

ANTI – CORRUPTION INITIATIVES, GOOD GOVERNANCE AND HUMAN RIGHTS: THE REPUBLIC OF MACEDONIA

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Abstract

In fighting corruption, good governance efforts rely on principles such as accountability, transparency and participation to shape anti-corruption measures. Initiatives may include establishing institutions such as anti-corruption commissions, creating mechanisms of information sharing, and monitoring governments' use of public funds and implementation of policies. Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. Corruption is recognized as a serious crime in the EU, which is reflected in its many anti-corruption instruments covering existing member states. Countries wishing to join still face considerable systemic corruption issues in their public institutions. In Macedonia as one of these countries the most significant human rights problems stemmed from pervasive corruption and from the government's failure to respect fully the rule of law.

This article introduces anti-corruption work, good governance, and attempts to identify the various levels of relationship between that work and human rights with particular reference to Macedonia as an EU candidate country.

Keywords: *corruption, anti-corruption instruments, good governance, impact of corruption on human rights, Macedonia.*

1. Introduction

Fighting corruption is a global concern because corruption is found in both rich and poor countries, and evidence shows that it hurts poor people disproportionately. It

contributes to instability, poverty and is a dominant factor driving fragile countries towards state failure¹.

Every year \$1 trillion is paid in bribes while an estimated \$2.6 trillion are stolen annually through corruption – a sum equivalent to more than 5 per cent of the

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¹ Governments, the private sector, non-governmental organizations, the media and citizens around the world are joining forces to fight this crime. The United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) are at the forefront of these efforts. See International Anti-Corruption Day 9 December: <http://www.un.org/en/events/anticorruptionday>.

global GDP. In developing countries, according to the United Nations Development Programme, funds lost to corruption are estimated at 10 times the amount of official development assistance².

The 2017 joint international campaign focuses on corruption as one of the biggest impediments to achieving the Sustainable Development Goals (SDGs). To mark the 2017 International Anti-Corruption Day (IACD), UNODC has developed a wide-ranging campaign focused on different SDGs and on how tackling corruption is vital to achieving them³.

Corporate corruption scandals unearthed in recent years have provided further impetus to the anti-corruption movement⁴.

What exactly is corruption? How are “offering”, “promising” and “giving” a bribe treated under the law? Different countries have different answers to these questions, by definition as well as interpretation⁵. Corruption here will be understood to mean abuse of public office for private gain, which

involves, for instance, public officials accepting bribes, unwarranted commissions or ‘kickbacks’ around processes of public procurement and service⁶.

The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of the exploitation and injustice which characterize our world. From violent ethnic cleansing to institutionalized racism, political actors have abused their entrusted powers to focus on gains for the few at great cost for the many⁷. Human rights strengthen good governance frameworks. They require: going beyond the ratification of human rights treaties, integrating human rights effectively in legislation and State policy and practice; establishing the promotion of justice as the aim of the rule of law; understanding that the credibility of democracy depends on the effectiveness of its response to people’s political, social and economic demands; promoting checks and balances between formal and informal institutions of governance; effecting necessary social

² Corruption is a serious crime that can undermine social and economic development in all societies. No country, region or community is immune. This year UNODC and UNDP have developed a joint global campaign, focusing on how corruption affects education, health, justice, democracy, prosperity and development. See United Nations Campaign: <http://www.anticorruptionday.org/actagainstcorruption/en/about-the-campaign/index.html>.

³ *Ibidem*. On 9 December each year, the world celebrates International Anti-Corruption Day. The fact that such a symbolic day exists (and immediately precedes Human Rights Day on 10 December) reflects the international community’s increased recognition of the importance of anti-corruption measures. Various factors have contributed to this, including the heightened awareness of the concrete impact of corruption. Attention has turned, for example, to: the financing of terrorist acts; the covering up of narcotics trafficking; and the impediments to the effective use of aid for economic growth and development caused by corrupt practices. See, eg, UNCAC Preamble para. 2: ‘Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering’.

⁴ Well-known examples include the corruption allegations against BAE Systems and Siemens: R (Corner House Research) v Director of the Serious Fraud Office [2009] 1 AC 756 (‘BAE Case’); United States v Siemens Aktiengesellschaft (Plea Agreement) (DC, no. 1:08-CR-00367-RJL, 6 January 2009) (‘Siemens Plea Agreement’).

