

The London School of Economics and Political Science

Explaining Enforcement Patterns of Anticorruption
Agencies: Comparative Analysis of Five Serbian, Croatian
and Macedonian Anticorruption Agencies

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A thesis submitted to the Department of Government of the London School of
Economics for the degree of Doctor of Philosophy, London, April 2016

Declaration

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Abstract

Anticorruption agencies (ACAs) have drawn scholarly attention in recent times. While authors focused predominately on studying ACAs' performance and their contribution to the reduction of corruption, ACAs' enforcement – as a process that precedes policy outcome - has remained understudied so far. This thesis seeks to contribute to filling this gap, by exploring the enforcement choices of five ACAs from three Western Balkans' countries – Serbia, Macedonia, and Croatia, in the period 2001-2012.

The thesis utilises three theoretical accounts in order to explore the determinants of the enforcement of the five ACAs' enforcement. These are organisational, temporal, and leadership based accounts. Organisational accounts include de-jure independence and agency resources as key factors, temporal accounts include life-cycle and political-cycle as determinants of agency behaviour and, finally, leadership-based accounts highlight the role of leaders, i.e. human agency, in shaping agency enforcement. While failing to lend support for the organisational and temporal accounts, the empirical analysis offers evidence in support of the leadership based account. Overriding the organisational and temporal boundaries and constraints, the 'personal' (human) factor turns out to have been the key driver of the analysed ACAs' enforcement.

The thesis also sets out to investigate whether the ACA model has implications for ACAs' enforcement. The first – the preventive ACA model - is argued to be able to exhibit the harshest forms of enforcement even if the organisational factors are weak. The other - the suppressive ACA model - is hypothesised to be able to exert the harshest forms of enforcement only under strong organisational factors. The empirical analysis yields support to this hypothesis. It is shown in the thesis that the two ACA models provide for different reputational opportunities and risks, factors that crucially shape the enforcement choices.

ACKNOWLEDGMENTS

This thesis would not have been possible without the generous contribution of many people.

I am deeply grateful to my supervisor Martin Lodge (LSE) and adviser Christel Koop (King's College London) for their support and patience throughout the studies. Working with Martin and Christel has been a privilege, as one can learn a lot from what they teach and from what they do as scholars. Their guidance, intellectual rigour, and research enthusiasm, spurred me to study regulation and public policy with ever increasing zeal.

I am also grateful to the members of my dissertation committee, Colin Provost (UCL) and Jan Meyer-Sahling (University of Nottingham), for their time and effort to read through the thesis and provide constructive feedback.

The number of clever and helpful people - from the Government Department and other LSE departments - whose presence has enriched my studies is so vast that I will be able to mention only some of them. I thank Uglješa Grušić, Stefan Paduraru, and Daniel Wang for the stimulating discussions and for all the fun we have had ever since the days of master studies. I consider myself truly blessed to have had people with such human and academic qualities for friends and fellows. My thanks also goes to Milan Dinić and Danyar Nurmakhatov, people who I wish could have spent more than one year at LSE. Special appreciation goes to the fellows from the GV401 research room - Marta Wojciechowska, Robert van Geffen, Ellie Knot, Kenneth Bunker, Gisela Calderon-Gongora, Ed Poole, Pon Souvannaseng, Randi Solhjell and many others, who I have shared with the suffering and joy of PhD studies. I am also grateful to Maja Kluger Rasmussen, Jürgen Braunstein, and Flavia Donadelli, for their collegial support during the teaching on the undergraduate course *Politics of Economic Policy*.

There are many fellow academics outside LSE whose friendship and support have been precious over the course of the research days. I would like to particularly mention Branislav Radeljić, Radman Šelmić, Marija Zurnić, and Marko Milanović.

This research would not have been possible without the help of the interviewees, who found the time to talk about their experience and role in the anticorruption policies and anticorruption agencies studied in this thesis. I am very grateful for their valuable contribution. I am also grateful to the donors who provided financial support for the PhD studies.

Marko Vojinović, my dear friend from Belgrade, and Mile Prodanović, my cousin from Zürich, were there to help out when it was most difficult and when it was quite uncertain whether the research project will reach its end one day. Thanks, Marko and Mile, we've pulled it off!

I dedicate this thesis to those who made supreme sacrifices because of my PhD studies: to my wife Ivana and my parents, Stevo and Živojka. It is their tremendous love and support that kept me motivated to persevere despite all the difficulties that such an endeavour carries.

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LIST OF ABBREVIATIONS

ACA	Anticorruption Agency (generic term)
ACA	Anti-corruption Agency (Serbia)
CARDS	Community Assistance for Reconstruction, Development and Stabilisation
CC	Criminal Code (Croatia)
CEE	Central and Eastern Europe
CINS	Center for Investigative Journalism Serbia
CPA	Criminal Procedure Act (Croatia)
CPIB	Corrupt Practices Investigation Bureau (Singapore)
DOS	Democratic Opposition of Serbia (Serbia)
DS	Democratic Party (Serbia)
DSS	Democratic Party of Serbia (Serbia)
EU	European Union
FBI	Federal Bureau of Investigation
GRECO	Group of States against Corruption
HDZ	Croatian Democratic Union (Croatia)
ICAC	Independent Commission against Corruption (Hong Kong)
KNAB	Corruption Prevention and Combating Bureau (Latvia)
LAA	Law on Anti-Corruption Agency (Serbia)
LBSCOC	Law on Bureau for Suppression of Corruption and Organised Crime (Cro)
LFPA	Law on Financing Political Activities (Serbia)
LL	Law on Lobbying (Macedonia)
LPC	Law on Prevention of Corruption (Macedonia)
LPCI	Law on Prevention of Conflict of Interest (Macedonia)

