EFFECTIVE LEGAL AND PRACTICAL MEASURES FOR COMBATING CORRUPTION: A CRIMINAL JUSTICE RESPONSE

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I. INTRODUCTION

Corruption is a global problem and although it appears even in highly developed countries, it is a major problem in developing countries or countries that are going through a transition process. It is manifested most frequently through misuse of official positions and authorizations, especially in the public procurement area, and also through nepotism and cronyism in relation to employment, and taking bribes, etc. Thus it is well known that one of the motives of some candidates for participation in elections refers to the use of their function for the purpose of acquiring significant financial and non-financial means in case they are elected. Unless concrete activities are undertaken in due time, corruption may become systemic and deeply entrenched in all spheres of society – public administration, the judiciary, police, customs authorities, local self-government, etc.

The transitional process, i.e. the process of privatization and denationalization, is still not over in the Republic of Macedonia. The length of this process resulted in an adequate basis or climate for many leinds of malpractice and for corruption. The inefficient actions of the investigative and judicial authorities have further stimulated corruptive behaviour, which has spread not only vertically, but horizontally, in all spheres of society, i.e. in all segments of the national integrity system. Therefore, there was an urgent need for organized steps to establish and strengthen the institutional and legal framework for efficient prevention and suppression of corruption. In order to have an efficient fight against corruption, a comprehensive and systematic approach is necessary.

A. Multidisciplinary Approach for the Fight against Corruption

Apart from strengthening the criminal justice response to corruption, in order to solve the problem of corruption and the reasons for its appearance more efficiently, a combined and multidisciplinary approach is necessary. The acceptance of repression as the sole reaction to corruption results only in elimination of its effects in individual cases, leaving unaddressed the reasons, motives and circumstances which lead to corruption.

The Law on Prevention of Corruption was adopted in 2002, and the State Commission for Prevention of Corruption was established the same year. The State Commission is a specialized body for preventive actions in the fight against corruption, but also has competencies for detecting misuse by elected or appointed functionaries, officials and responsible persons in public enterprise and other legal entities disposing with state capital and submitting initiatives before competent bodies for dismissal, removal, criminal prosecution or implementation of other measures of accountability.

Reflecting global trends and with the objective of effective preventive action against corruption, the "State Program for Prevention and Repression of Corruption" adopted in May 2007 by the State Commission for Prevention of Corruption (SCPC) is founded on prevention and detection of the reasons and conditions which lead to corruption, as well as on their elimination. This is the second State Program; the first one was adopted in 2003.

Repression remains as a corrective measure in individual cases. In the current social, political and legal

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environment, a repressive reaction is necessary for reinforcing discipline among public officials and citizens, as well as for regaining citizens' trust in public institutions. Also, if cases are finalized with a punitive court decision, the result of effective repression is prevention. But if the criminal justice response is weak, this could encourage corruption.

Apart from these two components, the third component – the educational component – is also necessary. This refers to wide social action for educating all layers of society regarding the negative consequences of corruption as a phenomenon that directly threatens the freedoms and rights of people, as well as destroys the basic principles of the legal state.

B. State Commission for Prevention of Corruption

Articles 5 and 6 of UNCAC recommend development and adoption of preventive anti-corruption policies or strategies and practice and establishment of an independent body or bodies for monitoring of the implementation of anticorruption strategies. Macedonia has already achieved this by establishing the State Commission for Prevention of Corruption and developing anticorruption strategy, i.e. the State Program for Prevention and Repression of Corruption with an Action Plan for implementation.

As mentioned before, the SCPC was established in November 2002 as a specialized body to implement the Law on Prevention of Corruption, adopted in 2002. The law was further amended in July 2004, November 2006 and January 2008.

The SCPC is an autonomous and independent body, and has the status of a legal entity. It is composed of seven members, including a President. The members are appointed by the Parliament from the rank of local experts in legal and economic fields. In performing their duties, the SCPC's members are accountable to the Parliament (annual reports are submitted to the Parliament). All professional and technical matters of the SCPC are carried out by its Secretariat, which currently has 17 staff members.