⁵ Corruption is the abuse of power for private gain. Corruption takes many forms, such as bribery, trading in influence, abuse of functions, but can also hide behind nepotism, conflicts of interest, or revolving doors between the public and the private sectors. Its effects are serious and widespread. Corruption constitutes a threat to security, as an enabler for crime and terrorism. It acts as a drag on economic growth, by creating business uncertainty, slowing processes, and imposing additional costs. The abuse of entrusted power for private gain. corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs. See Transparency International at: <https://www.transparency.org/glossary/term/cprruption>.

⁶ See Observer: http://oecdobserver.org/news/archivestory.php/aid/2163/Defining_corruption.html.

⁷ See, The Global corruption Barometer (2007): https://www.transparency.org/research/gcb/gcb_2007.

changes, particularly regarding gender equality and cultural diversity; generating political will and public participation and awareness; and responding to key challenges for human rights and good governance, such as corruption and violent conflict⁸.

Moreover, Human rights require a conducive and enabling environment, in particular appropriate regulations, institutions and procedures framing the actions of the State. Human rights provide a set of performance standards against which Governments and other actors can be held accountable. At the same time, good governance policies should empower individuals to live with dignity and freedom. Although human rights empower people, they cannot be respected and protected in a sustainable manner without good governance. In addition to relevant laws, political, managerial and administrative processes and institutions are needed to respond to the rights and needs of populations. There is no single model for good governance. Institutions and processes evolve over time⁹.

The success of the democratization and the establishment of a functioning State will depend on the existence of functioning institutions of pluralistic democracy and market economy in the Republic of Macedonia as well as other West Balkans States concerned. The effectiveness of local

reform efforts and international technical and financial assistance requires the quality of public service and must be based on the best practices of good governance. As corruption is the negation of the Rule of Law and an impediment to efficient law enforcement and effective functioning of public institutions, non-governmental institutions need to find a common platform with the institutions of the state to work to prevent it. Reducing corruption requires not only the relevant institution-building measures but also creating the social preconditions for establishing the Rule of Law. In this context it is of decisive importance to foster a democratic political culture based on trust and respect of government institutions, transparency and openness of the activities of the administration, and an orientation towards stability and predictability. This task has become all the more pressing in the Republic of Macedonia.

2. The International Legal Framework Against Corruption

Corruption is the abuse of public or private office for personal gain¹⁰. The costs of corruption for economic, political and social development are becoming increasingly evident. But many of the most

⁸ *Ibidem*.

⁹ Governance refers to mechanisms, institutions and processes through which authority is exercised in the conduct of public affairs. The concept of good governance emerged in the late 1980s to address failures in development policies due to governance concerns, including failure to respect human rights. The concepts of good governance and human rights are mutually reinforcing, both being based on core principles of participation, accountability, transparency and State responsibility. See HRBA Portal: <http://hrbaportal.org/faq/what-is-the-relationship-between-human-rights-and-good-governance>.

¹⁰ It could be the multinational company that pays a bribe to win the public contract to build the local highway, despite proposing a sub-standard offer. It could be the politician redirecting public investments to his hometown rather than to the region most in need. It could be the public official embezzling funds for school renovations to build his private villa. It could be the manager recruiting an ill-suited friend for a high-level position. Or, it could be the local official demanding bribes from ordinary citizens to get access to a new water pipe. At the end of the day, those hurt most by corruption are the world's weakest and most vulnerable. See, The rationale for fighting corruption at: <https://www.oecd.org/cleangovbiz/49693613.pdf>.

convincing arguments in support of the fight against corruption are little known to the public and remain unused in political debates. This brief provides evidence that reveals the true cost and to explain why governments and business must prioritise the fight against corruption¹¹.

International anti-corruption conventions play a key role in the global fight for integrity by: bringing the fight against corruption to the political forefront, setting legally binding standards and principles by which signatory states can be held to account, fostering both the domestic action and international co-operation needed to tackle the many facets of corruption.

Although they may be similar in substance, conventions can vary considerably depending on their signatories and specific obligations. Regarding their geographic scope, some aspire to a global coverage, while others have a regional focus. They may provide for different types of obligations, whether it is concrete recommendations for action along with sophisticated review processes, or more general political commitments as a basis for specific steps to be taken¹².

From the preceding brief summary of the international anti-corruption movement's evolution, it is clear that the Organization of Economic Cooperation and Development (OECD) Convention was a catalyst for further action¹³. The Convention have a global impact. It reduce the supply side of corruption as the OECD countries are the home states of most international companies. It is important on the demand-side, strengthening domestic anti-corruption efforts in developing countries and in those countries in transition in Central and Eastern Europe¹⁴.

