MODELS OF SPECIALISED ANTI-CORRUPTION INSTITUTIONS WITH A SPECIAL EMPHASIS ON ANTI-CORRUPTION MODEL IN THE REPUBLIC OF SERBIA

Vladimir Šebek, PhD[1]
Ministry of the Interior of the Republic of Serbia

Abstract: Specialized anti-corruption institutions are not product of the new age. First specialized departments in fighting against corruption went into effect in the middle of last century, but the beginning of creation of these departments has been connected with founding of the most significant specialized institutions. Although its effects on democratic institutions and economic and social development have long been apparent, the fight against corruption has only recently been placed high on the international policy agenda. The UN Convention Against Corruption, which came into force in 2005, is the most universal in its approach; it covers a very broad range of issues including the formation of specialised bodies responsible for preventing corruption and for combating corruption through law enforcement.It is the author's intention to present to the public the organizational solutions of the anti-corruption bodies predicted in the UN Convention against Corruption and folloving standards to act effectively. On the one hand, this text represents models of specialized anti-corruption bodies in the world, and on the other hand, it contains display of institutional anti-corruption model in Republic of Serbia as well, with the focus on the Department for Corruption Suppression (OBPK) in the Ministry of Interior.

Keywords: The prevention of corruption, Combating of corruption, The UN Convention Against Corruption, Criminal Law Convention on Corruption, Specialised anti-corruption bodies, Department for Corruption Suppression (OBPK).

INTRODUCTION

One of the most important foundations for successful functioning of all types of organizations is the existence of a clearly defined organizational structure. In addition, it is essential that there is a defined organizational structure, this must

1 dr.vladimir.sebek@gmail.com

be unique for a given organization, according to business areas or activities engaged. However, if we analyse scientific discourse about fight against corruption, we can notice significant number of works whose subject is phenomenological researching of corruption, respectively conditions and causes as a fertile ground for corruption, as well as works whose main objective are attempts in defining this serious social problem, which is definitely the content of anti-corruption struggle. On the other hand, it is evidently lack of works which have organizational form as a subject of their research, which could offer structural patterns for establishing anti-corruption bodies.

The main goal of this paper is to represent properly the basic organization model of the anti-corruption bodies to scientific, professional and broader public, implement the analyses in their different functions and virtually effect, identifying „the best practices" or else schemes for establishing more efficient forms of anti-corruption bodies. It basically means that the topic of the analysis are main factors which could bring to success or else failure in functioning of specialized anti-corruption bodies. If we realize true meanings of organizational structure in managing anti-corruption bodies, we can get the conclusion that the selection of management model and form is strategic activity.

Inventory of the existing models shows numerous anti-corruption bodies worldwide with tendency to grow. Recently approved international contracts demanding from member states to establish such bodies, and that will increase the number of those specialized anti-corruption bodies.

Whether or not preventive or repressive in their anti-corruption function, such organizational units need to take into consideration the full range of anti-corruption functions, including the following: Policy development, research, monitoring and co-ordination; Prevention of corruption in power structures; Education and awareness raising and Investigation and prosecution (OECD, 2008: 9-10).

Standards established throughout international conventions, in spite of proclaimed organizational solutions, also define its eligibility criteria for more effective specialized anti-corruption bodies. Both the United Nations (Article 6) and the Council of Europe anti-corruption conventions (Article 20) as their yardsticks define: independence, specialisation, adequate training and resources.

Independence – this qualitative criterion primarily means that the anti-corruption bodies should be shielded from undue political interference. Therefore, clearly expressed political volition for fight against corruption is one of the key prerequisite. This is particularly important for law enforcement bodies. Yet, we have to underline that none of the independent bodies can act on their own in fighting against corruption. The cooperation among department, therefore the cooperation with organizations of civil society is necessary, as well.

Specialisation – implies the existence of employees with special skills and appropriate mandate for fight against corruption. The Council of Europe Criminal Law Convention on Corruption clarifies the standard for law enforcement bodies, which can be fulfilled by the creation of a special body or by the designation of a number of specialised persons within existing institutions. Such approach will vary from country to country. The picture of experience in developed countries shows that the specialization is often provided in frame of existing agencies (bodies), while the countries in development take their efforts in forming of new specialized anti-corruption bodies. The reason for last one is high level of corruption in existing agencies.