LPCIDPP	Law on Prevention of Conflict of Interest in Discharge of Public Post (Ser)
LPMLFT	Law on Prevention of Money Laundering and Financing of Terrorism (Cro)
LSA	Law on State Attorney (Croatia)
OCCRP	Organised Crime and Corruption Reporting Project
OECD	Organisation for Economic Co-operation and Development
OSCE	Organisation for Security and Co-operation in Europe
PACO	Programme Against Corruption and Organised Crime
PNUSKOK	National Police Bureau for Combating Corruption and Organised Crime
SAA	Stabilisation and Association Agreement
SAO	State Attorney Office (Croatia)
SCPC	State Commission for Prevention of Corruption (Macedonia)
SDP	Social Democratic Party (Croatia)
SDSM	Social Democratic Union of Macedonia (Macedonia)
SEE	South-East Europe
STT	Special Investigation Service (Lithuania)
TAIEX	Technical Assistance and Information Exchange
UNCAC	United Nations Convention against Corruption
UNDP	United Nations Development Program
USAID	United States Agency for International Development
USKOK	Bureau for Suppression of Organised Crime and Corruption (Croatia)
VMRO-DPNE	Macedonian Revolutionary Organisation – Democratic Party for Macedonian National Unity (Macedonia)

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CHAPTER 1 Introduction

This thesis investigates the impact of institutional arrangements on enforcement patterns among anticorruption agencies (ACAs). It does so by looking at five ACAs, from three countries from the Western Balkans – Serbia, Macedonia¹, and Croatia. This thesis analyses their enforcement in the period from 2001 to 2012.

ACAs are specialised independent agencies, tasked with tackling corruption. Driven by the remarkable success of two pioneers, the Corrupt Practices Investigation Bureau from Singapore (CPIB; set up in 1952) and the Hong Kong Independent Commission Against Corruption (ICAC; set up in 1974), international organisations and the anticorruption industry advocated, in the 1990s and 2000s, the adoption of ACAs as a response to the growing number of political scandals (de Sousa 2010: 6-10). As a result, ACAs have spread widely since. Three decades ago, there were hardly more than 20 of such agencies, today we have more than 130 of ACAs around the world².

As an increasingly prominent institutional species and, as an inevitable actor in anticorruption policies in a large part of the world, ACAs have drawn the attention of professional and scholarly communities. That extant empirical analysis focuses primarily on the question of whether ACAs have proved instrumental in curbing corruption. A predominant concern has been what factors add to and detract from ACAs' success (Pope and Vogl 2000; Meagher 2004; Heilbrunn 2004; Doig *et al.* 2007; Quah 2010).

However, remarkably little is known about the process of ACAs' enforcement. This is surprising given that enforcement constitutes a key aspect of institutional life. The lack of research on ACA enforcement is additionally puzzling as the ACA literature has already identified a variety of

¹ While 'FYR [Former Yugoslav Republic of] Macedonia' is the official name, it is widely referred to as 'Macedonia'.

² For full list of ACAs, see the website of the International Association of Anti-Corruption Authorities: <http://www.iaaca.org/AntiCorruptionAuthorities/ByCountriesandRegions> [Accessed: 22 September 2015]

factors that are said to influence ACAs' performance, but still these factors have not been examined in the role of determinants of ACA enforcement. Should not the enforcement of ACAs, as a process that precedes and leads to specific outcomes in anticorruption policy, be subjected to greater empirical scrutiny?

The above is a puzzle that inspires the first research question: Why ACAs enforce their mandate the way they do and what factors shape their enforcement trajectories? In addressing this question, the thesis will explore the role of three sorts of factors, which are subsumed under three approaches: (i) 'organisational factors matter' - pointing to de-jure independence and resources as key determinants; (ii) 'timing matters' – focusing on the impact of life-cycle and political-cycle; and (iii) 'leadership matters' – highlighting the role of human agency and ACA leaders as crucial drivers of ACA enforcement. These factors have all been identified across the ACA literature as pertinent for ACA performance. They also feature in earlier theories from the organisational, agency, and regulation scholarship.

There is another related puzzle concerning ACA enforcement. The literature has highlighted as important the question of organisational models of ACAs (Heilbrunn 2004; Klemenčić and Stusek 2008; Dionisie and Checchi 2008; OECD 2013; Kuris 2015a). ACAs are regarded as one institutional species, but they come in a variety of organisational settings. Depending on constellation of powers and competencies, ACAs can be fit into two major models: (i) preventive, and (ii) suppressive. The former pursues preventive tasks and does not have investigative and prosecutorial powers. Suppressive ACAs, on the other hand, do investigate corruption and command prosecutorial powers. Previous debates focused on which model is more suitable for curbing corruption (Dionisie and Checchi 2008; Kuris 2015a), but little emphasis has been put on whether the organisational model, as a structural arrangement, affects the way ACAs enforce their mandate in practice. The underlying mechanisms of these two models' enforcement are particularly under-researched.

This leads to the following question: Does organisational model shape ACA enforcement and does it mediate the role of the other determinants of enforcement? This thesis links the question of organisational model to the Wilson's argument about agencies' aspiration to operate in a turf they have control over (1989: 179-196) and the reputation-based argument of agency behaviour (Carpenter 2010). It argues that the two models provide for substantively different constellations of reputational opportunities for ACAs.

Preventive ACAs, it is argued here, enjoy greater opportunities for reputational gains, while facing lower risk of reputational losses. This is due to the fact that preventive ACAs can achieve reputational gains through harsh enforcement, whereby the blame for policy failures can easily be shifted to the traditional suppressive institutions such as the police, prosecutor, and judiciary, who bear the accountability for the turf of prosecutions. Suppressive ACAs, on the other hand, find it more difficult to achieve a policy success because they face tighter legal constraints over the use of powers, encounter coordination problems with the partner institutions during investigations, and are more susceptible to political pushback (Kuris 2015a: 129). These are all factors that hamper policy success. At the same time, suppressive ACAs cannot shift the blame for policy failure as they are considered the most responsible anticorruption actor holding the central position in the prosecutorial procedure.