1. Competencies

In accordance with the Law on Prevention of Corruption, SCPC is competent for:

(i) adopting the State Program for Prevention and Repression of Corruption and Annual Programs and Work Plans for implementation of the State Program;

(ii) providing opinions on draft laws relevant for prevention of corruption;

(iii) raising initiatives for conducting a proceeding before competent bodies for dismissal, removal, criminal prosecution or application of other measures of accountability of elected or appointed functionaries, officials and responsible persons in public enterprises and other legal entities disposing with state capital;

(iv) raising initiatives before competent bodies for conducting control over the financial and material work of the political parties, trade unions, foundations and associations of citizens;

(v) maintaining records and overseeing declared property assets and changes in the property situation of elected and appointed functionaries, officials and responsible persons in public enterprises and other legal entities managing state assets and publishing declared property assets on their web-page;

(vi) preparing Annual Reports on its work and the measures and activities undertaken; submitting the Annual Report to the Parliament; forwarding it to the President of the State and the Government; announcing it to the media;

(vii) co-operating with other state bodies in the prevention of corruption and co-operating with corresponding national bodies of other states, and with international agencies and bodies in the field of prevention of corruption;

(viii) undertaking activities in the area of education of the bodies competent to detect and prosecute corruption and other types of crime; etc.

The SCPC also implements the Law on Conflict of Interests, adopted in 2007 and is competent for:

(i) adopting a State Program with an Action Plan for Prevention and Reduction of the Conflict of Interests;

(ii) providing opinions on draft laws of importance for the prevention of conflicts of interest;

(iii) considering cases of conflict of public and private interest determined with this or other laws;

(iv) raising initiatives for implementation of measures of responsibility of the civil servant determined with this law in cases when conflict of interest occurs;

(v) submitting a report on its work and measures/activities undertaken to the Parliament, and forwarding it to the Government and the media;

(vi) co-operating with other state bodies in the prevention of conflict of interest and undertaking activities in the area of education for identification of cases of conflict of interest in accordance to this or other laws; etc.

2. State Program & Action Plan for Prevention and Repression of Corruption

In May 2007, the SCPC adopted the State Program for Prevention and Repression of Corruption & Action Plan. It covers measures and activities to be adopted and implemented within the six pillars of the National Integrity System: (1) the political system, parliament and political parties; (2) the judiciary; (3) the public administration and local self government; (4) the law enforcement agencies; (5) the economic and financial system and the private sector; and (6) civil society, media, and the unions. The SCPC monitors the implementation of the State Program in two ways. First, through the level of implemented activities set in the Action plan and second, through the Performance Monitoring System, designed to allow monitoring of the Key Performance Indicators of the work of selected institutions. Through this, the performance efficiency of the selected institutions can be measured and improved, because inefficiency is considered one of the major reasons for spreading corruption in some segments of the National Integrity System.

3. Work on Cases

The SCPC works on cases on the basis of complaints filed by citizens, institutions, reports from the State Audit Office, and on its own initiative or on the basis of articles in the media. The total number of received cases since 2003 is more than 3,500 of which about 80% were reviewed. About 40% of received cases are found not to be in the competence of the State Commission, so these cases are either closed or sent to the other competent state bodies. The large number of complaints submitted shows the confidence that the SCPC enjoys among citizens as an independent institution.

If the SCPC finds that there is a reasonable ground for suspicions of corruption, it opens the case and instigates an investigation by requesting additional information or documents from other institutions. Institutions are obligated to submit requested documents. After compiling all requested documents, the SCPC finally delivers a decision. If the decision confirms the initial findings of corruption, then the SCPC prepares an Initiative for criminal prosecution and submits it to the General Public Prosecutor's Office, who continues with the case.

Initiatives prepared by the SCPC and submitted to the General Public Prosecution Office and their outcomes:

Year	Filed Initiatives	Status at the Public Prosecution Office				Status in Courts	
		Indictments	Pending Requests for collection of necessary notifications	Pending Requests for conducting investigations	Rejected (closed) by PPO	Court Decisions	Pending
2005	11	2	3	1	5	1	1
2006	17	1	11	1	4	1	/
2007	7	1	5	1	/	/	1
Total	35	4	19	3	9	2	2

II. CONVENTIONS

In order to strengthen the legislative framework for the fight against corruption, as well as to ensure greater independence of the specialized bodies so as to guarantee efficient performance of all activities, free of any pressure, the Republic of Macedonia has signed and ratified many international conventions targeting organized crime and corruption. They are listed below.

