



Parliament's relationship to anti-corruption agencies

Evidence from Lithuania,
Ukraine and Serbia

Franklin De Vrieze and Luka Glušac
London, July 2020

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Acknowledgements and Disclaimer

This paper on anti-corruption agencies is the product of the Westminster Foundation for Democracy (WFD). It was made possible through funding received from the United Kingdom's Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID).

This paper has been drafted by Franklin De Vrieze and Luka Glušac. The authors appreciate the peer-review comments received from Biljana Ledenican (UNDP Serbia), Chris Levick (WFD), Halyna Shevchuk (WFD Ukraine), John Lough (Chatham House - UK), Jovan Nicić (Anti-Corruption Agency Serbia), Magdalena Randall-Schab (WFD), Nazar Grom (UNDP Ukraine), Nick Dickinson (University of Exeter - UK), Yulia Krasnogolov (WFD Ukraine), Emil Atanasovski (WFD Western Balkans), Ivan Radojević (WFD Serbia) and Zivile Sadianec (Special Investigation Service of the Republic of Lithuania).

The views expressed in the paper are those of the authors, and not necessarily those of or endorsed by the institutions mentioned in the paper or the UK Government, which does not accept responsibility for such views or information or for any reliance placed on them.

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Abstract

While there is a rich body of literature on parliaments and parliamentary development per se, and an increasing number of research outputs on anti-corruption agencies (ACAs), surprisingly little has been written on the relations between these two actors, neither in general nor on specific issues or case studies. Given that ACAs have to be independent, particularly of the government, it is the parliament's responsibility to provide them with a strong mandate, guarantees of independence, security of tenure, but also to hold them accountable for their activities.

In this paper, we concentrate on parliament's relationship to independent anti-corruption agencies, and not to different government (executive) bodies with anti-corruption functions. We develop a set of key criteria for the analysis of the relationship between parliaments and ACAs, based on four important parliamentary functions: (1) establishing the legal framework and mandate of the ACA; (2) selection, appointment and removal of the leadership of the ACA; (3) approving or reviewing the budget allocated to the ACAs; and (4) review and follow-up to annual and other reports of the ACAs.

This assessment framework is then tested on three case studies, namely Lithuania, Ukraine and Serbia, to see how it plays out in different institutional types (multi-purpose; law-enforcement; and prevention and policy) and stages of European integration (EU member state; EU candidate country; and Eastern Neighbourhood country).

Key words:

anti-corruption, parliament, independent agencies, accountability, democratisation, law enforcement, corruption prevention, Lithuania, Ukraine, Serbia

Introduction

Corruption negatively affects political and economic development and stability as well as the effective provision of public services in society. In a growing number of countries in transition, one of the institutional mechanisms to combat corruption is the Anti-Corruption Commission or Agency (ACA). The establishment of an ACA is often part of the country's strategy on anti-corruption or institutional integrity.

An independent and well-functioning anti-corruption body is a fundamental pillar of the national integrity system of any country committed to preventing corruption. This is enshrined in the United Nations Convention against Corruption (UNCAC) of 2003, which states that an independent body or bodies within national governance systems are required to promote and enforce anti-corruption policies and practices.

Although anti-corruption bodies existed in different jurisdictions prior to the adoption of the UNCAC, there has been a noticeable growth of ACAs around the world in the past two decades, signifying the important role these bodies play in the prevention and control of corruption. Today, there are more than 100 ACAs around the world.

Even before the UN Convention was launched, regional anti-corruption treaties have been enacted in Europe, such as the Council of Europe's Criminal Law Convention against Corruption (ETS 173) and Civil Law Convention on Corruption (ETS 174). Both treaties regulate international cooperation and rely on GRECO (Group of States against Corruption) to monitor developments and advise all parties. These conventions not only provide a model framework for international cooperation but also establish the principle of a separate authority with 'the necessary independence... to be able to carry out their functions effectively and free from any undue pressure [and] ensure that the staff of such entities has adequate training and financial resources'.¹

While there are some studies challenging the ultimate success of such agencies,² most of the literature considers ACAs as an important institutional feature that indeed contributes to fighting corruption, particularly high-level political corruption.

Many studies have documented the negative effect of corruption on development, economic growth, and democracy.³ Independent anti-corruption agencies are often recommended as the tool to curb corruption. However, their efficiency depends on political will to allocate authority, powers, and resources. Moreover, setting up new institutions is always costly and accordingly problematic to low- and middle-income countries. To that end, there are both pro and contra reasons to establish them. For instance, among pro reasons Johannsen and Pedersen enlist a fresh start and the 'clean hands' of the new institution; the ability to act independently; the openness to multi-faceted action combining traditional and new approaches; and the fact that it can serve as a solution to coordination problems.⁴ The same authors give contra reasons as well, such as: the extra costs relating to the establishment of a new institutions; the creation of a new layer of bureaucracy; the possibility of jurisdictional conflicts among agencies, and potential rejection of all traditional law enforcing and detection techniques.⁵

The work of an ACA is by no means easy or straightforward, nor are there globally acceptable standards which ACAs must adhere to.⁶ In fact, measuring the effectiveness of independent oversight bodies is notoriously challenging, as their performance is very much dependent on the performance of other institutional actors. In the absence of recognised benchmarks, the performance and effectiveness of an ACA are often informally gauged by the courage, commitment and

1. Council of Europe, Criminal Law Convention against Corruption, 1999, para. 20.

2. Alina Mungiu-Pippidi, *The Quest for Good Governance. How Societies Develop Control of Corruption*, CUP, 2015, 106-113; Frank Anechiarico and James B. Jacobs, *How Corruption Control Makes Government Ineffective*, University of Chicago Press, 1996.

3. See for instance: Leslie Holmes, *Rotten States? Corruption, Post-communism and Neoliberalism*, Duke UP, 2006; Cheol Liu and John L. Mikesell, 'The Impact of Public Officials? Corruption on the Size and Allocation of U.S. State Spending', *Public Administration Review*, 3/74, 2014, 346-359.

4. Lars Johannsen and Karin Hilmer Pedersen, 'The Institutional Roots of Anti-Corruption Policies: Comparing the Three Baltic States', *Journal of Baltic Studies*, 3/42, 2011, 332.

5. *Ibid.*

6. There some guidelines however, such as Jakarta Statement on Principles for Anti-Corruption Agencies.

determination with which it discharges its functions, often in complex socio-political environments. However, while this paper touches upon some elements important for the assessment of performance and effectiveness of an ACA, it is not focused on that, as this is dealt with elsewhere.⁷

This paper is concentrated on the parliament's relationship to an ACA, which can be seen as an important precondition for an effective ACA. We focus on the parliament's relationship to ACAs, because while there is a rich body of literature on parliaments per se, and an increasing number of research outputs on ACAs, surprisingly little has been written on the relations between these two actors, neither in general nor on specific issues or case studies. Given that ACAs have to be independent, particularly of the government, it is the parliament's responsibility to provide them with a strong mandate, guarantees of independence, security of tenure, but also to hold them accountable for their activities.

In this paper, we concentrate on the parliament's relationship to independent anti-corruption agencies, and not to different government (executive) bodies with anti-corruption functions. To that end, our research questions are:

- In which way does a solid framework for independence and accountability enable ACAs to be effective institutions capable of tackling corruption within the scope of their mandate?
- How does the independence and accountability of ACAs play out in each of the three models of ACAs (multi-purpose type; law enforcement type; prevention and policy type) and what are the lessons learned regarding the effectiveness of ACAs in each of the three models?
- What are the current approaches of parliament's interaction with ACAs in case studies for each of the three models, and what are the options for stronger parliamentary engagement in support of ACAs?
- How has the democratic transition and the changing power of parliament in three case studies influenced the effectiveness, independence and accountability of ACAs?

In an attempt to answer those questions and to contribute to the literature, we develop a set of key criteria for the analysis of the relationship between parliaments and ACAs, based on four main parliamentary functions: (1) establishing the legal framework and mandate of the ACA; (2) selection, appointment and removal of the leadership of the ACA; (3) approving or reviewing the budget allocated to the ACAs; and (4) review and follow-up to annual and other reports of the ACAs.

This assessment framework is then tested on three case studies, namely Lithuania, Ukraine and Serbia, to see how it plays out in different institutional designs and national contexts. We chose these three countries for three reasons. Firstly, to cover three basic types of ACAs: Lithuania for multi-purpose, Ukraine for law-enforcement and Serbia for prevention and policy type. Secondly, to include countries in different stages of their European integration process; that is, Lithuania as EU member state, Serbia as EU candidate country and Ukraine as Eastern Neighbourhood country. Thirdly, many analyses of corruption and anti-corruption in the Balkans, the Baltics and Eastern Europe have demonstrated that the levels of administrative corruption and state capture in Europe's ex-communist states, including new EU member states, remain high after almost two decades of transition. It seems evident that, despite the distinctive characteristics of the different countries, some common features of their subsequent transformations have a bearing on the degree and specifics of the corruption phenomenon across these and neighbouring countries, which makes them more comparable. This should be taken into consideration when analysing the attitude of parliaments toward ACAs.

7. There are some guidelines however, such as Jakarta Statement on Principles for Anti-Corruption Agencies. For more on how to evaluate anti-corruption agencies, see: Jesper Johnsen, Hannes Hechler, Luís De Sousa and Harald Mathisen, *How to Monitor and Evaluate Anti-Corruption Agencies: Guidelines for Agencies, Donors, and Evaluators*, Chr. Michelsen Institute, 2011.

The Assessment Framework

Our assessment framework is built around the central argument that it is parliament's responsibility to define and secure both normative and financial preconditions for ACAs' work, but also to make sure that ACAs' decisions and key concerns raised are properly followed up. Thus, we concentrate on the aspects of their relationship that can show whether the parliament performs those responsibilities in a proper manner. In other words, we aim to provide for the assessment framework that which would incorporate the necessary level of independence granted to ACAs, as well as the accountability demanded from ACAs.

Our assessment framework is based on a 2019 WFD-published study on the dimensions and indicators of independence and accountability of independent oversight institutions⁸, as well as on existing literature exploring the relationship of parliaments with types of independent agencies, such as ombudsmen⁹. It is a practice-oriented set, rooted in international and comparative standards, such as the Jakarta Statement on Principles for Anti-Corruption Agencies.¹⁰

We assess parliament's relationship to ACAs through four main functions:

1. parliament's role in establishing the legal framework and mandate of the ACA
2. parliament's role in the selection, appointments and removal of the leadership of the ACA
3. parliament's role regarding approving or reviewing the budget allocated to the ACAs
4. parliament's review and follow-up to annual and other reports of the ACAs.

Under the first criterion, we consider that an ACA has to be established by primary, parliament-approved legislation, guaranteeing independence, clear and strong mandate, strength of institutional objectives, and clear regulation of relations with other state and public authorities.

In the second criterion, we include: the merit-based and timely selection of the head of the institution and board members; parliament's role in the nomination or appointment process of the head of agency or board members; fixed term in office and clear provisions on possibility for renewal; and clear and well-regulated grounds for removal from office.¹¹

By the third criterion, we mean that parliament should allocate financial resources for an ACA's operation sufficient for performing its functions. An ACA should be given authority to prepare its draft annual budget, while parliament should guarantee that the executive would not hamper the execution of that ACA's budget in any way.

Finally, under the fourth criterion, we consider: the requirement of an ACA to submit an annual report to parliament and/or government; requirements on the structure and content of the annual report; clarity if the annual report is for information or for approval; an ACA's authority to submit information and reports on its own initiative to parliament and/or government; regular scrutiny by a parliamentary committee; and oversight by the body responsible for providing financial resources.

8. Franklin De Vrieze, *Independent Oversight Institutions and Regulatory Agencies and their Relationship to Parliament: Outline of Assessment Framework*, WFD, 2019, https://www.wfd.org/wp-content/uploads/2019/02/WEB_INDEPENDENT-OVERSIGHT-INS.pdf

9. Luka Glušac, 'Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)', *The International Journal of Human Rights*, 23(4), 2019, 531-554, <https://doi.org/10.1080/13642987.2018.1513400>

10. Jakarta Statement on Principles for Anti-Corruption Agencies, November 26-27, 2012, https://www.unodc.org/documents/corruption/WG-Prevention/Art_6_Preventive_anti-corruption_bodies/JAKARTA_STATEMENT_en.pdf.

11. For more on appointment and removal procedures, see: Sofie Arjon Schütte, *The Fish's Head: Appointment and Removal Procedures for Anti-Corruption Agency Leadership*, Chr. Michelsen Institute, 2015.

We consider these four broad criteria to be the most substantive and measurable. They are also well recognised in academic literature as key features of the relationship between parliaments and independent oversight institutions. The parliament has to meet these four criteria to fulfil its intended role of a protector of the independence of the ACA and the holder of its accountability. In other words, if the parliament fails to develop predictable, consistent and independence-supporting conduct towards the ACA, it actually hampers the ACA from exercising its mandate.¹²

It should be added that we do not underestimate the importance of other criteria such as cooperation in education or training and awareness raising on anti-corruption. However, we do take that neither of these are not essential for the independence and efficient work of the ACA, or for the general assessment of the parliament's relations towards it. In other words, these criteria can be understood as additional factors that can only further enhance the cooperation between the two institutions, but remain obsolete in a situation where the four basic criteria are not fulfilled.¹³

12. Compare: Luka Glušac, 'Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)', *The International Journal of Human Rights*, 23(4), 2019, 531-554, <https://doi.org/10.1080/13642987.2018.1513400>, 538.

13. *Ibid.*

Types of Anti-Corruption Agencies¹⁴

While there are different types of categorisations of ACAs,¹⁵ for the purpose of this paper we adopt the differentiation of ACAs into three groups based upon their mandate, as proposed by the Organization for Economic Co-operation and Development (OECD): (1) multi-purpose agencies (with law enforcement powers); (2) law enforcement-type institutions; and (3) prevention, policy, and coordination institutions.¹⁶

Multi-purpose agencies are combining law enforcement powers, preventive functions and often also functions of policy advice to the government or the president. Multi-purpose agencies are considered the most effective model for countries affected by corruption that is spread and entrenched in the public administration as well as in the judiciary and law enforcement institutions. It requires establishing a new, independent multi-task agency instead of co-opting departments from existing institutions. Examples of multi-purpose agencies can be found in for instance Latvia and Lithuania.¹⁷

ACAs as law enforcement-type institutions are specialised agencies with prosecutorial authority in specific cases. Sometimes they may be specialised units for investigation and/or prosecution of corruption cases. A first example is the Romanian National Anti-corruption Directorate (NAD), which is a structure with legal personality within the framework of the Prosecutor's Office attached to the High Court of Cassation and Justice. The NAD is led by a Chief Prosecutor whose independence is guaranteed by law. A second example is the Croatian Office for the Suppression of Corruption and Organized Crime (USKOK). It is a prosecutorial service; its procedures and regulations are like those of the other prosecutors' offices. The Ministry of Justice issues the internal rules and approves the personnel schemes of the Office. The Head of the USKOK is appointed by the Chief Public Prosecutor, after obtaining the opinion of the Minister of Justice and of the panel of national Public Prosecutors. The interaction with parliament regarding this type of ACAs is very limited.