Resources and Powers – in frame of this criterion the training and the budget are most important how their operations would be effective. Also, the splitting of jurisdictions and right work focusing is crucially. In some models, as useful showed up splitting of jurisdictions in important and high-level cases of corruption. In addition to the above, it is necessary that these institutions have enough jurisdiction with their investigative capacities, resources and contemporary methods, to develop evidence, and ultimately, put together a case for prosecution of offenders.

The foln addition to the most significant criterions listed to establish effective anti-corruption institutions, there are numerous factors which being weaking, or even disabling functioning of these bodies. The analysts of anti-corruption institutions worldwide have identified various reasons why many initiatives to set up and administer specialised anti-corruption institutions fail. While the reasons differ in depth and length, they generally refer to a list of political, economic, governance, legal, organisational, performance and public confidence factors, also known as "Seven Deadly Sins" (Doig, 2004: 145).

This paper is structured as follows. Based on the literature on corruption, we will first discuss about models of organization structure of anti-corruption institutions at global site. In chapter three we are explaining single organization forms of anti-corruption bodies. The fourth part deals with the organizational form of anti-corruption bodies in the Republic of Serbia. Establishing special department for fight against corruption (OBPK) in frame of Ministry of interior is the central part of the study in the fourth section. The last section concludes the discussion and summarizes lessons to be learned related to the importance of organizational forms of anti-corruption bodies.

MAIN ANTI-CORRUPTION INSTITUTIONS

Specialized anti-corruption institutions are not product of a new age. First specialized departments in fighting against corruption showed up in the middle of the last century, but the very beginning of the formation of such authorities is related to the establishment of the most important specialized institutions such as in Singapore or Hong Kong in the late seventies (De Speville, 2010: 47-70; Cupic C, 2013: 193-210). In addition to the above, which are certainly an example of a popular image successful, independent and multi-purpose anti-corruption agencies, there are many more anti-corruption bodies operating in different countries.

Considering the many anti-corruption institution around the world, as well as their various functions, it is difficult to identify all significant structural patterns. Such a process of development of anti-corruption institutions did not bypass our country and is directly connected to the process of political democratization and economic liberalization, as is the case in many parts of the world. Of course, we should also keep in mind the fact that the efforts are being made to build the rule of law and administrative management in post authoritative and post-conflict environments (as Serbia is) should be more expressed and more effective, because such political and economic transition give a fertile ground for corruption.[2] That actually means every new institution must be tailored to a specific national environment, considering different cultural, legal and many other circumstances. However, viewed from the organizational side, both the United Nations and the Council of Europe anti-corruption conventions have a significant role in creating and identifying the main models, which can then be described or analyzed in accordance with the its main functions.

Considering the multitude of anti-corruption institutions worldwide, their various functions and actual performance, it is difficult to identify all main functional and structural patterns. It is impossible to identify "best models" or blueprints for establishing anti-corruption institutions. Any new institution needs to be adjusted to the specific national context taking into account the varying cultural, legal and administrative circumstances. However, some trends can be established and main models identified. A comparative overview of different models of specialised institutions can be summarised and analysed according to their main functions, as follows (OECD, 2008: 11; Mitchell, Z et al. 2013: 3):

- Multi-purpose agencies with law enforcement powers and preventive functions;
- Law enforcement agencies, departments and/or units;
- Preventive, policy development and co-ordination institutions.

Multi-purpose agencies

This model represents the most complex organizational form of anti-corruption institutions, given integrated all key pillars both repression and prevention of corruption. Complexity of such form is reflected in that an organization can develop a policy to fight corruption, analysis of the situation in the field of fight of corruption, technical help in prevention, informing the public, monitoring, as well as the investigation of corrupt criminal offences.

2 More about corruption research in the Republic of Serbia see in publications: USAID Survey on citizens' perceptions of fighting corruption in Serbia, USAID, 2018. The publication is available at: http://www.mc.rs/upload/events/2018/decembar/CeSID_%20USAID_GAI_prezentacija_111218_SR.pdf. Petrus C. et al, *Corruption policy in Serbia - From black box to transparent policy making*, Wolf Legal Publishers,October 2012. Posted on the site The Anti-Corruption Council Republic of Serbia.

The most prominent example of such anti-corruption bodies are the Hong Kong Independent Commission against Corruption and Singapore Corrupt Practices Investigation Bureau. A number of other agencies (e.g. those in Lithuania, Latvia, New South Wales, Australia, Argentina, Korea and Ecuador) have adopted elements of the Hong Kong and Singapore strategies.

Law enforcement agencies

This organizational model is most often applied in practice and it could contains different forms of specialization, i.e. can be applied in bodies for the investigation of corruptive acts but also in the bodies of the public prosecutor's offices. Also, this model can have a combination of specialized investigation and prosecution authorities in one body.