(i) The Criminal Law Convention on Corruption. The Parliament of the Republic of Macedonia ratified the Convention in 1999; the Additional Protocol to the Criminal Law Convention on Corruption was ratified in 2005;

(ii) The Civil Law Convention on Corruption was ratified in 2000;

(iii) The European Convention on International Legal Aid, ratified in 1999, and its second Additional Protocol;

(iv) The European Convention on Extradition and its Additional Protocol, ratified in 1999;

(v) The European Convention on the Transfer of Sentenced Persons and its Additional Protocol, ratified in 1999;

(vi) The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990, ratified in 2000;

(vii) The Convention on Cybercrime, ratified in 2004;

(viii) The United Nations Convention against Transnational Organized Crime, ratified in 2004;

(ix) The United Nations Convention against Corruption; the UNCAC was signed in August 2006 and was ratified in March 2007.

III. AUTHORITIES AND AGENCIES FOR INVESTIGATING, PROSECUTING AND ADJUDICATING CORRUPTION AND CORRUPTION-RELATED OFFENCES IN MACEDONIA

A. Investigative Competence

1. Ministry of Internal Affairs
   (i) Unit for organized crime and corruption.
   (ii) Unit for internal control and professional standards.

2. Directorate for Money Laundering Prevention

3. Financial Police

4. Public Revenue Office
   (i) Unit for monitoring the assets declaration of elected and appointed officials.
   (ii) Unit for internal investigation.

5. Customs Administration – Department of Professional Accountability
   (i) Department for internal inspection.
   (ii) Department for internal investigations.

6. Independent Anti-Corruption Bodies

(i) State Commission for Prevention of Corruption
   (i) Unit for prevention of corruption.
   (ii) Unit for evidence and monitoring the property situation.
   (iii) Unit for prevention of conflicts of interest.

(ii) State Audit Office

As bodies with investigative competence, the State Commission for Prevention of Corruption and the State Audit Office also have an co-ordinative and instigative role. Their success, to a great extent, depends on their co-operation with other law enforcement agencies and institutions from the executive and judicial power.

B. Prosecuting Competence

1. Public Prosecutor's Office

(i) Special Unit for Organized Crime and Corruption within the General Prosecutor's Office.

C. Adjudicative Competence

1. Courts

Recently, several judges have been appointed in Basic Courts, and they shall be involved in the investigation and adjudication of cases of organized crime and corruption. There is an ongoing process of specialization of the judges who shall adjudicate the most complex forms of crime, such as organized crime and corruption, since practical experience has shown that without such organization, and without such specialized judges, more efficient results can hardly be expected.

D. Status of the Judiciary and Prosecution Service

1. Amendments to the Constitution of the Republic of Macedonia

Amendments to the Constitution were adopted in December 2005, aiming to strengthen the independence and integrity of the judiciary and prosecution service.

(i) Judiciary

With the amendments, the Constitution stipulates that the types of courts, their spheres of competence, their establishment, abrogation, organization and composition, as well as the procedure they follow, are regulated by law, adopted by a two-thirds majority vote of the total number of MPs. The intention of this amendment is to ensure a consensus among political parties in the Parliament.

Also, the Judicial Council was established which should guarantee autonomy and independence of judicial power. The Judicial Council elects and dismisses judges and lay judges, determines the termination of a judge's office, elects and dismisses Presidents of Courts, monitors and assesses the work of judges, decides on the disciplinary accountability of judges, and has the right to revoke the immunity of judges, etc.

(ii) Public Prosecution

The Government proposes a candidate for the office of Public Prosecutor of the Republic of Macedonia, having previously obtained the opinion of the Council of Public Prosecutors. The Public Prosecutor of the Republic of Macedonia is appointed and dismissed by the Parliament of the Republic of Macedonia for a term of six years with the right to re-appointment.

The competences, establishment, termination, organization and functioning of the Public Prosecutor's Office is stipulated by law, adopted by a two-thirds majority vote of the total number of MPs. The intention of this amendment is, as above mentioned, to ensure a consensus among political parties in the Parliament.

The public prosecutors are elected by the Council of Public Prosecutors and their term of office shall have no restrictions. The Council decides on dismissal of public prosecutors. The competences, composition and structure of the Council, and the term of office of its members, as well as the basis and the procedure for termination of the mandate and for the dismissal of a member of the Council are stipulated by law. The basis and the procedure for termination of the mandate and dismissal of the Public Prosecutor of the Republic of Macedonia and of the public prosecutors are determined by law.

The Law on Public Prosecution and the Law on the Council of Public Prosecutors were adopted in December 2007. A new Basic Public Prosecutor's Office for organized crime and corruption shall be established with the competence to deal with severe cases of corruption and organized crime.