The third type of ACAs are the prevention, policy, and coordination institutions. This category of agencies is very diversified. One can distinguish between two sub-categories. Firstly, there are the agencies whose work focuses on defining strategic objectives, priorities and anti-corruption measures and on the coordination of the governmental action against corruption. Examples can be found in Armenia and Montenegro. The main challenge of this type is that it has no independence from the government; it is a mere advisory body with no policy making or implementation functions. Secondly, there are agencies that in addition to the general tasks of corruption prevention are also responsible for some operational activities related to monitoring the application of public service regulations. Examples can be found in Azerbaijan, Slovenia and North Macedonia.

The Parliament of Azerbaijan appoints one third of the members of the Commission on Combating Corruption and receives an annual report, as do the President and the Supreme Court. In Slovenia, the Commission on Corruption Prevention is an independent agency accountable to Parliament. It assesses the effectiveness of anti-corruption regulations, is responsible for the enforcement of the Code of Conduct for Public Officials and deals with control of the financial assets of Slovenian functionaries.

According to the OECD, independent, multi-purpose ACAs of the kind established in Latvia and Lithuania have a better chance to represent a solid anchor for meaningful anti-corruption activities and may be better able to withstand the inherent political pressure. However, the creation of any new institution has to be considered in the specific context of each country, and this 'Baltic' model has not emerged as the dominant model. The main alternative models are the specialised law enforcement agencies, and the corruption prevention agencies. They tend to be more vulnerable to political pressure or to the instrumentalisation of the anti-corruption fight for political ends.

14. Retrieved from: Franklin De Vrieze, *Independent Oversight Institutions and Regulatory Agencies and their Relationship to Parliament: Outline of Assessment Framework*, WFD, 2019, https://www.wfd.org/wp-content/uploads/2019/02/WEB_INDEPENDENT-OVERSIGHT-INS.pdf

15. See for instance: John R. Heilbrunn, *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption*, World Bank Institute, 2004; Jon S.T. Quah, 'Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis', *International Public Management Review*, 2/8, 2007, 73-96.

16. Organisation for Economic Co-operation and Development, *Specialized Anti-Corruption Institutions: Review of Models, OECD Anti-Corruption Network for Eastern Europe and Central Asia*, 2008, 13.

17. Dan Dionisie, Francesco Checchi, *Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners' Experience*, <http://www.arabacinet.org/files/activities/Pres-Session6-Checchi-30072008-e.pdf>

Case Studies

Lithuania (multi-purpose)

Background

Immediately after regaining its independence in 1990, Lithuania created an array of legal and strategic acts designed to fight corruption. Furthermore, the Government's anti-corruption strategy was inspired and directly influenced by the process of joining the European Union. Immediately after Lithuania submitted its application to join the European Union, the fight against corruption was named its most immediate goal,¹⁸ and continued to be after EU accession in 2004 as well. In 2002, the Seimas (Parliament) adopted the 'National Anti-Corruption Programme of the Republic of Lithuania', comprising the National Anti-Corruption Strategy and the Action Plan for the implementation of the Strategy, that serves as a major legislative framework for anti-corruption activities. The programme focused on a holistic, integrated, and collaborative approach to address corruption and provides three main measures for the fight against corruption: prevention, investigation of corruption related offences, and public anti-corruption education. Furthermore, in May 2002, Lithuania adopted Law on Prevention of Corruption.

Parallel to normative developments, Lithuania also worked on changing its anti-corruption institutional landscape. In 1997, the Special Investigations Service (SIS) was established within the Ministry of the Interior. The tasks of the SIS were to collect and use intelligence about criminal associations and corrupt public officials as well as carry out prevention activities. In 2000, the SIS became independent, and accountable only to the President and the Parliament. In this way, the agency was separated from the Government. The functions of the SIS were, however, relatively limited, and it was only in 2002, with the adoption of the Law on Corruption Prevention, that the scope of the SIS was expanded to include prevention, education, awareness, and analysis.¹⁹

Following the adoption of the original National Anti-Corruption Programme in 2002, Lithuania has updated it periodically; last time for the period 2015-2025.²⁰ The current Programme emphasises that corruption is one of the national threats to the State and one of the most dangerous social phenomena threatening human rights, democracy and the rule of law, distorting social justice, fair competition, business conditions and slowing down economic growth.²¹ It further stipulates that corruption is associated with excessive bureaucracy and regulation and lacks balance between discretion in decision-making and accountability.²² With the amendments of the Law on the SIS in 2018, Analytical Anti-Corruption Intelligence was introduced. It covers collection, processing and collation of information on corruption and related phenomena. The result of processing this information could be provided to the Government and municipal agencies and officers authorised to make decisions significant in terms of reducing the spread of corruption.

While the public perception of corruption in Lithuania was traditionally high, especially comparing to other Baltic countries,²³ since entering the EU, the country has seen a rather steady improvement in this area. According to Transparency International's Corruption Perceptions Index, in 2019 Lithuania scored 60 out of 100 on a points scale, placing it 35th out of 180 countries in the world.²⁴ Previously, it scored 59 out of 100 for four consecutive years (2015-

18. See more in: Raimundas Urbonas, 'Corruption in Lithuania', *Connections*, 1/9, 2009, 67-92.

19. For more on anti-corruption trainings for public administration in Lithuania, see: Bryane Michael, Eleanor Kennon and Jeppe Kromann Hansen, 'The Future of Anti-corruption Measures in Lithuania', *Viešoji Politika Ir Administravimas*, 16, 2006, 7-15; and Mantas Jonauskis, 'Anti-Corruption Education And Training In Lithuania', in Michael Bryane, Rainer Kattel and Wolfgang Drechsler (eds), *Enhancing the Capacities to Govern: Challenges Facing the Central and Eastern European Countries*, Bratislava, The Network of Institutes and Schools of Public Administration in Central and Eastern Europe, 2004, 254-269.

20. Seimas of the Republic of Lithuania, *Resolution on the Approval of the National Anti-Corruption Programme of the Republic of Lithuania for 2015-2025*, No XII-1537, 10 March 2015.

21. Para 5 of the *National Anti-Corruption Programme of the Republic of Lithuania for 2015-2025*.

22. *Ibid.*

23. See: Raimundas Urbonas, 'Corruption in Lithuania', *Connections*, 1/9, 2009, 67-92; Jolanta Aleknevičienė, 'What are the Changes in the "Lithuanian Map of Corruption"?', in Katarína Staroňová and Emília Beblavá, *Corruption and Anti-Corruption Measures in Central and Eastern Europe*, Bratislava, The Network of Institutes and Schools of Public Administration in Central and Eastern Europe, 2009, 45-64.

24. Transparency International, Corruption Perceptions Index, <https://www.transparency.org/cpi2019>

2018), placing it 38th.²⁵ Furthermore, the Eurobarometer 2017 survey²⁶ published by the European Commission in December 2017 also confirmed positive decreasing trends in direct corruption experience in Lithuania.²⁷ The most recent survey, the Lithuanian Map of Corruption, conducted by the SIS in 2020, indicates that corruption in Lithuania continued to go down. According to the results, 10 per cent of ordinary people, 5 per cent of business representatives and 2 per cent of civil servants said they paid a bribe last year, compared to 12, 8 and 4 per cent, respectively, a year ago.²⁸

Parliament's role

Determining the legal framework and mandate

The SIS has been designed as the main anti-corruption body, with responsibilities including coordinating the National Anti-Corruption Programme, detecting and preventing corruption offences as well as ensuring the coordination of anti-corruption measures within state institutions and between them and society. According to the law, its objective is to reduce corruption as a threat to human rights and freedoms, the principles of the rule of law and economic development.²⁹

The tasks of the SIS are to perform, in accordance with the procedure established in the laws and other legal acts, criminal persecution due to corruption-related crimes, criminal intelligence, corruption prevention, anti-corruption education of the public and public awareness raising, analytical anti-corruption intelligence and other tasks assigned to the SIS in the laws and other legal acts.³⁰ Furthermore, the Law on Prevention of Corruption stipulates that the SIS: (1) participates in the development of the National Anti-corruption Programme by the Government and make proposals as to the supplement or amendment of the said Programme; (2) makes proposals to the President of the Republic, the Seimas and the Government as to the enactment, supplement and amendment of laws and other legal acts necessary for the implementation of corruption prevention; (3) takes part in the functions of co-ordination and supervision of the activities of state or municipal bodies in the field of corruption prevention discharged by the Government; (4) together with other state or municipal bodies, implements corruption prevention measures; and (5) together with other state or municipal bodies, implements the National Anti-Corruption Programme.³¹



Figure 1: Logo of Special Investigation Service of the Republic of Lithuania

The same law foresees three additional tasks of the SIS: analysis of the risk of corruption; anti-corruption assessment of the existing or draft legislation; and providing information about a person intending to take or taking office in a state or municipal institution or an enterprise.³² Such broad and inclusive tasks contribute to the SIS's categorisation as a multi-purpose type of ACA, given that its mandate covers law enforcement, preventive and advisory functions.

The SIS's functions fits into the checks-and-balances logic of the Lithuanian semi-presidential system.³³ The SIS shares its mandate in prevention of corruption with the Government, the Chief Official Ethics Commission; and other state, municipal and non-state bodies.³⁴ The SIS's work is also complemented by the Seimas Anti-Corruption Commission,

25. Transparency International, Corruption Perceptions Index, <https://www.transparency.org/cpi2018>

26. See more at: <http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/82002>

27. Special Investigation Service of the Republic of Lithuania, *Activity Report for 2017*, 2018, 5.

28. STT, 'Corruption on decline in Lithuania, survey suggests', January 21, 2020, <https://www.stt.lt/en/news/7481/corruption-on-decline-in-lithuania-survey-suggests:2846>

29. Art. 6 of the Law on the Special Investigations Service, as of 2018.

30. Art. 7 of the Law on the Special Investigations Service, as of 2018.

31. Art. 15 of the Law on Prevention of Corruption, as of 2016.

32. Art. 6-9 of the Law on Prevention of Corruption, as of 2016.

33. Lars Johannsen and Karin Hilmer Pedersen, 'The Institutional Roots of Anti-Corruption Policies: Comparing the Three Baltic States', *Journal of Baltic Studies*, 3/42, 2011, 339.

34. Art. 12 of the Law on Prevention of Corruption, as of 2016.

established in October 2001. The Anti-Corruption Commission replaced the Commission for the Investigation of Economic Crimes. The Anti-Corruption Commission analyses crimes involving corruption, hears reports of certain institutions on their fight against corruption and submits proposals to the institutions, the Government and the Seimas. The Commission drafts decisions of the Seimas on controlling and restricting these crimes. It also has the right to access to information of all enterprises, offices and institutions as well as to invite the present and former state officials to give explanations. The Commission should be seen not only as a parliamentary control body of the executive but also as a forum for deliberation.



In its most recent report on Lithuania, the Council of Europe's Group of States against Corruption (GRECO) underlined the need to significantly strengthen the co-operation between the Chief Official Ethics Commission and the oversight institutions responsible for preventing corruption among parliamentarians, judges and prosecutors.³⁵ GRECO also emphasised that it is of the utmost importance to ensure progress in practice with regard to the transparency of committee activities and applying rules for parliamentarians' engagement with lobbyists and other third parties. Furthermore, more measures are also required to improve supervision and enforcement of the rules regarding declarations of private interests and conflicts of interests as well as to put in place efficient internal mechanisms promoting integrity in the Seimas.³⁶

All key legislative and strategic documents relevant for prevention of corruption are adopted by the Seimas, including the Law on Prevention of Corruption, the Law on the Special Investigations Service and the National Anti-Corruption Programme of the Republic of Lithuania.

The Law on the Special Investigations Service establishes the SIS as a main anti-corruption law enforcement agency of the Republic of Lithuania accountable to the President of the Republic and the Seimas, while the SIS shares preventive functions with other state and non-state bodies, as provided for by the Law on Prevention of Corruption.³⁷ The Law guarantees the independence of the SIS by prescribing that while discharging their official duties and carrying out assignments for their superiors, the officers of the SIS are guided by laws and other legal acts. State institutions and agencies or their employees, political parties, non-governmental organisations and movements, the mass media, other natural or legal persons are prohibited from interfering with criminal intelligence and other activities carried out by the Officers of the SIS.³⁸

35. GRECO, *Fourth Evaluation Report on Lithuania*, GrecoRC4 (2017)3, 2017.

36. Ibid.

37. Art. 2 of the Law on the Special Investigations Service, as of 2018.

38. Art. 25 of the Law on the Special Investigations Service, as of 2018.

The Law also stipulates that a pre-trial investigation against an officer of the SIS may be initiated only by the Prosecutor General of the Republic of Lithuania or their Deputy.³⁹ In addition, the officers of the SIS cannot be detained, and inspection of their person, their (the SIS's) assets and vehicles is prohibited without participation of the head of the appropriate SIS unit or a representative authorised by them, except in cases when the officer is detained in obvious flagrante delicto. In this case an agency, having detained the SIS officer, shall inform the Director of the SIS about it within 12 hours.⁴⁰ Furthermore, information about the SIS officers who are carrying out or who have carried out special assignments shall be a state secret and may be used and declassified only in cases and according to the procedure established by the law.⁴¹ Finally, measures prescribed in the Law on the Protection from Tampering of the Participants of Criminal Procedure and Criminal Intelligence Activities, Judicial and Law Enforcement Officers may provide for the protection of SIS officers and their family members.⁴²

Selection and appointment

The SIS is headed by the Director. A candidate to the position of the Director is nominated to the Seimas by the President of the Republic who also appoints and dismiss the Director, by and with the consent of the Seimas. The Director is appointed for a term of five years and cannot serve more than two consecutive terms.⁴³

The competent Seimas committee considers candidates for the SIS Director and submits conclusions to the Seimas.⁴⁴ A candidate for SIS Director is then presented at Seimas plenary sittings, in the candidate's presence. Following the presentation, the candidate is given the floor (for up to ten minutes), after which they must answer questions put to them by Members of the Seimas.⁴⁵ The Seimas votes to approve the appointment of the SIS Director by secret ballot.⁴⁶ For instance, the current Director, Mr. Žydrūnas Bartkus, was elected in March 2018 with the support of 103 parliamentarians in a secret ballot, while nine were against and 14 abstained.⁴⁷

The first Deputy Director and deputies are appointed and removed from office by the President of the Republic at the proposal of the Director. The term of office of the first Deputy Director and deputies is linked to the term of office of the Director, meaning that the appointment of the next Director leads to the end of the term of office of the first Deputy Director and deputies.⁴⁸

The Law prescribes that the Director and Deputy Directors of the SIS may be dismissed only on the following grounds: (1) resignation; (2) breach of the oath; (3) coming into effect of a conviction; (4) ill health certified by an opinion of an appropriate medical examining commission; (5) transfer by their own consent to another position; (6) establishing of the circumstances referred to in Article 23 of this Law;⁴⁹ (7) termination of their term in office; and (8) loss of the citizenship of the Republic of Lithuania.⁵⁰