The thesis expects that these two different reputational constellations will affect how particularly harsh forms of enforcement can be achieved across the two ACA models. Harsh enforcement is associated with higher reputational risks because this sort of enforcement makes a policy failure more visible. The expectation therefore is that ACAs of the suppressive model will opt for a harsher form of enforcement only if the key factors are such configured that they make a success more likely. This means that the organisational factors, for instance, need to feature 'high values', that is that the de-jure independence is high and that the resources are abundant. A second thesis' research question therefore is: Do the two respective

ACA models pursue harsh enforcement under different conditions, that is under different constellations of the determinants?

The empirical analysis will yield several important answers as to the two thesis' research questions. First, it will show that the impact and direction of the individual determinants of ACA enforcement is more diverse and multifaceted than the ACA literature assumes. More specifically, it will show that the key explanatory factor for the ACAs' enforcement is leadership, whereas the organisational and temporal factors are unable to explain the observed enforcement patterns. Secondly, the empirical analysis will demonstrate the plausibility of the reputation-based approach in analysis of the impact of organisational model on ACA enforcement. It will demonstrate that preventive ACAs are able to pursue harsh forms of enforcement in absence of 'strong' organisational factors (i.e. under low de-jure independence and/or poor resources). The suppressive ACA model, however, will be shown to entail strong organisational factors as necessary preconditions for harsh enforcement.

The thesis offers contributions to the following literatures – (i) the literature on agencies; (ii) the literature on ACAs, (iii) the literature on public sector reforms in transitional contexts and more specifically in the Western Balkans, and (iv) the literature on regulatory enforcement. The following describes the contribution to each of the four literatures.

Contribution to the study of agencies

A growing literature developed in the last couple of decades to examine so called semi-independent agencies, which by definition, operate outside the governmental hierarchy (Pollitt and Talbot 2004). Following the launch of worldwide privatisation and liberalisation in the 1980s, such agencies have spread widely as part of a broader movement called New Public Management (Pollitt and Bouckaert 2011). Semi-independent agencies include, among others,

the group of regulatory agencies which have proliferated with the rise of the regulatory state (Majone 1994, 1997).

A large portion of the literature on semi-independent agencies focuses on the phenomenon of delegation. This includes theoretical debates about rationales behind delegation (Thatcher and Sweet 2002), questions of control (McCubbins *et al.* 1987), normative questions about legitimacy and accountability (Majone 1994; 1997; Christensen and Lægreid 2007), studies of determinants of delegation arrangements (Epstein and O'Halloran 1999; Huber and Shipan 2002; Elgie and McMenamin 2005; Bertelli 2006; Yesilkagit and Christensen 2010), and research on the effects of specific forms of delegation (Gilardi 2005b; Guidi 2014).

Regrettably, far less investigation of agencies' enforcement has been conducted. Questions that have been particularly under-researched are how agencies enforce their mandate under specific institutional design and, secondly, how is this enforcement affected by the key factors featuring in prominent theoretical approaches? This study elucidates the enforcement of one sort of agencies, which operate in the anticorruption domain. By investigating which of the most prominent theoretical schools offer(s) plausible explanations, the thesis makes a contribution to a better understanding of agency enforcement.

One sort of issue that has lately commanded attention in the study of agencies is the role of de-jure independence. Some authors examined the relationship between the de-jure independence and the factual independence of agencies (Maggetti 2007; Hanretty and Koop 2013). Others questioned whether de-jure independence is correlated with policy outcomes (Gilardi 2009; Guidi 2015), and one group of studies examined the impact of the de-jure independence on agency longevity, i.e. agency survival (Lewis 2002). All these studies sought to pin down the effects of organisational determinants, which largely derive from institutional theory. However, fewer studies contrast competing theoretical approaches in explaining agencies' outcomes (but see Boin *et al.* 2010, for 'temporal' vs. design theory).

The findings about the impact of de-jure independence are mixed, so the debate is far from settled. More empirical evidence from various contexts and policy domains would be particularly valuable to further elucidate this issue. This thesis contributes to these debates, by offering findings about the impact of de-jure independence of agencies that operate in a specific domain, anticorruption, in a specific context – transitional. The thesis will illuminate whether, in such a context, the de-jure independence directs into specific forms of enforcement of the analysed agencies.

Linked to the question of independence of those running agencies is the possibility of political influence over bureaucracy. Traditional principal-agent accounts assume hierarchical modes of control, however it would be a simplification to regard the relationship between the politician and his appointee as a one-way, top-down relationship. As Provost and Teske (2009: 1-15) remind, traditional means of control of bureaucrats such as appointments, which lead to installing like-minded bureaucrats, did not always bring about those policies that were preferred by the principal. Bureaucrats may be able to exhibit resistance, to advance own agendas, or to identify themselves with the agency's mission, which could result in unexpected (or undesirable) enforcement, from the perspective of principal. This thesis takes particular interest in further examining the interplay between bureaucrats and politicians, especially as the domain of anticorruption is one in which, according to anecdotal evidence, the battles for political influence over the agency leaders are among the fiercest.

The reputational basis of agency behaviour may be of particular help in understanding this phenomenon. Recently, a new school in the agency literature emerged claiming that agencies are driven by reputation-related concerns, which are said to be critical for reinforcing agency power (Carpenter 2014) and also key for sustaining accountability (Busuioc and Lodge 2015). The key actor in shaping agency behaviour, according to this line of reasoning, is agency leader. While certain empirical studies demonstrated this point (Carpenter 2001), there is much room

for further empirical investigation that may test the given argument. By examining the role of agency leaders in the five ACAs' enforcement, this thesis adds to this strand of research.