IV. CRIMINAL JUSTICE RESPONSE

A. Criminal Code

The Criminal Code of the Republic of Macedonia was adopted in 1996. During its implementation there was a need for certain strengthening of punitive policy, as well as for an introduction of new forms of incrimination, especially for an effective fight against forms of organized crime and corruption. Therefore, the Criminal Code was amended four times. The new forms of crime, especially organized crime such as corruption, money laundering, illegal drug trafficking, terrorism and financing of terrorism, have imposed

the need for amendments to criminal legislation.

By amending the Criminal Code, the Republic of Macedonia has realized its determination to harmonize its punitive legislation with European legislation and with international conventions, agreements and standards. The amendments of the Criminal Code have brought significant changes not only in the General Section, but in the Special Section as well.

1. General Section of the Criminal Code
The most significant amendments to the General section are the following:

- Introducing criminal responsibility of a legal person.
- Confiscation of assets and benefit from assets, as well as confiscation of objects.

2. Special Section of the Criminal Code
The Special Section of the Criminal Code comprises amendments which refer to essential elements of certain crimes, introduction of new crimes or increase of the stipulated sanctions and measures for certain acts.

The most significant amendments refer to the crimes against public finances, payment operations and economy, crimes against professional duty, the crime of money laundering and other benefits of criminal acts, smuggling, new crimes such as customs fraud, acquiring inappropriate benefit from assets, terrorist organizations, and amendments that refer to financing of terrorism, as well as other types of criminal acts.

The amendments to the Criminal Code led to adequate amendments to the Law on Criminal Procedure, by stipulating new process norms for providing for implementation of the punitive acts.

B. Offences Related to Corruption in the Criminal Code (Section: Crimes against Official Duty)

1. Misuse of Official Position and Authorization – Article 353
This offence compounds the offences stipulated in Article 17 of the UNCAC (embezzlement, misappropriation or other diversion of property by a public official) and Article 19 (abuse of function).

(i) An official person who, by using his or her official position or authorization, by exceeding the limits of his or her official authorization, or by not performing his or her official duty, acquires for him or herself or for another some kind of benefit, or causes damage to another, shall be punished with imprisonment of six months to three years.

(ii) If the perpetrator of the crime from (i) above acquires a larger property gain (five average monthly salaries), or causes larger property damage, or violates the rights of another more severely, he or she shall be punished with imprisonment of six months to five years.

(iii) If the perpetrator of the crime from (i) above acquires a significant property gain (50 average monthly salaries) or causes significant damage, he shall be punished with imprisonment of one to ten years.

(iv) Responsible persons in a foreign legal entity which has a representative office in Macedonia or performs some economic activities in Macedonia or an entity who is performing activities in the public interest will be punished as determined in (i), (ii) and (iii), if the act is done via his or her special authorization or duty.

(v) If the crime stipulated in paragraph (i) is performed during the execution of public procurements or causes damage to the finances of the Budget of the Republic of Macedonia, public funds or other state owned finances, the perpetrator shall be sentenced to imprisonment of at least four years.

The intention of paragraph (v) is to protect the state capital and finances from misuse in the process of public procurements.

A case study of the misuse of an official position and authorizations is outlined in Appendix A.

2. Receiving a Bribe (Refers to Foreign Officials also) – Article 357

(i) An official person who requests or receives a present or some other benefit, or receives a promise of a present or some other benefit, in order to perform an official act within the framework of his or her own official authorization which he or she should not perform, or not to perform an official act which he or she otherwise must do, shall be punished with imprisonment of one to ten years.

(ii) An official person who requests or receives a present or some other benefit, or receives a promise for a present or some other benefit, in order to perform an official act within the framework of his or her own official authorization which he or she must perform, or not to perform an official act which he or she otherwise should not perform, shall be punished with imprisonment of six months to five years.

(iii) An official person who, after the official acts listed in items (i) and (ii) of this article are committed or not committed, requests or receives a present or some other benefit in connection with this, shall be punished with imprisonment of three months to three years.

(iv) A responsible person in a legal entity which disposes state or social property who commits a crime from items (i), (ii) and (iii), as well as a responsible person in some other legal entity, a responsible person in a foreign legal entity, or a foreign official person who commits a crime which damages the Republic of Macedonia, its citizens or legal entities, and who commits the same crime in relation to attaining, realizing or removing rights determined by law - for the crime from item (i), shall be punished with imprisonment of one to ten years; for the crime from item (ii), shall be punished with imprisonment of six months to five years; and for the crime from item (iii), shall be punished with imprisonment of three months to three years.