39. Art. 26.1. of the Law on the Special Investigations Service, as of 2018.

40. Art. 26.2. of the Law on the Special Investigations Service, as of 2018.

41. Art. 26.3. of the Law on the Special Investigations Service, as of 2018.

42. Art. 26.4. of the Law on the Special Investigations Service, as of 2018.

43. Art. 12.1. of the Law on the Special Investigations Service, as of 2018.

44. Art. 49 of the Seimas Statute, as of 2015.

45. Art. 200 of the Seimas Statute, as of 2015.

46. Art. 115 of the Seimas Statute, as of 2015.

47. 'Seimas gives green light to appointing Bartkus as STT chief', Delfi, March 27, 2018, <https://en.delfi.lt/culture/seimas-gives-green-light-to-appointing-bartkus-as-stt-chief.d?id=77546997>

48. Art. 12.2. of the Law on the Special Investigations Service, as of 2018.

49. Art. 23 of the Law provides for the conflict of interest and other restrictions.

50. Art. 13 of the Law on the Special Investigations Service, as of 2018.

Budget allocation

The SIS is financed from the state budget of Lithuania. The Director of the SIS is the manager of the budget appropriations.⁵¹ The Law prescribes that the SIS may also have other funds to ensure criminal intelligence activities.⁵² The SIS reports to the Seimas about the needs and use of the budget funds.⁵³

Since 2012 there has been a steady increase in the SIS annual budget (see Figure 2).⁵⁴

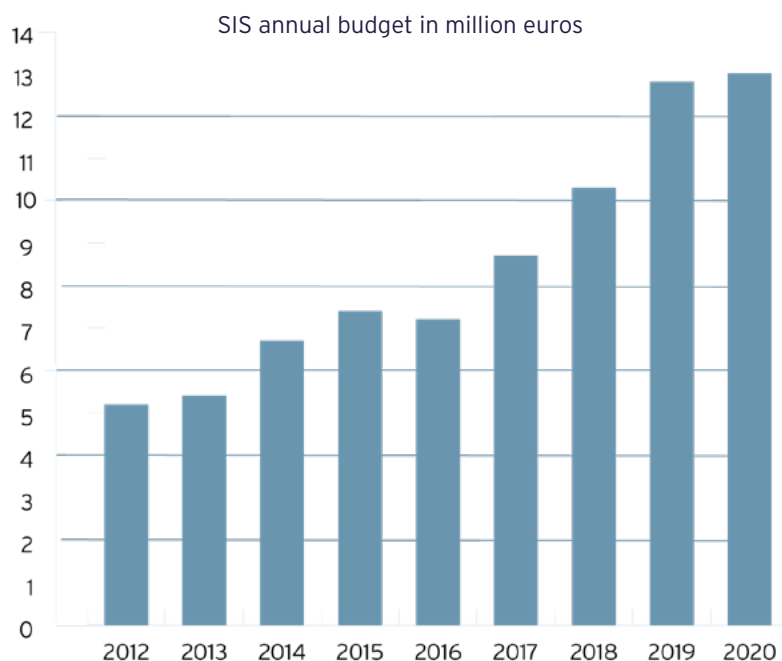


Figure 2: the SIS annual budget 2012-2020

The SIS is also allowed to receive support from foreign institutions and establishments, international organisations and other lawful sources of funds.⁵⁵ The SIS benefits particularly from the funds of the Operational Programme for the European Union Funds' Investments in 2014-2020 and the European Union Prevention of and Fight against Crime Programme.

Reporting

The SIS is obliged by law to report in writing, at least once a year, to the President of the Republic and the Seimas about the results of its activities and changes significant in terms of reducing the spread of corruption in Lithuania, and submit its proposals on the formation of an anti-corruption environment.⁵⁶ The SIS's annual reports are published on its website.

Besides the Law on the SIS, Article 206.5 of the Seimas Statute also stipulated that heads of state institutions whose appointment is subject to approval of the Seimas - which is the case for the SIS - submit (usually by 1 March) an annual activity report of the institution. Upon receipt of such a report, the Speaker of the Seimas notifies the Seimas and the latter decides on the committee to be assigned with consideration of the submitted report. Having considered the report, the Statute prescribes that the committee prepares a conclusion and a draft resolution to be debated at a Seimas sitting along with the report by the head of the state institution.⁵⁷ Article 206.6 further states that, if the Seimas adopts a resolution not to approve the institution's activity report submitted by the head of the state institution whose appointment

51. Art. 14.1. of the Law on the Special Investigations Service, as of 2018.

52. Art. 14.2. of the Law on the Special Investigations Service, as of 2018. It is unclear from the law whether these funds should come from the state budget or other sources.

53. Art. 16.3. of the Law on the Special Investigations Service, as of 2018.

54. Special Investigation Service of the Republic of Lithuania, *Activity Report for 2015*, 5. and Special Investigation Service of the Republic of Lithuania, *Activity Report for 2017*, 43. Available at: <https://www.stt.lt/en/menu/stt-annual-reports/#turinys>

55. Art. 14.3. of the Law on the Special Investigations Service, as of 2018.

56. Art. 8.1.3. of the Law on the Special Investigations Service, as of 2018.

57. Art. 206.5 of the Seimas Statute, as of 2015.

is subject to approval of the Seimas, the Seimas may assign to the committee which has considered the above report to submit a draft resolution of the Seimas regarding a proposal to the President of the Republic to dismiss from office this head of the institution. In other words, the Seimas could propose to the President of the Republic to dismiss the head of the SIS, if it does not approve his report. It goes on to state that decisions on dismissal from office of heads of state institutions and on a proposal to the President of the Republic to dismiss from office heads of state institutions should be adopted by secret ballot by a majority vote of more than half of all the members of the Seimas.⁵⁸ It is important to underline that in December 2015, the Constitutional Court of the Republic of Lithuania declared these two paragraphs (5 and 6) of Article 206 unconstitutional, i.e. it declared them to be in conflict with Article 5(1) and (2) and Article 67 of the Constitution of the Republic of Lithuania.⁵⁹ Article 5 stipulates that state power is executed by the Seimas, the President of the Republic and the Government, and the Judiciary and that the scope of power is limited by the Constitution; while Article 67 enlists the competencies of the Seimas.

This ruling is of vital importance for the independence of the SIS, as it prevents the Seimas from initiate a dismissal procedure of the SIS Director in the event that members of Seimas do not approve the annual report. In other words, hypothetically, the Seimas could have dismissed the SIS Director every time the ruling parliamentary majority did not like what was written in the annual activity report. Such provision was also contradicting the Law on the SIS which enumerates all the potential reasons for the SIS members' dismissal, as not approving the report was not among them.⁶⁰

With this ruling, the Constitutional Court supported the view that parliament should not at all vote to approve or not approve the report by the SIS and other independent bodies, but only to consider them and follow up on the main issues raised by the SIS, without a possibility to use the report as a tool for dismissal. This is very important for the security of tenure and independence of the ACA, as it enables the SIS to write critical, rigorous, objective and fact-based reports, without intuitive self-censorship in fear of potential dismissal.

Beyond the annual activity report, the Seimas is entitled to receive data on the needs and use of the budget funds of the SIS, explanations and reports of the SIS on the enforcement of laws and other legal acts (except information on specific pre-trial investigations and criminal intelligence investigations), information collected and processed during analytical anti-corruption intelligence activities in accordance with the procedure and on the grounds prescribed by Article 9.5 of this Law, as well as other information on activities of the SIS.⁶¹ The parliamentary committee drafts and submits proposals on improvement of legal acts related to activities of the SIS, areas of the analytical anti-corruption intelligence, as well as recommendations on improvement of activities of the SIS.⁶² Furthermore, the parliamentary committee performs the control of the SIS in accordance with the procedure prescribed by the Statute of the Seimas.⁶³ According to the Seimas Statute, it is in the mandate of the Committee on National Security and Defence to consider and draft laws and other legal acts on the issues pertaining to the SIS.⁶⁴

58. Art. 206.6 of the Seimas Statute, as of 2015.

59. The Constitutional Court of the Republic of Lithuania, *Ruling on the Compliance of Certain Provisions of the Statute of the Seimas of the Republic of Lithuania, Law on the Prosecution Service, and the Resolution of the Seimas of the Republic of Lithuania (No. Xii-528) 'On the 2012 Annual Activity Report of the Prosecution Service of the Republic Of Lithuania' of 1 October 2013 with the Constitution of the Republic of Lithuania*, Ruling No. KT34-N22/2015, Case No. 20/2013-1/2014, December 30, 2015, <https://www.lrkt.lt/en/court-acts/search/170/ta1554/content>

60. See: Art. 13 of the Law on the Special Investigations Service, as of 2018.

61. Art. 16.3. of the Law on the Special Investigations Service, as of 2018.

62. Art. 16.2. of the Law on the Special Investigations Service, as of 2018.

63. Art. 16.1. of the Law on the Special Investigations Service, as of 2018.

64. Art. 63 of the Seimas Statute, as of 2015.

Assessment

The SIS is a multi-purpose anti-corruption body with a broad mandate. In addition to law enforcement and criminal intelligence powers related to bribery and corruption-related offences, the SIS has general functions in the field of prevention and education, coordination and implementation of the National Anti-corruption Programme. However, the SIS is generally perceived as a law-enforcement institution.⁶⁵ At the same time, the SIS is recognised as one of a few successful copies of the Hong Kong model.⁶⁶

Institutionally, the SIS is an independent body accountable to the President of the Republic and the Parliament. In terms of legislation, the SIS has a broad and strong mandate, with adequate guarantees of independence and immunities. At the same time, its budget is constantly increasing in the last decade, which should enable the SIS to continue with its current programme of action and expand it further. The institution enjoys good reputation both domestically and internationally. In fact, the SIS regularly provides its expertise and shares experience with institutions abroad. For instance, the SIS implemented five EU twinning projects, usually serving as Project Leader. Twinning is a European Union instrument for institutional cooperation between public administrations of EU member states and of beneficiary or partner countries. Twinning projects bring together public sector expertise from EU member states and beneficiary countries with the aim of building institutional capacities through peer-to-peer activities. Most recently, with partner institutions from Lithuania and Romania,⁶⁷ the SIS won a competitive call and was awarded with the Twinning Project in Serbia, aiming to strengthen capacities of internal control in the fight against corruption within the Ministry of Interior.⁶⁸

With regard to the selection and appointment process, one issue that should be more precisely regulated by legislation is the procedure of selecting the President's candidate for the SIS Director. Current legislation regulates the voting procedure in the Seimas, but remains silent on how the President selects the candidate, on what basis and under which procedure. It remains unclear who can propose the candidates to the President, and what the decisive reasons for their final proposal, that is, the vetting procedure is unknown.

Consideration of SIS's reports is also vaguely regulated, especially after the decision of the Constitutional Court. This decision is of great importance as it has prevented the possibility to initiate the dismissal procedure if the SIS' report is not adopted. It is not clear under which procedure and exactly how the SIS' reports are discussed, or what the outcome is of those discussions. In addition, the Seimas Statute should more explicitly stipulate what committees are obliged to consider the SIS reports and which committees can do it occasionally depending on the report's theme.

While there are positive signals, public perception about corruption is that it is still high in Lithuania, in the sense that the vast majority of citizens believe that corruption is widespread. The SIS should invest more efforts in public presentation of its activities and results, and actively use media to raise awareness, but also to highlight both good and bad developments, in terms of high profile cases that can influence public opinion and perception. A recent case where 26 people were arrested, including eight top judges and five lawyers, in an anti-corruption crackdown is a good example. Prime Minister Prosecutor General and the SIS Director revealed that the authorities have uncovered a 'system' of corruption, where judges and lawyers were receiving between €1,000 and €100,000 to influence the outcome of administrative, civil and criminal court cases. As Prime Minister Saulius Skvernelis pointed out: 'everyone has to learn the lesson; the times of untouchables are over'.⁶⁹ This combination of strong legal actions and effective public media presentation certainly increases public confidence in government's anti-corruption determination and actions. However, in order for these actions to be indeed effective, the courts have to play their part in an efficient manner, by concluding their proceedings in a timely and authoritative way. Only when high officials are ultimately convicted for corruption does the public perception really start to change.

65. Organisation for Economic Co-operation and Development, *Specialized Anti-Corruption Institutions: Review of Models*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2008, 58, <https://www.oecd.org/corruption/acn/39971975.pdf>

66. Organisation for Economic Co-operation and Development, *Specialized Anti-Corruption Institutions: Review of Models*, OECD Anti-Corruption Network for Eastern Europe and Central Asia, 2008, 58, <https://www.oecd.org/corruption/acn/39971975.pdf>

67. Police Department under the Ministry of Interior of the Republic of Lithuania, and several Romanian law enforcement agencies, as well as Romanian Anti-Corruption General Directorate.

68. More on the project at: <https://www.stt.lt/en/news/7481/stt-implements-eu-twinning-project-in-serbia:2769>

69. Galaxy Henry, 'Top Lithuanian Judges Arrested in Anti-Corruption Crackdown', Politico, February 20, 2019, <https://www.politico.eu/article/top-lithuanian-judges-arrested-in-anti-corruption-crackdown/>

Ukraine (law enforcement)



Photo: EITI flickr / Ukrainian Parliament

Background

Corruption is well recognised as one of the most important problems of Ukrainian society. Some observers even say that: 'since the country achieved independence in 1991, the problem is not that a well-functioning state has been corrupted by certain illegal practices; rather, those corrupt practices have constituted the rules by which the state has been run'.⁷⁰ Ukrainian authorities and different political regimes since 1991 tried to tackle this widespread and structural problem, but with little success. In 2019, Ukraine scored 30 points, ranking 126th among 180 countries in Transparency International's Corruption Perceptions Index,⁷¹ which is a decline compared to 2018, when Ukraine scored 32 points, ranking 120th. The 2018 result was two points and 10 places higher than in 2017 (when Ukraine ranked 130th with 30 points).⁷²

Many people saw the 2014 'Revolution of Dignity' as a hopeful turning point in countering corruption. Since 2014, Ukraine has undertaken significant reforms to address corruption in public life. In fact, no country emerging from the former Soviet Union, with the exception of the Baltic states and Georgia, has adopted such significant measures in such a short time to limit the space for corrupt practices while also creating new anti-corruption bodies and starting to reform its judiciary and law enforcement agencies.

