which have a mandate for the prevention and competencies, such as internal controls, commissions for the resolution of conflict of interest, and special sector-level agencies (e.g. Public Procurement Policy Sector, which has a shared competence in the prevention of corruption). The countries that have a complex system of anti-corruption policies and institutions establish special arrangements for horizontal and vertical interagency cooperation.

## **2. Reasons for establishment of specialized Anti-Corruption Agencies**

The reasons for establishment of anti-corruption institutions is to address a specific problem of corruption, and to institutionally tackle parables related to corruption. This was a situation in many countries, including Hong Kong, Singapore and Australia. In 1987, in response to scandals involving the police and narcotics money, political leaders in New South Wales decided to establish an agency that would have many of the same core functions as the Hong Kong Independent Commission Against Corruption, with a crucial difference of an emphasis on prevention.<sup>8</sup> The ICAC was formed in response to the 1974 Peter Godber affair,<sup>9</sup> while the CPIB was only strengthened in response to the 1970s scandals involving police officers in the narcotics trade. These crises forced policy makers to create anti-corruption agencies that were independent from the police since the police were themselves involved in the scandals.

A specialized anti-corruption institution might be needed when structural or operational deficiencies within an existing institutional framework does not allow for effective preventive and repressive actions against corruption.

Establishment of a new institution is justified where it promotes efficient prevention and fight against corruption.<sup>10</sup> Proponents for establishment of a new institution generally argue that it has several advantages: improved coordination among multiple agencies, centralization of information about the corruption and separation from political and corruption intrusion.

The advantages of establishment of a new institution is linked with the need for specialization. Combating corruption is gradually become a special field of expertise. The volume of academic knowledge and practical experience that exist in this area is growing. Therefore, it might lead to the improvement of quality. Separate institution would bring together people with relevant professional knowledge who could focus on these complex cases, which is difficult for the agencies that have other responsibilities as well.

The new anti-corruption institution should assume leading role in the coordination and implementation of complex measures that corruption prevention always implies. Effective anti-corruption efforts assume involvement of numerous institutions (police, prosecutors' office, tax administration, business registry, cadaster,

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8 South Africa Anti-Corruption Architecture, Basel Institute on Governance, International Centre for Asset Recovery, 2012.

9 A British senior police officer Peter Godber, who had amassed a fortune of 4.3 million Hong Kong dollars, came under the investigation in 1973 and fled to the UK. He was later extradited, tried and convicted.

10 Specialized anti-corruption institutions: Review of Models, OECD, 2013.

state audit institution, public procurement administration, etc.) whose work should be coordinated to ensure exchange of intelligence and data.

Inability of existing institutions to effectively combat corruption, especially in young democracies, is because they are tainted by corruption or political intrusion. However, the establishment of new institutions can perpetuate social injustice by allowing a corrupt leader to claim a commitment to anti-corruption while using the agencies themselves for political gain (Huther, Shah, 2012).

Establishment of new institution has several drawbacks that can reduce efficiency in fight against corruption. It is difficult to build anti-corruption institutions which operate independently from the weak governance structures that characterize countries with systemic corruption, including the legal system, mechanisms of political accountability, and financial and regulatory institutions (Rose-Ackerman, 2006). Fight against corruption requires whole of the government approach and strong cooperation between all law enforcement agencies. Even if the determination to tackle corruption was initially strong, usually from a government newly in power, it often diminishes as the realities of office, the vested interests in the status quo and the pressure of more immediate tasks bear on the actions of government.

Simply creating an anti-corruption agency is not enough for positive changes to occur. The existence of such an institution is meaningful only if it is given adequate powers and resources and if other anti-corruption programs are in place (financial accountability, judicial and media independence, public awareness campaigns, citizens participation, decentralization, bureaucratic culture, etc.) (Johnson, 2016).