Previously, reputation has featured as an opposite factor to organisational design, especially regarding how the principal-agent perspective sees it. According to the reputation-based school, agencies' behaviour is not a function of their institutional design nor is the way they seek to exercise accountability crucially dependent on the formal hierarchical mechanisms of control. What is novel in the thesis is that it links organisational settings to the reputational argument - by claiming that the 'design matters' approach can be reconciled with the 'reputation matters' approach. The argument is that different institutional architectures can provide for different reputational opportunities, which may further be a key factor when agency leaders make decisions about enforcement choices.

Contribution to the ACA literature

There is a burgeoning literature examining ACAs, which draws on empirical evidence that comes largely from developing and transitional regions³. As noted, the prevalent focus in the study of ACAs has been on the question of ACAs' role in curbing corruption. This 'professionalist' perspective, or as Doig calls it, a 'business-planning' approach (2012a: 68), has been advanced by practitioners whose works have been driven by concerns about ACAs' contribution to anticorruption policies and reforms⁴.

³ Doig *et al.* (2005) examined the ACAs in five African countries – Ghana, Malawi, Tanzania, Uganda, and Zambia; Bolongaita (2010) focuses on the Indonesian ACA, Kuris produced cases studies of a number of ACAs across the world, from Asian – in the Philippines, Indonesia, to African ones - Ghana, Botswana, to Central and East European countries such as Slovenia, Croatia, Lithuania, and Latvia (Kuris, 2012a, 2012b, 2013a 2013b). Quah investigated the region of South-East Asia, first by comparing Hong Kong and Singapore (1994) and more recently by focusing on five countries - China, Japan, Philippines, Singapore and Taiwan (2015). Studies that included ACAs from developed regions are rare, but one exception to this is Hellbrunn's (2004) comparison of ACAs from South Korea, Honk Kong, Australian New South Wales, and American New York.

⁴ To mention just a few key authors, who worked as consultants or practitioners in the field of anticorruption, for organisations such as the UN, World Bank, Transparency International, or specific projects of anticorruption

The following syntax analysis of eight most cited papers⁵ illustrates well the prevalence of the 'profesionalist perspective' in the ACA literature. An overview is provided for the frequency of words that typically reflect the 'professionalist perspective' (typical words: success-, -effective-, -perform-, and so on), which is contrasted to the so called 'enforcement perspective' that regularly appears in the regulation literature (typical words: enforce-, implement-, work-, approach-, and so on).

TABLE 1.1 Frequency of words indicating the 'professionalist' and 'enforcement' perspective in eight most cited articles about ACAs (the numbers indicate how many times the word appeared in the eight articles).

Words indicating 'professionalist perspective'	Words indicating 'enforcement perspective'
success* 147 *effective* 137 perform* 101 fail* 63 curb* 51	66 measure* 46 enforce* 41 implement* 28 mechanism* 15 compl*

Sources: Doig (1995), Meagher (2005), Meagher (2004), De Sousa (2010), Quah (2010), Doig et all. (2006), Heilbrunn (2004), and Smilov (2010).

reforms:

Alan Doig (UNDOC, WB): <http://www.policy.hu/themes05/governance/doig.html>

Luis De Sousa (Transparency): <http://transparencyschool.org/lecturer/luis-de-sousa/>

John S.T. Quah (Consultant): <http://www.jonstquah.com/about.htm>

Goran Klemenčić (OECD; later, Slovenian Commission for Prevention of Corruption):

http://www.vlada.si/en/about_the_government/ministries/ministry_of_justice/minister_of_justice/

In parentheses are given the organisations that the authors have worked for.

⁵ As retrieved by Google Scholar.

The table demonstrates that the emphasis in the most cited ACA papers has been on questions pointing to ACAs' success, effectiveness, performance (in normative sense), failure, and the likes. Enforcement and implementation, which are bywords for the 'enforcement perspective', have been mentioned far less frequently (87 times in total, far rarer than 'success' and 'effective' respectively). While not exhaustive, this brief review of the language used in the ACA literature clearly illustrates the primacy of the 'professionalist' perspective.

The implication of the predominance of the 'professionalist perspective' is a lack of knowledge about the process of ACA enforcement. This lack of research about ACA enforcement is surprising given the fact that ACAs can be considered a class of regulatory agencies (Batory 2012a: 640) and that, in the regulation scholarship, enforcement has been a recurring theme on the research agenda (May and Winter 2011: 223-224). Enforcement of any sort of institution warrants scholarly attention as it is a key aspect of institutional life, not least because it represents a particular stage in the policy cycle (Howlett and Ramesh 1995). After all, how a regulator enforces its mandate is one of the key determinants of regulatees' response and compliance (May and Winter 2011: 252). The thesis' exploration of ACA enforcement constitutes a contribution to the ACA literature. Not only does it produce findings about how a certain set of ACAs enforce their mandates in practice, the thesis also adds to the promotion of the 'enforcement perspective', as an approach whose deployment leads to a better understanding of the population of ACAs.

In doing so, the thesis first develops a concept that measures ACA enforcement. The ACA literature has suffered from measurement problems in examining ACA performance (Gemperle 2015: 6), let alone when it comes to measurement of enforcement (a phenomenon that has been under-researched so far). One contribution the thesis offers to the study of ACAs therefore lies in developing a framework that captures the key elements of ACA enforcement.

As will be elaborated later, the thesis suggests a '3s' *enforcement pattern*⁶ framework that includes enforcement strategy, enforcement style, and political selectivity, which together convey all crucial information about an ACA's implementation.

