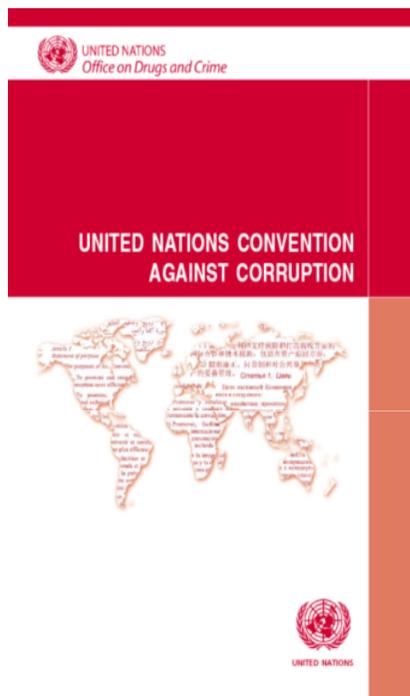


Assessment of the Legal Frameworks on Criminalization of Corruption Offenses of SEE Countries and their Anti-Corruption Strategies/Action Plans in view of their Compliance with the Provisions of the United Nations Convention against Corruption



LONDA ESADZE
Expert Consultant, UNODC

**REGIONAL CONFERENCE
STRENGTHENING REGIONAL COOPERATION IN
SOUTH EASTERN EUROPE IN THE IMPLEMENTATION OF
THE UNITED NATIONS CONVENTION AGAINST CORRUPTION
8-10 December 2009
(Bojana Residence)
Sofia, Bulgaria
December 9, 2009**



In 1993, when Luciano Violante, then President of the Italian Chamber of Deputies, was the Chairman of the Parliamentary Anti-Mafia Committee, he asked a State witness for information on the investments and money-laundering techniques used by his organization.

- *“He replied, ‘If you have some money to invest, what do you do?’*
- *“I answered, ‘I would ask an expert for advice.’*
- *“To which he replied, ‘And so do we. If investment proves sound what do you do?’*
- *“I go back to that same expert,’ was my reply.*
- *“Exactly like us. And if it turns out to be a bad investment, what do you do?’*
- *“I look for another expert, and go to someone else.’*
- *“So do we. Except that we first kill the previous expert and make sure the second one knows what we’ve done. That’s the difference between you and us.”*

But the really clever ones do not murder. Murder may remove an obstacle but it makes a lot of noise. Corruption is silent and wins an accomplice. That’s why it is more danger!

Current trends of fighting corruption in transition countries

There are some specific aspects and trends of corruption characterized in most countries of the Region and for countries in transition in general:

- Systemic Network of Corruption Pyramids
- Patron-client relationships, nepotism and cronyism
- Horizontal and vertical structures of corruption in Public sector
- Reducing petty corruption/bribery in many citizen-Government interactions, but increasing grand corruption, when corruption becomes more sophisticated and latent and moves to the spheres where big money and power rest: budgeting, special funds, procurement, and privatization
- Judiciary
- Lack of transparency and communication with the public in explaining reforms

Dilemma: “Anti-Corruption” or Democracy?

- Violations of Human Rights and principles of Democracy are often performed under “anti-corruption slogans”.
- “Anti-corruption” serves as main justification for many institutional failures
- Highly-publicized fight against corruption is politically motivated and is used to strengthen control over all sectors, and monopolize power.
- Despite of relatively well-developed framework of laws aimed at preventing conflicts of interest among public officials promotion in civil service remains plagued with nepotism and cronyism.
- Anti-corruption speculations should not become as the populist, legitimising messages of new leaderships regimes worldwide
- it is very important to study the relationship between foreign assistance and domestic corruption and ensure that “Donor Sponsored Anti-Corruption” not become commercialized industry.

Corruption and Anti-Corruption in the Western Balkans

- Anti-corruption is not a novelty in the countries of the Western Balkans.
- Given their European Union's (EU) accession agendas and since EU conditionality includes improving institutional frameworks to deal with corruption, anti-corruption has become a high priority. However, public corruption is still a serious problem affecting the political, social and economic aspects of the everyday life of their citizens.
- The importance of prospective European Union membership cannot be overestimated as the main driver to spur anti-corruption efforts.
- there is a need for national anti-corruption institutions to take ownership of the anticorruption reform agenda under the EU accession process, instead of letting it be driven by the Progress Reports.
- While these reports focus mainly on legislative reforms and the establishment of new institutions, such 'quick fixes' may not be sustainable. Experience in the region has shown that anti-corruption efforts that shortcut existing institutions and/or that have an excessive legalistic focus may be counterproductive.