(v) The received present or acquired property gains shall be confiscated.

3. Giving a Bribe (Refers to Foreign Officials also) – Article 358

4. Unlawful Mediation (Trading in Influence) – Article 359

5. Covering the Origin of Disproportionately Obtained Property – Article 359a

6. Money Laundering and other Proceeds of Crime – Article 273

7. Bribery at Elections and Voting (Corruption Related)

C. Law on Criminal Procedure

1. Amendments and New Modern Solutions

Many amendments to the Law on Criminal Procedure have been made in the section referring to the pre-investigative procedure. The amendments stipulate new competencies of the state bodies in order to provide more efficient protection of the rights and freedoms of citizens, as well as protection of society against crime and corruption. The previous legal framework and competencies of the state bodies for detecting and pursuing crime was a limiting factor in terms of more efficient prevention and detection of crimes, as well as in terms of providing quality evidence.

Apart from the increased competencies of the bodies for internal affairs and other competent state bodies for detecting crimes and perpetrators, as well as the competencies of the Public Prosecutor, the Law on Criminal Procedure has other very important provisions. These refer to the special investigative measures, protection of witnesses, collaborators of justice and victims, provisions stipulating the procedure for confiscation of assets, protection of assets and confiscation of objects, the procedure against legal persons, and many other provisions. By including these provisions in the Law on Criminal Procedure, the objective is not only to make the criminal procedure faster and more efficient, to allow the defence to exercise its rights and guarantees, and the defendant his or her presumption of innocence, but also to prevent abuse of rights and deliberate prolonging of the procedure as well.

2. Special Investigative Measures

According to Article 146 of the Law on Criminal Procedure, special investigative measures can be undertaken for the purpose of providing data and evidence necessary for the successful flow of criminal

justice procedure, in cases in which data and evidence is impossible to collect or its collection is accompanied by serious difficulties. The special investigative measures can be undertaken only for crimes which carry a prison sentence of *at least four years*. This means that according to the Law on Criminal Procedure, the special investigative measures can be applied only to severe crimes. The law stipulates only one exception, namely, that special investigative measures can be undertaken for crimes which carry a prison sentence of up to five years, if there is reasonable suspicion that the crimes have been committed by an organized group.

The Law on Criminal Procedure stipulates the following special investigative measures:

- Interception of communications and access to private homes and other premises or transport vehicles, so as to create conditions for interception of communications under the terms and procedures stipulated by law;
- Access to and browsing of computer systems, confiscation of computer systems, part of their systems, or the database;
- Secret surveillance, interception, visual recording and wiretapping of persons and objects with technical means;
- Simulated purchase of objects, as well as apparent (simulated) bribing and apparent (simulated) acceptance of a bribe;
- Controlled delivery and transportation of persons and objects;
- Use of undercover agents for interception and collection of information or data;
- Opening of a simulated bank account in which assets originated from perpetrated criminal acts can be deposited; and
- Registration of simulated legal persons or use of currently registered legal persons for collection of data.

There are special investigative measures which are applied to a known perpetrator of a criminal act. In case the identity of the perpetrator of the criminal act is unknown, the special investigative measures can be enforced according to the subject of the criminal act. However, the use of special investigative measures, such as simulated purchase of objects; use of undercover agents for interception and collection of information or data; opening a simulated bank account in which assets originated from perpetrated criminal acts can be deposited; registration of simulated legal persons or use of currently registered legal persons for collection of data; and simulated bribing and apparent (simulated) acceptance of a bribe, must not lead to *the perpetration of a criminal act*. If the above-mentioned special investigative measures are imposed on a certain person, the person shall not be prosecuted for criminal acts such as accessory before the fact, if such criminal acts were perpetrated for the purpose of providing data and evidence for a successful flow of criminal procedure.