The ACA literature has identified a number of factors that supposedly determine ACA performance. Pope and Vogl (2000) point to leadership, formal independence, and access to data, as key preconditions for an ACA's successful performance. De Sousa (2010) highlights independence on three accounts; firstly when it comes to appointment of ACA staff and political pushback, second in cooperation with other anticorruption bodies, and thirdly in resources, as crucial for achieving satisfactory performance. Dionisie and Checchi (2008) suggest that an ACA can be functional only with adequate resources. In Camemer's opinion, leadership, resources, adequate ACA powers, independence, and the support of media, are all factors that underpin ACAs' success (2001). Relatedly, OSCE (2006: 167) identifies, among the others, lack of resources and absence of political will as two common factors causing ACAs' underperformance. This matches what de Speville said (2008) – that the lack of political will and resources are common causes of failure. He adds that political interference, selectivity, and high initial expectations may also hinder ACAs' work. Lack of support of the environment, primarily of the civil society and media, are also cited as causes of ACA failure (Heller 2006). While some studies give more weight to one factor over the others, it can be concluded that there has been a consensus in the ACA literature about several factors that are cited as crucial for ACA success/failure. These include political will and supportive environment, ACAs' leaders' skills, independence, resources, initial mandate and expectations, and assistance of anticorruption partner bodies.

If these factors are said to be critical for ACAs' success, can we take them as 'prime suspects' for ACAs' enforcement either? Is it plausible to assume that those factors have had (the

⁶ '3s' stems from the initial letters of (enforcement) strategy, (enforcement) style, and (political) selectivity, which are the constituent elements of the concept.

predicted) effect on ACA enforcement just as they were argued to have had on ACAs' performance? Following up these concerns, the thesis utilises the key determinants from the ACA literature in a study of the five ACAs' enforcement.

It is worth mentioning that the given determinants feature as key drivers of institutional behaviour in theories from the organisational, agency, and regulation literature. In that sense, the thesis not only draws on the studies of ACA performance in borrowing key determinants, it also links these determinants to prominent and long-established theories from other (and older) disciplines. The thesis' major contribution in this respect lies in testing whether the hypothesised factors indeed matter in the practice of ACA enforcement. Some of the questions to be addressed in the empirical analysis include; are insufficient resources necessarily a hindering factor; does organisational maturity (conceived as a passage of time) of an ACA lead to harsher enforcement and finally, is the role of leadership crucial?

One sort of discussion in the ACA literature has been about organisational models. As documented, ACAs come in a variety of forms. Some classifications recognise several models, for example 'preventive', 'law enforcement' and 'multipurpose' agencies (Klemenčić and Stusek 2008; OECD 2013), others point out that the core distinction lies between the 'suppressive' (agencies that investigate and prosecute corruption) and 'preventive' ACAs (with prevention function(s) only). Kuris (2015a), for instance, relies on this distinction calling the former "guard dogs" and the latter "watchdogs".

One question that has generated a polarised debate, mostly in media and professional circles but also in the ACA literature, has been what the possibilities of the different ACA models are and, relatedly, is the suppressive model superior to the preventive in curbing corruption (for an argument backing the former, see Dionisie and Checchi 2008; for the 'pro-preventive' side, see Kuris 2015a). Irrespective of the positions in these debates, a shared understanding seems to be that different organisational models provide for different possibilities for ACAs' work. Yet,

little has been explored beyond this sort of claim. For example, an investigation into whether the different ACA models direct into different logics of enforcement is lacking.

The thesis contributes to these debates about ACA models and it does so from a positivist rather than normative angle. It explores whether and how the two ACA models (suppressive vs. preventive) matter for the way ACAs pursue their enforcement. As noted earlier, one novelty the thesis brings is the introduction of the reputation-based perspective, previously advanced in the regulation literature (Carpenter 2010). This perspective will provide a theoretical lens that explains how different organisational models cause different logics of enforcement. In that sense, the thesis' contribution is not only in investigating the enforcement consequences of the two organisational models, it also lies in explaining the underlying mechanisms that are said to drive different logics.

Contribution to the study of public sector reforms in the Western Balkans

The thesis also speaks to the literature on public sector reforms in the Western Balkans. The three analysed countries (Serbia, Macedonia, and Croatia) launched comprehensive political reforms after 2000 (Bartlett 2007). The reforms were driven by an EU accession process (which is at the time of writing still ongoing in Serbia and Macedonia, while Croatia joined the EU in 2013). As in other EU accession candidates, the public sector has been at the heart of the reform agenda of the three countries.

A majority of the studies about the reforms in the Western Balkans focuses on the question of conditionality and transformative power of the EU accession process (Börzel 2011; Elbasani 2013; Georgescu 2015). This literature raises similar questions to those posed by the scholarship researching the transformative role of EU in Central and Eastern Europe (Grabbe 2006; Haughton 2007; Börzel and Hüllen 2011; Dimitrova 2010). Part of the literature about the Western Balkans reforms took a practitioner perspective (Demetropoulos 2002; Alberti and

Sayed 2007) by discussing the achievements and upcoming challenges in particular issues (e.g. network governance – Papadimitriou and Phinnemore 2003; Taylor 2013), as well as the administrative reforms (Jano 2008; Goran 2009).

Significant attention in the region has been devoted to the creation of semi-autonomous agencies, which represent a novel sort of institutions that had not existed in the three countries before the reforms started. However, it is noticeable that, apart from a few exceptions (Musa and Koprić 2011; Koprić *et al.* 2012; Aleksić and Radulović 2013), the topic of agencification in South-East Europe (SEE) has largely been overlooked in the scholarship. Those few mentioned studies sought to take stock of the developments in the agencification process and to discuss the challenges and prospects for the work of the established semi-autonomous agencies. Yet, lacking is research on what the agencies' enforcement trajectories look like in the region.