Transparency International's 2009 Corruption Perceptions Index (CPI) ranks 180

countries according to their perceived level of public sector corruption.

Country	Country Rank 2008	CPI Score 2008	Country Rank 2009	CPI Score 2009
CROATIA	62	4.4. (CPI Score was 3.7. in 2003)	66	4.1.
MACEDONIA (FYR)	72	3.6. (CPI Score was 2.3. in 2003)	71	3.8.
MONTENEGRO	85	3.4. (CPI Score was 2.3 (Serbia & Mon) in 2003)	69	3.9.
ALBANIA	85	3.4. (CPI Score was 2.5. in 2003)	95	3.2.
SERBIA	85	3.4. (CPI Score was 2.3 (Serbia & Mon) in 2003)	83	3.5.
BOSNIA AND HERZEGOVINA	92	3.2. (CPI Score was 3.3. in 2003)	95	3.2.

All countries in the region have ratified the Convention, what makes the UNCAC an additional and probably optimal umbrella to the need for establishing of clear and sustainable regional cooperation mechanisms. Beside the *Acquis Communautaire*, the UNCAC implementation should be the anchor in ensuring significant progress in fighting corruption.

COUNTRY	SIGNATURE	RATIFICATION
Albania	18 Dec 2003	25 May 2006
Bosnia and Herzegovina	16 Sep 2005	26 Oct 2006
Croatia	10 Dec 2003	24 Apr 2005
Macedonia (FYR)	18 Aug 2005	13 Apr 2007
Montenegro		23 Oct 2006 (Succession)
Serbia	11 Dec 2003	20 Dec 2005

The Challenges of the United Nations Convention against Corruption

- **As of November 2009, there were 140 signatories and the Convention had been ratified, accepted, approved or acceded by 141 countries (States Parties).**
- **UNCAC is both a legal and a political document, covers *all regions*;**
- **tackles the responsibilities of *developed, as well as developing* countries;**
- **focuses on the *prevention of* corruption, not just its criminalisation;**
- **covers *private as well as public* sector corruption: bribe-payers and bribe-takers;**
- **outlaws the payment of bribes to foreign public officials, going beyond a similar prohibition in the OECD Convention and covering new trading powers such as India and China;**
- **identifies as a priority the *return of stolen assets to* their country of origin and requires the prevention and punishment of corruption-related money laundering;**
- **strengthens *transparency, accountability and participation in public decision-making*;**
- **calls for *financial and technical assistance to developing countries* for UNCAC implementation.**

Some Weaknesses and Fears

- **Now the review mechanisms are in place, but it does not consider full publication of country reports and has only made non-mandatory provisions for governments to receive input from civil society, instead of ensuring that these inputs are given to independent reviewers.**
- **A mixture of mandatory and discretionary provisions.**
- **As with many international agreements, the devil is in the details: the language is often notably vague in many areas and the parties are often given great discretion in how (and whether) to apply particular provisions.**
- **Therefore the Convention should not be used as a political tool: it is important that State Parties avoid using it principally to attack political opponents especially in less democratic countries (*e.g. selective prosecution or Article 7(3), dealing with campaign finance and transparency of the funding of political parties. The possibility of reasonably limited, but still anonymous contributions to political parties financing from private persons often is only way for survival for the opposition parties in authoritarian or semi-authoritarian regimes, as private legal or/and physical persons are afraid to provide them open financial assistance under authoritarian rules*).**

Anti-Corruption Policies and Mechanisms under the UNCAC

- Article 5: Preventive anti-corruption policies and practices – Mandatory (except of paragraph 4, which is Optional measure)
- Article 6: Preventive anti-corruption body or bodies – Mandatory
- Article 10: Public reporting - – Mandatory
- Article 13: Participation of society - – Mandatory
- **As a fundamental preventive provision, Article 5 puts emphasis on a strategic approach and is a gateway for the implementation of UNCAC provisions.**

Review of National Anti-Corruption Strategies and Action Plans of the Western Balkan Countries

- There are no universally applicable types of ACS. Rather, each country must carefully tailor and implement its own particular strategy.
- The UNCAC Article 5 about developing anti-corruption policies requires practices rather than legislation. But the Article 5 also provides a basis for article 6 on anti-corruption bodies. That's why national law-drafters very often not accidentally place references on the adoption of the ACS in the laws about on anti-corruption agencies (ASAs).
- Article 5, paragraph 4, calls for state parties to collaborate with each other in implementing anti-corruption prevention measures
- Therefore the regional cooperation of the Western Balkans countries' anti-corruption authorities aiming at sharing experience on the success and obstacles in drafting and implementing of anti-corruption strategies and action plans should be given special importance.