3. Imposing Special Investigative Measures

According to Article 148 of the Law on Criminal Procedure, special investigative measures shall be imposed during the pre-investigative procedure upon *order* of the Public Prosecutor or the investigative judge. During the investigation process, the special investigative measures shall be imposed only upon the *order* of the investigative judge. This provision clearly stipulates that special investigative measures can be imposed only through written orders. The written order can be considered valid only if the following persons have issued it:

- During the *investigation process*, special investigative measures can be imposed only by the investigative judge;
- During the *pre-investigation procedure*, special investigative measures can be imposed by the investigative judge upon an elaborated proposal by the Public Prosecutor, when the identity of the perpetrator of the criminal act is known;
- During the *pre-investigation procedure*, the written order for imposing special investigative measures can be issued by the Public Prosecutor upon an elaborated proposal by the Ministry of Interior, for

cases when the identity of the perpetrator of the criminal act is unknown; in case the investigative judge does not agree with the proposal by the Public Prosecutor regarding the imposition of special investigative measures, the Criminal Council of the court shall make the decision;

- The enforcement institutions for imposing special investigative measures are the Ministry of Interior, the Customs Administration, and the Financial Police.

D. Law on Interception of Communications

The Constitution of the Republic of Macedonia stipulates that the freedom and inviolability of correspondence and other forms of communication is guaranteed. Only a court decision may, under conditions and in the procedure prescribed by law, authorize non-application of the principle of inviolability of correspondence and other forms of communication, in cases where it is indispensable to prevent or reveal criminal acts, for a criminal investigation or where required in the interests of security and defence of the Republic.

The Law on Interception of Communications defines the legal framework which would limit the potential possible violation of privacy and its different aspects by the state bodies that would implement the law. Moreover, certain conditions for an efficient response to modern forms of crime shall be provided, especially referring to the fight against organized crime, corruption, illegal drugs, weapons and human trafficking, terrorism, and modern forms of espionage, as well as other types of severe crimes which endanger the safety and defence system of the state.

This law stipulates the conditions and procedures limiting the secrecy of communications, the allowable actions, and the manner of storage and use of the acquired information and data, as well as control of the legality of actions to prevent abuse of such procedures. Communications can only be intercepted on the basis of a court decision.

Remembering that this measure has serious bearing on the rights and freedoms of citizens, the Law stipulates provisions for monitoring and control of the enforcement of the measure for interception of communications. The monitoring and control of the enforcement of the measure shall be provided by the Parliament of the Republic of Macedonia, by establishing a special Committee.

1. Evidence Value of the Data, Notifications, Documents and Objects

The data, notifications, documents and objects acquired through the use of special investigative measures stipulated in Article 146 of the Law on Criminal Procedure, can be used as evidence in criminal procedure under the specific terms and manner stipulated in the law.

Persons can be interviewed as protected witnesses during the implementation of the special investigative measures. The identity of these persons shall remain a professional secret.

If the special investigative measures are imposed without the order of the investigative judge, i.e. by order of the Public Prosecutor, or are not applied in accordance with the provisions of the law, evidence acquired due to the use of such measures shall not be used as evidence in the criminal procedure.

E. Enforced Competencies of the Public Prosecutor in the Pre-investigative Procedure

With the amendments of the Law on Criminal Procedure, the Public Prosecutor has an active role in terms of the detection of criminal acts and their perpetrators. Despite the fact that the Law on Criminal Procedure and the Law on Public Prosecution stipulate that the Public Prosecutor has the obligation to detect and prosecute criminal acts and perpetrators of criminal acts, such obligation was not adequately confirmed by legal authorizations and measures, which authorizations must be at the disposal of the Public Prosecutor. With the amendments to the Law on Criminal Procedure, the insufficient activity and lack of responsibility can no longer be justified by the lack of authorizations.

The Public Prosecutor can ask for necessary data and notifications from state authorities; from institutions which have public competencies; from other legal persons; and from the bodies of units of local self-government, as well as from citizens. The Public Prosecutor can ask for submission of documents, minutes, cases and notifications; and he or she can consult with and ask for an opinion from experts in the relevant

field, so as to make a decision regarding criminal charges.

The Public Prosecutor has the authorization to invite the person who filed the criminal charges, the defendant and his or her defence lawyer, and other persons who might make a contribution to the assessment of the credibility of the findings in the charges. The minutes for the information acquired by citizens, which shall be written in the presence of the Public Prosecutor and shall be signed by him or her, can be used as evidence in the criminal procedure.

The Public Prosecutor can invite other persons who might make a contribution to the assessment of the credibility of the findings in the charges. The minutes for the acquired information, which shall be written in the presence of the Public Prosecutor, the defendant and the defence lawyer, and which shall be signed by the invited person, can be used as evidence in the criminal procedure. The previous provisions of the Law on Criminal Procedure did not stipulate the above mentioned details.