### **3. Corruption in Western Balkans**

Western Balkans region was selected due to fact that rule of law is now at the heart of the EU accession process and candidate countries must demonstrate a solid track record to show that suppression of corruption is deeply rooted on the ground. The fight against corruption emerged as one of the most significant issues during 2004 enlargement of the EU and gained even more importance with the accession of Romania and Bulgaria in 2007.<sup>11</sup> To prepare candidate countries for membership, the EU found it necessary to create new institutions and mechanisms to address corruption. Assessment is focused on the Western Balkan countries that are

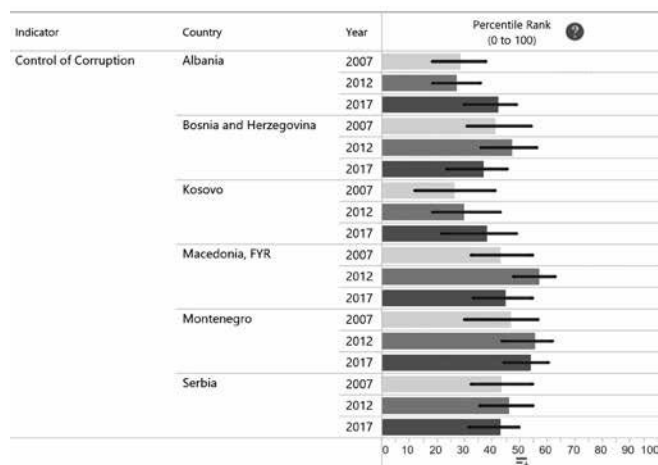
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11 Bulgaria and Romania have joined the European Union on January 1<sup>st</sup>, 2007, but under the condition to continue the reforms in the area of justice and rule of law. The compromise was sealed by a special monitoring mechanism, called Control and Verification Mechanism (CVM). Under that mechanism the European Commission monitors the implementation of reforms in several benchmarks and makes recommendations. Each year, the Commission presents a general report in July and an interim document in the beginning of the year. The reports assess progress under the Cooperation and Verification Mechanism, with judicial reform, the fight against corruption and, concerning Bulgaria, the fight against organized crime.

in the process of EU integration:<sup>12</sup> Albania, Bosnia and Herzegovina (BiH), FYR of Macedonia, Montenegro, Serbia and Kosovo.<sup>13</sup>

In Western Balkans region the corruption is serious obstacle for doing business, investments and business development. Businesses consider corruption to be among the most important challenges when doing business in these countries.<sup>14</sup> Corruption in the Albanian is widespread and is considered one of the integral issues facing the country, as assessed by several sources, including Freedom in the World 2018<sup>15</sup> and the Human Rights Practices Report 2017<sup>16</sup>. According to the same sources corruption remain a prevalent problem in Montenegro, Macedonia, Kosovo, Bosnia and Herzegovina and Serbia. Same is confirmed by the World Bank Worldwide Governance Indicator (WGI) Control of Corruption which captures perception of the extent to which public power is exercised for private gain.<sup>17</sup>

**Figure 1:** *Worldwide Governance Indicator - Control of Corruption in Western Balkan countries*



Source: World Bank

12 Albania, the former Yugoslav Republic of Macedonia, Montenegro and Serbia have candidate status for EU membership, and Montenegro and Serbia started their accession negotiations in 2012 and 2014, respectively. BiH and Kosovo are lagging behind. BiH Stabilization and Association Agreement (SAA) with the EU entered into force in June 2015 and in September 2016 the EU Council invited Commission to present Opinion on BiH candidacy application, while Kosovo SAA enter into force in April 2016. All are committed to their EU future and to bringing their national legislation into line with the *acquis communautaire*, but the progress achieved in fulfilling the political and economic criteria is uneven.

13 Under UN Resolution 1244.

14 See Global Competitiveness Report 2019, World Economic Forum, 2018 and results for indicator Incidence of Corruption.

15 See Freedom in the World Report 2018, <https://freedomhouse.org/report/freedom-world/2018/albania> accessed on 15.11.2018.

16 For more information <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

17 For more information <http://info.worldbank.org/governance/wgi/index.aspx#home>

Although, World Bank Doing Business Reports do not capture the prevalence of bribery and corruption, the case study also finds that economies with greater control and safety mechanism in place tend to have a lower incidence of corruption. In addition, the economies that rank high on Doing Business indicators tend to perform well in other international data sets, such as the Global Competitiveness Index and Transparency International's Corruption Perceptions Index.

Despite some important achievements in combating corruption in selected countries, mostly with respect to the adoption of laws in key anticorruption areas, anticorruption and good governance reforms are not consolidated. While many laws have been passed, implementation has been less certain, and it appears that implementation gaps are growing.