Each reviewed country has anti-corruption strategies and action plans in place:

COUNTRY	ANTI-CORRUPTION STRATEGY	ANTI-CORRUPTION ACTION PLAN
ALBANIA	Crosscutting Strategy for Prevention, Fight against Corruption and Transparent Governance 2008-2013 (October, 2008)	National Anti-Corruption Action Plan 2009 – 2014 (September, 2009)
BiH	National Anti-Corruption Strategy 2009 – 2014 (September, 2009)	Action Plan of the Anti-Corruption Strategy (2006-2010) (June, 2008)
CROATIA	Anti-Corruption Strategy 2006-2010 (June, 2008)	State Anti-Corruption Action Plan for 2007 - 2011 with supplementary Pillar-Specific Problem Matrixes (May, 2007)
MACEDONIA (FYR)	State Anti-Corruption Program for 2007 - 2011 (May, 2007)	State Anti-Corruption Action Plan for 2007 - 2011 with supplementary Pillar-Specific Problem Matrixes(May,2007)
MONTENEGRO	The Programme for the Fight against Organised Crime and Corruption (July, 2005)	Innovated Action Plan 2008-2009 of the Programme for the Fight against Organised Crime and Corruption (May, 2008)
SERBIA	The National Strategy for Combating Corruption (December 2005)	The Action Plan 2007-2008 for the Implementation of the National Anti-Corruption Strategy (December, 2006)

ALBANIA: Crosscutting Strategy for Prevention, Fight against Corruption and Transparent Governance 2008-2013

Priorities:

- **Prevention, transparency, all-inclusion and education;**
 - **Corruption Investigation and Penalization;**
 - **Consolidation of Cooperation and Domestic and International Coordination**
- The Strategy includes a broad list of specific measures – covering all imaginable issues, with little prioritisation – intended to be taken on the economy, rule of law (law enforcement), public administration and civil service, procurement, audit, health and education, and public awareness. However, the Strategy seems to be too ambitious and perhaps unrealistic, but it should have a positive impact if it is conducive to taking effective, concrete steps.**
- The Crosscutting Strategy is a largely declaratory document. It seems overly ambitious, since the catalogue of initiatives is truly immense, while very little prioritisation has been done and few considerations about the practical implementation of the measures taken so far.**
- Finally, while the strategy suggests some anti-corruption measures within the judiciary, it does not seem sufficiently ambitious in this particular field given the crucial importance of this sector and the corruption problems it faces.**

ALBANIA: The integrated action plan 2009 for the implementation of the Crosscutting strategy

- **Reflects the strategic objectives and the institutional measures that will be undertaken from the line ministries as established by the plans of the responsible institutions.**
- **Seems to be an automatic compilation of the internal action plans of different ministries and institutions and lacks of inter-structural coordination mechanisms, which creates a risk for overlapping and duplications of the activities.**
- **At the same time the integrated action plan does not follow the priorities as assigned in the Crosscutting strategy and not make references to them.**
- **The implementation of the Crosscutting Strategy and Action Plan has started. However, realistic implementation mechanisms and timeframes are missing, together with monitorable indicators and adequate resources.**
- **The Anti-Corruption Strategy should be better prioritised, with a more realistic reform agenda. Otherwise it would remain as controversial collection of legislative and institutional measures that will be difficult to realise.**

BiH: National Anti-Corruption Strategy and Action Plan 2009 2014.

- **Current 2006-2009 Strategy for (the) fight against Organised crime and Corruption is a largely descriptive document and its implementation remains on a poor level because there is no national authority in charge of comprehensively implementing this strategy following an Action Plan.**
- **Strategy and Action Plan 2009 – 2014 has four key objectives and identifies short-comings of the previous strategy against corruption and its implementation, and specifies individual actions to be taken in the short, medium and long terms for the strategy's objectives to be reached.**
- **Action Plan elaborates the individual actions further, identifies the responsible authorities, sets deadlines and establishes indicators of success. However due to complexity of Bosnia and Herzegovina administrative structures, the enforcement involves numerous institutions and agencies at all levels of authority, which without more specific coordinative mechanisms might create additional obstacles for a successful the implementation of the Strategy and Action Plan. At the same time the budgetary implications have not yet been examined.**
- **Interdepartmental working group for the preparation of (a) proposal of the law on (the) establishment of (an) anti-corruption body chaired by the Ministry of Security.**
- **The draft Law on Agency for Prevention of Corruption and on Cooperation in Fight against Corruption has been prepared and is under adoption.**