One of the major obstacles for delayed actions by the Public Prosecutor in relation to filed charges was the practice of not undertaking any activities for months and sometimes for years after the submission of the requests for collection of necessary information. The procedure was prolonged and there was a lack of efficiency. Stacked records of criminal charges were left unopened for years. The amendments to the Law on Criminal Procedure stipulates that the Ministry of Interior and other state authorities, institutions which have public authorizations, and other legal persons are obliged to act immediately upon request of the Public Prosecutor for review of certain allegations in the charges, within 30 days upon receipt of the request. The Ministry of Interior, other state authorities and legal persons are obliged to act within 90 days upon receipt of the request by the Public Prosecutor regarding exceptionally complex cases of severe criminal acts perpetrated by many persons from a wider area, or by organized criminal group. The Public Prosecutor can always demand that the Ministry of Interior, other state authorities, institutions which have public competencies and other legal persons notify him or her regarding the measures that they have undertaken in relation to his or her request for collection of necessary information.

A very important change in the Law on Criminal Procedure refers to the provision from Article 156, which deviates from the principle of legality, but serves for efficient prosecution of the severest form of crime. Namely, according to the above mentioned provision, the Public Prosecutor is not obliged to initiate criminal prosecution, i.e. can drop the prosecution if the defendant is a member of an organized group, gang or other criminal group, voluntarily co-operates before or during the process of perpetrating the criminal act, or during the criminal procedure, and if such co-operation and statement given by that person is of utmost significance for detecting the criminal acts or the perpetrators of the criminal acts. This is an important discretionary right of the Public Prosecutor, which can be exercised according to the precisely defined criteria, and that refers to the voluntary co-operation of the person and the essential importance of the statement that this person shall give for detecting the criminal acts or the perpetrators of the criminal acts, when such criminal acts are committed by an organized group, gang or other criminal group.

F. Protection of Witnesses, Collaborators of Justice and Victims

The Law on Criminal Procedure, as of 1997, did not stipulate provisions for protection of witnesses, collaborators of justice and victims. The international conventions and agreements have imposed the obligation of including such provisions in the national legislation. The latest amendments to the Law on Criminal Procedure have stipulated such provisions in a special chapter, "Protection of witnesses, collaborators of justice and victims". By including these provisions in the punitive legislation, the legislation is harmonized with the provisions of international conventions and agreements. It is clear that the modern forms of organized crime and corruption are impossible to fight without providing protection for witnesses, collaborators of justice and victims of crime.

The protection of the above mentioned persons is implemented through a special manner of investigation and participation in the procedure. The hearing of the witness is held only in the presence of the Public Prosecutor and the investigative judge or the president of the council, in premises that guarantee the protection of his or her identity. Moreover, having the witness's consent, the council can decide that the hearing be organized through the court or by using other technical means of communication, or other adequate means of communication. A copy of the minutes with the statement of the witness and without his

or her signature shall be submitted to the defendant and his or her defence lawyer, who has the opportunity to address the court in written form, by asking questions of the witness.

Protection of the above mentioned persons can be provided through inclusion of the persons in the *Program for Protection of Witnesses*. The proposal for inclusion in the Program submitted to the Council for Protection of Witnesses shall be submitted by the Public Prosecutor of the Republic of Macedonia, on the basis of a written request for inclusion in the Program, submitted by the Ministry of Internal Affairs, the competent Public Prosecutor or the judge who handles the relevant case.

If there are possibilities for inclusion in the Program, the Public Prosecutor of the Republic of Macedonia submits the proposal to the Department for Protection of Witnesses, so as to issue the decision for inclusion in the Program. The composition, the competencies of the Department for Protection of Witnesses, the measures for protection and the manner of their enforcement are stipulated in the Law on Protection of Witnesses, adopted in 2005.

G. Confiscation of Proceeds of Crime

The Criminal Code regulates the procedure for confiscation of the proceeds of crime. This measure, during the past, was not implemented to a great extent because the procedure for the managing of confiscated property was not adequately regulated.

Currently undergoing the procedures for adoption is the Law on Managing of Confiscated Property, Property Benefit and Items in Criminal Procedure. With the adoption of the Law, the necessary conditions for more efficient application of the criminal code regulations will be set.