This Convention deals with what, in the law of some countries, is called "active corruption" or "active bribery", meaning the offence committed by the person who promises or gives the bribe, as contrasted with "passive bribery", the offence committed by the official who receives the bribe¹⁵. This Convention seeks to assure a functional equivalence among the measures taken by the Parties to sanction bribery of foreign public officials, without requiring uniformity or changes in fundamental principles of a Party's legal system¹⁶.

¹¹ *Ibidem*.

¹² See <https://www.oecd.org/cleangovbiz/internationalconventions.htm#global>.

¹³ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, opened for signature 17 December 1997, [1999] ATS 21 (entered into force 15 February 1999) ('OECD Convention').

¹⁴ Public knowledge of the critical issues under discussion within the OECD needs to be increased. In defining and describing those issues, the public can note that finally governments are moving to curb corruption. An inadequate Convention forces the question to OECD governments: how much global business bribery is the international community willing to tolerate? See, OECD Anti-Corruption Convention Leaves Critical Question Still Open, at: https://www.transparency.org/news/pressrelease/oecd_anti_corruption_convention_leaves_critical_questions_still_open.

¹⁵ The Convention does not utilize the term "active bribery" simply to avoid it being misread by the non-technical reader as implying that the briber has taken the initiative and the recipient is a passive victim. In fact, in a number of situations, the recipient will have induced or pressured the briber and will have been, in that sense, the more active.

¹⁶ See also the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions Adopted by the Council on 26 November 2009; Recommendation of the Council on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions, Adopted by the Council on 25 May 2009; Recommendation of the Council on Bribery and Officially Supported Export Credits Adopted by the Council on 14 December 2006; Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption 16 November 2016; and OECD Guidelines for Multinational Enterprises – Section VII.

It should be noted that Bribery in international business subverts world trade and investment. Bribery often leads to a misallocation of scarce public resources. Sometimes public officials are bribed to support non-essential projects thereby¹⁷. The rot may result from foreign contractors doing dirty deals with local administrators¹⁸ that enrich them both.

The OECD has been a global leader in the fight against corruption for many years. Along with other intergovernmental organizations, OECD has helped to create a panoply of international instruments that seek to limit corruption. And yet corruption continues. This is, in part, the inspiration for launching CleanGovBiz. This initiative supports governments, business and civil society to build integrity and fight corruption. It draws together existing anti-corruption tools, reinforces their implementation, improves co-ordination

among relevant players and monitors progress towards integrity¹⁹.

The first global agreement comprehensively addressing corruption is the United Nations Convention against Corruption (UNCAC)²⁰. The high number of signatories and ratifications reflects the broad international consensus on the UNCAC. This consensus was not only shared among states, but also among the international private sector and civil society²¹.

Substantive highlights of the Convention include:

- Prevention²² which means that the corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors²³;
- The Convention requires countries to

¹⁷ For example in many developing countries. Further postponing construction of vital rural clinics and sanitation systems. Sometimes important infrastructure, such as roads and railways, is constructed but then collapses. Bribery can enable corrupt authoritarian regimes to stay in office. And there is frequently a link between high levels of official corruption and widespread human rights abuse. Or, corporate bribery of officials can contribute to the collapse of fragile institutions of democracy. And, at worst, the collapse of such institutions can spark the forceful overthrow of governments, so unleashing a fresh cycle of military rule, repression and corruption. See *Ibidem*. Supra 17.

¹⁸ For example, purchasing poor quality equipment at inflated prices.

¹⁹ The CleanGovBiz Toolkit is being developed on the basis of the important standards embodied in international conventions to help put these standards into practice. In order to “walk the talk” o these conventions, the Toolkit proposes concrete priority measures, guidance on their implementation and examples of good practices in the multiple policy areas concerned. These conventions have been signed and ratified by states which in turn provides the necessary political legitimacy for applying the CleanGovBiz guidance. Political momentum is building to intensify the fight against corruption. Citizens are no longer willing to bear the burden of corrupt political and economic elites, as shown by the uprising in the Arab world. The tight budget constraints deriving from the crisis and the emerging corruption cases in a number of countries are increasing pressure on decision makers to act. CleanGovBiz provides governments, businesses and civil society with guidance and access to practical tools to face this challenge. See at: <https://www.oecd.org/cleangovbiz/about/>.

²⁰ UN General Assembly Resolution UNGA, on 31 October 2016 and was opened for signature in Merida, Mexico, on 9-11 December 2003. The Convention entered into force two years later, on 14 December 2005.

