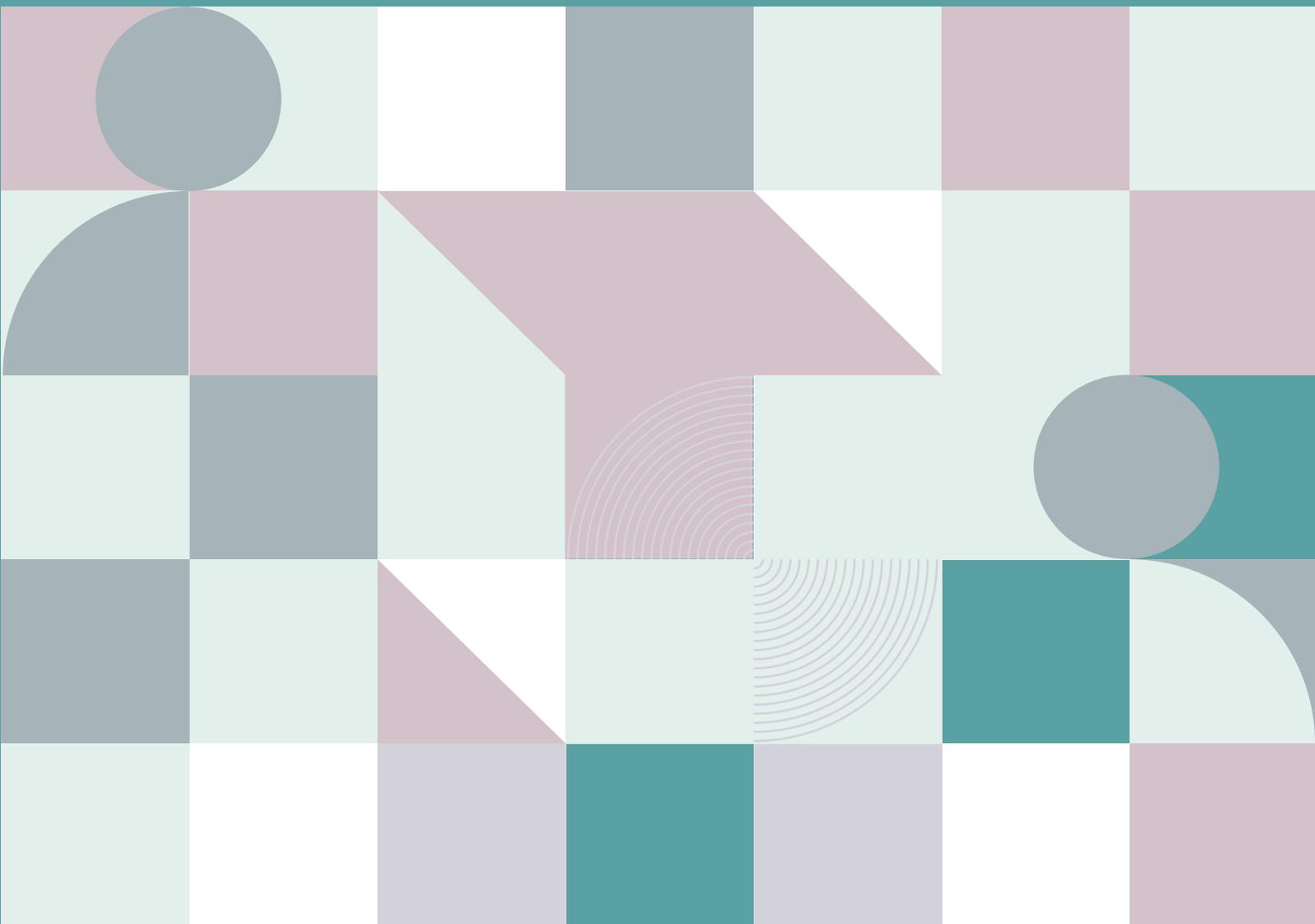


SCPC'S ACTIONS FOR PUBLIC SECTOR EMPLOYMENT: INDEFINITE ACTION WITH UNCERTAIN OUTCOME

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Introduction

This brief thematic analysis complements the periodic analyses for improving the efficiency of the work of the State Commission for Prevention of Corruption (hereinafter SCPC or the State Commission).¹ This additional report refers to the decisions, that is the work of the SCPC between January 1 and June 30, 2020. The purpose of this analysis is to review the workload of the SCPC in the area of employment, the content of these cases, the way they are processed, the course of the procedure related to these cases and the decisions made.

This analysis will help us delve deeper in the topic of employment by analyzing the actions of the SCPC. This issue is of special interest bearing in mind that public sector employment has been a horizontal issue in all Anti-Corruption Programs since 2003, which had a lot of planned, but not fully implemented activities.