Difference between adopted laws and practice resulted with the perception that the Western Balkans is a region vulnerable to corruption.<sup>18</sup> In Montenegro according to a 2018 European Commission report the impact of anti-corruption measures in particularly vulnerable areas remains limited.<sup>19</sup> In Bosnia and Herzegovina<sup>20</sup> and Serbia<sup>21</sup>, corruption remains prevalent in many area, particularly public procurement and continues to be a serious problem. Albania, along with Kosovo, ranks as the most corrupt in the Western Balkans. Its citizens perceive corruption the second most important problem after unemployment.

To evaluate the dimensions of a so-called 'victimless crime', can be hard. Different mechanisms are in place, e.g. Group of States against Corruption (GRECO) evaluations, the OECD Working Group on Bribery's assessments, the World Bank's Control of Corruption index, Transparency International (TI) Global Corruption Barometer. According to TI's Corruption Perception Index (CPI), all Western Balkans countries have a high corruption score and while ratings have improved slightly in some of them, the region as a whole remains among those with the poorest ratings in Europe.

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18 Measuring corruption has become popular method that should help countries to identify where is a need for action, as well as inform decision makers both what that action should be and assessing whether it has worked. The dominant mode of measurement since the mid-1990s has been perception-based, via cross-national indices drawn from a range of surveys and 'expert assessments'. Indices such as the Corruption Perception Index (CPI), the Bribe Payers Index (BPI), the Global Corruption Barometer (all produced by Transparency International), the Business Environment and Enterprise Performance Surveys (BEEPS) or other aggregate indicators such as the Control of Corruption element in the World Bank Group's Worldwide Governance Indicators (WGI), have undoubtedly proved immensely important in raising awareness of the issue of corruption, as well as allowing for detailed cross country comparisons.

19 For more information see Montenegro 2018 Report, SWD(2018) 150 final, p. 18-23.

20 For more information see Bosnia and Herzegovina 2018 Report, SWD(2018) 155 final, p. 12-15.

21 For more information see Serbia 2018 Report, SWD(2018) 152 final, p. 19-23.

All countries from the Western Balkans signed and ratified the most important international instruments in anti-corruption area, including the United Nations Convention Against Corruption (UNCAC) as the first global agreement in the anti-corruption field, it required from the member states not only to provide the specialization of the law enforcement authorities, but also to establish specialized preventive anti-corruption agencies.<sup>22</sup> Despite this, all these countries are faced with widespread corruption – one of the key challenges in the process of accession to the European Union. The results in combating corruption achieved so far can only be assessed as limited. It is therefore not surprising that all countries in the region maintain relatively high scores when it comes to corruption perception.

#### **4. Key issues in implementation of international standards on anti-corruption authorities in Western Balkans**

To address corruption challenges, international obligations from article 6 of UNCAC and recommendations received in GRECO Evaluation Reports, Western Balkan countries established specialized anti-corruption agencies.<sup>23</sup> Bosnia and Herzegovina has Agency for the Prevention of Corruption and Coordination of Fight Against Corruption (APIK), Montenegro has Agency for Prevention of Corruption, Macedonia has State Corruption Prevention Commission, Albania has High Inspectorate of Declaration and audit of Assets and Conflict of Interest (HIDAACI), Serbia has Anticorruption Agency, and Kosovo has Anti-Corruption Agency.

Specialized anti-corruption agencies in the Western Balkan countries predominantly have a preventive role (Matić Bošković, 2013: 65-89). This model comprises institutions with one or more corruption prevention functions, such as investigation and analysis, strategic plan development and coordination, training and advisory activity for other institutions relating to the threat of corruption, proposal of preventive measures, etc. Some of these may have special authorizations such as control of the public officers' assets declarations, control of financing of political parties or deciding in the conflict of interest cases.

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22 For list of signatories see following website <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

23 Albania, Bosnia and Herzegovina, Macedonia, Montenegro, Romania, Serbia and Kosovo in accordance with the UN Security Council Resolution No. 1244.