²¹ By ratifying treaties, states make an explicit and legally binding commitment to abide by and give effect to the normative principles espoused in them. However, there is no guarantee that states will institute the legal protections necessary to secure their international obligations, especially because the institutional characteristics, monitoring mechanisms and substantive content of these treaties vary greatly.

²² Article 6 of the Convention.

²³ These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once

establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law²⁴;

– Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders²⁵; and

– In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as “a fundamental principle of the Convention²⁶...”.

The UNCAC does not specify what conditions need to be met in order for anti-corruption bodies to be considered independent. Clarification can be found in an OECD study, which states that structural and operational autonomy, along with a clear legal basis and mandate for anti-corruption body, are all important elements in achieving independence²⁷.

The EU started off with modest anti-corruption instruments that mainly tackled

the misdirection of EU funds in 1995. However, the EU broadened its focus over the course of time, with the final step being a comprehensive two-year review process of member states’ general anti-corruption achievements. The results of a 2012 EU Corruption Barometer underlined that even in the EU, the fight against corruption is far from won.²⁸ The Treaty on the Functioning of the EU recognizes corruption as a “euro-crime”, listing it among the particularly serious crimes with a cross-border dimension for which minimum rules on the definition of criminal offences and sanctions may be established²⁹. With the adoption of the Stockholm Program,³⁰ the Commission has been given a political mandate to measure efforts in the fight against corruption and to develop a comprehensive EU anti-corruption policy, in close cooperation with the Council of Europe

recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures.

²⁴ In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and “laundering” of the proceeds of corruption. Offences committed in support of corruption, including money laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption. See Article 43 of the Convention.

²⁵ Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption. *Ibidem*.

²⁶ Article 51 of the Convention.

²⁷ Anti-Corruption Network for Eastern Europe and Central Asia, ‘Specialized Anti-Corruption Institutions: Review of Models’ (Report, Organizations for Economic Co-Operation and Development, 2008), 10, pp. 24-7. See also, UN Doc. CAC/COSP/IRG/2012/CRP.8 (22 June 2012); UN Doc CAC/COSP/2009/15 (1 December 2009) 3.; UN Doc CAC/COSP/IRG/1/1/1 Add. 3 (9 January 2012); UN Doc CAC/COSP/IRG/1/1/1/Add.4 (16 January 2012); UN Doc CAC/COSP/IRG/1/1/1 Add.5 (31 January 2012); UN Doc CAC/COSP/IRG/1/1/1 Add. 6 (23 March 2012) and UN Doc CAC/COSP/IRG/2012/CRP. 4 (18 June 2012).

²⁸ See European Commission, ‘Commission Fights Corruption: A Stronger Commitment for Greater Results’ (Press Release, IP/11/678, 6 June 2011) ; European Commission, ‘*Commission Steps Up Efforts to Forge a Comprehensive Anti-Corruption Policy at EU Level*’ (Press Release, MEMO 11/376, 6 June 2011) ; European Commission, ‘Frequently Asked Questions: How Corruption is Tackled at the EU Level’ (Press Release, MEMO 12/105, 15 February 2012).

²⁹ See the Treaty on the Functioning of the EU (TFEU) Article 83.1.

³⁰ See The Stockholm Programme — An Open And Secure Europe Serving And Protecting Citizens (2010/C 115/01).

Group of States against Corruption (GRECO)³¹.

The EU Anti-Corruption Report, published in 2014³², demonstrated that the nature and scope of corruption vary from one EU country to another and that the effectiveness of anti-corruption policies is quite different. The Report also showed that corruption deserves greater attention in all EU countries.

Since then, the EU Anti-Corruption Report has served as the basis for dialogue with national authorities while also informing broader debates across Europe. All EU countries have designated a national contact point to facilitate information exchange on anti-corruption policy. Together with the anti-corruption experience-sharing programme launched by the Commission in 2015³³, these efforts have encouraged national authorities to better implement laws and policies against corruption.

The Commission's anti-corruption efforts are centred around the following main pillars: mainstreaming anti-corruption provisions in EU horizontal and sectorial legislation and policy; monitoring performances in the fight against corruption by Member States; supporting the

implementation of anti-corruption measures at national level via funding, technical assistance and experience-sharing; improving the quantitative evidence base for anti-corruption policy³⁴. One tool to help anti-corruption efforts is ensuring a common high standard of legislation, either specifically on corruption, or incorporating anti-corruption elements in other sectoral legislation.

Specific anti-corruption acquis includes the 1997 Convention on fighting corruption involving officials of the EU or officials of Member States³⁵ and the 2003 Framework Decision on combating corruption in the private sector³⁶ aims to criminalise both active and passive bribery.