The reforms started with the adoption of the Law on Preventing Corruption in October 2014, and the first comprehensive anti-corruption policy document, the Anti-Corruption Strategy for 2014-2017, adopted by the Ukrainian Parliament the same month.⁷³

Those and other measures sought for the first time to limit the losses to society from predatory behaviour by officials acting for their own benefit and on behalf of a narrow group of powerful individuals.⁷⁴ A number of different laws were

70. Thomas de Waal, *Fighting a Culture of Corruption in Ukraine*, Carnegie Europe, April 2016, 1.

71. Transparency International, Corruption Perceptions Index, <https://www.transparency.org/cpi2019>

72. See more in: <https://ti-ukraine.org/en/news/cpi-2018-second-worst-score-of-all-neighbors-after-russia/>

73. In 2018, National Agency on Corruption Prevention (NACP) prepared the Anti-Corruption Strategy for 2018-2020. The document was supported by the Cabinet of Ministers which approved the draft Law of Ukraine 'On Anti-Corruption Strategy for 2018-2020' and submitted it to the Verkhovna Rada (see <https://www.kmu.gov.ua/en/news/uryad-shvaliv-proekt-zakonu-ukrayini-pro-antikorupciynustrategiyu-na-2018-2020-roki>). However, despite being discussed in competent parliamentary committees during 2018, it was not put on the plenary agenda. According to the Verkhovna Rada's records, the project was cancelled in September 2019 (see: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63942). As time has passed, a new strategy has to be prepared.

74. John Lough and Vladimir Dubrovskiy, *Are Ukraine's Anti-corruption Reforms Working?* Research Paper, Chatham House - the Royal

adopted with the idea to create normative preconditions for fighting the culture of impunity for high level corruption. These legislative changes were followed by a reorganisation of existing - and the establishment of new - anti-corruption bodies.

In May 2019, Volodymyr Zelenskyy won the presidential elections, while in July of the same year, The Servant of the People party, established by Zelenskyy to support his run for the presidency, received an unprecedented level of electoral support. The party won a majority in parliament. From the very first day, the Verkhovna Rada began approving many new laws at a very fast pace. While commending the determination of the new Rada to introduce important necessary reforms, many observers warned that such fast pace may affect not only the quality of laws passed,⁷⁵ but also their legality. In fact, there are reports on instances of voting taking place in violation of the Rada's official legislative practices.⁷⁶

The set of judicial reforming laws adopted in November 2019 has raised particularly grave concerns, among both domestic and international actors. Experts⁷⁷ and NGOs⁷⁸, as well as representatives of the EU and individual states⁷⁹, have criticised it heavily. In March 2020, the Constitutional Court declared some provisions of the Law on the Judiciary and Status of Judges, the Law on the Activity of Judicial Governance Bodies and the Law on the High Council of Justice unconstitutional.⁸⁰

While praising Ukraine for vivid legislative activities and adopting measures to enhance transparency, GRECO warned that a large number of laws have been considered and adopted through a fast-track procedure, without sufficient discussion and justification, or adequate involvement of all stakeholders and genuine public consultation.⁸¹

Anti-corruption bodies in Ukraine can be divided in preventive and law enforcement. Preventive and policy development bodies include the National Agency for Corruption Prevention (NACP), the Committee on Corruption Prevention and Counteraction of the Verkhovna Rada of Ukraine, and the National Council of Anti-Corruption Policy under the President of Ukraine. The Council of Europe's Group of States against Corruption (GRECO) has praised the Committee on Corruption Prevention and Counteraction of the Verkhovna Rada for being 'transparent and proactive in fulfilling its important legislative, advisory and control responsibilities in anticorruption matters'.⁸² In its last report on Ukraine, GRECO emphasised that more should be done to ensure that legislation is processed with an adequate level of transparency and public discussion, including by introducing specific rules on the interaction of parliamentarians with lobbyists and other third parties seeking to influence law-making. Likewise, there is no comprehensive framework on parliamentary ethics and conduct, or on principles of parliamentarians' integrity and due performance, supervision, advisory and training set-up and accountability mechanisms. Furthermore, one of the main public criticisms regarding the legislature relates to the misuse of immunity provisions, including for acts of corruption.⁸³ In March 2020, GRECO published the conclusions on the implementation of its 2017 recommendations on preventing corruption in respect of members of parliament, judges and prosecutors. GRECO concluded that out of the 31 recommendations, Ukraine has implemented or dealt with in a satisfactory manner five recommendations, while fifteen have been partly implemented and eleven have not been implemented.⁸⁴

Institute of International Affairs, London, November 2018, 3.

75. Andrian Prokip, 'Ukraine Quarterly Digest: July-September 2019', October 7, 2019, *Wilson Center*, <https://www.wilsoncenter.org/blog-post/ukraine-quarterly-digest-july-september-2019>

76. 'What is Danger of Recent Violations in Ukraine's Parliament', *Euromaidan*, September 15, 2019, <http://euromaidanpress.com/2019/09/15/what-is-danger-of-recent-violations-in-ukraines-parliament-by-zelenskyy-mps/>

77. Andrii Nekoliak, 'Ukraine's Presidents and the Judiciary: An Uneasy Relationship', *Verfassungsblog*, March 24, 2020, <https://verfassungsblog.de/ukraines-presidents-and-the-judiciary-an-uneasy-relationship/>

78. Haly Coynash, 'Zelensky urged to stop the sabotage of judicial reform in Ukraine', *Kharkiv Human Rights Protection Group*, March 2, 2020, <http://khp.org/en/index.php?id=1582939432>

79. 'Посли ЄС і Канади розкритикували законопроекти Зеленського з реформ судової влади і прокуратури, Європейська правда, September 11, 2019: <https://www.eurointegration.com.ua/news/2019/09/11/7100634/>

80. Constitutional Court, *Summary to the Decision of the Grand Chamber of the Constitutional Court of Ukraine No.4-r/2020 dated March 11, 2020*, <http://www.ccu.gov.ua/en/docs/2988>

81. Council of Europe, 'Some reforms launched by Ukraine in response to GRECO recommendations', March 26, 2020, <https://www.coe.int/en/web/kyiv/-/some-reforms-launched-by-ukraine-in-response-to-greco-recommendations-on-preventing-corruption-among-mps-judges-and-prosecutors-but-serious-concerns-r>

82. GRECO, Fourth Evaluation Report on Ukraine, GrecoEval4Rep(2016)9, 2017, 4.

83. Ibid.

84. GRECO, Compliance Report, GrecoRC4(2019)28, 2019 (2020).

The establishment of new bodies for pre-trial investigation and prosecution of high-profile corruption crimes – the National Anti-corruption Bureau of Ukraine (NABU) and the Specialized Anti-corruption Prosecutor’s Office (SAPO) – was particularly seen as a vital step forward. These two new independent bodies are supported by the National Police of Ukraine, the State Bureau of Investigations (SBI) and prosecutor’s office, as well as by the National Agency for Detection, Investigation and Management of Assets Derived from Corruption and Other Crimes, set up to identify, recover and manage confiscated assets.



Figure 3: Logo of the National Anti-Corruption Bureau of Ukraine

In June 2018, legislation to establish a High Anti-Corruption Court (HACC) was adopted. The HACC was introduced through the combined efforts of Ukrainian civil society organisations and the international donor community, and is widely perceived as a critical step in ensuring greater judicial efficiency, integrity, and independence in addressing corruption cases, especially those involving political elites.⁸⁵ In April 2019, The HACC judges and those of the Appeals Chamber took an oath, while the court started working in September 2020. The HACC is now in charge of all cases under NABU’s jurisdiction.

Given the focus of this paper on independent anti-corruption agencies, we concentrate on the National Anticorruption Bureau of Ukraine (NABU). The NABU’s independence is guaranteed in the following ways:

- 1) the special procedure for the competitive selection of the Director of the NABU is provided for by the law, as well as an exhaustive list of reasons for terminating his powers
- 2) the competitive bases of selection of other employees of the NABU, their special legal and social protection, proper wage conditions are all stipulated by the law
- 3) the procedure for financing and logistics of the NABU is clear and established by law
- 4) the means of ensuring the personal security of the NABU employees, their close relatives, property, as determined by law⁸⁶

Furthermore, any use of the NABU in party, group or personal interests is not allowed. The activities of political parties at the NABU are prohibited. Finally, unlawful interference with the activities of the NABU by state bodies, local self-government bodies, their officials and officials, political parties, public associations, or other natural or legal persons is prohibited.⁸⁷

Parliament’s role

Determining the legal framework and mandate

The Law on National Anti-Corruption Bureau of Ukraine explicitly classifies it as a state law enforcement agency, responsible for preventing, detecting, terminating, investigating and disclosing corruption offenses attributed to its jurisdiction, as well as preventing the committing of new ones.⁸⁸ The task of the NABU is to counter the criminal corruption offenses committed by senior officials authorised to perform state or local government functions, endangering national security.⁸⁹ To that end, NABU is created to exclusively tackle high-level corruption.

85. Ivanna Y. Kuz and Matthew C. Stephenson, Ukraine’s High Anti-Corruption Court: Innovation for impartial justice, U4 Brief, 3, e Chr. Michelsen Institute, 2020, <https://www.u4.no/publications/ukraines-high-anti-corruption-court.pdf>

86. Art. 4 of the Law on National Anti-Corruption Bureau of Ukraine, as of 2020, available at <https://zakon.rada.gov.ua/laws/show/1698-18>

87. Art. 4 of the Law on NABU.

88. Art. 4 of the Law on NABU.

89. Art. of the Law on NABU.

The Law prescribes that the NABU is formed by the President of Ukraine. Ukraine is a semi-presidential system, where the Prime Minister is appointed by the Verkhovna Rada of Ukraine on the submission of the President of Ukraine. The Prime Minister of Ukraine manages the work of the Cabinet of Ministers of Ukraine. Members of the Cabinet of Ministers of Ukraine, except the Prime Minister of Ukraine, the Minister of Defense and the Minister of Foreign Affairs of Ukraine, are appointed by the Verkhovna Rada of Ukraine (VRU) upon the submission of the Prime Minister of Ukraine. The Minister of Defense of Ukraine and the Minister of Foreign Affairs of Ukraine are appointed by the VRU upon the submission of the President of Ukraine.⁹⁰

The law provides for the basic principles of the NABU's activities, namely: (1) the rule of law; (2) respect and observance of human and civil rights and freedoms; (3) legality; (4) impartiality and justice; (5) the independence of the National Bureau and its employees; (6) subordination and accountability to the public and determined by law state bodies; (7) openness for democratic civilian control; (8) political neutrality and non-partisanship; and (9) interaction with other state bodies, local self-government bodies, and public associations.⁹¹

Main responsibilities of the NABU, as provided for by the law, are to:

- 1) carry out operative-search activities for the purpose of prevention, detection, termination and disclosure of criminal offences committed by the law to its jurisdiction, as well as in operational-search cases, demanded from other law-enforcement bodies;
- 2) carry out pre-trial investigation of criminal offences committed by the law to its jurisdiction, as well as conducts pre-trial investigation of other criminal offences in cases specified by law;
- 3) take measures for the investigation and seizure of funds and other property that may be subject to confiscation or special confiscation in criminal offences attributed to the National Bureau of Investigation, carry out activities for the storage of funds and other property that is seized;
- 4) interact with other state bodies, local self-government bodies and other entities for the performance of their duties;
- 5) carry out informational and analytical work in order to identify and eliminate the causes and conditions conducive to the commission of criminal offences, classified as a National Bureau;
- 6) ensure personal safety of the employees of the National Bureau and other persons specified by the law, protection against unlawful encroachments on persons involved in criminal proceedings in the criminal offences of the persons subject to them;
- 7) ensures confidential and voluntary cooperation with persons who report corruption offences;
- 8) report on its activities in accordance with the procedure established by this Law and inform the public about the results of its work;
- 9) carry out international cooperation within the limits of its competence in accordance with the legislation of Ukraine and international treaties of Ukraine⁹².

With the amendments to the Law⁹³ introduced in October 2019, NABU was given two additional functions, to:

- 10) take measures to identify ill-founded assets and collect evidence of their ill-foundedness, send materials to the Specialized Anti-Corruption Prosecutor's Office to resolve the issue of claim for recognition of ill-founded assets and their recovery into the state revenue;
- 11) collect and send materials to the Specialized Anti-Corruption Prosecutor's Office to resolve the issue of a claim for invalidation of agreements in cases stipulated by the legislation of Ukraine.

90. Article 9 of the Law of Ukraine on the Cabinet of Ministers of Ukraine.

91. Art. 3 of the Law on NABU.

92. Art. 16 of the Law on NABU.

93. Art. 16. of the Law No. 263-IX of 31 October 2019.

In October 2019 one more important addition to the mandate of NABU was introduced. With amendments to the Criminal Procedure Code,⁹⁴ the Bureau was given the right to retrieve information from transport telecommunication networks, covering both the content of the communications and information about the communication (so-called metadata or retrieved data), which effectively entitles it to wiretap. The same right was given to the SBI (State Bureau of Investigation). With amendments to the Law on the NABU, the Bureau was allowed to have 'direct, including automated, access to automated information and reference systems, registers and databases whose holder (administrator) is state or local self-government, uses state, including governmental, communications and communications, special communications networks and other technical means'.⁹⁵

Selection and appointment

The NABU is managed by the Director, who is appointed and dismissed by the President of Ukraine in accordance with the procedure established by this Law.⁹⁶ The Director is appointed for a term of seven years. The same person cannot hold this post for more than two consecutive terms.

The Director must be a citizen of Ukraine with a higher legal education, at least ten years of legal experience, and experience in managing government entities, or international organisations, for at least five years. Further, the candidate has to speak the official state language and be able to perform official duties with high business and moral qualities.

A person who has been a member of a governing body of a political party, or who has been in a labour or other contractual relationship with a political party for two years prior to applying for the position of the Director, cannot be appointed.⁹⁷

Also, a person who has not passed an examination in accordance with the procedure established by the Law on the Purge of Power may not be appointed to the post of Director in order to restore confidence in the authorities and create conditions for the construction of a new system of government bodies in accordance with European standards, as stated by the law.⁹⁸

The Director is appointed by the President among candidates proposed by the special commission, established by the law.⁹⁹ The Commission consists of nine members, where the President, the Cabinet of Ministers and the VRU appoint three members each. Members of the Commission have to be persons with impeccable reputation, high professional and moral qualities and social authority.¹⁰⁰

Meetings of the Commission are open to media and the public, and are announced on the official website of the President of Ukraine no later than 48 hours before they take place. The work of the Commission is technically supported by the President's administration.

The Commission should be formed not later than two months before the expiration of the term of office of the Director of the NABU or within 14 days from the day of early termination of their powers (dismissal) in accordance with the procedure established by the Law on NABU.¹⁰¹ The advertisement, containing terms and conditions for conducting a competition for the post, is published in the national print media and on the official website of the President of Ukraine.

After receiving the applications, the Commission selects candidates for the interview, as a next stage. Those selected candidates then have to pass a special examination, as provided for by the Law on Prevention of Corruption and a check provided for in the Law on the Purge of Power (Lustration law). Based upon the results of those stages, the Commission proposes to the President of Ukraine two or three candidates who, according to the justified decision of the Commission, have the best professional experience, knowledge and qualities for the position of the Director. The President of Ukraine has to appoint one of those candidates within a deadline of ten days.