All the anti-corruption institutions in the Western Balkan are declared as independent bodies in their funding act.<sup>24</sup> Thus, in accordance with the legal text, the Bosnia and Herzegovina Agency is an independent and autonomous administrative organization, reporting to the Parliamentary Assembly of BIH on its operations.<sup>25</sup> Similar provision is contained in the Macedonian Law on the Prevention of Corruption,<sup>26</sup> specifying that the State Commission is autonomous and independent in the performance of its statutory functions. The Serbian Law on Anti-Corruption Agency specifies that the Agency is an autonomous and independent state authority, reporting to the National Assembly on its operations.<sup>27</sup> The Kosovo Constitution contains a provision relating to independent agencies,<sup>28</sup> and in accordance with the Law, the Anti-Corruption Agency is defined as an autonomous and specialized agency responsible for the implementation of the state policy relating to the prevention of and action against corruption.<sup>29</sup> Montenegro Agency for Prevention of Corruption is autonomous and independent body established by Parliament.<sup>30</sup>

Governing over anti-corruption institutions in majority of Western Balkans is entrusted to collegial body and management over the body to director. The collegial bodies have different mandate and composition in selected countries. The State Commission for Prevention of Corruption in Macedonia is collegial body that governs and manage work of the Commission. Board of the Anti-corruption Agency in Serbia decides on appeals against decisions of the director pronouncing

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- 24 Both the United Nations Convention Against Corruption and the Council of Europe conventions specify the criteria for efficient anti-corruption agencies including independence, specialization, adequate training, and resources. In practice, many countries face major challenges in trying to implement these broadly defined criteria in practice.
  - 25 Article 6 of the Law on Agency for the Prevention of Corruption and Coordination of the Fight Against Corruption (*Zakon o Agenciji za prevenciju korupcije i koordinaciju borbe protiv korupcije*), Official Gazette BIH, NO.103/09, 58/13
  - 26 Article 47 of the RM Law on the Prevention of Corruption, Official Gazette of the Republic of Macedonia No.28/2002; 46/2004; 126/2006; 10/2008; 161/2008 and 145/2010.
  - 27 Article 3 of the Law on Anti-Corruption Agency (*Zakon o Agenciji za borbu protiv korupcije*), Official Gazette of Republic of Serbia, No.97/2008, 53/2010, 66/2011, 67/2013, 112/2013, 8/2015.
  - 28 2008 Constitution, Article 142, Official Gazette of Kosovo, No.25/2012,7/2013, 20/2015.
  - 29 Article 3 of the Law on Anti-Corruption Agency (*Zakon o Agenciji za borbu protiv korupcije*), Official Gazette of Republic of Serbia, No.97/2008, 53/2010, 66/2011, 67/2013, 112/2013, 8/2015.
  - 30 Article 4 of the Law on Prevention of Corruption. Before adoption of the new Law on Prevention of Corruption the Montenegrin Administration for Anti-Corruption Initiative was an integral part of the Ministry of Justice. See more in Article 4 of the Decree on the Public Administration Organization and Operating Procedures (*Uredba o organizaciji i načinu rada državne uprave*), Official Gazette of Montenegro, No. 5/12.

measures in accordance with the Law, adopts Agency annual report, performs supervision over the work and proposes budget for operation of the Agency. Similar mandate has Anti-Corruption Council in Kosovo over the work of the Agency director, as well as Council of the Agency for Prevention of Corruption in Montenegro. Members of the collegial bodies are elected by legislative and/or executive power.

With respect to resources, anti-corruption agencies should be provided adequate material resources, and specialized and trained staff required for the efficient performance of their functions. While the capacities of the anti-corruption agencies in the region are at different levels, most agencies lack staff or have vacant position due to lack of financial resources.<sup>31</sup> Having in mind financial crises and budget constraints, anticorruption bodies in region are also facing challenges in securing adequate funding.

## **5. Track record**

Requirement for sufficient financial and human resources is related to the workload and results of the anticorruption bodies in Western Balkans region. The reason for establishment of anticorruption authorities in all Western Balkan countries was improvement in implementation of anticorruption activities. However, there is a gap between public expectations and results achieved till now.

Demand for ACA services differ from country to country. In all countries, anticorruption authorities are collecting records on assets of public officials. In Serbia approximately 20,000 officials are obliged to submit asset declaration, in Bosnia and Herzegovina 6,000, in Albania 4,200, in Montenegro around 4,000, while in Kosovo only 3,900 officials.<sup>32</sup> Asset declarations are valuable source of information and verification procedure could provide indication for corruption.

Although, all anticorruption agencies in the region have significant workload in keeping registries and controlling conflict of interest and asset declarations, the visible results are missing. The important achievement in all countries is established culture for public officials to declare assets and interests. In addition, in countries where anti-corruption authorities have power to control

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31 Bosnia and Herzegovina 2018 Report, pp. 14. *The state level Anti-Corruption Agency has an appropriate budget but 20 % of its 41 positions are vacant, including in key areas. Premises are not adequate.*

32 Source Greco <https://www.kpk-rs.si/upload/datoteke/GRECO%2060%20-%20Tour%20de%20table%20-%20Horia%20Georgescu.pdf>

financing of political parties, the political parties are regularly submitting financial reports. However, effective control and verification of these reports has to be established, as well as smooth cooperation with the institutions responsible for investigation and prosecution.