It is known from the Europeanisation literature that the main challenge for the former communist countries, whether in CEE or SEE, does not lie in the adoption of 'modern' standards, it lies in the implementation of policies (Falkner *et al.* 2007; Falkner and Treib 2008; but, for an opposite argument, see Toshkov and Steunenberg 2009). Hence the phrase 'the world of dead letters' (Falkner *et al.* 2008) which is used to denote the practice among CEE countries of poor implementation of otherwise well transposed policies. The same problem of failed law implementation has plagued the SEE region across various policy domains (Murgasova *et al.* 2015; Shinar and Bratić 2010; Spehar 2012; Teqja 2014;). While the literature has diagnosed the problem of poor implementation, what is lacking is thorough analysis of the process of enforcement of particular institutions, agencies being one sort of them. The 'black box' of enforcement, in other words, has not yet been opened in the literature examining the region. The thesis' insights into five ACAs' enforcement and its drivers make a step forward in this regard. By 'unpacking' the operation of the given agencies, the thesis will reveal more about the enforcement dynamics. It will also illuminate what factors are crucial for the enforcement of agencies; whether they are organisational, temporal, or the 'human' factor. The

value added will concern the research body analysing the region, but it will also speak to the scholarship about the CEE region, which, as noted, still faces implementation problems despite the EU membership.

Contribution to the regulatory enforcement literature

Finally, the thesis speaks to the regulatory enforcement literature. As mentioned, ACAs can be considered as a sub-type of regulatory agencies. An examination of the (causes of) varieties of their enforcement is relevant for the study of regulatory enforcement style.

Enforcement style is a widely used concept in the enforcement literature, serving to explain how a regulator interacts with a regulatee. This interaction is usually performed during inspections. One task can be enforced in a variety of ways. For instance, upon the discovery of a violation, a regulator/inspector can treat the regulatee in a coercive manner, by imposing a sanction, but she can also act in an accommodative manner, by providing advice or information, in the hope that this will lead the regulatee to cut down its violations in the future.

Initial conceptualisations of enforcement style were based on a unidimensional distinction on *coercive* versus *persuasive* approaches (Kagan and Scholtz 1980; Reiss 1984). Coercive, also called legalistic or punitive, approach implies strict application of sanctions. The regulator does not give 'another chance' to the regulatee to correct her conduct, insisting instead on direct imposition of penalties. In contrast, persuasive (or accommodative) enforcement style is more 'regulatee-friendly'. Instead of sanctions, the regulator provides information and advice to the regulatee, believing that this will contribute to a lesser number of future violations.

Later, authors suggested that considering enforcement style as a unidimensional concept is too simplistic. Besides the degree of coerciveness, which had previously been the axis along which enforcement styles were determined, other attributes were argued to be important too. Winter

and May (2002) remind that authors such as Hawkins (1983, 1984), Hutter (1989; 1997), Richardson *et al.* (1982), or Shover *et al.* (1984), demonstrated in empirical studies the need for this diversity of underlying enforcement approaches that contain more elements than the unidimensional two-polar concept (coercive vs. accommodative) points to.

Gormley (1998), for example, proposed a dimension called *rigidity* to be added to the 'coerciveness' axis; one regulator who is stringent (coercive) can be more or less flexible in choosing what will be enforced, and these two different levels of flexibility lead to two different styles. In an empirical study of Danish municipal enforcement of agricultural regulation, May and Winter (2000) find that two dimensions indeed better capture regulators' enforcement styles, that is varieties of on-ground regulatory approaches. The authors call these dimensions 'formalism' and 'coerciveness'. Formalism (corresponding to Gormley's 'rigidity', 1998) is about whether regulators 'go by the book' (Bardach and Kagan 1982), by following precisely prescribed guidelines when engaging with regulatees, or they resort to forms of engagement that are not detailed in the legislation. 'Coerciveness' refers to the use of threats against regulatees. Though roughly corresponding to what the initial unidimensional concept calls degree of punitiveness, it can be said that there is a subtle difference between 'their coerciveness' and the Kagan's (1991) in that 'their coerciveness' refers to what sanctions a regulator *threats* will be applied in practice. Based on the above two dimensions, four combinations of enforcement style are possible (low formalism-low coerciveness; low-formalism-high coerciveness; high formalism-low coerciveness; high formalism-high coerciveness).

More recently, frameworks that contain multiple dimensions appeared. To capture Brazilian environmental agencies' enforcement, McAllister (2010) adds two novel dimensions to the standard axes of formalism and punitiveness. One is the autonomy dimension (agency's possibility of formulating own policy goals) and the other is capacity (whether an agency is active in searching for violations). Depending on how an agency scores on each of the four

dimensions, five enforcement styles are possible (retreatist, flexible, conciliatory, perfunctory, legalistic)⁷. McAllister's concept is thus richer in information yet less parsimonious compared to the previous concepts of enforcement style.

As can be seen, numerous works have been produced to establish a variety of patterns among regulators' enforcement styles. Yet, a much smaller portion of the literature attempted to pin down the causes of these variations. Some studies asked whether specific theoretical explanations may explain regulatory enforcement style, for instance how problem characteristics (Kagan and Scholz 1984), organisational norms (Hutter 1989), or personal inspectors' traits (Gormley 1998) affect enforcement style. However, attempts to systematically take stock of potential sources of variations in enforcement style were rare. Among these rare attempts, Kagan (1989) highlighted that a number of factors interact to produce specific enforcement styles. These factors range from legal design factors (defined as regulators' legal powers), through task environment (visibility of violations; regulated enterprises' willingness to comply), to political environment factors (recent catastrophes or scandals, urgent projects, political controversy, electoral shifts, budgetary cutbacks, attempts to regulate government entities) (Kagan 1989: 112). More recently, May and Winter summarised that „scholars have attempted to explain this variation by pointing to various *organisational, political, situational* and *personal* considerations“ (2011: 222). The present thesis seeks to further advance this line of study in the enforcement style literature, by contrasting these prominent theoretical approaches that compete to explain variations in regulatory enforcement.