CROATIA

- Anti-Corruption Strategy was adopted by the Croatian Parliament on 19 June 2008 and is a revision of the National Anti-Corruption Programme 2006-2008.
- The Government of the Republic of Croatia adopted the Action Plan on 25 June 2008, which sets out the implementing measures, competent authorities, deadlines and the funds.
- The Strategy includes the principle of self-assessment, which obliges all competent authorities of the Republic of Croatia to consistently and regularly oversee the implementation of the Action Plan, assess the risk of corruption, and to take appropriate measures.
- Strategy and Action Plan introduces Office for the Suppression of Corruption and Organised Crime (USKOK, in Croatian) judges, i.e. special anti-corruption judges, who will cooperate with law enforcement agencies in order to combat corruption.

MACEDONIA

- **The second State Anti-Corruption Program and Action Plan for 2007 - 2011 with supplementary Pillar-Specific Problem Matrixes (in the Framework of the State Program and Action Plan) were adopted in May 2007. The new Program and Action Plan focus on improving the performance of the institutions and narrowing the risks for corruption. They are based on precisely determined performance indicators.**
- **The objectives of the State Program are: Permanent adoption of a widely accepted consensual system of measures for prevention and repression of corruption; Establishment of a system of criteria with indicators for measuring and assessing the effectiveness of corruption prevention policies; Creation of an environment of “zero tolerance” for corruption; Transformation of corruption from a low-risk, highly profitable activity into a high-risk, low-profit activity; Detection and punishment of the perpetrators, along with removal of material and non-material benefit, advantage, or privilege resulting from criminal activity.**
- **Notable that the State Program pays special attention to the Performance Monitoring System for the SCPC, which very much differs this Program from similar policy documents of other countries in the region.**
- **The State Program is structured in six pillars of the national integrity system**
- **Macedonia’s approach to integrate the Action Plan and Pillar-Specific Problem Matrixes in the strategy document sets very efficient monitoring system of their implementation.**

MONTENEGRO

- **The Programme for the Fight against Organised Crime and Corruption addresses a number of general and specific preventive and repressive (law enforcement) measures, with a strong emphasis on international cooperation.**
- **The Action Plan for implementation of the Program of the fight against corruption and organized crime was adopted in May 2006.**
- **During its work, National Commission recognized the need for amending of the Action Plan and Innovated Action Plan (IAP), covering the period 2008-2009, was adopted on 20 May 2008.**
- **In February 2007 the Government passed the Decision on establishing the National Commission for monitoring realization of the Action Plan**
- **Innovated Action plan puts into effect the priorities defined in the Program for the fight against corruption and organized crime, recommendations of National Commission, recommendations of international organizations and institutions, as well as recommendations of involved institutions of Montenegro. It sets specific measures, including measures focusing on local governments, that demonstrate a positive evolution in thinking during the process of implementation and review. Also determines clear and ambitious goals, measures, competent institutions, and deadlines, i.e. dynamic of obligations accomplishment, indicators of success and possible risk factors.**
- **Within the Innovated Action Plan there are total of 310 measures out of which 270 were analyzed and monitored in 2008. Therefore, for period January 01- June 30 2009, additional 40 measures were analyzed and monitored for the purpose of the Fifth report.**

SERBIA

The National Strategy for Combating Corruption includes three key elements:

- efficient enforcement of anti-corruption legislation,**
- prevention, that implies elimination of opportunities for corruption and**
- awareness-raising and education of the general public aiming at public support for implementing of Anti-Corruption Strategy.**

Apart from confusing coordination mechanisms and sharing of functions among the implementation bodies such as the National Commission for the Implementation of the National Anti-corruption Strategy and National Anti-Corruption Council, the Action Plan suffers from many other shortcomings, among them:

- a mere translation of the strategy into table form, with insufficient elaboration of the interim activities necessary to reach a particular objective;**
- unrealistic timelines for implementation without prioritising or sequencing of steps into the short-, medium, and long-term;**
- responsibilities assigned too generally to ministries or agencies,**
- identifying or having measurable indicators;**
- At the same time there are no quantitative estimates of the resources needed for implementation.**

The Law on the Anti-Corruption Agency – adopted in October 2008 - determines that the Anti-corruption Agency shall to be entrusted with the monitoring of the Anti-corruption Strategy and its Action Plan. However it is still not clear how a newly established Anti-Corruption Agency will share duties with the Implementation Commission and the National Anti-Corruption Council.