After initial positive expectations, the Macedonia SCPC was in the limbo till 2017 since the overall political situation in the country. The SCPC regularly initiates misdemeanor proceedings for failure to declare assets or submit statements of interest, with around 500 cases for verification of conflict of interest per year.<sup>33</sup> In 2017 the SCPC submitted 48 requests to launch misdemeanor procedure for failure to declare assets.<sup>34</sup> It also investigates potential conflicts of interest, over 680 cases in the past five years and refers asset discrepancies to the Public Revenue Office for further investigation (over 60 cases in the past three years). The SCPC did not seem willing or able to tackle cases on reported high-level corruption, especially if they were against high-level officials from the government or governing party.<sup>35</sup> The SCPC developed data base, which contained more than 3,700 declarations. Only from 2018 there is registry of elected and appointed officials, which enables the SCPC to know how many MPs, judges and prosecutors are subject to a duty to declare their assets in any given year, following their election/appointment or the end of their office.

Although, ACA at Kosovo has results in implementation of the legislation, there is a lack in prosecution and final convictions. Since it was established the Agency has sent 700 cases to the prosecution. In 2017 the prosecution offices have filed indictments on 30 cases, based on the ACA referrals.<sup>36</sup> In 2018, out of 4,498 officials obliged to submit annual assets declarations, 98% complied with the obligation. The ACA in 2017 submitted criminal charges against 50 officials for failure to report or for false reporting of assets. However, verification of assets declaration remains the challenge for the ACA. The Agency handled 150 cases of conflicts of interest in 2017, of which 5 were submitted for the misdemeanor procedure and 5 were sent to the prosecution service for criminal investigation. In 2017 the Agency handled 40 cases on prevention of corruption in public procurement and issued 20 opinions, of which around 20 percent were not considered.

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33 FRYOM 2018 Report, SWD(2018) 154 final, pp. 23.

34 Idem.

35 For example, the SCPC did not take measures to investigate an increase of assets of the director of civil intelligence and some members of parliament. Also, the SCPC remained silent on independent audit reports showing that €58 million transferred from the central budget account to the account of Centar municipality for the "Skopje 2014" project were not accounted for. See: BTI 2016 Macedonia Country Report.

36 Kosovo 2018 Report, SWD (2018) 156 final, pp. 18.

Serbian Anti-corruption Agency has some track record for checks of party funding, conflicts of interest and asset declarations. The misdemeanor courts are issuing conviction based on the ACA requests. The Agency submitted 86 requests for misdemeanor proceedings relating to asset declarations in 2017 and misdemeanor courts issued 63 convictions in 2017.<sup>37</sup> In the area of criminal law, the Agency results are not so impressive. The Agency filed fifteen criminal charges in 2017 based on a reasonable suspicion that a public official had not reported assets or had given false information about assets with the intention of concealing the facts. Eight final judgment convicting eight public officials to imprisonment or probation was issued. Proceedings are under way in 16 cases; in 17 cases the criminal charge was dismissed and there was five acquittals.<sup>38</sup> The Agency has stepped up its checks on the funding of political activities and elections, and submitted 273 requests for misdemeanor proceedings for breaches of the law on financing political activities in 2017.

The fragmentation of powers across the country's various administrative layers influenced on the efficiency of the APIK in Bosnia and Herzegovina. The fight against and the prevention of corruption require dedicated and specialized bodies at all levels of government with appropriate coordination channels.<sup>39</sup> In 2015 the APIK coordinated adoption of integrity plans for state level institutions. The results are positive, 88% of institutions finalized and adopted integrity plans upon APIK positive opinion, 9% is in the process of preparation of integrity plans, while 3% did not take any action. In 2017 the APIK received asset declarations from 96 percent of state level public officials.

Although the Montenegro Agency for Prevention of Corruption is the youngest institution in the Western Balkans its exercise powers in relation to conflict of interest and incapability of functions, assets declarations and control of funding of political parties.<sup>40</sup> The majority of public officials, 96 percent, submitted assets declaration. The Agency initiated misdemeanor proceedings for 312 officials who failed to submit assets declaration and another 42 misdemeanor proceedings were instituted due to irregularities identified in the asset declarations submitted.