The Council of Europe (CoE), which aims to defend and promote pluralistic democracy, human rights and the rule of law, has played a pioneering role in the fight against corruption as it represents a danger for the core values cited. The Criminal Law Convention on Corruption states that corruption endangers the rule of law, democracy and human rights; it poses a threat to good governance, a fair and social justice system, distorts the competitive map, puts a brake on economic development and endangers the stability of democratic

³¹It is in the common interest to ensure that all Member States have effective anti-corruption policies and the EU supports the Member States in pursuing this work. See Report from the Commission to the Council on the modalities of European Union participation in the Council of Europe Group of States against Corruption (GRECO), COM/2011/0307.

³² See European Commission, Brussels, 3.2.2014, COM(2014) 38.

³³ European Commission Anti-Corruption Report at: https://ec.europa.eu/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report_en.

³⁴ *Ibidem*.

³⁵ Council Act of 26 May 1997 drawing up the Convention made on the basis of Article K.3 (2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union [Official Journal C 195 of 25 June 1997].

³⁶ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector. See also: 1st Protocol to the PIF Convention of 27 September 1996 (in force since 17 October 2002); Protocol of 19 June 1997 to the PIF Convention (in force since May 2009); Convention on Fighting Corruption involving Officials of the EU or Officials of the Member States, 1997 (entered into force on 28 September 2005); EACN, Council Decision 2008/852/JHA, of 24 October 2008 on a contact point network against corruption; EU Anti-Corruption Package (follow-up the Stockholm Programme, adopted on 16 June 2011; and Directive 2004/18 on the coordination of procedures for award of public work contracts, public supply contracts and public service contracts.

institutions and the moral foundations of society.

On 6 November 1997, the Committee of Ministers of the CoE adopted the Twenty Guiding Principles for the Fight against Corruption³⁷. These guidelines set out a broad spectrum of anti-corruption measures, such as limiting immunity for corruption charges, denying tax deductibility for bribes, ensuring free media and preventing the shielding of legal persons from liability.

The Criminal Law Convention was adopted by CoE in early 1999³⁸ and an Additional Protocol to the Criminal Law Convention on Corruption was adopted in May 2003³⁹. The Criminal Law Convention aims to harmonise the definition of a certain type of corruption, namely that of public officials. Such harmonisation, as stated by the Explanatory Report that accompanied the Criminal Law Convention,⁴⁰ would more easily allow for the requirement of dual criminality to be met by the states parties.

The Civil Law Convention on Corruption ('Civil Law Convention') was adopted on 4 November 1999 and entered into force four years later⁴¹. It focuses on effective civil remedies for any damage

caused by corrupt acts. Both the Criminal Law Convention and the Civil Law Convention are open for signature by non-European countries⁴².

The CoE's anti-corruption efforts have received substantial attention mainly because of the anti-corruption implementation mechanism. The CoE established GRECO on 1 May 1999⁴³. Its function is to monitor compliance with the Council's anti-corruption standards⁴⁴, serving as a platform for both the exchange of best practices and peer pressure⁴⁵. States that are not members of the CoE can become members of GRECO⁴⁶ and states that become parties to the Criminal Law Convention or the Civil Law Convention automatically become members⁴⁷.

3. Anti-Corruption Measures, Good Governance and Human Rights

There is no single and exhaustive definition of "good governance," nor is there a delimitation of its scope, that commands universal acceptance⁴⁸. Depending on the context and the overriding objective sought,

³⁷ Committee of Ministers, Council of Europe, Resolution (97)24 on the Twenty Guiding Principles for the Fight against Corruption (6 November 1997).

³⁸ See Criminal Law Convention on Corruption, Strasbourg, 27.I.1999, *European Treaty Series* - no. 173.

³⁹ Additional Protocol to the Criminal Law Convention, opened for signature 15 May 2003, ETS no. 191 (entered into force on 1 February 2005) ('Additional Protocol').

⁴⁰ Council of Europe, Criminal Law Convention on Corruption: Explanatory Report, [21]–[22].

⁴¹ Civil Law Convention on Corruption, opened for signature 4 November 1999, ETS no. 174 (entered into force 1 November 2003).