V. CONCLUSIONS

The aim of an efficient criminal justice system is to achieve two effects – special and general prevention. Special prevention is directed towards perpetrators of criminal offences through their prosecution and penalization and discouraging them from similar acts in the future. General prevention affects the public awareness of the risk and unprofitability of committing such criminal offences.

The role of NGOs and media is also of great importance in overall efforts for fighting corruption. Their position as watchdog bodies and constructive critical review of the work of the prosecution and judiciary in handling corruption cases have a positive effect in producing more efficient work of those institutions.

To further strengthen the criminal justice system, monitoring and scrutinizing the implementation of anti-corruption policy, timely reaction for the elimination of the detected weaknesses and permanent harmonization of national legislation with international standards and conventions is of vital importance.

APPENDIX A

CASE STUDY

The State Commission for Prevention of Corruption, upon a submitted motion regarding unlawfulness related to obtaining real estate in the denationalization procedure, expropriation of that real estate, and evasion of turnover tax on real estate and rights, in 2006 initiated a procedure for reviewing denationalization of real estate.

This is a case of exercising the right to denationalization of real estate, where the requesting parties authorized a lawyer to represent them, with complete authorization in the denationalization procedure, as well as a complete right to hold the real estate and authorization to transfer the same to a third party.

Upon adoption of a Decision from the first instance body competent for decision upon requests for denationalization, which determined an amount of 120,000 EUR, the lawyer submitted a complaint to the Commission for Administrative Issues of Second Instance in the field of denationalization. The Commission accepted the complaint and adopted a relevant decision which determines compensation at 900,000 EUR, and instead of financial compensation for the requesting parties, they shall receive state owned land in the above stated amount (agricultural land or a construction free site) with a market value five times greater than the adopted financial compensation.

At the time, the Deputy Minister of Economy was President of the Commission for Administrative Issues of Second Instance in the field of denationalization. Without notifying the owners, based on the power of attorney, the proxy (lawyer) transferred the right to hold the real estate to a third party. This property was immediately expropriated by virtual loan agreements, agreements and notary acts for mortgage and realization of the mortgage due to non-payment of the alleged loan. Immediately afterwards, the real estate was sold according to its market value.

Based on the documents, the State Commission for Prevention of Corruption established a founded suspicion of misuse of official position and authorization (Article 353 of the Criminal Code) i.e. acts of corruption and organized crime. As a consequence, the State Commission submitted an initiative to the Public Prosecutor's Office for criminal prosecution and also an initiative to the Government of the Republic of Macedonia for an annulment procedure for the denationalization decision adopted by the Commission for Administrative Issues of Second Instance in the field of denationalization.

The State Commission concluded that in this case the President of the Commission, the Director of the Cadastre, the lawyer, three notaries, and the party who had been given the right to hold the real estate were direct perpetrators and co-perpetrators of criminal acts in the field of organized crime and corruption, as determined in the Criminal Code for misuse of the official position and authorization (Article 353); tax evasion (Article 279), based on the ratio between the amount of the mortgage and the value of the property; and extortion (Article 260) – provision of a loan by private entities.

The Government, upon receipt of the initiative from the State Commission for Prevention of Corruption, within its competencies (Law on General Administrative Procedure, Article 368, paragraph 1), adopted, *ex officio*, a decision on the annulment of the denationalization decisions of the Commission for Administrative Issues of Second Instance in the field of denationalization, as well as the legal implications of the same, and due to the above mentioned, the Cadastre was obliged to enter the property in the public books in the condition as they were before the adoption of the decision from the Second Instance Commission, and the first instance body was obliged to repeat the denationalization procedure.

The Public Prosecutor's Office initiated investigation and filed indictments for the involved parties in front of the competent court. Upon conduct of the court proceedings, the Court adopted a decision, sentencing 11 persons to imprisonment for a total duration of 50 years, as follows:

- The President of the Commission for Administrative Issues of Second Instance in the field of denationalization and the Director of the Cadastre were imprisoned for three years each;
- The lawyer and the person who had been given the right to hold the property were sentenced to three years each;

- The two notaries were sentenced to imprisonment of three years, and the third notary public, for whom it was concluded within the procedure that was the organizer of the whole illicit act, was sentenced to imprisonment of 14 years.

According to the court procedure, the verdicts in favour of the State should result in seizing the proceeds of the criminal acts, in the amount of approximately 2,000,000 EUR.

At the moment, procedures remain ongoing, upon complaint from the defendants, in the Court of Appeal.