In 2017, the Agency issued 127 opinions on incompatibility of functions and based on Agency opinions, 37 public officials resigned from their office or function. Challenges remain regarding cases of conflict of interest, which are

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37 Serbia 2018 Report, pp. 20.

38 Idem.

39 Bosnia and Herzegovina 2018 Report, pp. 13.

40 Montenegro 2018 Report, pp. 19.

scarce. When it comes to funding of political parties the Agency has not identified any abuse of public resources for party purposes. Funding of electoral campaigns resulted in initiation of 405 misdemeanor procedures for noncompliance.

Over the last few years the Albania HIDAACI has become more active in control of assets declarations submitted by state officials, including high level officials. In 2017 the HIDAACI submitted criminal charges to prosecution for 22 cases against high state officials and 72 charges against low and mid ranking officials.

Public perception of anticorruption authorities is in the direct relation with the achieved results and proactive communication with public. There is impression that anticorruption agencies in the region missed opportunities to communicate with media and public. By cooperating with the media and fully informing the public, anticorruption agencies can correct the public perception of corruption, accurately represent their work and its success, educate citizens about the negative effects of corruption on their everyday lives, and mobilize both citizens and the media to help the agency achieve its good governance objectives.<sup>41</sup>

## **6. Concluding remarks**

Anti-corruption institutions in the region are a new trend, given they have emerged over the last ten years, as a consequence of the European integration process, and to meet the obligations taken with the ratification of the UN Convention Against Corruption. High as corruption might have been on the governments' agendas, it was not feasible to create institutions with extraordinary powers that would somehow affect the established balance of power.

Effects and results of the anti-corruption bodies in Western Balkans are modest. In all countries public officials are declare assets regularly, however anti-corruption bodies do not have impressive track record of the verification of declarations. Similar results are in the area of control of funding of political parties in those countries where anti-corruption bodies have this competence. Some progress has been achieved in the area of conflict of interest and incompatibility of functions. There is no high-level corruption cases that are initiated based on the work and control of anti-corruption bodies in Western Balkans, like it was in

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41 More on communication with the public: E. Byrne, A. Arnold, F. Nagano, Building Public Support for Anti-Corruption Efforts – Why Anti-corruption Agencies need to communicate and how, International Bank for Reconstruction and Development / The World Bank Communication for Governance & Accountability Program (CommGAP), 2010.

Romania where National Integrity Agency (ANI) has significant track record in seizure of assets.<sup>42</sup>

These, relatively new institutions faced with the implementation challenges of political pressure, widely set powers, need to position within existing institutional framework and insufficient capacity. Establishment of new institutions raise following questions in all countries in the region: availability of appropriate facilities, equipment, and adjusted IT structures, including adjusted case management software; a system to monitor the implementation of the new approach; a communication strategy to ensure that users and others stakeholders understand the focus of the new institution and what to expect, as well as to allow feedback for further improvements; and the availability of qualified staff, and/or various experts.

Success of the anticorruption institutions depends on the fact if there is a genuine will of elites or it is imposed goal. Hong Kong and Singapore anti-corruption commissions have developed in response to domestic demands for reform rather than international pressure. A broad domestic coalition that supports reform ensured that policy makers had an incentive to build a strong anti-corruption institution which have effective powers and are adequately resourced. One should have in mind that although Singapore and Hong Kong get high ratings from freedom from bribery in their public administration,<sup>43</sup> they are far from being open access societies.<sup>44</sup> In Western Balkan countries the anti-corruption activities were based on external pressure and the recommendations of the EU and GRECO.

All analyzed Anti-Corruption Agencies face serious budgetary and staffing problems. The main reason for this is extremely tight fiscal situation in all countries in the region. As a result, the Anti-Corruption Agencies in the region are not fully operational and cannot exercise competences defined by law.<sup>45</sup> Most anti-corruption institutions in region were provided with limited institutional capacity, budget and personnel, despite declared intentions to the opposite. With respect to the problems relating to the implementation of regulations, in all the

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42 Almost six years into ANI's history, 60 unjustified wealth cases with a total value of over 12 million euros have been investigated and sent to court. Five of those cases got a final court decision, while for two of them approximately one million euros went back to the state budget. Furthermore, in the period 2007-2013, 5,500 administrative fines were applied, which raised 800,000 euros for the state budget.