Review of National Anti-Corruption Strategies and Action Plans of the Western Balkan Countries

- The review of the anti-corruption strategies and action plans of Albania, BiH, Croatia, Macedonia, Montenegro and Serbia shows that the **anti-corruption policy documents should not remain as a list of “good wishes”** and that their implementation very much depends on efficient monitoring and coordinative mechanisms, including fixed procedures for follow-ups, institutions responsible for monitoring, resources for monitoring, and the responsibility of public office holders for non-implementation.

CRIMINALIZATION OF CORRUPTION OFFENCES

Obligations to criminalize: mandatory offences:

- **Article 15 - Bribery of national public officials**
- **Article 16 (para 1) - Bribery of foreign public officials and officials of public international organizations**
- **Article 17 - Embezzlement, misappropriation or other diversion of property by a public official**
- **Article 23 - Laundering of proceeds of crime**
- **Article 25 – Obstruction of Justice**

Criminalization: Obligations to consider criminalization: non-mandatory offences

- **Article 16 (para 2) - Bribery of foreign public officials and officials of public international organizations**
- **Article 18 - Trading in influence**
- **Article 19 - Abuse of functions**
- **Article 20 - Illicit enrichment**
- **Article 21 -Bribery in the private sector**
- **Article 22 - Embezzlement of property in the private sector**
- **Article 24 - Concealment**

Domestic and Foreign Bribery (UNCAC Articles 15 and 16): ALBANIA

- **Albanian Criminal Code anti-bribery provisions make no reference to any moral/intentional element of the offence (however the intention to commit an offence is a general requirement under Albanian law and is one of the very conditions of the offence)**
- **The UNCAC term of “public officials” does not appear in the Albanian anti-bribery provisions, which refer instead to “a person exercising public functions” (articles 244 and 259 CC). High State officials and locally elected persons are specifically covered by articles 245, 260 CC and judges, prosecutors and employees of the judicial bodies by sections 319, 319/a CC. However even the term of “a person exercising public functions” and of “high State officials” is not defined by law.**
- **The very absence of a distinction between domestic and foreign public officials in the bribery provisions, as well as a reference to the provisions of Article 7 of Albanian CC which establish jurisdiction – within certain limits – over offences committed by foreign persons, is not satisfactory to implement the UNCAC requirement.**
- **On the basis of this understanding, foreign public officials, officials of international organisations, members of foreign public assemblies, members of international parliamentary assemblies, as well as judges and officials of international courts, are not covered by the terms “persons exercising public functions”, “high State officials and locally elected persons” and “judges, prosecutors and employees of the judicial bodies” employed in various bribery provisions.**
- **It is recommended to take the legislative measures necessary to ensure that active and passive bribery of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, as well as judges and officials of international courts, are explicitly criminalised in accordance with the UNCAC Article 16.**

Domestic and Foreign Bribery (UNCAC Articles 15 and 16): BiH

- **The BiHCC in general criminalize a bribery of both national and foreign public officials in the same articles: 217 and 218, but does not consider a term “offering” in case of active bribery. However, the relevant provisions on active and passive bribery do not specify expressly that the offence can be committed directly or indirectly.**
- **The BiHCC anti-bribery provisions make no reference to any moral/intentional element of the offence, which is only that of intending to solicit or accept the undue advantage for the purpose of altering one’s conduct in the course of official duties.**
- **Terms of “official person” and “foreign official person” are not defined in accordance of the UNCAC. There is confusion in the BiHCC Article 1 in defining “official person” and responsible person”.**
- **BiHCC does not indicates that the gift or other benefit constituting the bribe might be given to a person other than the official. While the UNCAC Article 15 specifically mentions that a bribe may be given to or received by a person other than the official, the current provisions seem to limit the act to a personal receipt of the gift or benefit.**
- **The BiHCC anti-corruption provisions make no reference to any moral/intentional element of bribery of foreign public officials and officials of public international organizations.**
- **Term of “foreign official person” is not defined in accordance of the article 16 of UNCAC. There is a confusion in the BiHCC Article in defining “official person” and responsible person”.**