This is, perhaps, the most common model applied in Europe. Examples of such models include Germany (Department of Internal Investigations), United Kingdom (Metropolitan Police/Anti-corruption Command), Romania (National Anti-Corruption Directorate), Hungary (Central Prosecutorial Investigation Office), Croatia (Office for the Prevention and Suppression of Corruption and Organised Crime), Belgium (Central Office for the Repression of Corruption), Spain (Special Prosecutors Office for the Repression of Economic Offences Related Corruption) etc. The most prominent example in Republic of Serbia of Law enforcement type institution is specialized organizational unit in the Ministry of Interior - Department for Corruption Suppression (OBPK).

Preventive, policy development and co-ordination institutions

Organizational form of these anti-corruption bodies is based on division on one or more anti-corruption prevention functions. They can be responsible for research in the phenomena of corruption; assessing the risk of corruption; monitoring and co-ordination of the implementation of the national and local anti-corruption strategies and action plans; reviewing and preparing relevant legislation; monitoring the conflict of interest rules and declaration of assets requirement for public officials; elaboration and implementation of codes of ethics; assisting in the anti-corruption training for officials; issuing guidance and providing advice on issues related to government ethics; facilitating international co-operation and co-operation with the civil society, and other matters.Examples of such institutions include the United States (Office of Government Ethics), France (Central Service for the Prevention of Corruption), Serbia(Anti-corruption Agency), Bulgaria (Commission for the Co-ordination of Activities for Combating Corruption), Albania (Anti-corruption Monitoring Group), Republic of Northern Macedonia (State Commission for Prevention of Corruption) etc.

ANTI-CORRUPTION INSTITUTIONS OF REPUBLIC OF SERBIA

Many countries within Europe apply the second of the OECD (2008) anti-corruption models: the law enforcement type institutions (LETI). These institutions apply different forms of specialization including detection, investigation and prosecution. Specializations can be utilized in separate bodies or combined within the one agency. The LETI model can also include other functions of prevention, co-ordination and research.

Looked up on pattern from main European countries Republic of Serbia in its first line in fighting against corruption strengthens the law enforcement type institutions. No wonder for these kind of organization considering the 2018 Corruption Perception Index (CPI), ranks the level of corruption within Serbia's public sector as 87 out of 180 countries, with a score of 39 out of 100 (Transparency International, 2018). Also, the report of a Group of countries against corruption (GRECO)- body of Council of Europe for 2015 and 2016 which concerns compliance in preventing corruption in relation to the deputies, judges and prosecutors, as the most sensitive branches of authorities, contains a conclusion that Republic of Serbia did not satisfactorily implemented or acted upon recommendations for preventing corruption (GRECO 2015; GRECO 2017). This result gives us the right to deem Serbia as country in which the level of corruption is high, needed more to strengthen the efforts for anti-corruption struggle. Surely, fight against corruption in Republic of Serbia is placement for other state institutions and organizations, as well. In order to present the institutional framework of anti-corruption institutions, we have created a table describing those belonging to the law enforcement type institutions, as same as, those classified in the group of Preventive, policy development and co-ordination institutions (see Table 1.).

Table 1. *Republic of Serbia Anti-corruption Organzations/Institutions*

Anti-corruption Agencies	**The OECD models**	**Function**	**Relevant legislation**	**Oversight**
The Anti-corruption Agency (ACAs)	Preventive, policy development and co-ordination institutions	Preventive functions, including integrity plans in public administration and control of financing of political parties	Law on The Anti-Corruption Agency	The Serbian National Assembly

The Anti-Corruption Council	Preventive, policy development and co-ordination institutions	Expert, advisory body of The Government with a mission to see all the aspects of anti-corruption activities and to make proposals for bringing regulations	Constitution of the Republic of Serbia	The Government of RS
The Prosecutor's Office: The Anti-corruption Departments The Prosecutor's Office for Organized Crime	Law enforcement type institutions	Identification, investigation and prosecution of corruption offences	Law on organization and jurisdiction of government authorities in suppression of organized crime, terrorism and corruption;	The Republic Public Prosecutor's Office
Department for Corruption Suppression (OBPK) (Criminal Investigation Directorate, Ministry of Interior)	Law enforcement type institutions	Police investigations of corruption offences	Law on organization and jurisdiction of government authorities in suppression of organized crime, terrorism and corruption; The Criminal Procedure Code;	Ministry of Interior
Service for Combating Organized Crime (SBPOK) – Department for High-Level Corruption (Ministry of Interior)	Law enforcement type institutions	Investigating and probing high-level corruption cases, i.e. corruption cases related to highest state officials	Law on organization and jurisdiction of government authorities in suppression of organized crime, terrorism and corruption; The Criminal Procedure Code;	Ministry of Interior