43 World Bank's World Governance Indicators for Control of Corruption and Transparency International Corruption Perception Index.

44 The Economist's Crony Capitalism Index 2016, <http://www.economist.com/blogs/graphicdetail/2016/05/daily-chart-2>

45 According to BIH 2018 Report in the Agency for Prevention and Coordination of Fight Against Corruption 20 percent of positions are still vacant.

countries in the region, independent anti-corruption agencies do not have adequate financial or human capacities to be able to perform all the duties and responsibilities specified by the legal framework and strategy papers. The economic conditions and the situation in the entire region create a difficult environment for implementation of planned reforms.

The problems in implementation of anti-corruption regulations are also affected by shortcomings in the process of passing of laws and strategic documents. All the countries in the region adopt regulations without having conducted cost assessments, economic impact analysis or investigated the possibilities for them to be implemented in practice, and often the link between the adoption of regulations/strategies and budget planning is missing. As a consequence of these shortcomings, in Bosnia and Herzegovina and Serbia, there were considerable delays in the implementation of the law and establishment of the anti-corruption agencies. In Bosnia and Herzegovina, the Law was adopted in 2009, whilst the director and two deputies were appointed as late as July 2011, and the Agency was not fully operational before end of 2012.<sup>46</sup> In Serbia, the Law on the Anti-Corruption Agency was adopted in 2008, and the Agency became operational in January 2010.

Lack of ACAs communication strategy resulted that these agencies have not become generally known and accepted central points for the anti-corruption action. In all countries, the civil sector express concerns on the performance of independent anti-corruption agencies, as the public expected more concrete results. It is difficult to restore public trust or engage the community in the fight against corruption, if the general public is not aware that anti-corruption agencies exist or what can really achieve in line with competences. Operating a proactive community and grassroots outreach program, through a community affairs staff person, for example, is imperative in rebuilding community confidence in government entities. Through such outreach programs, effective collaborations can be made with civil society.

All the institutions in the regions need to find an adequate way to impose themselves as the centers of excellence, i.e. the central anti-corruption institutions. Inter-institutional cooperation is an obstacle for effective work of the anti-corruption authorities in the region. In Bosnia and Herzegovina and Serbia, the institutions themselves request wider investigative powers. The all anti-corruption authorities in region, depend on cooperation with other state institutions and

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46 EU Commission Bosnia and Herzegovina 2012 Progress Report, SWD (2012) 335 final, pp. 14.

on the efficiency and speed of response of the law enforcement institutions. For the efficient control of official's assets, the anti-corruption agency should have effective cooperation with the Ministry of Interior, the Business Registers' Agency, the Tax Administration, the Cadaster, banks and other institutions, to verify the accuracy of data contained in the asset declarations. In practice, this form of cooperation and exchange of information has proven to be an obstacle, either due to unsound databases in other institutions, or due to their unwillingness to exchange data with a new body.

Romania ANI developed successful cooperation with the judiciary, which could be recognized as a good practice for the Western Balkan countries. ANI is regularly organizing regional meetings with prosecutors to streamline investigations and exchange of information. The High Court of Cassation and Justice in order to ensure unification of court practice set up a central classification and monitoring of all incompatibility and conflict of interest cases that is available to the ANI.

There is little evidence that anti-corruption agencies have had any significant influence on the governments' legislative agenda and anti-corruption policies. All the institutions in the region have similar preventive powers stipulated by legal acts, laws and secondary legislation. Beside control of assets and conflict of interest, majority of institutions have an important role in the formulation of the anti-corruption strategy papers and the oversight of their implementation, raising awareness on combat against corruption, education and administrative control. Most of the tasks of these bodies are related to some form of coordination, supervision and control over the national anticorruption strategies.

Irrespective of number of functions they perform, the anti-corruption agencies rely on the cooperation of many other complementary bodies and their impact is strongly conditioned by their ability to interact and cooperation with other institutions involved in anti-corruption activities.

Executive and legislative powers also affect the independence and impartiality of the work of Western Balkan ACAs through their powers of appointing and reappointing of their leadership.

To be effective establishment of the anti-corruption agency should be based on internal pressure and commitment to fight corruption. International and external pressures are not enough for successful fight against corruption and effective anti-corruption agency.



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