Domestic and Foreign Bribery (UNCAC Articles 15 and 16): CROATIA

- **The terms “confers” and “promises to confer” are interpreted to cover promising, offering, and giving a benefit with the meaning of Article 15 of the UNCAC. However, this provision of law would not appear to cover the conferring of a benefit through a third party intermediary.**
- **Articles 347 and 348 of Criminal Code of Croatia provisions make no reference to any moral/intentional element of the offence, which is only that of intending to solicit or accept the undue advantage for the purpose of altering one’s conduct in the course of official duties.**
- **It remains unclear whether Croatia would prosecute the passive bribery of international officials.**
- **Articles 347 and 348 would of the Criminal Code not appear to cover the conferring of a benefit through a third party intermediary.**

Domestic and Foreign Bribery (UNCAC Articles 15 and 16): MACEDONIA

- CC of Macedonia does not consider a term “offering” in case of active bribery.
- Anti-corruption provisions of CC Macedonia make no reference to any moral/intentional element of the offence in criminalizing of domestic and foreign bribery.

Domestic and Foreign Bribery (UNCAC Articles 15 and 16): MONTENEGRO

- CC of Montenegro considers all requested elements in case of active and passive bribery of both national and foreign public official or an official of a public international organization. However, anti-corruption provisions of CC Montenegro make no reference to any moral/intentional element of the offence, which is only that of intending to solicit or accept the undue advantage for the purpose of altering one's conduct in the course of official duties.

Domestic and Foreign Bribery (UNCAC Articles 15 and 16): SERBIA

- CC of Serbia does not consider a term “promising” in case of active bribery of both national and foreign public official or an official of a public international organization, but considers all requested elements in case of passive bribery.
- In defining of foreign official CC of Serbia is only country in the region who makes a reference to official of an international tribunal.

Embezzlement, misappropriation or other diversion of property by a public official (UNCAC Article 17)

Almost all countries have adopted general measures required in accordance with the UNCAC Article 17, however

- **ALBANIA**

Relevant provisions from Albanian Criminal Code don't cover instances where these acts are for the benefit of another person or entity.

MONTENEGRO and SERBIA

- While Provisions from Montenegro's Criminal Code cover embezzlement or misappropriation of money, securities, or other movables, it is not clear if it would cover the taking of the very broad category of "any thing of value" mandated by UNCAC Article 17.

Trading in influence (UNCAC Article 18)

- **BOSNIA AND HERZEGOVINA**
- The provisions of article 219 of the BiHCC use the word “accepts” for passive trading in influence. It does not make reference those required elements such are “Promising and offering”.
- **MACEDONIA**
- The provisions of article 359 of the Macedonian CC in case of passive trading in Influence make reference to “accepting (receiving)”, but does not cover another required element “soliciting”
- The provisions of article 359 of the Macedonian CC do not address active trading in Influence.

Abuse of functions (UNCAC Article 19)

- **The Article 337 of the CC Croatia is only positive exception among other similar provisions of other reviewed countries, which make reference to intentional element of the offence in accordance to the requirements of the UNCAC Article 19.**
- **Also notable that provisions of the Article 353 of CC Macedonia extended to responsible persons in the foreign legal entity which has an representative office in the country.**

Illicit enrichment (UNCAC Article 20)

- None of the SEE countries cover the requirements of Article 20 of the UNCAC in relation of illicit enrichment. This could be caused by that reason that most of the Criminal Code's anti-corruption provisions in SEE COUNTRIES were adopted, amended or changed in order to comply with the Council of Europe Criminal Law Convention on Corruption, which in its turn does not address illicit enrichment.
- It was reported that a working group has been working on relevant amendments in some countries, however information is not available up to now.

Bribery in the private sector (UNCAC Article 21)

- **ALBANIA**
- The offences of active and passive bribery in the private sector are criminalised under Albanian legislation. Overall, these provisions meet the standards of the UNCAC Article 21.
- **BOSNIA AND HERZEGOVINA**
- Active and passive bribery in the private sector are criminalized in the Articles 217 and 218 (domestic and foreign bribery) of the Criminal Code of Bosnia and Herzegovina by taking into account a definition of “responsible person”, which inter alia means a person in a business enterprise too. Accordingly all of our comments concerning in relation to a bribery of national public officials are applicable.
- **CROATIA**
- Provisions of Croatian legislation concerning bribery in the private sector meet the most of the requirements of the UNCAC Article 21. However, those provisions of law would not appear to cover the conferring of a benefit through a third party intermediary and make no reference to any moral/intentional element of the offence.