⁴² In addition to these treaties, the CoE has issued several soft law instruments. One of them is the recommendation on codes of conduct for public officials, adopted on 11 May 2000 (See Committee of Ministers, Council of Europe, Recommendation no. R 2000(10) of the Committee of Ministers to Member States on Codes of Conduct for Public Officials (11 May 2000). On 8 April 2003, the Committee of Ministers adopted a recommendation on common rules against corruption in the funding of political parties and electoral campaigns (See, Recommendation Rec(2003)4; Council of Ministers Recommendation Rec(2003)4; and Council of Ministers Recommendation no. R (2000) 10.

⁴³ Committee of Ministers, Council of Europe, Resolution 99(5) Establishing the Group of States against Corruption (GRECO) (1 May 1999).

⁴⁴ *Ibidem* art. 2.

⁴⁵ *Ibidem* art. 1.

⁴⁶ *Ibidem* art 4(2).

⁴⁷ Criminal Law Convention art 24; Civil Law Convention art 14.

⁴⁸ The term is used with great flexibility; this is an advantage, but also a source of some difficulty at the operational level.

good governance has been said at various times to encompass: full respect of human rights, the rule of law, effective participation, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions, an efficient and effective public sector, legitimacy, access to knowledge, information and education, political empowerment of people, equity, sustainability, and attitudes and values that foster responsibility, solidarity and tolerance.

However, there is a significant degree of consensus that good governance relates to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development⁴⁹. The key question is: are the institutions of governance effectively guaranteeing the right to health, adequate housing, sufficient food, quality education, fair justice and personal security?

The concept of good governance has been clarified by the work of the former Commission on Human Rights,⁵⁰ identified the key attributes of good governance: transparency, responsibility, accountability, participation, responsiveness (to the needs of the people)⁵¹.

In fighting corruption, good governance efforts rely on principles such as accountability, transparency and participation to shape anti-corruption measures. Initiatives may include establishing institutions such as anti-corruption commissions, creating mechanisms of information sharing, and monitoring governments' use of public funds and implementation of policies⁵².

At the Warsaw Summit in June 2016⁵³ Heads of State and Government agreed that corruption and poor governance are security challenges that undermine democracy, the rule of law and economic development, erode public trust and have a negative impact on operational effectiveness.

Improved governance requires an integrated, long-term strategy built upon cooperation between government and citizens. It involves both participation and institutions. The Rule of Law, Accountability, and Transparency are technical and legal issues at some levels, but also interactive to produce government that is legitimate, effective, and widely supported by citizens, as well as a civil society that is strong, open, and capable of playing a positive role in politics and

⁴⁹ It has been said that good governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. The true test of "good" governance is the degree to which it delivers on the promise of human rights: civil, cultural, economic, political and social rights.

⁵⁰ UN Commission on Human Rights, resolution no. 2000/64. By linking good governance to sustainable human development, emphasizing principles such as accountability, participation and the enjoyment of human rights, and rejecting prescriptive approaches to development assistance, the resolution stands as an implicit endorsement of the rights-based approach to development.

⁵¹ Resolution 2000/64 expressly linked good governance to an enabling environment conducive to the enjoyment of human rights and "prompting growth and sustainable human development." In underscoring the importance of development cooperation for securing good governance in countries in need of external support, the resolution recognized the value of partnership approaches to development cooperation and the inappropriateness of prescriptive approaches.

⁵² See SELDI.net: <http://seldi.net/history/summary/anti-corruptiongood-governance>.

⁵³ See Warsaw Summit Communique, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Warsaw 8-9 July 2016, at: https://www.nato.int/cps/en/natohq/official_texts_133169.htm.

government⁵⁴. Good governance involves far more than the power of the state or the strength of political will. The rule of law, transparency, and accountability are not merely technical questions of administrative procedure or institutional design⁵⁵. They are outcomes of democratizing processes driven not only by committed leadership also by the participation of, and contention among, groups and interests in society—processes that are most effective when sustained and restrained by legitimate, effective institutions⁵⁶.

There is no doubt that the goals for good governance are: Legitimate, effective, responsive institutions and policies; understandable processes and outcomes⁵⁷; transparency⁵⁸; incentives to sustain good governance for leaders⁵⁹; vertical accountability⁶⁰; and horizontal accountability and leaders, and among segments of government⁶¹.

The human rights issues primarily concern the relationship between the state and its citizens. The economic development mainly depends on good governance and equitable. Now, these days, is what good governance is to ensure the political and economic development. There are two aspects of good governance, about the

legitimacy of a political aspect and a technical aspect that is related to the capacity. Democratic governance and state capacity inextricably linked together. Good governance as an ideal principle refers to the effective user friendly laws that benefit those who live in the territory. Good governance and basic human rights standards should be defined by economic criteria and management. Relationship between human rights and good governance is the way in which human rights can be seen as good corporate governance reform policies⁶².