The text also contains recommendations on how the State Commission's efficiency could be improved, in general and within this area, but also on how the SCPC could improve its own efficiency and influence in terms of improving the situation and reducing the employment-related risk of corruption.

Description of the issue

Today, 17 years after the adoption of the first State Program in June 2003 and the new National Strategy for Fight Against Corruption and Conflict of Interest 2020-2024, it has been determined once again that the employment-related risk of corruption is very high, which means that systemic solutions for its

reduction/removal need to be devised. Since public sector employment is identified as a process most exposed to the risk of corruption, and it manifests in the same manner in all sectors/relevant spheres of the society, it is addressed separately in Chapter 4 of the Strategy.

¹ Martina Ilievska and Misha Popovic. "Report on the work of the State Commission for Prevention of Corruption: January-June 2020". 2020. Available at: <https://bit.ly/3bpgvd3>

² <https://www.dskk.mk/index.php?id=118&L=536>

³ Ibid p. 7

⁴ Official Journal of the Republic of Macedonia no. 12 of January 19, 2019; Law on Prevention of Corruption and Conflict of Interest

⁵ Article 41 (1)

Legal competence of the SCPC

This issue is also regulated separately in the Law on Prevention of Corruption and Conflict of Interest⁴ where a separate chapter regulates the prohibition of “Influence during selection, appointment and dismissal of managerial positions”. A political party or a person that acts on behalf of a political party may not exert influence during employment, assignment and termination of work of an official.⁵ The State Commission may ask the competent authority to reassess or nullify employment decisions, and the institution is required to take action on the commission’s request. Thus, while carrying out its competences, the State Commission has access to databases hosted by other bodies and institutions, including that of the Employment Agency.

The law foresees other measures related to corruptive practices and conflict of interest in

regards to employment or similar benefits. Thus, the law foresees a three-year period in which officials may not be employed or acquire ownership in companies they supervised. At the same time, a two-year period is prescribed for work or representation of private sector entities with which the official has established business relationships.

All of these issues are under the competence of the State Commission. One wonders to what extent and whether these issues are or should previously be regulated by other laws and legal acts so that the SCPC can act on them and make decisions based on the law. This issue will also be tackled in this analysis, especially from the point of view of SIPC's decisions.

Decisions made and the efficiency and effectiveness of the SCPC

What kind of decisions has the SCPC made?

Out of the 196 cases the SCPC took action on in the period between January and June 2020, 89 were employment-related. Out of these, the conclusion in 36 cases was that there is no corruption and conflict of interest, there was insufficient information for taking action in 16 complaints, for a total of 8 cases it concluded that it is not competent, 10 cases were referred to or resolved by other institutions and 2 cases were subject to the statute of limitation. Further procedures were taken for 11 of the cases, a misdemeanor procedure was initiated in 2 cases, and in 4 cases the conflict of interest was removed.

The cases which the State Commission deemed free of corruption and conflict of interest can also be considered resolved, but a more detailed analysis of the content of these cases is needed to determine the extent and the type of effect achieved with these actions in the implementation of the competences of the State Commission.

According to the data analyzed for the efficiency of the actions taken, of all the cases it took action on, the State Commission removed the conflict of interest only in four. The outcome of the misdemeanor procedures is yet to be seen.

Duration of procedures

An element that must be encapsulated in the analysis of the work of the State Commission, and consequently in the employment-related procedures, is by all means the timeframe in which it took action on in these cases. According to statistical data on the number of days that elapsed from the moment the case was recorded to the moment it was resolved, the State Commission took an average of 250 days per each of these cases. There are cases in which the procedure took more than 400 days, and only a single case was resolved in 59 days.

An analysis of three cases that the SCPC took action on in the area of employment

Case 1⁶: Session 31, June 12 2020, complaint no. 12-1588/2 **is rejected** since, in the view of the SCPC, this action is considered mobbing, and the decision for transfer was made in January, that is ahead of the elections, and in regards to the same case, the Commission for deciding on objections of administrative workers acted upon an appeal and decided that the objection is unfounded. The procedure took 98 days.

Case 2⁷: Session 31, June 12 2020, complaint no. 12-1263/3, **the procedure is terminated** since there are no elements for competent action of the SCPC. The complaint was lodged on November 6, 2019, by the mayor of the municipality of Krivogashtani against an acting director of a public utility company,

who was already dismissed, for illegal transfer of an employee. The SCPC acted on this complaint for more than seven months, in the course of which it implemented a procedure for establishing the facts and for assessing the justification for the allegations. In order to assess the allegations, **a number of laws was consulted** that determines the subject matter the procedure refers to and **an inspection of the decisions that were made previously was carried out**. The procedure was terminated because the SCPC found that the applicant failed to confirm the suspicions of corruptive behavior. However, at the same time it determined that the officials had an opportunity to report the violations during the transfer to the inspection service, that is it found that **not all of the actions were taken**.