Bribery in the private sector (UNCAC Article 21)

- **MACEDONIA**

- Active and passive bribery are criminalized in articles 357 and 358 of Criminal Code of Macedonia with a reference to “an official person”. However according to the Article 122(7) of the CC in some cases an official person is also considered to be a responsible person. A responsible person itself is defined as “a person within the legal entity, who considering his/her function or based on special authorization in the legal entity, is entrusted with a certain circle of matters which concern the execution of legal regulations, or regulations that are enacted on the basis on a law or a general act of the legal entity, in the management, use and disposition of property, the management of the production or some other economic process, or the supervision over them”. Based on the above mentioned it is a little difficult to conclude whether the anti-bribery provisions of the articles 357 and 358 of Criminal Code of Macedonia could be extended to the private sector or not.

- **MONTENEGRO**

- Active and passive bribery are criminalized in Articles 424 and 423 of the Criminal Code of Montenegro with a reference to “an official”, as a subject of the crime. According to the Article 142(7) of the CC “Persons in an official capacity shall be” inter alia “deemed to mean:3) a person in an institution, enterprise/company”. However it is still unclear whether the anti-bribery provisions of the articles 424 and 423 of Criminal Code of Montenegro could be extended to the private sector or not.

- **SERBIA**

- Active and passive bribery are criminalized in Articles 368 and 367 of the Criminal Code of Serbia with a reference to “an official”, as a subject of the crime. According to the Article 112 of the Criminal Code “(3) An official is:3) a person in an institution, enterprise or other entity who is assigned periodical discharge of public authority, who rules on rights, obligations or interests of natural or legal persons or on public interest”; However it is still unclear whether the anti-bribery provisions of the articles 368 and 367 of Criminal Code of Serbia could be extended to the private sector or not.

Embezzlement of property in the private sector (UNCAC Article 22)

- **BOSNIA AND HERZEGOVINA**
- Criminal Code of Bosnia and Herzegovina limits embezzlement to officers or persons with positions in institutions. While it may be logical for the BiHCC to make this distinction, limiting the crime to public embezzlement, it does not make the same sense for the entities.
- **MONTENEGRO and SERBIA**
- While Provisions of Criminal Codes of Montenegro (Articles 420-421) and Serbia (Article 364) are covering embezzlement or misappropriation of money, securities, or other movables, it is not clear if it would cover the taking of the very broad category of “any thing of value” indicated in the UNCAC Article 22.

Laundering of proceeds of crime (Money Laundering) (UNCAC Article 23)

- **ALBANIA**
- The Law does not specify predicate offences for the purpose of the article 247 of the CC and it is still for the prosecution to prove that the proceeds are connected with a specific predicate offence. This is not in line with UNCAC Article 23, which requires that the list of predicate offences include the widest possible range and at a minimum the offences established in accordance with the Convention against Corruption.
- When the predicate crime is committed abroad by an Albanian citizen, money laundering in Albania is prosecutable domestically. Where the offender is a foreign citizen, money laundering in Albania is only prosecutable where it is committed against the interests of the Albanian State or an Albanian citizen. Thus the Criminal Code does not make clear that Albania has jurisdiction over money laundering offences when the predicate offence was committed abroad by a foreign citizen. It is not expressly stated that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances.
- **BOSNIA AND HERZEGOVINA**
- The BiHCC does not specify predicate offences; rather it prohibits these acts with respect to any crime or criminal offence.
- **CROATIA**
- This separate money laundering offence is basically in line with the UNCAC and the legislation helpfully contains an explicit provision to ensure that the laundering of foreign proceeds is covered in Croatia. However, the scope of the money laundering offence is unnecessarily limited to banking, financial or other economic operations“. Even if the term “other economic operations“ were to be widely interpreted, the scope of this provision does not cover all the physical (material) elements as required by the UNCAC. It is also unclear if indirect proceeds deriving from property other than money are covered.