94. Amendments to the Criminal Procedure Code, No. 187-IX of 4 October 2019, <https://zakon.rada.gov.ua/laws/show/187-20/sp:wide#n70>

95. Art. 17 of the Law on NABU, as introduced by Law No. 140-IX of 2 October 2019.

96. Art. 6 of the Law on NABU.

97. Art. 6 of the Law on NABU.

98. Art. of the Law on NABU.

99. Art. 7 of the Law on NABU.

100. Art. 7 of the Law on NABU.

101. Art. 7 of the Law on NABU.

The issue of presidential power to appoint the Director of NABU was put under the spotlight in late August 2019, when President Zelensky submitted the urgent Draft Law No. 1014 to the VRU, which stipulates amendments to Article 106 of the Constitution, with the aim to explicitly include the authority of the President to establish independent bodies, and to appoint and dismiss the heads of the NABU and the SIB. The President argued that the goal of proposed legislative changes is to provide for a constitutional basis to the powers of the President already provided for by law, primarily the Law on the NABU and the Law on the SIB. When the draft law entered the parliamentary procedure, the Constitutional Court was invited to give its opinion on the constitutionality of these amendments. In December 2019, the Constitutional Court declared amendments unconstitutional, arguing that extension of the powers of the Head of State would result in the redistribution of powers between the President and the Cabinet of Ministers, and therefore cause an imbalance of the existing constitutional system of check and balances.¹⁰² The Court further stated that: 'any violation of the principle of separation of powers that leads to its concentration, including the combination of functions other than certain state bodies, violates the guarantees of human and citizen's rights and freedoms'. GRECO also raised concerns about these amendments, reiterating that any legislative changes should in fact shield NABU from improper influence or pressure and to guarantee its operational independence.¹⁰³ After receiving the opinion of the Constitutional Court, the VRU voted against the amendments in February 2020.¹⁰⁴ However, this entire situation now raises the question of the constitutionality of the provisions of the Law on the NABU and the Law on the SIB regulating the appointment and selection of heads of these institutions. This situation may be, indeed, used to change the procedure by giving the mandate to appoint these officials either to the Cabinet of Ministers, as argued by Transparency International Ukraine,¹⁰⁵ or to the VRU, to provide for the strongest guarantees of independence and accountability.

Besides usual managerial duties, the NABU Director is responsible for all activities of the institution, in particular the lawfulness of the operations and investigations, the pre-trial investigation carried out by the NABU, and the observance of the rights and freedoms of individuals. The Director has access to state secrets of all levels of secrecy.

Furthermore, the Director ensures the openness and transparency of NABU activities.¹⁰⁶ The law also contains very detailed provisions on reasons for dismissal and the procedure.

Budget allocation

NABU is financed from the state budget.¹⁰⁷ NABU itself creates a fund for operational searches (secret investigations). The law also prescribes that the NABU has to be provided with the necessary material resources, equipment and other property for the performance of official activities.¹⁰⁸

With regard to the staff, according to the most recent information, the NABU has 677 employees, out of a maximum of 700 provisioned by the staffing table.¹⁰⁹ That makes 96.7% occupancy which is a reputable score. Out of 677 employees, the majority (486) are civil servants, while the rest are the officers (191).¹¹⁰

102. Constitutional Court, Summary to the Opinion of the Grand Chamber of the Constitutional Court of Ukraine No. 7-v/2019, dated December 16, 2019, <http://www.ccu.gov.ua/en/docs/2540>

103. GRECO, Compliance Report, GrecoRC4(2019)28, 2019 (2020), para 30.

104. See official records at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66250

105. Transparency International Ukraine, 'Appointing the Heads of the NABU and the SIB: Amendments to the Constitution', September 2, 2019, <https://ti-ukraine.org/en/news/appointing-the-heads-of-the-nabu-and-the-sib-amendments-to-the-constitution/>

106. Art. 8 of the Law on NABU.

107. Art. 24 of the Law on NABU.

108. Art. 25 of the Law on National Anti-Corruption Bureau of Ukraine, as of 2020.

109. NABU, *Report July-December 2019*, 49, https://nabu.gov.ua/sites/default/files/reports/zvit_-_ji_2019_all_0.pdf

110. NABU, *Report July-December 2019*, 49.

NABU's budget has been progressively increased in the last few years, from 488.6 million UAH in 2016¹¹¹, over 773.6 million UAH in 2017¹¹², 857 million UAH in 2018¹¹³ to 867.4 million UAH in 2019¹¹⁴ (see Figure 4). The percentage of spent budget is also increasing, which speaks of better planning and financial efficiency.¹¹⁵

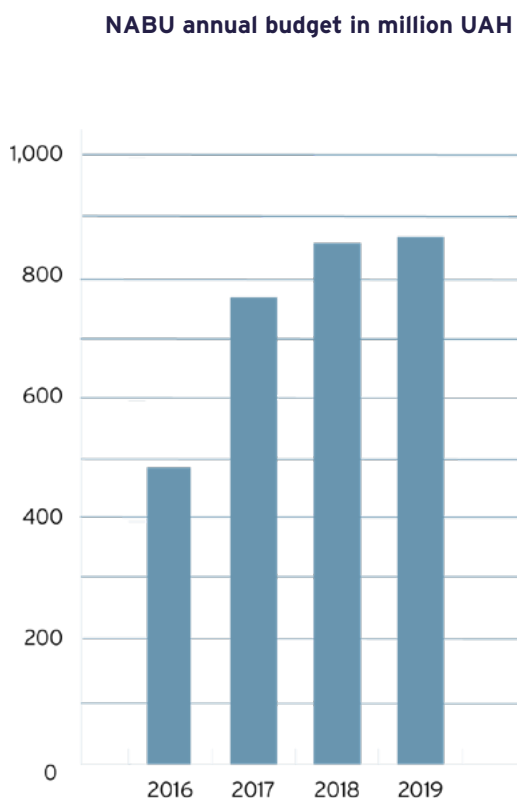


Figure 4: the NABU annual budget 2016-2019

The law stipulates that other sources of financing are prohibited, except for cases stipulated by international treaties of Ukraine or projects of international technical assistance.¹¹⁶ To that end, the international donor community, particularly the USA, UK and EU, strategically support the NABU's work.

Reporting

The Law stipulates that the NABU semi-annually (by 10 February and 10 August) provides the President, VRU and the Cabinet of Ministers with a written report on the NABU activities for the previous six month period. The reports are published on the NABU's website in Ukrainian and English. They are not available on the VRU's website.¹¹⁷

111. NABU, *Report August 2016 - February 2017*, 44.

112. NABU, *Report July-December 2017*, 42.

113. NABU, *Report July-December 2018*, 80.

114. NABU, *Report July-December 2019*, 61.

115. See annual reports of the NABU: <https://nabu.gov.ua/en/reports>

116. Art. 24 of the Law on NABU.

117. The authors thank Yulia Krasnogolov, Programme Manager in the Ukrainian office of the Westminster Foundation for Democracy (WFD) and Nazar Grom, Anti-Corruption Policy Specialist in the United Nations Development Programme (UNDP) in Ukraine for useful clarifications of the reporting procedures.

The law is very detailed on the content of the report submitted by the NABU. It stipulates that it has to contain the following information:

- (1a) statistical data on the results of activities with mandatory reference to the number of applications and reports on criminal offences in terms of criminal offences classified by the law as those under jurisdiction of the NABU;
 - (1b) the number of investigations initiated by the NABU and their results;
 - (1c) the number of people standing indicted for committing criminal offences classified by the law as those under jurisdiction of the NABU;
 - (1d) the number of people officially found guilty of committing criminal offences classified by the law as those under jurisdiction of the NABU;
 - (1e) the number of people officially declared innocent of committing relevant criminal offences;
 - (1f) information by categories of people indicated in Part 1 of the Law of Ukraine 'On preventing corruption'¹¹⁸;
 - (1g) information on the amount of loss and damage from criminal offences classified by the law as those under jurisdiction of the NABU, state and amount of compensation;
 - (1h) information on funds and other property acquired as a result of criminal offences classified by the law as those under jurisdiction of the NABU, confiscated by court order, funds amounting to value of illegally received services and benefits, forfeited to the state, and their use;
 - (1i) information on funds and other property acquired as a result of criminal offences classified by the law as those under jurisdiction of the NABU, recovered from abroad, and their keeping;
 - (1j) information on seizure of property, confiscation of objects and proceedings acquired as a result of criminal offences classified by the law as those under jurisdiction of the NABU, and their use;
 - (1k) number of submissions made as to the elimination of causes and conditions contributing to committing criminal offences;
 - (1l) results of the character tests;
-
- (2) cooperation with other public authorities, local authorities, companies, organisations and establishments;
 - (3) cooperation with competent foreign authorities, international and foreign organisations and signing agreements on cooperation and representing interests abroad;
 - (4) cooperation with NGOs and mass media;
 - (5) number of the National Bureau employees, their qualification, work experience and further training;
 - (6) work of the NABU Internal Control Department; number of reports on offences committed by the NABU employees, investigation results and bringing to justice;
 - (7) budget of the NABU and its execution; and
 - (8) other information concerning the results of the NABU activities its duties.¹¹⁹

These detailed provisions on the content of the NABU's reports are not matched with a clear procedure for their consideration by any of the addressees, that is, the President of Ukraine, Parliament of Ukraine and the Cabinet of Ministers of Ukraine.

When the NABU prepares the report, it is firstly sent to the Civil Oversight Council, which should review it within two weeks. The report is then submitted to the relevant state bodies and made public with the conclusion of the Civil Oversight Council.¹²⁰

The Civil Oversight Council has two main tasks: (1) to conduct civil control of the NABU's work; and (2) to facilitate cooperation in the sphere of fighting corruption between the NABU on one side and public associations and other civil society institutions on the other side.¹²¹ The Council has 15 members, selected through open and transparent competition,

118. See those categories of people in the Law on Preventing Corruption.

119. Art. 26 of the Law on NABU.

120. Art. 26 of the Law on NABU.

121. Presidential Decree No. 272/2015 on the issues of Civil Oversight Council at the National Anti-corruption Bureau of Ukraine, <https://nabu.gov.ua/en/regulations-civil-oversight-council>

for a one year mandate. The candidates for the Council members are nominated by public associations whose statutory activities include preventing and combating corruption, and are elected through preferential online voting of Ukrainian citizens residing in the country. There are no strict requirements for the membership, except that candidates cannot be: persons authorised to perform functions of the state or local governments; persons who have been employed at the NABU or other law enforcement agency (regardless of the employment duration) over the previous two years; and persons whose relatives have been employed at the NABU or other law enforcement agency (regardless of the employment duration) over the previous two years.

The Verkhovna Rada's Committee on Corruption Prevention and Counteraction conducts, at least once a year, a public hearing on the activities of the NABU, the implementation of tasks entrusted to it, and observance of the legislation, rights and freedoms of individuals.¹²² This procedure is conducted as a parliamentary hearing, as regulated by the Law on the Rules of Procedure of the VRU.¹²³ According to the law, parliamentary hearings in the VRU are organised to examine issues of public concern and which require legislative regulation. Based on the results of parliamentary hearings, the VRU, at its plenary meeting, passes a resolution approving respective recommendations. Contrary to the national report on anti-corruption policy, prepared by NACP, which have been followed up through these parliamentary hearings, according to existing information, there were no annual parliamentary hearings on NABU reports during the last several years. However, in April 2019, the Committee held hearings entitled: 'The results of 4 years of work of the NABU and the specialized anti-corruption prosecutor's office: analysis of the effectiveness and further strategy to combat corruption'. It took the form of the enlarged meeting of the VRU Committee on Corruption Prevention and Counteraction, which besides the members of the Committee included other MPs, the Director of NABU, the Head of the Specialized Anti-corruption Prosecutor's Office, journalists, and representatives of CSOs, among others. After the hearing, the Committee stressed the need for legislative regulation of the start date of the new High Anti-Corruption Court, the transfer of criminal proceedings to this court and the strengthening of parliamentary control over the activities of the NABU, the Specialized Anti-corruption Prosecutor's Office and their officials.¹²⁴

There is also one additional accountability mechanism of the work of the NABU. Every year, an independent assessment (audit) of the effectiveness of the NABU, and its operational and institutional independence, is conducted. This assessment is performed through a random audit of criminal proceedings and pre-trial investigation carried out by the NABU. The assessment is carried out by an external three-member commission. The President, the Verkhovna Rada and the Cabinet of Ministers each annually appoint one member of the commission from among persons who have significant experience in pre-trial investigation and judiciary (including abroad or in international organisations), who possess the necessary knowledge and skills for such an assessment, and who also have an impeccable professional reputation. There is no clear legal provision describing the procedure for such appointments, nor any vetting procedure for candidates of the President and the Cabinet of Ministers. According to available information, any member of the Cabinet of Ministers may propose candidates for this appointment, while the President make the decision. The Verkhovna Rada established the most developed procedure. According to the regulation adopted by the Verkhovna Rada,¹²⁵ an open competition with requirements for candidates is announced on the website of the VRU. Applications from candidates are received by the Committee on Corruption Prevention and Counteraction, which publishes information on the candidates on the VRU website for public consideration. Candidates are then publicly discussed within 14 days and anybody can send their comments on candidates to the Committee. These comments are of a recommendatory nature. After review of this information, the Committee determines the candidates who go to the second round. Then the members of the Committee conduct interviews with shortlisted candidates, after which the Committee votes and proposes the candidates to the VRU plenary, which ultimately appoints the VRU representative of the NABU audit commission after the public hearing.

Members of the commission act independently and must not receive any orders or instructions by any person. The commission is granted free access to all NABU documents and staff relevant for their assessment. The commission must not disclose any sensitive information, nor it can interfere with the conduct of the pre-trial investigation. The

122. Art. 26.5. of the Law on NABU.

123. Art. 233-236 of the Law on the Rules of Procedure of the Verkhovna Rada of Ukraine.

124. The minutes of the meeting can be accessed here (in Ukrainian): <http://crimecor.rada.gov.ua/uploads/documents/31181.pdf>. The authors thank Halyna Shevchuk, WFD Country Representative in Ukraine and Yulia Krasnogolov, Programme Manager in WFD Ukraine for the information with regard to the work of the Committee on Corruption Prevention and Counteraction.

125. Available at: <http://crimecor.rada.gov.ua/uploads/documents/30728.pdf>

commission's conclusion is made public and is included as an addition to the written report of the NABU. Afterwards, it is heard by the Verkhovna Rada.¹²⁶ As per available information, no audit has yet been performed, despite strong pressure by the International Monetary Fund and other international instances.¹²⁷

Beyond the occasion of presentation and consideration of regular reports, the NABU Director has the right to attend meetings of the Verkhovna Rada, its committees, temporary special and temporary investigative commissions, as well as to participate in an advisory role at the meetings of the Cabinet of Ministers of Ukraine.¹²⁸

Assessment

The establishment of the NABU was perceived as one of the most important steps in fighting high-profile corruption in Ukraine. The rigorous staff selection procedures and the efforts of civil society, backed by international partners, to ensure its institutional independence have produced an agency made from a different fabric to the rest of the law enforcement system. Nevertheless, that does not mean that NABU has been free of scandals or accusations. In fact, NABU's Director Artem Sytnyk has been a target of frequent attacks. According to some observers, calls to dismiss Sytnyk have mainly been initiated by 'the representatives of the political beau monde',¹²⁹ such as politicians, businessmen, some media outlets, but with no wider public support. At the same time, on some occasions, the NABU staff was accused of illegal conduct. For instance, several employees of the NABU were accused of slowing down the investigation of corruption in the supply of smuggled goods from the Russian Federation.¹³⁰ According to the information released, the NABU Director dismissed several employees, including the Head of the Detective Unit.¹³¹ Most recently, some media outlets published obtained materials which indicate that NABU leaked case files and personal data of Ukrainian lawmakers to embassies of a number of countries, while the Bureau's detectives visited the embassies with reports on the progress of the investigation.¹³² Despite those cases, NABU managed to retain a reputation as a 'clean' organisation.