Case no. 3⁸: Session 30 - first extension held on May 18, 2020. The Commission took action on case no. 09-1071/12. The case in question is related to the Airports of the Republic of North Macedonia shareholding company. The case was opened on **SIPC's own initiative** on allegation of influence in the course of employment of a person close to an official. The case was launched on March 6, 2019, and the SCPC procedure lasted one year and two months, or 442 days, more specifically. The procedure was initiated in line to Article 32 paragraph 1, that is on SIPC's own initiative. The procedure was **stopped, and the case was archived** by the decision made on May 18 2020.

⁶ https://www.dsk.mk/fileadmin/user_upload/2020/odluki/2020-1588-2-Odluka.pdf

⁷ https://www.dsk.mk/fileadmin/user_upload/2020/odluki/2020-1263-3.pdf

⁸ https://www.dsk.mk/fileadmin/user_upload/2020/odluki/09-1071.pdf

In this case, the SCPC **found a violation** of Article 63 paragraph 1, "Using discretionary powers" and Article 67 paragraph 1 of the LPCCI, "Misuse while performing activities of public interest", which states that "a person performing activities of public interest may not misuse their position for personal advantage". Despite the fact that it found violations of these provisions of the LPCCI, the State Commission terminated this case because it was not competent to take further action on the case.

This case emphasizes the following question: how are the procedures on which the SCPC has competence, not just employment-related, governed by other laws, and do they ensure throughput in order to effectively resolve procedures for any shortcomings and illicit activities found in the behavior of certain officials. Furthermore, this triggers the dilemma of sanctioning, i.e. how to ensure that an appropriate sanction would be delivered for any illegal activity that was found and proven on the basis of evidence.

In this specific case, the SCPC accepted the view of the supervisory board of the Airports shareholding company that the latter is not competent to take action on ascertaining responsibility of this kind. Thus, the case returned to the SCPC, which concluded that the SCPC does not have any legal foundation for further action.

Instead of registering the case **as a case in which a violation of discretionary powers was**

confirmed, the case was filed as resolved and archived and no further action is possible.

In the specific case, it is necessary to underline that:

Во конкретниот случај, потребно е да се нагласи дека:

1. In this way, the SCPC misses the opportunity to valorize its work and seek additional systemic solutions to these issues.
2. In addition, the SCPC had an opportunity to require from the Airports shareholding company to govern these issues and to provide resolution to such issues in the future by means of internal acts.
3. The analysis of this case could be published in its entirety in order to share the experience and create a legal practice in terms of misuse of discretionary powers.
4. The SCPC could in that sense also carry out a regulatory corruption risk analysis, and, by virtue of a formal act issued by the government and the line ministry, to ask for amendments to the relevant laws and other legal acts.
5. By all means, the SCPC could also have pointed out the potential influence peddling.

Conclusions and recommendations

The issue of employment-related corruption risk, noted in the first State Anti-Corruption Program of 2003, has persisted for many years, and it has again been integrated as a priority – horizontal area in the most recent National Anti-Corruption Strategy. In order to tackle the issue, systemic measures and a strong political will are needed.

The State Commission for Prevention of Corruption at the present invests a lot of resources and time in cases related to public employment. On average, 250 days for establishing the facts were spent on each of these cases. It is evident that the length of the procedures has an adverse effect on the work of the Commission and takes up a considerable chunk of the time that may be allocated to the other competences of the Commission.

The competences of the State Commission integrated in the Anti-corruption Law are numerous and include the possibility for an anti-corruption analysis of the laws and for proposing new legislation, but **it should reinforce its role in the supervision of the implementation of the laws in this area.**

The SCPC should reinforce its capacities to use all its potential to valorize its work and seek additional systemic solutions to these issues. **In order to**

achieve efficient changes, it is essential that the Commission takes action on individual cases and that it uses specific cases as a basis for pointing to changes in the procedures or laws.

The work of the SCPC is of key importance for building the legal practice of the work of the institutions, but also of the investigative bodies and courts. Analyses of individual cases, which usually trigger the so-called “administrative investigation”, could be published in their entirety in order to share the experience and to seek solutions right away, for example in situations in which discretionary powers are exceeded.

The competence of the SCPC to analyze the corruption risk in the regulation is key in this instance, as well, and provides an opportunity for the SCPC, using a formal act, based on a specific case, to require from the government and the line ministry to implement amendments to the relevant laws and the other legal acts.

This by all means requires the capacity and readiness of the other entities, not just in the executive government, but in the NGO sector, as well, which can bridge some of these gaps through its projects.