Laundering of proceeds of crime (Money Laundering) (UNCAC Article 23)

- **MACEDONIA**
- **New Draft-Law of the Law amending the Criminal Code in the Article 273 does not clearly criminalize an use and simple possession of laundered property.**
- **MONTENEGRO**
- **The definition in the Criminal Code of the criminal offence of money laundering is limited to conduct, which falls within “banking, financial or other business operations”.**
- **The prior conviction of a predicate offence is not a requirement for the money laundering offence or for the proving of the existence of the proceeds of crime. Identification and proof of a specific predicate offence is required by the jurisprudence. The fact that the predicate offence is regularly prosecuted together with the money laundering offence implies that there might be an evidential problem when the predicate offence cannot be prosecuted.**
- **Like other countries in the region the incrimination of money laundering in Macedonian Criminal Code clearly reflects the “all crime” approach, where all criminal offences, which generate proceeds, can be predicate offences to money laundering.**
- **SERBIA**
- **Serbia also uses “all crime” approach and the reference to “criminal offence” does provide for a clear indication that all actions that are sanctioned by penal law are considered predicate elements of money laundering.**

Obstruction of justice (UNCAC Article 25)

- **SERBIA**
- Relevant provisions from Criminal Code don't fully cover all forms of inducements, threats, or force used to interfere with witnesses or officials, as well as threats against officials in order to obstruct justice.

Conclusions: AC STRATEGIES AND ACTION PLANS

- Each reviewed country has anti-corruption strategies and action plans in place, however there have apparently been great difficulties in developing adequate approaches and guidance on how to select priorities for anti-corruption policies and how to sequence interventions strategically.
- Bigger efforts need to be made to select priorities strategically in line with a realistic estimate of capacities and available resources in the implementing agencies.

Conclusions: AC STRATEGIES AND ACTION PLANS

- The Crosscutting Strategy for Prevention, Fight against Corruption and Transparent Governance of **Albania** is a largely declaratory document, while very little prioritisation has been done and few considerations about the practical implementation of the measures taken so far. The integrated action plan 2009 seems to be an automatic compilation of the internal action plans of different ministries and institutions and lacks of inter-structural coordination mechanisms, which creates a risk for overlapping and duplications of the activities; realistic implementation mechanisms and timeframes are missing, together with monitorable indicators and adequate resources.
- Due to complexity of **Bosnia and Herzegovina** administrative structures, the enforcement of National Anti-Corruption Strategy and Action Plan 2009 – 2014 involves numerous institutions and agencies at all levels of authority, which without more specific coordinative mechanisms might create additional obstacles^[1] for their successful implementation. At the same time the budgetary implications have not yet been examined.

Conclusions: AC STRATEGIES AND ACTION PLANS

- AC Strategies and Action Plans of **Croatia and Macedonia** introduce a number of innovations, which might serve as a good sample for other countries similar policy documents: Croatia's Strategy includes the principle and well developed methodology of self-assessment, while the State Anti-Corruption Program and Action Plan for 2007 – 2011 of Macedonia presents an interesting model of the Performance Monitoring System.
- Innovated Action Plan (IAP) of **Montenegro** suggests a more thorough understanding of the challenge of fighting corruption and determines clear and ambitious goals, measures, competent institutions, and deadlines, i.e. dynamic of obligations accomplishment, indicators of success and possible risk factors. It also contains a number of more specific measures, focusing on local governments that demonstrate a positive evolution in thinking during the process of implementation and review.
- **Serbia** promptly needs to adopt new anti-corruption strategy and action plan. The current Action Plan suffers from many shortcomings and at the same time there are no quantitative estimates of the resources needed for implementation.

Conclusions: CRIMINALISATION OF CORRUPTION

- All of the SEE countries are member states of the United Nations Convention against Corruption and in general the legislative framework for criminalization of corruption offences in line with the UNCAC is by and large sufficient, either currently or in draft proposals already in the process of being adopted.
- However, some legislative gaps and collisions have been identified in terms of full compliance of domestic laws with the UNCAC provisions, which countries are encouraged to fulfil.

SUGGESTED ACTIONS

- Provide training to law-makers, law-drafters and practitioners on legislative techniques and conducting the UNCAC gaps analyses and compliance reports.
- Provide training to judges and law-enforcements on case work based practice, practical guidance and other forms of capacity building among others.
- Provide additional training to judges in order to increase their awareness rising about the UNCAC's use in a court practice.
- Provide legal advice and assistance to further harmonize domestic legislation with UNCAC, in particular in the areas of criminalization of illicit enrichment, trading in influence and bribery of foreign public officials and officials of public international organizations
- To ensure more compatibility with the UNCAC and enhance regional cooperation and experience sharing in the area of anti-corruption legislation it would be beneficial to create centralized legal database including primary and secondary legislation along with the draft laws. The database could also contain country review reports, findings, based on self-assessments and peer reviews by experts, conducted within the UNCAC review mechanisms.

Corruption is dead, Long Live Corruption!(?)