By contrast, the reputation of SAPO has been damaged after a NABU investigation revealed that the Specialized Anti-Corruption Prosecutor (Nazar Kholodnytsky) had encouraged a witness to give false testimony and tipped off several suspects about impending searches of their properties.¹³³ Disciplinary proceedings were launched against him in April 2018. However, the Qualification and Disciplinary Commission of Prosecutors (QDCP), despite having received evidence that he committed gross violation of prosecutorial ethics, recommended a reprimand instead of dismissal. This decision caused strong reaction from the international community, as well as NABU and civil society, who expressed concerns about the effective functioning, independence and cooperation of the anti-corruption institutions as well as the damaging effect on the reputation of SAPO. According to the European Commission, after those conflicts, relations between the management of NABU and SAPO improved over the summer of 2019.¹³⁴

It is widely accepted that NABU's main problem is the lack of a properly functioning judicial system to try its cases. By April 2020, the NABU, in cooperation with the SAPO, had initiated 892 pre-trial investigations in high-level corruption cases, including against public figures in Ukraine. However, the conviction rate of these cases remains very low at 38

126. Art. 26.6. of the Law on NABU.

127. "У НАБУ четвертий рік не проводиться аудит", 24 April 2019, <https://www.unn.com.ua/uk/news/1796121-u-nabu-chetvertiy-rik-ne-provoditsya-audit>

128. Art. 8 of the Law on National Anti-Corruption Bureau of Ukraine, as of 2020.

129. Oleksandr Liemienov, Yevhen Krapyvin and Iryna Shyba, *Lessons Learned from the Work of Anti-Corruption Institutions in Romania and Ukraine*, Centre for Economic Strategy, September 2019, 14.

130. Oleksandr Liemienov, Yevhen Krapyvin and Iryna Shyba, *Lessons Learned from the Work of Anti-Corruption Institutions in Romania and Ukraine*, Centre for Economic Strategy, September 2019, 16.

131. See: TSN, 'After the scandalous investigation conducted by BIHUS.INFO, Sytnyk dismissed the Head of the NABU detectives', March 26, 2019, <https://bit.ly/2mavCb4>

132. UNIAN, 'NABU "leaked" case files and lawmakers' personal data to foreign embassies - media', March 30, 2020, <https://www.unian.info/politics/10937771-nabu-leaked-case-files-and-lawmakers-personal-data-to-foreign-embassies-media.html>

133. Olena Goncharova and Oleg Sukhov, 'NABU Recordings Implicate Chief Anti-Graft Prosecutor in Alleged Corruption', Kyiv Post, April 4, 2018, <https://www.kyivpost.com/ukraine-politics/nabu-releases-recordings-implicating-kholodnytsky-alleged-corruption.html>

134. European Commission, *Association Implementation Report on Ukraine* SWD(2019) 433, December 2019, 9. However, in April 2020, new media reports appeared arguing that this conflict is far from being resolved. See: UNIAN, 'NABU illegally gathered compromising material to discredit SAPO, PGO - media (Documents)', April 1, 2020, <https://www.unian.info/politics/10940894-nabu-illegally-gathered-compromising-material-to-discredit-sapo-pgo-media-documents.html>

cases.¹³⁵ According to the European Commission, the vast majority of cases are blocked in Ukraine's ordinary courts.¹³⁶ So far, no high-level official has been convicted of corruption.

With the start of work of the HACC, the situation is expected to improve. Indeed, there are great expectations of the HACC, which is widely perceived as the missing link that would guarantee that the NABU cases receive proper and efficient judicial follow up. The judicial outcome of NABU's cases would also serve to assess not only its own work, but of the HACC as well. As noted by some observers: 'the HACC's success depends on the quality of work conducted by NABU and SAPO; the HACC can convict only if investigators uncover, and prosecutors present, evidence of guilt beyond a reasonable doubt'.¹³⁷ To that end, it is NABU's main task to 'feed' the HACC with well-investigated and evidence-rich cases. On the other hand, the HACC has to be able to process those cases efficiently, objectively and thoroughly. An important precondition for the Court's timely work was laid down in September 2019, with amendments to the law regulating jurisdiction of the HACC. Namely, according to the original text of the law, the HACC was supposed to receive thousands of 'old' corruption-related cases which had been accumulating in courts for years. With new amendments, the HACC will receive only new cases, that is, those registered from 5 September 2019 when the Court started its work.¹³⁸ In that way, the HACC would be able to focus on new high profile corruption cases and thus show its true effectiveness.¹³⁹

The experience of the past five years has shown that in the Ukrainian system at its current stage of development, it is far easier and more effective to shrink the space for corrupt practices than to deter corruption by punishing corrupt individuals.¹⁴⁰ The culture of corruption and the negative public perception about state efforts to tackle it can only start to change when high level officials are sentenced for corruption.

European integration can certainly help in these efforts, as the membership perspective can speed up some legislative and institutional processes. However, anti-corruption efforts are not just about passing laws or creating institutions, they are mostly about the effective implementation of the reforms passed, as argued by GRECO.¹⁴¹ It is thus crucial that the newly established legislative and other measures are properly implemented. Given the recent introduction of related legislation, substantial work lies ahead.

Likewise, the independence and impartiality of anti-corruption institutions must be ensured not only in law, but also in practice.¹⁴² Indeed, the parliament in Ukraine has so far stuck to its legislative role when it comes to its relation with NABU, neglecting other functions, provided for in the law.

As demonstrated above, there is important room for the improvement of Rada's practice in discussing NABU's reports and a more proactive role in making sure that annual audit is performed and properly followed up. With such improvements, the Verkhovna Rada would be in a better position not only to protect NABU's independence, but also to make it more accountable. That is even more necessary now when NABU has that right to autonomously access citizens' communications. With more rights come more responsibilities.

Thus, the Verkhovna Rada should make sure that the entire oversight system functions well, in order to be able to determine that citizens' rights and freedoms are not violated by the NABU.

135. As per data available on NABU's website, <https://nabu.gov.ua/en>

136. European Commission, Association Implementation Report on Ukraine SWD (2019) 433, December 2019, 9.

137. Ivanna Y. Kuz and Matthew C. Stephenson, Ukraine's High Anti-Corruption Court: Innovation for impartial justice, U4 Brief, 3, e Chr. Michelsen Institute, 2020, 9, <https://www.u4.no/publications/ukraines-high-anti-corruption-court.pdf>

138. The Law No. 100-IX of 18 September 2019, http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66258

139. See more on these amendments in: Transparency International Ukraine, 'Draft Law on the Work of the High Anti-Corruption Court: Legal Analysis', September 9, 2019, <https://ti-ukraine.org/en/news/draft-law-on-the-work-of-the-high-anti-corruption-court-legal-analysis/>

140. John Lough and Vladimir Dubrovskiy, *Are Ukraine's Anti-corruption Reforms Working?*, Research Paper, Chatham House - the Royal Institute of International Affairs, London, November 2018, 34

141. Council of Europe, 'Some reforms launched by Ukraine in response to GRECO recommendations', March 26, 2020, <https://www.coe.int/en/web/kyiv/-/some-reforms-launched-by-ukraine-in-response-to-greco-recommendations-on-preventing-corruption-among-mps-judges-and-prosecutors-but-serious-concerns-r>

142. Ibid.

Serbia (prevention and policy)¹⁴³

Background

Several agencies in Serbia specifically work on anti-corruption; however, the main responsibilities for fighting and preventing corruption are shared by Serbia's Agency for Prevention of Corruption (APC), the Anti-corruption Council and the Prosecutor's Office for Organized Crime.¹⁴⁴

The Agency for Prevention of Corruption (APC) was established by the new Law on Prevention of Corruption adopted in May 2019.¹⁴⁵ APC is a legal successor of the Anti-corruption Agency (ACA), created in 2008, which became operational in 2010. APC is a dedicated corruption prevention body established as an autonomous and independent body. It coordinates national anti-corruption strategy and has a range of other preventive functions, including integrity plans in public administration, as well as control of the financing of political parties.

The main investigative and prosecutorial body dealing with corruption cases is the Prosecutor's Office for Organized Crime. The Anti-corruption Council acts as an advisory body to the government. Its mission is to propose measures to be taken in order to fight corruption effectively, to monitor their implementation, and to make proposals for regulations and programmes in this area.

The new Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Terrorism and Corruption, which entered into force in March 2018, provides for specialised authorities with the purpose of investigating and prosecuting corruption cases. It decentralises the prosecutor's offices in charge of corruption offences, which will be located in four major cities. Special departments for fighting against corruption have been formed in the higher courts in those four cities. Financial forensic expertise is also to be located in the special prosecution offices. The law also provides scope for using task forces to investigate corruption cases.

In its latest progress report for Serbia, the European Commission observes that only limited progress has been achieved in fighting corruption and that there is no measurable impact of corruption prevention reforms.¹⁴⁶ The Commission underlined that law enforcement and judicial authorities still needed to establish a credible track record of operationally independent prosecutions and of finalised high-level corruption cases.¹⁴⁷ In its previous reports, the Commission noted that the operational capacity of relevant institutions has remained uneven; that is to say, law enforcement and judicial authorities still need to prove that they can investigate, prosecute and try all high level corruption cases in an unbiased and operationally independent manner.¹⁴⁸ Among its recommendations to the Serbian authorities, the Commission underlined the importance of improving its track record on investigations, indictments and final convictions in high level corruption cases, including the seizure and confiscation of criminal assets.^{149, 150} The Commission also called on Serbian authorities to implement legislation on the ACA that needs to be compliant with the *acquis*, international agreements and GRECO recommendations, in order to strengthen the Agency's role as a key institution in a more effective fight against corruption.

In its 2019 interim compliance report on Serbia, the Council of Europe's Group of States against Corruption (GRECO) concluded that: 'Serbia has implemented satisfactorily or dealt with in a satisfactory manner none of the thirteen

143. The Law on Prevention of Corruption entered into force in late May 2019, but its application (implementation) will start from 1 September 2020, except provisions on the appointment of the members of the APC Council (which is the new name for the ACA Board), which immediately come into effect. For that reason, the Serbian case study includes a comparison between previous and new legal provisions on the Agency.

144. For more on anti-corruption bodies in Serbia see: Slobodan Tomić, *Leadership, Institutions and Enforcement: Anti-Corruption Agencies in Serbia, Croatia and Macedonia*, Palgrave Macmillan, 2019.

145. While the new law was indeed necessary, many observers argue that it failed to resolve many shortcomings in the existing legislation. More information available at https://transparentnost.org.rs/images/dokumenti_uz_vesti/ACAS_Law_proposals.pdf

146. European Commission, *Serbia 2019 Report*, SWD(2019) 219final, May 2019, 3.

147. *Ibid*

148. European Commission, *Serbia 2018 Report*, SWD(2018) 152 final, April 2018, 3-4.

149. European Commission, *Serbia 2019 Report*, SWD (2019) 219 final, May 2019, 19.

150. European Commission, *Serbia 2018 Report*, SWD (2018) 152 final, April 2018, 19.

recommendations¹⁵¹ contained in the Fourth Round Evaluation Report from 2015. Ten recommendations have been partly implemented and three have not been implemented. In the same report, GRECO, on one hand, praised Serbia for the adoption of the new Law on Lobbying, and on the other, called for an urgent adoption of a code of conduct for MPs, as well as further measures to improve the transparency of the legislative process, to allow for adequate timeframes and debates on draft legislation and to avoid the use of urgent legislative procedures, unless in exceptional circumstances.¹⁵² GRECO, like the European Commission, called for the adoption of the new law on prevention of corruption, to strengthen the Agency. As a paradox, the law was indeed adopted, but under urgent legislative procedure.

Serbia adopted key policy and strategic anti-corruption documents. However, their implementation, particularly that of the Anti-Corruption Strategy and Action Plan for 2013-2018, revised in June 2016, remains well behind schedule.¹⁵³ In fact, both documents expired at the end of 2018, while new Strategy has not been adopted.

According to the European Commission, corruption remains prevalent in many areas and remains an issue of concern.¹⁵⁴ In 2019, Transparency International's Corruption Perceptions Index places Serbia 91st on its list of 180 countries, with the score of 39 out of 100 on a points scale.¹⁵⁵ That is the same score as in 2018,¹⁵⁶ while in previous years, Serbia was slightly better ranked, i.e. with 41 points in 2017; 42 in 2016, and 40 in 2015.¹⁵⁷



Photo: Wikimedia Commons / Special session of the National Assembly of Serbia

Parliament's role

Determining the legal framework and mandate

The Law on Prevention of Corruption, as well as the previous Law on Anti-corruption Agency, provides for a broad mandate, including preventive, educational, normative and awareness-raising functions.¹⁵⁸

The APC supervises the implementation of all strategic anti-corruption documents, submits reports on their implementation with recommendations to the National Assembly, and issues recommendations to public authorities on

151. GRECO, Interim Compliance Report on Serbia, GrecoRC4(2019)5, 2019, para. 96.

152. *Ibid.*

153. European Commission, *Serbia 2018 Report*, SWD (2018) 152 final, April 2018, 22.

154. European Commission, *Serbia 2019 Report*, SWD (2019) 219 final, May 2019, 4.

155. Transparency International, *Corruption Perceptions Index*, <https://www.transparency.org/cpi2019>

156. Transparency International, *Corruption Perceptions Index*, <https://www.transparency.org/cpi2018>

157. *Ibid.*

158. Art. 6. of the Law on Prevention of Corruption, 'Official Gazette of RS', No. 35/19.

how to rectify omissions in the implementation of strategic anti-corruption documents. APC may also issue initiatives for amending strategic documents. It also adopts general regulations in its field.¹⁵⁹

The APC deals with issues concerning conflict of interest and performs tasks in accordance with the law governing the financing of political parties; that is, political entities. It also has important competences during election campaigns, such as overseeing the misuse of public funds or using official meetings and gatherings to promote work of particular political party.

The APC issues opinions and directives for enforcing this Law, launches initiatives for amending and enacting regulations in the field of fighting corruption, and cooperates with other state bodies in drafting regulations in the field of fight against corruption. It keeps a register of officials and of the property and income of officials. With the new Law, the Agency was given the right to obtain data on the accounts of the public officials directly from banks and other financial institutions, without the consent of those officials, while for the data on the accounts of other people, their consent is needed.¹⁶⁰

Furthermore, the Agency conducts research on corruption, analyses the risks of corruption and introduces and implements education programmes concerning corruption. Finally, the APC acts on complaints submitted by legal entities and natural persons. With the new law, the Agency may receive and handle anonymous complaints,¹⁶¹ which was not an option in the previous legal regime.