Finally, corruption compromises States' ability to fulfil their obligation to promote, respect and protect the human rights of individuals within their jurisdictions. Human rights are indivisible and interdependent, and the consequences of corrupt governance are multiple and touch on all human rights — civil, political, economic, social and cultural rights, as well as the right to development⁶³.

4. EU Enlargement: The Republic of Macedonia

Corruption is recognized as a serious crime in the EU, which is reflected in its

⁵⁴ Good Governance: Rule of Law, Transparency, and Accountability by Michael Johnston Department of Political Science, Colgate University, at: <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010193.pdf>.

⁵⁵ See UN Millennium Development Goals (MDG): <http://www.un.org/millenniumgoals/>.

⁵⁶ *Ibidem*. Supra 56.

⁵⁷ With visible results in citizens' lives --with clear standards for success or failure --with clear lines of responsibility and accountability.

⁵⁸ Openness from above --participation and scrutiny from below --honesty from all.

⁵⁹ The opportunity to take credit --for citizens: a credible chance for justice and a better life --for neighboring societies: sharing insights, experiences, expertise, values.

⁶⁰ Government that answers to citizens --citizens who accept and abide by laws and policies.

⁶¹ Access to information --the right to be consulted --the power to check excesses and abuses.

⁶² See Relationship between good governance and Human rights Masoomeh Mostafavi Azad University, 2012, at: <file:///C:/Users/e.andreevska/SSRN/Downloads/SSRN-id2136129.pdf>.

⁶³ In recent years, a number of relevant UN bodies and mechanisms have acknowledged the negative effects of corruption on the protection of human rights and on development. UN human rights bodies and mechanisms (i.e., Human Rights Council, its Special Rapporteurs, and the Universal Periodic Review mechanism, as well as human rights Treaty Bodies) are increasingly mindful of the negative impact of corruption on the enjoyment of human rights, and have addressed issues of corruption and human rights on numerous occasions.

many anti-corruption instruments covering existing member states. Countries wishing to join still face considerable systemic corruption issues in their public institutions⁶⁴.

Corruption affects citizens in very basic aspects of their everyday life in various ways. It has a negative impact: on citizens' everyday life⁶⁵; on a political level⁶⁶; and on economic development⁶⁷.

Macedonia is the 90 least corrupt nation out of 175 countries, according to the 2016 Corruption Perceptions Index reported by Transparency International. Corruption Rank in Macedonia averaged 79.20 from 1999 until 2016, reaching an all time high of 106 in 2003 and a record low of 62 in 2010⁶⁸.

Corruption and inefficient bureaucracy are challenges companies may face when doing business in Macedonia. There is a high risk of corruption in most of the country's sectors. Private businesses frequently

complain about burdensome administrative processes that create operational delays and opportunities for corruption. Public procurement, the customs administration, and the building and construction sectors are some of the areas where corruption and bribery are most prevalent. The primary legal framework regulating corruption and bribery in Macedonia is contained in the Law on prevention of Corruption⁶⁹ and the Crime Code,⁷⁰ which make individuals and companies criminally liable for corrupt practices⁷¹.

As a final point, concerning the fight against corruption, the country has some level of preparation. Corruption remains prevalent in many areas and continues to be a serious problem. The legislative and institutional framework has been developed. However, the structural shortcomings of the State Commission for Prevention of Corruption and political interference in its

⁶⁴ Between September 2012 and February 2013, more than 6,000 people were interviewed in the Western Balkans on their views of corruption levels in their country/territory and their governments' efforts to fight corruption. The survey shows that: 44% of people surveyed in the enlargement region believe that corruption has increased in their country over the past 2 years. Perceptions of increase in corruption levels are particularly high in Bosnia and Herzegovina and Albania with 65% and 66% respectively of people surveyed. Political parties, the judiciary and medical sectors are perceived as the most corrupt institutions across the region. See, EU Enlargement Factsheet, at: <https://ec.europa.eu/neighbourhood-enlargement/>.

⁶⁵ It affects their trust in the legal system and public administration; it deprives them from the health services they are entitled to get when bribing doctors is a common way to be helped faster it affects the quality of education and professional standards if a diploma can be bought instead of honestly obtained.

⁶⁶ It fosters a system where not the public interest, but the interests of individuals or groups are better served. Gaps in legislation allow corruption to spread it causes, distortions in elections, and it undermines democratic values which are indispensable for EU enlargement.

