

ESTABLISHMENT AND FUNCTIONING OF THE ANTI-CORRUPTION PREVENTION BODY (UNCAC, ARTICLE 6)– THE CASE OF SLOVENIA

I. Introduction

Republic of Slovenia is one of newly established countries in Central Europe that up until recently fought against corruption in traditional ways: use of police, prosecution and judiciary. There was nothing to be even heard about prevention methods, especially systematic prevention, even though national prevention strategies were being adopted relating to various less important fields. Only after the Group of States against Corruption – GRECO Report in December 2000 a few steps towards this direction were made by recommending Slovenia adoption of National Anti Corruption Strategy and establishment of a body that would be in charge of its implementation. As a result, the Office of the Government of the Republic of Slovenia for Prevention of Corruption was established in 2001, which two primary tasks were preparation of the key regulation on prevention of corruption and preparation of the national anti corruption strategy. Both documents were prepared by the Office's experts by 2003, when difficult negotiations with politicians began in order to adopt these two documents in the National Parliament. While preparing these two documents, Slovenian experts took into consideration negotiations on the content of future global anticorruption convention in which they were actively involved, and adapted their recommendations to solutions that seemed the best and most efficient during negotiations in Vienna.

II. Establishment of independent Commission for the Prevention of Corruption

Republic of Slovenia adopted Prevention of Corruption Act in January 2004, which established independent and autonomous state body – Commission for the Prevention of Corruption (hereinafter: Commission).

The Commission is composed in way that it represents all three branches of power. Its 5 members are appointed by the National Assembly of the Republic of Slovenia: the chairman and deputy chairman are proposed for appointment by the President of the Republic as the representatives of all Slovenian citizens, while the Judicial Council, the Commission of the National Assembly of the Republic of Slovenia responsible for mandates and elections and

the Government of the Republic of Slovenia propose one member each. It is not mandatory that the representatives of all branches of the government are employed in those branches; they can be representatives from others.

The function of a Commission's member is not compatible with an office in a national body, local community body, political party or trade union or with work in a national body, local community body or holder of public authorisations. Their term in office is six years, without option of re-appointment, while prior dismissal can only be done due to specified reasons that imply to Slovenian judges as well¹. The Commission operates as a collegial body, which means that its members adopt decisions by the majority of votes of all members, thus at least three votes. Commission is independent in its use of budget, and it is subordinated to the Parliamentary Commission to which it reports every three months.

Commission has various tasks: supervision of the financial situation of functionaries, prevention of the conflicts of interest, increase of the integrity in public and private sector, educating on prevention of corruption, preparation of the general texts and possible amendments to the national anticorruption strategy, and is responsible for its implementation. In other words, Commission for prevention of corruption is a body that entirely fulfils requirements of the Article 6 of UNCAC. As such it represents a model for many countries and continues to be a subject of study by its experts².

III. Resolution on the Prevention of Corruption in the Republic of Slovenia

Resolution on the Prevention of Corruption in the Republic of Slovenia is the title of national anticorruption strategy that Commission proposed to the Parliament for its adoption, which was indeed adopted without any major opposition in June 2004. A content of the document is following: introduction, definition of corruption, principles of the Resolution, objectives of the Resolution, types and extent of corruption in the Republic of Slovenia, preventing and combating of corruption in the Republic of Slovenia (this chapter represents 172 measures that are to be implemented in following areas: politics, public administration, law

¹ If they themselves require, if they are finally convicted of a criminal offence prosecuted *ex officio*, if they perform an activity or hold an office which is not compatible with the office of the member of Commission, due to permanent loss of capacity to hold the office, if they violate the Constitution or the law while holding the office.

² Macedonia, Serbia, Kosovo, Bosnia and Herzegovina, Moldavia, Kirgizia, Ukraine, etc.

enforcement and judicial bodies, economics, private sector, non-governmental organisations, media, and general public), international anticorruption cooperation, and implementation of the Resolution. Therefore, Slovenia created national anticorruption strategy anticipated by the Article 5 of UNCAC. Furthermore, this document was also analysed many times by countries that are only now preparing it.

The strategy anticipates preparation of the adoption of a special Action plan for its implementation, which is to define guidelines for sector based anticorruption programs, clear objectives for individual measures, their parties responsible for its implementation, the methods of implementation, priorities and deadlines for their implementation, expected costs, risk factors and success criteria. Commission adopted this Action plan in February 2005. The parties responsible for measures to prevent and combat corruption in Slovenia must report on the implementation to the Commission every 12 months. Commission compiles a report on the implementation of the Resolution based on the receipt of reports from responsible parties and together with the assessment of the implementation and proposals for further measures, and if necessary, proposals on the accountability procedures with regards to not implementing or poor implementation of the Resolution within state bodies submits it to the National Assembly. The report is published in full, following its adoption by the National Assembly. Commission includes the report on the implementation of national anticorruption strategy in its general yearly report for the Parliament, which is published following its adoption by the Commission.

IV. Definition of an independent body for prevention of corruption

Definition of an independent body for prevention of corruption is not merely formal, meaning necessity for autonomous position within the state bodies' structure. It has also contextual meaning – independence of such body must originate from its tasks in implementing national anticorruption strategy as well. There is no social aspect of life that is immune to corruption, thus, every national anticorruption strategy must include all social areas or, in other words, it must include all branches of government. Only uniform and coordinated implementation on the strategy in all sectors can assure improvement in fight against corruption. Moreover, this means that a body specialised for fighting corruption cannot be part of any governmental branch. If it is to be, then it would face following problems: within its branch of government it would be dependent on its top level, it could not perform independently and unimpeded its

most sensitive tasks, and it could not interfere in other two branches because it would violate the principle of division of powers foreseen in many Constitutions. Therefore, it is essential that such body is independent and autonomous.

V. Conclusion

It is first and foremost a subject of a political will what type of body would certain country have, what its position and competences would be, what resources would devote to it to be able to fight corruption. Only adoption of rules and formal establishment of such body cannot bring any changes in reality. Numerous countries that adopted UNCAC will have to deal with the question of where and how to place such body anticipated by the Article 6, and there are probably few of those countries that will not be able or will not even approach to this matter seriously enough. Disturbing fact is that among those are also countries, which serve as role models in assuring its integrity; however, while it remains primarily dependent on political will, it will not bring any changes. It will be the same in those countries that already have such bodies required by the Article 6 of UNCAC, where the politics due to its fear that those bodies would work seriously and minimise possibilities for abuses at the top levels, breaks them down, hoping that it would pass without any notice. Perhaps this would be a perfect rationale for hastening with monitoring mechanisms of UNCAC implementation.

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