Figure 5: Logo of the Serbian Anti-Corruption Agency

Selection and appointment

The APC's bodies are the Council (previously known as the Board) and the Director. At the very outset, it should be noted that the new Law on APC shifted the balance of relations between the Council and Director in Director's favour. The Director now has a stronger position than before, while the remit of the Council is now considerably narrower.

In the past, the Board had the following competences: to appoint and dismiss the Director of the Agency, decide on salary increases for the Director, decide on appeals against decisions of the director pronouncing measures in accordance with this Law, adopt the annual report on operation of the Agency which it submits to the National Assembly (Parliament), perform supervision over the work and property status of the Director, propose budget funds for operation of the Agency, enact the Agency Rules of Procedure and perform other tasks set forth under this Law.¹⁶² However, according to the new law, the Board, now re-named 'the Council' only decides on appeals against decisions of the Director pronouncing measures in accordance with this Law, performs supervision over the work and property status of the Director and takes general views in relation to the implementation of this Law.¹⁶³

A person may be elected a member of the Council if they meet the general requirements for employment in state administration bodies, hold a university degree and have a minimum nine years of experience and have not been convicted for a criminal offence making them unworthy to discharge the office of member of the Council.¹⁶⁴ A member of the Council may not be a member of a political party or political entity. These provisions are the same in both laws, apart from the new provision allowing a member of the Agency's Council to be employed outside the Agency or perform another paid job, unless this is contrary to this Law.¹⁶⁵

159. Art. 6.1. of the Law on Prevention of Corruption.

160. Art. 36.4. of the Law on Prevention of Corruption.

161. Art. 78.5. of the Law on Prevention of Corruption.

162. Art. 7 of the Law on Anti-Corruption Agency, 'Official Gazette of RS', Nos. 97/2008, 53/2010, 66/2011 - decision of the Constitutional Court, 67/2013 - decision of the Constitutional Court, 112/2013 - authentic opinion and 8/2015 - decision of the Constitutional Court.

163. Art. 20 of the Law on Prevention of Corruption.

164. Art. 8 of the Law on Anti-Corruption Agency.

165. Art. 20.3. of the Law on Prevention of Corruption.

As per the composition of the Council, the situation is as follows. The ACA Board had nine members, elected by the National Assembly following their nomination by: (1) Administrative Committee of the National Assembly; (2) President of the Republic; (3) Government; (4) Supreme Court of Cassation; (5) State Audit Institution; (6) The Protector of Citizens and Commissioner for Information of Public Importance, through joint agreement; (7) Social and Economic Council; (8) Bar Association of Serbia; and (9) Associations of Journalists of the Republic of Serbia, in mutual agreement. With the new Law, the Council has only five members,¹⁶⁶ which are now appointed by the National Assembly after the public competition, which is opened by the Ministry of Justice. The public competition is published in the Official Gazette of the Republic of Serbia, at least one public media with a state-wide coverage, as well as on the websites of the Ministry of Justice, the APC and the Judicial Academy.¹⁶⁷ The competition is conducted by the Judicial Academy, which appoints a three-member commission.¹⁶⁸ Its task is to review all applications with enclosed evidence, compile a list of candidates who meet the selection criteria and conduct an assessment (test) of candidates' professional competence, knowledge and skills. The test consists of two parts: in the first part, the competence of the candidates is checked, and in the second part of the test, the professional integrity of the candidates is evaluated.¹⁶⁹ After the test, the commission submits a list of candidates to the Minister of Justice. The Minister then creates a list of candidates who have scored at least 80 points on the test (out of 100), and submits it to the National Assembly for consideration.¹⁷⁰ The National Assembly finally appoints the Council members.

The term of office of member of the Council is now five years,¹⁷¹ instead of four, which was the case with the Board members. The same person may be elected member of the Council twice at most, same as it was with the Board members.¹⁷²

The law contains provisions on dismissal procedures. The office of a Council member terminates with expiration of the term of office, by resignation, permanent incapacity to discharge office due to illness and on basis of medical findings of a relevant medical institution and by dismissal. The Ministry of Justice is obliged to open a public competition for the election of a new member of the Council three months prior to expiry of the term of office. If the office of a Council member terminates prior to the expiry of the term, the Ministry of Justice is required to do the same within a deadline of 15 days.¹⁷³

A member of the Council shall be dismissed if they become a member of a political party (political entity), if sentenced to at least six months in prison for committing a criminal offence, committing a punishable offence making them unworthy of the office of a member of the Council or if it is determined that they have violated any law within the Agency's jurisdiction.¹⁷⁴ The procedure to determine whether there are grounds for dismissal of a member of the Board shall be initiated by the parliamentary competent committee. The Council member is allowed to make a statement on the initiation of this procedure.¹⁷⁵ The Committee may remove from the public office the Council member in question until the completion of the procedure, but no longer than six months from the start of dismissal procedure. Decision on dismissal is passed by the National Assembly with the majority of votes of all MPs, at the motion of the parliamentary committee.

The Council decides by a majority vote of all its members. Members cannot abstain from the vote.¹⁷⁶ The work of the Council is managed by the Chairperson, elected by the members of the Council amongst themselves, for a one-year mandate.

The Director has a mandate to: represent the APC; manage its operation, organise and ensure lawful and efficient discharge of its tasks; issue decisions on the violation of this law and pronounce measures; give opinions and instructions for the implementation of the Law on Prevention of Corruption; decide on the requests by public officials, as provided by this law; submit the annual report on the operation of the Agency to the National Assembly; draft the proposal of budget

166. Art. 20.1. of the Law on Prevention of Corruption.

167. Art. 22 of the Law on Prevention of Corruption.

168. Art. 23 of the Law on Prevention of Corruption.

169. Ibid.

170. Art. 24 of the Law on Prevention of Corruption.

171. Art. 25 of the Law on Prevention of Corruption.

172. Art. 10 of the Law on Anti-Corruption Agency.

173. Art. 26 of the Law on Prevention of Corruption.

174. Art. 27 of the Law on Prevention of Corruption.

175. Art. 27.2. of the Law on Prevention of Corruption.

176. Art. 28.3. of the Law on Prevention of Corruption.

funds for the operation of the Agency; pass general and individual acts; decide on the rights, duties and responsibilities of the Agency staff; enforce decisions of the Council; and perform other tasks determined by law.¹⁷⁷

The Director may be a person who meets the general requirements for employment in state bodies, holds a degree in law and has a minimum nine years of experience, was not sentenced to at least six months of prison for committing a criminal offence, and has not committed a punishable offence making them unworthy of the office of the Director. The Director may not be a member of a political party or political entity.

The Director is appointed by the National Assembly after the public competition, which is opened by the Ministry of Justice.¹⁷⁸ The selection and appointment procedure is the same as with the Council members. The only difference is that the test has a third part also. In this part, the candidates present their programme of work.

When discussing the appointment and selection procedure under the new law, it is commendable that the legislature opted to introduce public competition for both the Council and the Director. However, the role of the National Assembly is seriously demoted, as it only appoints the ACA's officials, while selection procedure is performed by other bodies. The fact that public competition can be announced (opened) exclusively by the executive body, the Ministry of Justice, is problematic, as it may potentially influence the work of the Agency by, for instance, postponing the competition or obstructing it in some other way. Although it is certainly better that the selection procedure is conducted by the Judicial Academy and not the Ministry itself, it remains unclear why that task was not delegated to the competent parliamentary committee, given that the ACA is accountable to the Assembly. In general, there is no need to have any active role of the executive branch in the selection and appointment process, however procedural that role might be.

The term of office of the Director is five years. The same person may not be elected as the Director more than twice. The reasons for dismissal are the same as with the Council members.¹⁷⁹

Finally, it should be also noted that salaries of the Council members, Director and staff members have been considerably increased with the new Law.

While the legislation provides well-designed procedures for the selection and appointment, in practice they have either not been used or been used with a severe delay, which has hampered the work of the Agency, leaving it without the full leadership. Put another way, the Parliament has been the main obstacle instead of being the provider of the independence and institutional stability of the ACA.

For instance, because they were not favourites of the ruling parliamentary majority, the candidates for the members of the ACA Board proposed by the Protector of Citizens (Ombudsman) and Commissioner for Information of Public Importance, and Associations of Journalists of the Republic of Serbia, have not been elected for more than four years, causing the Board to work with seven instead of nine members. It is important to stress that when the candidate proposed by the Protector of Citizens (Ombudsman) was ultimately elected after four years, the law was breached. Namely, as already said, according to the Law on the Anti-Corruption Agency, the Protector of Citizens (Ombudsman) and the Commissioner for Information of Public Importance and Personal Data Protection propose the candidate for Board member *through joint agreement*. In this case, there was no joint agreement of these institutions, as they were unable to agree on the candidate. The parliamentary majority elected the candidate proposed only by the Ombudsman.

In that way, the National Assembly threatened the ACA's work and its Board's ability to make decisions in full capacity. Furthermore, by not electing the Board members nominated by other entities, it clearly breached the law. In addition, between April and August 2017, the Parliament left the ACA Board with only two members, because it hesitated to elect new members. That caused severe problems in the functioning of the ACA, especially because at the same time it was left without the Director. Ms. Tatjana Babić, who served as the Director from January 2013, left the office when she was appointed as a judge of the Constitutional Court in December 2016. The competition for the new Director was declared unsuccessful, because the Board members could not agree on the right candidate after two rounds of voting. In the meantime, the mandate of the majority of the Board members expired in April 2017, as mentioned above. It was only in September 2017 that new Director was elected, Ms. Majda Kršikapa, who resigned after only two months under mysterious

177. Art. 9 of the Law on Prevention of Corruption

178. Art. 12 of the Law on Prevention of Corruption.

179. Art. 16 of the Law on Prevention of Corruption.

circumstances (without any justification). The new competition was announced, and current Director Mr. Dragan Sikimić was elected in January 2018. Some oppositional parties strongly protested against Sikimić's election, arguing that he was in clear conflict of interest, because of his prior relations with the ruling party, the Serbian Progressive Party. In 2016, he was a candidate of the ruling party in local elections, as well as the member of the working body in charge for implementing elections in 2017, appointed from the list made by the ruling party (Serbian Progressive Party).¹⁸⁰ In addition, he has donated money to the Serbian Progressive Party.¹⁸¹ In fact, according to some sources, he was an active member of the party and actually resigned (from the party) on the day of his election, not on the day he applied for the position.¹⁸² If the latter is true, then he was an ineligible candidate. Despite this information and protests from the opposition, Sikimić remained in the office.

The new Law on Prevention of Corruption entered into force in late May 2019, but its application (implementation) will start from 1 September 2020. Only provisions on the appointment of the members of the APC Council (which is the new name for the ACA Board), come into immediate effect.¹⁸³ Namely, the law stipulates that members of the new APC Council have to be elected until 1 September 2020; that is, when the new law enters into force completely.¹⁸⁴ This procedure has not yet been initiated. Thus, it is to be seen whether the selection and appointment procedure of the APC management will be conducted in accordance with the law and within legal deadline, or if the National Assembly will continue to exercise poor practice in this regard.

Budget allocation

The funds for the operation of the APC are provided in the budget of the Republic of Serbia at the proposal of the Agency, and from other sources, in accordance with the Law.¹⁸⁵ The Agency autonomously disposes with those funds.¹⁸⁶ Those provisions existed in the old law as well, but are now being additionally strengthened, providing for stronger guarantees of the financial independence of the APC. Namely, the new Law on Prevention of Corruption stipulates that the APC has a separate budget line in the state budget. Its annual financial plan is drafted by the APC Director and then submitted to the Ministry of Finance, which includes it in the draft law on budget. The law provides that the annual funds for the Agency have to be sufficient for its efficient and independent work.¹⁸⁷ Furthermore, without the consent of the APC Director, the Government cannot suspend, postpone or limit the execution of budgetary funds intended for APC work.¹⁸⁸

The APC/ACA budget has steadily increased since 2014. It is commendable that the Agency spent 94.26 per cent of its annual budget for 2019.¹⁸⁹ That is a promising development, given that in period 2014-2018, the Agency exercised rather poor financial and planning efficiency, never spending more than 80 per cent of its annual budget.¹⁹⁰ Similarly, there was an increase in number of employees, from 74 in 2014 to 87 in 2017, but in 2018 that number decreased to 80,¹⁹¹ and remained the same in 2019.¹⁹² The Parliamentary Committee for Judiciary approved the new staffing table of the ACA twice in last three years, in November 2018 and March 2019. According to the current staffing table, the APC/ACA should have 163 employees. With the current 80 employees, the occupancy is only 49.08 per cent.¹⁹³ That is even

180. The list for 2016 local elections in Belgrade, 'Official Gazette of the City of Belgrade', No. 26/2016. See also: Jelena Veljković, 'Dragan Sikimić, SNS-ov član izborne komisije', Javno, January 17, 2018, <https://javno.rs/vest/dragan-sikimic-sns-ov-clan-izborne-komisije>

181. See more in: 'Rakić Vodinečić: Poništiti nezakonit izbor Sikimića za direktora Agencije', *Dijalog.net*, January 22, 2018, <https://www.dijalog.net/rakic-vodinelic-ponistiti-nezakonit-izbor-sikimica-za-direktora-agencije/>

182. See more in: 'Sikimić bio član SNS u vreme izbora na čelo Agencije?', *Danas*, February 9, 2018, <https://www.danas.rs/drustvo/sikimic-bio-clan-sns-u-vreme-izbora-na-celo-agencije/>

183. Art. 4. of the Law on Prevention of Corruption.

184. Art. 112 of the Law on Prevention of Corruption.

185. Art. 4. of the Law on Prevention of Corruption.

186. Art. 4.4. of the Law on Prevention of Corruption.

187. Art. 4.3. of the Law on Prevention of Corruption.

188. Art. 4.5. of the Law on Prevention of Corruption.

189. Anti-Corruption Agency, Annual Report, 2019, 11.

190. See ACAs' annual reports at <http://www.acas.rs/izvestaji/godisnji-izvestaj/>

191. Anti-Corruption Agency, Annual Report, 2018, 44.

192. Anti-Corruption Agency, Annual Report, 2019, 11.

193. Anti-Corruption Agency, Annual Report, 2019, 11.

lower than the occupancy under the 2018 staffing table from 2018, which was 57.5 per cent (80 out of 139).¹⁹⁴ However, according to Agency's 2019 annual report, public competition for 26 new staff has been advertised in September 2019. Once hired, these new employees should significantly raise the capacities of the APC/ACA. That would be a very welcome development. With increased capacities, the Agency should be able to be more proactive and efficient.

Reporting

Recommendations and reports are the most visible results of the work of independent state authorities. Through these reports, the Parliament is informed about the work of public authorities. At the same time, these reports serve as an indicator of the work of independent authorities, including the APC.