⁶⁷ It scares off foreign investors, it prevents the free market to grass root; it causes skilled people to leave the country to seek for better opportunities abroad.

⁶⁸ See, Macedonia Corruption Rank 1999-2018, at: <https://tradingeconomics.com/macedonia/corruption-rank>. It should be noted that every government that has been in power in Macedonia since independence has declared the fight against corruption a priority. However, according to observers, the actions of the government have been rather superficial. Although progress has been made in establishing the legal and institutional framework for fighting corruption, implementation of anti-corruption laws and independent handling of corruption cases by the relevant supervisory bodies and courts remains a major challenge. See, Transparency International, at: <https://knowledgehub.transparency.org/helpdesk/former-yugoslav-republic-of-macedonia-overview-of-political-corruption>.

⁶⁹ See at: http://rai-see.org/wp-content/uploads/2015/06/law_on_prevention_of_corruption.pdf.

⁷⁰ See at: <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan016120.pdf>.

⁷¹ Facilitation is prohibited, and gifts may be considered illegal depending on their value or intent. Insufficient implementation of legislation and ineffective law enforcement impede the fight against corruption and public officials continue to act with impunity.

work have minimized the impact of past efforts. There is still a need to establish a convincing track record, especially on high level corruption cases. In the fight against organised crime, the country has reached some level of preparation. The legislative framework is broadly in line with European standards and strategies have been elaborated. However, the law enforcement capacity to investigate financial crimes and confiscate assets needs to be developed further⁷².

5. Conclusion

The case for combating corruption is that “it is a force which drives poverty, inequality, dysfunctional democracy and global insecurity”. These words, from one of the world’s foremost experts on countering corruption over the past thirty years, speak to all of us, in nations rich and poor, who wish to see a more prosperous and secure global future. National anti-corruption strategies and plans are a component of realizing this desire.

There is no silver bullet for fighting corruption⁷³, but effective law enforcement is essential to ensure the corrupt are punished and break the cycle of impunity, or

freedom from punishment or loss⁷⁴. Moreover, reforms focussing on improving financial management and strengthening the role of auditing agencies have in many countries achieved greater impact than public sector reforms on curbing corruption⁷⁵. Countries successful at curbing corruption have a long tradition of government openness, freedom of the press, transparency and access to information.⁷⁶ Also, strengthening citizens demand for anti-corruption and empowering them to hold government accountable is a sustainable approach that helps to build mutual trust between citizens and government⁷⁷. Finally, without access to the international financial system, corrupt public officials throughout the world would not be able to launder and hide the proceeds of looted state assets⁷⁸.

The concept of corruption and ideas on the proper functioning of political systems are exceedingly specific socially and culturally. Therefore, the existing anti-corruption consensus is problematic. It is necessary to learn more about the ambiguities of the term in its local translations. The anti-corruption campaign has to understand much more precisely which types of corruption emerge in different contexts and, even more basically,

⁷² See European Commission Doc. SWD(2016) 362 final, Brussels, 9.11.2016.

⁷³ Many countries have made significant progress in curbing corruption, however practitioners are always on the lookout for solutions and evidence of impact.

⁷⁴ Successful enforcement approaches are supported by a strong legal framework, law enforcement branches and an independent and effective court system. Civil society can support the process with initiatives such as Transparency International’s Unmask the Corrupt campaign. See, Unmask the Corrupt, at: <https://unmaskthecorrupt.org/>.

⁷⁵ One such reform is the disclosure of budget information, which prevents waste and misappropriation of resources.

⁷⁶ Access to information increases the responsiveness of government bodies, while simultaneously having a positive effect on the levels of public participation in a country.

⁷⁷ For example, community monitoring initiatives have in some cases contributed to the detection of corruption, reduced leakages of funds, and improved the quantity and quality of public services.

⁷⁸ The European Union recently approved the 4th Anti-Money Laundering Directive, which requires EU member-states to create registers of the beneficial owners of companies established within their borders. See, Transparency International, How to stop Corruption: 5 Key Ingredients, at: https://www.transparency.org/news/feature/how_to_stop_corruption_5_key_ingredients.

what corruption actually means in a given context. It appears to be crucial that activities aimed at overcoming corruption consider the extreme cultural variations in the concept of corruption and its related implications⁷⁹.

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⁷⁹ See GIGA Research Programme: Power, Norms and Governance in International Relations, Contextualizing Conceptions of Corruption: Challenges for the International Anti-corruption Campaign, at: http://repec.giga-hamburg.de/pdf/giga_09_wp115_gephart.pdf.

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