For the purpose of conceptual clarification, May and Winter suggest a distinction between *enforcement strategy* and *enforcement style* (2011: 224). Enforcement strategy refers to

⁷ 1. "retreatist": low formalism, low coerciveness, low capacity and low autonomy; 2. "flexible": comprised of situational mixes (all combinations beyond the four styles presented here); 3. "conciliatory": low formalism, low coercion, high capacity, high autonomy; 4. "perfunctory": high formalism, high coercion, low capacity, low autonomy; 5. "legalistic": high formalism, high coerciveness, high capacity, high autonomy (McAllister 2010: 66-67)

choices that agencies make with regard to how to interpret the mission they are assigned to attain. Enforcement strategy encompasses questions such as what to enforce, how to allocate resources for inspections, and what tools to use (May and Winter 2011: 225-226). Enforcement style, on the other hand, refers to inspectors' interactions with regulatees, in the field (May and Winter 2011: 229). The question of enforcement style is therefore the question about the nature of what inspectors do in everyday work rather than what sorts of strategic choices regulatory agencies make.

One contribution that this thesis makes is that it shows that the concepts of enforcement strategy and enforcement style are not mutually exclusive. It is shown, on the example of ACAs, that there are regulators whose work can be described only if we know both its enforcement strategy and enforcement style (i.e. its enforcement choices in individual actions undertaken against public officials). Additionally, the thesis adds a third element as a constituent part of the enforcement pattern – *political selectivity*. Unlike most other regulatory domains, one of the crucial details in ACAs' work is the political moment: how selectively opposition leaders are targeted in comparison to government officials. The thesis therefore develops a multifaceted concept, which is 'broader' than the respective concepts that the regulatory enforcement literature has produced thus far.

The unit of analysis is an agency, so the thesis contributes to the body of empirical evidence analysing agencies, as a sort of regulatory actors. As mentioned, most of the extant scholarship has focused on inspectors as central figures in regulation [e.g. May and Winter 2000; May and Wood 2003; Pautz 2009], whereas far less knowledge has been produced about the enforcement style of agencies as key actors.

Lastly, the thesis brings another sort of theoretical explanation which has not been previously deployed in the study of regulatory enforcement. It is the reputation-based argument, suggesting that agencies' behaviour is a result of their reputation-seeking and reputation-defending intents. In that sense, the thesis draws attention to another sort of explanatory

factor that has not been discussed earlier. In truth, links to the 'personal' factor have been made in the study of regulatory enforcement so far, however what is novel in this thesis is the explanation of how the enforcement unfolds in terms of leadership triggering specific mechanisms.

Thesis outline

Chapter 2 considers the thesis' methodology. It starts off with an analysis of the research design and case selection and then moves on to a description of the three countries' background information and the region's characteristics. Thereafter, the chapter concludes with discussion of the data and measurement, and the forms of evidence collected for the empirical analysis.

Chapter 3 focuses on theoretical background, presenting the independent and dependent variables. It first introduces three theoretical approaches that feature explanatory factors of enforcement pattern. These are organisational, temporal, and leadership-based explanations. The explanatory factors are linked to particular expectations regarding their role and direction in shaping ACA enforcement. The chapter then sets out the dependent variable – ACA enforcement. A concept called *3s enforcement pattern* will be developed to measure the five ACAs' enforcement.

Chapter 4 presents the empirical analysis of the Serbian ACAs. It analyses the following three ACAs – the Anti-Corruption Council (Council; 2001-2012), the Republican Committee for Resolution of Conflict of Interest (Committee; 2005-2009), and the Anti-Corruption Agency (ACA; 2010-2012). It shows that the Council demonstrated the harshest enforcement pattern, that the Committee espoused a harsh form of enforcement pattern, too, however with a strategy and style that did not reach the harshest possible 'values', and finally, it will be shown that the ACA failed to espouse a harsh enforcement pattern. Chapter 4 will indicate that the

organisational and temporal accounts do not feature as plausible explanatory approaches of the ACAs' enforcement. It will also be shown that there were ACAs, of the preventive model, who were able to espouse harsh enforcement despite the absence of 'strong' organisational factors.

Chapter 5 features an empirical analysis of the Macedonian ACA, State Commission for Prevention of Corruption (SCPC), which had been in place since 2002. The analysis will indicate that variations in the SCPC's enforcement pattern concurred with turnovers in its Board. The chapter will conclude that the leadership-based explanation overrides the organisational and temporal accounts in the case of the SCPC. Despite a lack of 'strong organisational factors', that is a high degree of de-jure independence and high resources, the SCPC managed to pursue a harsh enforcement pattern in the first stage (2002-2007). In the second stage, the SCPC abandoned the practice of harsh enforcement, despite a rise in resources, one of the relevant organisational factors.

Chapter 6 analyses the enforcement of the Croatian ACA, USKOK, which is the only suppressive agency in the thesis' sample. The findings will show that the USKOK espoused a sort of 'sparse' harsh enforcement since the beginning, however this was drastically escalated over time, as a result of a strengthening of its organisational factors (resources, powers) as well as a leadership change (undertaken in 2005). The findings show that for the harshest enforcement pattern to take place, the USKOK needed the highest values on all organisational factors as well as a strong leadership. This lends support to the reputation-based claim that the suppressive ACA model poses a higher threshold for a harsh enforcement. A wide variety of factors, primarily organisational ones, need to attain a 'high value' before a choice for the harshest form of enforcement can be taken.

Chapter 7 proceeds to a comparative analysis of the empirical findings obtained in the previous three chapters. It assesses the empirical evidence against the expectations set out in Chapter 2. It will be concluded that the leadership-based argument appears as the most plausible for

explaining the enforcement patterns of the five ACAs. The organisational and temporal accounts, it is concluded, have little explanatory power. Concerning the role of ACA model in mediating the impact of the individual determinants, it will be concluded that the comparative analysis lends support to the reputation-based explanation that suggests that preventive ACAs may attain a harsh enforcement without strong organisational factors, whereas suppressive ACAs must have all key determinants at its highest values to be able to espouse a harsh enforcement pattern.