The APC is obliged by the law to submit an annual report on its operations to the National Assembly, no later than 31 March of the current year for the preceding year. APC's annual reports are published on the National Assembly's website, as well on its own website. Furthermore, the APC may submit special reports at the request of the National Assembly, or on its own initiative. The new Law on Prevention of Corruption introduced a new provision according to which the APC may at the request of the National Assembly, or on its own initiative, submit to the National Assembly reports on the state of corruption and the risks of corruption in public authorities.¹⁹⁵ Contrary to the old Law on the ACA which stipulated that: 'both regular (annual) and special reports of the ACA are also submitted to the Government',¹⁹⁶ the new law does not contain such provision.

Parliamentary Rules of Procedure regulate the procedure for the consideration of annual reports of independent bodies, including the APC/ACA. Upon receiving the APC/ACA's annual report, the Speaker of the National Assembly communicates the report to MPs and the competent committee. There may be one or more competent committees. In case of the APC/ACA, it is usually the Committee on Finance, State Budget and Control of Public Spending that considers the APC/ACA's report. However, others might be designated as well. The competent committee has to consider the report within 30 days from the day of submittal. The APC/ACA representative is invited to the sitting of the competent committee, when it considers the report on the agenda. Upon consideration of the report, the committee submits a report to the National Assembly together with its draft conclusion on the report. The National Assembly then considers the APC/ACA report and the report of the competent committee, with the draft conclusion. Upon conclusion of the debate at the sitting attended by the majority of MPs, the National Assembly adopts by a majority vote a conclusion.¹⁹⁷ In other words, the National Assembly votes on the adoption of a conclusion of its competent committee about APC/ACA's annual report, and not on the report itself. This is important as it prevents the Assembly from proceeding with a proposal of dismissal of the head of the APC/ACA in the event that it does not adopt the annual report, which was a possibility in Lithuania, before the decision of the Constitutional Court.

Despite the fact that a legal framework provides a rather regulated procedure of consideration of ACA's annual reports, in practice, the National Assembly did not build a consistent, predictable, efficient and sustainable approach to considering its annual reports. It usually does consider them only in committees, but the report then does not reach the plenary. In fact, Agency's annual reports for four consecutive years (2014-2017) have not been discussed in the plenary. The same applies to the reports of other independent institutions, such as the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, and the Commissioner for Protection of Equality. That means that the Parliament did not discuss reports on implementation of the Strategy and Action Plans in that period as well. In that way, the very purpose of parliamentary committees has been thwarted for years; the entire reporting procedure, set to enable meaningful discussion and substantive conclusion, has been ridiculed.¹⁹⁸

194. *Ibid*, 43.

195. Art. 39. of the Law on Prevention of Corruption

196. Art. 26.

197. Art. 237-239 of the Rules of Procedure of the National Assembly, 'Official Gazette of the Republic of Serbia' No. 20/12.

198. The same situation is with the Ombudsman's annual reports, see more in: Luka Glušac, "Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)", *The International Journal of Human Rights*, 23(4), 2019, 531-554, <https://doi.org/10.1080/13642987.2018.1513400>

With that said, it is indeed a positive development that the National Assembly discussed Agency's 2018 annual report (with accompanying reports on implementation of the Strategy and Action Plans) in plenary in July 2019, together with the reports of other independent oversight bodies (Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection). Before it reached the plenary, ACA's report was discussed by the Committee on Finance, State Budget and Control of Public Spending.¹⁹⁹ It remains unclear what motivated the ruling majority to finally put annual reports of independent bodies on its plenary agenda. While pressures from independent bodies themselves, the European Commission and civil society have certainly contributed to such decision, they cannot solely explain it, because they have existed for years. Arguably, it was the change in the top management of the Agency, but also election of the new Ombudsman in 2017 and, particularly, the Commissioner for Information of Public Importance and Personal Data Protection in 2019 that triggered this change of behaviour on Parliament's side. The new Ombudsman and Commissioner were elected by the current ruling majority. Previous holders of these two offices were well known for not hesitating to raise their voices against government's authoritarian tendencies and democratic backsliding.

In fact, the debate about reports of independent bodies was largely concentrated on cheap political attacks on former holders of independent offices. The discussion was also severely damaged by the fact that the vast majority of opposition parties boycotted the work of National Assembly, from early 2019 until the end of MPs' mandate in 2020. Regular parliamentary elections should have taken place in late April 2020, but they have been postponed to 21 June 2020, due to the coronavirus pandemics and the state of emergency declared in March 2020.

It is to be seen if this change in Parliament's practice will be permanent, or if discussion about 2018 annual reports was just a 'lucky' exemption. The former would testify to a true realisation that substantive discussion about reports of independent bodies is an essential element of public accountability of both those bodies and public administration. The latter would indicate that there is no sincere change of practice, but only occasional opportune political behaviour.

Assessment

In general, Serbia's institutions for preventing corruption broadly meet international standards and continue to show good potential. However, as noted by the European Commission, its human resources situation, the way other institutions share information and the consideration given by the political level to the ACAs' work require further improvement.²⁰⁰

The APC/ACA continues to perform in some areas of its remit, despite limited resources and both legal and institutional obstacles - in particular the lack of human resources and outdated equipment. Recent adoption of the new law and reports that the Agency is in the process of hiring more than 25 new staff are promising signs.

Despite the fact that the legal framework provides a rather regulated procedure of consideration of ACA/APC's annual reports, in practice, the National Assembly did not build a consistent, efficient and sustainable approach to considering its annual reports. After four years of refusing to do so, the Assembly did debate the 2018 annual report of the ACA. However, it remains completely unpredictable whether the Assembly will consider them in the future or not, and if so, how. At the same time, the National Assembly has hampered ACA work by long delays in choosing the members of its Board, which has caused severe problems for ACA's decision-making process. Now that the new Law on Prevention of Corruption has been adopted, the National Assembly is in perfect position to change its bad practice and elect the APC's Council members within the deadline and following the procedure prescribed in the law.

Parliamentary oversight of the executive is one of the pillars of the checks and balances system. There is a stable trend in Serbia that the parliament becomes a tool of the executive branch. Upon election of the Government, key leaders of the ruling party become ministers or other state officials, leaving the parliament to 'party soldiers'.²⁰¹ In circumstances where opposition is weak, there is no real parliamentary oversight. In addition, a majority of the current opposition in Serbia announced that they would boycott general elections to be held in 2020. If that happens, the parliamentary oversight will be even weaker.

199. See the discussion at: http://www.parlament.rs/78_sednica_Odbora_za_finansije_republi%C4%8Dki_bud%C5%BEet_i_kontrolu_tro%C5%A1enja_javnih_sredstava.36684.941.html

200. European Commission, Serbia 2018 Report, SWD (2018) 152 final, April 2018, 20-21.

201. Luka Glušac, 'Assessing the Relationship between Parliament and Ombudsman: Evidence from Serbia (2007-2016)', *The International Journal of Human Rights*, 23(4), 2019, 548-549.

Parliament's declarative support to the ACA/APC has to come to life in practical terms, as it should be a protector of the ACA/APC's independence. The Agency's independence is not a privilege established for anyone's comfort, but a requirement and a necessity needed to ensure that anti-corruption policies do not depend on daily politics. The EU conditionality in the rule of law, but especially in anti-corruption, should be more concrete, with the clear emphasis on established benchmarks and fulfilment of already accepted obligations of the candidate country. By introducing the revised enlargement methodology, in early February 2020, the European Commission made a promising step in the right direction. The new methodology puts more focus on the rule of law and reaffirms anti-corruption as a cross-cutting issue, by emphasising that 'anti-corruption work will be mainstreamed through a strong focus in relevant chapters.'²⁰²

In implementing new methodology, the EU should regularly follow up on these requirements and consistently pressure the Serbian parliament to finally start serving as a backbone of the anti-corruption system.

202. See: European Commission, 'Revised enlargement methodology: Questions and Answers', February 5, 2020, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_182

Conclusions

Three anti-corruption agencies analysed in this paper share number of commonalities, but also differ in some important aspects. Based on the information from the three case studies provided, both country-specific and some general conclusions can be drawn.

Lithuania, Ukraine and Serbia share a communist past, but their post-communist development has been quite different. Lithuania has used its geopolitical position very successfully, speeded up the reforms and utilised strong incentives to join the EU and NATO. Serbia suffered from wars in the 1990s and only after the overthrow of Milošević in 2000 did it start with the real transition. Finally, Ukrainian limbo between West and East has influenced the speed and nature of reform efforts ever since its independence.

All three countries still experience corruption problems, although of different proportions. The public perception of corruption is very high, despite strong efforts to change it.

They have all ratified UN and the Council of Europe's conventions on corruption. However, they have opted for different institutional solutions. Lithuania was one a few countries to follow the Hong Kong model, and established a multi-purpose agency; Ukraine chose to create a law enforcement agency and special prosecution office, while Serbia opted for an independent prevention and policy agency, while keeping the enforcement with the police and prosecution.

All three ACAs were created by the law, with strong and clear mandate, and sufficient guarantees of independence and immunities, applicable for their type of institution. They are all state-funded and their budgets are in steady increase. At the same time, they all enjoyed firm support from the international donor community and have number of externally funded projects.

While all three countries are semi-presidential democracies, the formal relations of their presidents, governments and parliaments is different. Serbia's constitution prescribes the strongest parliament, while in other two cases, the president is perhaps stronger on paper. That influences the appointment process of ACAs as well.

One of our conclusions is that the Lithuanian legislation should stipulate more clearly how the President selects the candidate for the SIS Director; that is to say, on which bases and under which procedure. It remains unclear who can propose the candidates to the President, and what the decisive reasons are for the President's final proposal. The Ukrainian and Serbian models, where the candidates for top management are selected through an open competition seem to offer a better choice. This is of vital importance, given that the Director should be a role model for the employees, not just through overseeing, control and monitoring, but also through maintaining and developing a motivated workforce, as argued in public service motivation studies and suggested with respect to ethical behaviour.²⁰³ It should be added that even if there is an open competition or other well-designed procedure, the timely and legitimate appointment of the top management depends decisively on the state: the parliament in case of Serbia, and the president in case of Ukraine. We have witnessed that in Serbia, the parliament was reluctant to appoint some of the members of the ACA Board, which caused severe problems in its functioning and legitimacy of its decisions.

Consideration of ACAs' regular and special reports is one of the key mechanisms for making them accountable on the one hand and providing them with more public exposure on the other. At the same time, comprehensive and meaningful discussion of the reports, and particularly their follow up, should serve as a parliament's mechanism for the oversight of the executive branch. The parliament should pick up the main conclusions and recommendations from ACAs' reports and push the government to implement them. However, our analysis showed a rather gloomy picture in this regard. Normatively, the best situation is in Ukraine, where the law stipulates that the NABU is to report twice a year to the Parliament. The law provides for very detailed information on the content of the report and lists a number of data that the NABU has to deliver in its reports. However, existing information indicates rather poor parliamentary performance in discussing NABU's reports and following up on their findings. In Lithuania, the situation is somewhat different. Consideration of SIS's reports is vaguely regulated, especially after the decision of the Constitutional Court. This decision is of great importance as it has prevented the possibility to initiate the dismissal procedure if the SIS' report is not adopted. It is not clear which

203. James L. Perry, Annie Hondeghe and Lois R. Wise, 'Revisiting the motivational bases of public service: Twenty years of research and an agenda for the future', *Public Administration Review*, 5/70, 2010, 681-690.

procedure applies and exactly how the SIS' reports are to be discussed after the Court's decision, and what the outcome of those discussions is to be. The Parliament should more explicitly stipulate what committees are obliged to consider the SIS reports, and under which procedures. Finally, the Serbian ACA faces the biggest problems in this regard. Despite the fact that the reporting procedure is regulated rather clearly, the Parliament largely ignores it. Out of last five ACA's annual reports, the Serbian Parliament discussed only the last one (for 2018) in the plenary. Some reports have been discussed in the committees, but the committees' draft conclusions and recommendations were usually not later validated and approved in the plenary, making their efforts completely useless. This is even more problematic given that the Serbian ACA is a prevention and policy model, which should have the most strategic relations with the parliament. In other words, our analysis demonstrated that prevention and policy type of ACA depends the mostly from the parliament, in terms of the mandate and independence, but also on operational level. Having in mind the Serbian political and legal system, the chosen ACA model seems suitable. However, in circumstances where the parliament is generally weak and under a strong influence from the executive, as in Serbia, it is hardly to be expected that it would perform well in supporting the work of anti-corruption agency. As our analysis showed, the Serbian Parliament is largely ineffective in being the protector of the ACA's independence and its strongest ally in the fight against corruption.

Law enforcement and multi-purpose types are more oriented towards the judiciary. The Ukrainian case study showed that without strong prosecution and courts, the efforts of the ACA remain futile. With the High Anti-corruption Court now in place, NABU's cases should, hopefully, receive proper and efficient judicial follow up. Only with some time distance when the HACC develops its own practice, would it be possible to assess whether Ukraine opted for the most suitable model of ACA. It seems to be on the right track. As with the Parliament, there is a wide space for improving its relations with the NABU. So far, the Parliament was sticking to adopting legislation necessary for NABU's work. It should be more active in discussing its reports and advocating for the audit of NABU's work. It may also consider performing post-legislative scrutiny of anti-corruption legislation, given its frequent changes.

The Lithuanian case study suggested that selecting priorities and using their resources most efficiently are among strategic challenges of multi-purpose agencies. Given that these agencies have broad mandate, covering prevention, law enforcement and policy and coordination, it is of vital importance to try, on one hand, to develop them in balance and at a similar pace, but on the other, to make smart prioritisations depending on the stage of institutional development and most important current corruption-related issues. Available information indicate that Lithuania chose its ACA's model wisely. The institution performs well and enjoys solid public support. However, it needs to show constant results, with high-profile cases receiving judicial outcomes. Only when high officials are ultimately convicted for corruption does the public perception really start to change. The Lithuanian Parliament, in general, plays its role correctly. It should, however, clarify the procedure for discussing the SIS' reports and make sure they are properly followed up.

This paper demonstrated that the legislative function is equally important for all three ACA models. Irrespective of the chosen model, parliaments should go beyond it and demonstrate they are fully invested in anti-corruption campaigns, by discussing ACAs' reports, making sure they have optimal budget, and active participation in other mechanisms, such as audit, where they exist. These all serve not only to protect ACAs' independence, which should be parliaments' essential role, but also to make them accountable.

There is no quick solution for building a functioning anti-corruption system, even with political will. The issue of corruption touches upon all aspects of the state and addressing it has similarly to draw on many aspects of the broader state reform issues, including civil service reforms, institutional capacity development, building integrity systems and upgrading the policy capacities.²⁰⁴ With strong mandate and leadership, independent anti-corruption agencies are an invaluable institutional feature for both prevention and law-enforcement.

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Westminster Foundation for Democracy (WFD) is the UK public body dedicated to supporting democracy around the world. Operating directly in over 40 countries, WFD works with parliaments, political parties, and civil society groups as well as on elections to help make countries' political systems fairer, more inclusive and accountable.

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