Figure 1 demonstrates that Serbia has an abundance of legislation that is employed by a significant number of anti-corruption agencies. In addition, the fallowing institutions have a significant anti-corruption function: Administration for the Prevention of Money Laundering,[3] Tax Administration (Tax police sector),[4]The Republic Commission for Protection of Right in the Public Procurement Procedure[5] and State Audit Institution (SAI)[6].

The bodies listed in Table 1. represents Republic of Serbia response to key international treaties that have been requested by the signatory to form a body or bodies that prevent corruption, or a body, bodies or persons specialised in combating corruption through law enforcement.

Republic of Serbia has ratified the United Nations (UN) Convention against Corruption in 2005, Council of Europe - Criminal Law Convention on Corruption in 2002, and the Council of Europe - Additional Protocol to the Criminal Law Convention on Corruption ratified in 2007.). This elements form an integral part of Serbia's anti-corruption framework.

Furthermore, we will present legal and institutional framework of the most significant representatives of the law enforcement type institutions with a special review on Department for Corruption Suppression (OBPK) which been created within the framework of Criminal Investigation Directorate in the Ministry of Interior. The Serbian story about the creation and the implementation of the national anti-corruption strategy could be interesting not only because it illustrates institutional and legislative peculiarities of the "transitional" period of the society, but also due to the fact that the Serbian state tries to combine different models of anti-corruption activities that come from both the West (the North American and the West European experience) and from the East (Hong Kong's anti-corruption practice).

Legal and Institutional Framework

The Department for Corruption Suppression (OBPK) established in 2018, is a special body within the Criminal Investigation Directorate in Ministry of Interior with a mandate to direct police investigations corruption cases. The criminal offences under the OBPK's jurisdiction are strictly enumerated by the Law on organization and jurisdiction of government authorities in suppression of organized crime, corruption and other severe criminal offences (ZONDO) which provisions went into effect on March 1, 2018. New and specialized anti-corruption body have been created by this law - The Anti-corruption Departments within the Prosecutor's Office. Although these both mentioned type of institutions do not have independent preventive function, detection and prosecution provides a strong deterrent against corruption, helping to reduce incentive to commit bribery. It is important to notice that the OBPK, by its leading role in fighting against corruption, also coordinates work of all remain organizational units within the Ministry of Interior which are in charge for investigating criminal acts against economy, finance and official duties.

Legal basis for forming the law enforcement type institutions were found in the third part of ZONDO where organization and jurisdiction of state authorities in combating corruption are defined. In article 13.are defined next institutions competent for suppression of corruption:

1. Special departments of the Higher public prosecutor offices for the suppression of corruption);

2. Ministry of Interior – a specialized unit responsible for combating corruption;

3. Special departments of the Higher courts for the suppression of corruption);

According to the ZONDO, OBPK is a specialised unit established for the whole territory of Serbia. The OBPK became nominally operational in March 2018, when ten sections formed by the act on systematization, nine operational sections and one Section for coordination. The substantive jurisdiction of the OBPK is limited to the offences enumerated in the ZONDO, respectively the area of corruption and corruption related offences. The public prosecutor offices also has detached regional offices in four major Higher public prosecutor offices throughout Serbia, namely Beograd, Novi Sad, Niš and Kraljevo.

The new law also envisages modern forms of cooperation between public prosecutor office and the police. Ratio legis for their implementation into the law is growing complexity of criminality, especially in the area of corruption and financial crime, so it is necessary to find adequate mechanisms for their suppression. These mechanisms are: financial forensic service, liaison officers and impact teams (Krstic, 2017: 78).

CONCLUSION

Selection of organizational structure and operational models of specialized anti-corruption institutions, first of all low enforcement institutions, represent strategic activity, at the same time tells us about the importance of organizational structure in the operations of such institutions. Prevalence and the number of corruptive offences is the evidence that the prevalence of anti-corruption bodies is insufficient to reduce corruption. Needless to say, an organisation, no matter how well structured and equipped, cannot fight corruption on its own. Apart from a dedicated and professional agency like the Law enforcement agencies, there are several important factors without which the battle against corruption could not be won. Primarily, this includes independence and adequate training and resources.

Comparative analysis of organizational structures of anti-corruption institutions in developed countries in which are implemented the key elements of anti-corruption functions (prevention and education, so repression as well) is related to country's ranking results according to the leading corruption perception researches. The examples of Singapore, Hong Kong and Australia best showing mentioned above, having in mind the corruption perception index of these countries and their leading roles with low level of corruption in them. The reasons for this are most often linked to respecting the basic principles of anti-corruption policy, and above all, principle of transparency, specialization, training and adequate leverage of power which could provide strong enough both preventive and repressive influence. The approach applied by Republic of Serbia in the matter of anti-corruption struggle raises a question of whether this is the most successful way to achieve the stated objectives. The legislator put emphasis on amendments to the law in the aim of incrimination, strengthening the penal policy also, but the implementation of the action plan for the fight against corruption and adoption of an anti-corruption strategy were not at the center of interest.

There is no single solution in fighting corruption. Every country has to examine its unique circumstances and come up with a comprehensive strategy, which should embrace the three pronged approach deterrence, prevention and education. Ideally there should be a dedicated and independent anti-corruption agency tasked to co-ordinate and implement such strategy, and to mobilize support from the community. The Hong Kong experience offers hope to countries which have a serious corruption problem which appears to be insurmountable. Hong Kong's experience proved that given a top political will, a dedicated anti-corruption agency and a correct strategy, even the most corrupt place like Hong Kong can be transformed into a clean society.

REFERENCES

1. Čedomir, Č, (2013), Models for the Systemic Fight Against Corruption, The Yearbook of the Faculty of Political Science, University of Belgrade, Vol. 7, No 9, p. 193-210.
2. Council of Europe - Group of States against Corruption GRECO (2017), *Compliance report Serbia – Fourth evaluation round (Corruption prevention in respect of members of parliament, judges and prosecutors)*, GrecoRC4(2017)8, Strasbourg;
3. Council of Europe - Group of States against Corruption GRECO (2015), *Compliance report Serbia – Fourth evaluation round (Corruption prevention in respect of members of parliament, judges and prosecutors)*, Greco Eval IV Rep (2015) 8E, Strasbourg;
4. Council of Europe, *Additional Protocol to the Criminal Law Convention on Corruption*, European Treaty Series- No. 191, entered into force on 1 February 2005.
5. Council of Europe, *Criminal Law Convention on Corruption*, European Treaty Series- No. 173, adopted on 27 January 1999, entered into force on 1 July 2002.
6. De Speville, B (2010) Anticorruption Commissions: The „Hong Kong Model" Revisited, *Asia-Pacific Review, 17(1), 47-70.*
7. Doig, Alan (2004), "A Good Idea Gone Wrong? Anti-Corruption Commissions in the Twenty First Century", EGPA 2004 Annual Conference, Ljubljana
8. Krstić, G. (2017), *Specialization of state autorities in combating organized crime, terrorism and corruption with special impact in relationship between prosecutors office and police*, NBP – Journal of Criminalistics and Law, 22 (3), pp. 67-88.

9. Law on organization and jurisdiction of government authorities in suppression of organized crime, terrorism and corruption (Official Gazette of RS, No. 94/2016 and 87/2018- separate Law);

10. Law on The Anti-Corruption Agency (Official Gazette of RS, no. 97/08, 53/10);

11. Mitchell, Z. et al. (2013), *A Comparative Analysis of the OECD Anti-Corruption Models (Asia & Europe) And Australia's Existing Anti-Corruption Platform*, International Journal of Business and Commerce, Vol. 4, No.03, pp. 01-23.

12. Organisation for Economic Co-operation and Development (OECD Publications), *Specialised Anti-Corruption Institutions: Review of Models*, France, 2008.

13. Petrus C. et al, *Corruption policy in Serbia - From black box to transparent policy making*, Wolf Legal Publishers,October 2012.

14. The Criminal Procedure Code (Official Gazette of RS, no 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 and 55/2014);

15. The Geneva Centre for the Democratic Control of Armed Forces – DCAF (2012), *Toolkit on Police Integrity*, Switzerland (Valeur, Slovak Republic).

16. Transparency International (2018), *Corruption Perception Index 2018*. Available: www.transparency.org/cpi2018#downloads

17. UN General Assembly (2003),*United Nations Convention Against Corruption*, adopted 31 October 2003 by Resolution 58/4 (A/58/422).

18. USAID, *Survey on citizens' perceptions of fighting corruption in Serbia*, USAID, 2018.