Chapter 8 concludes the thesis by summarising the main findings and by discussing their wider implications and generalisability. For the explanatory power of individual determinants, it will be suggested that the findings about the primacy of leadership-based explanation can be generalisable in two different directions. One interpretation would be that a wider application of the findings can be made in the non-OECD world, in countries with similar macro-institutional settings. Another interpretation is that there is no strong reason to dismiss in advance that the findings are replicable across the OECD world. No definite answer is provided as regards which of the two interpretations are more plausible. Future research is suggested to explore the OECD vs. non-OECD differences in this regard. Furthermore, the chapter suggests that the findings about the different enforcement logics of the two ACA models, which derive from different reputational constellations, are widely applicable regardless of macro-institutional settings of a country. The chapter highlights the main contribution to the four literatures that were introduced in Chapter 1 (the agency literature; ACA literature; the literature on public sector reforms in the Western Balkans; the enforcement literature).

CHAPTER 2 Methods

This chapter discusses the methodology. First are considered the research design and the case selection. Then the chapter describes the backgrounds of those countries involved. To conclude this chapter, the measurement and data will be discussed.

Research Design and Case Selection

To address the research questions, an analysis of five ACAs from the Western Balkans region will be pursued. These ACAs come from Serbia, Macedonia and Croatia - three countries that were all undergoing transitional reforms in the 2000s. The five ACAs are:

- *From Serbia*: the Anti-Corruption Council (Council; 2001-2012); the Republican Committee for Resolution of Conflict of Interest (Committee; 2004-2009); the Anti-Corruption Agency (ACA; 2010-2012);
- *From Macedonia*: the State Commission for Prevention of Corruption (SCPC; 2002-2012);
- *From Croatia*: the Bureau for Combatting Corruption and Organised Crime (USKOK; 2001-2012)

The first four ACAs are of the preventive model, whereas the fifth, the Croatian USKOK, is the only suppressive ACA within the sample. The observed period is from 2001 to 2012. All ACAs were established from 2001 onwards, so the thesis will encompass their entire life-span up to the end of 2012 (a point when the data collection entered an advanced stage). The remainder of this section explains the reasons behind the selection of the above listed five ACAs.

In order to address the thesis' questions, several methodological objectives need to be achieved. First, the observation of the outcome must allow its key characteristics to be traced over time. This would enable the effective measuring of the dependent variable. The value of ACA enforcement, which is the dependent variable, is neither self-evident nor measurable by quantitative indicators only. The only way to determine enforcement strategy, as one of the elements of ACA enforcement, is to describe how an ACA behaved over time in terms of its priorities, allocation of resources and tools that were used. For those to be known, qualitative appraisals are needed. In-depth qualitative case-study method is therefore necessary to obtain an insight into how the observed outcome (ACA enforcement) develops and varies over time. The case study approach is advantageous for the given purpose because:

„one of the primary virtues of the case study method is the depth of analysis that it offers. One may think of depth as referring to the detail, richness, completeness, wholeness or the degree of variance in an outcome that is accounted for by an explanation“ (Gerring 2006: 49).

Next, to address the first research question, the study needs to maximise the variation among the explanatory variables. To ensure that it is possible to assess what the effect of the respective explanatory variables is, we need to look at whether different values of the explanatory variables are associated with the predicted values in the observed outcome. The *diverse case method* is most suited to achieve these assessments. The diverse case method builds upon variations in the explanatory variables as the crucial criterion for case selection (Gerring 2006: 97). As it seeks to represent the full range of variation in the selected independent variables, this method enables testing of the effects of those variables on the observed outcome.

In employing the diverse case method, the thesis particularly searched for those cases that maximise the variance on the organisational and leadership factors. The third group of explanatory factors – temporal - are not of concern for case selection for the simple reason that they, by default, ensure variation within cases. Each ACA, regardless of its characteristics and

specifics, undergoes a political-cycle, in which the 'value' of distance from the next election decreases over time (to be 'reset' to the 'maximal value' immediately after the election is held). All ACAs are also subject to the logic of 'increasing value' of the variable of aging (as time passes), regardless of the ACA's individual characteristics.

At the same time, the ACA that will be picked are necessarily in their 'youth phase'. The realities of the dissemination process of ACAs across the world are that most ACAs are old about 10 to 15 years, not more (from the point of the year 2012). Namely, nearly all ACAs in the world (with few exceptions, those largely from East and South-East Asia) were established in late 1990s or 2000s. This prevents too wide 'stretching' of the 'age' variable, that is, extreme variations on this factor are not possible. While being focused on one stage of agency life ('youth'), this study will include variations in the 'age' variable within this stage.

What was needed therefore was a constellation of cases which maximises variation in the following variables: de-jure independence, organisational resources and leadership. Regarding the first two variables, the variation is maximised if there are cases with 'low' as well as 'high' values. As these are continuous variables, another circumstance, which can only be helpful, would be to ensure the inclusion of some medium values as well (Gerring 2006: 99). This would ensure the provision of a richer representation from one extreme value of the variable to another. Maximisation of variation in leadership, on the other hand, is construed in binary terms: it is achieved if one ACA saw a change in its leadership.

At the same time, the thesis' case selection shall accommodate the needs of the second research question. This question investigates the differences in the logic of enforcement between the two ACA models (preventive and suppressive) and to be able to carry out a comparative analysis - the case selection obviously needs to draw on examples of both ACA models (preventive as well as suppressive).

For this second research question, the qualitative case study needs to go beyond exploring the associations among the variables – it will need to look at the underlying processes and mechanisms. To remind, the hypothesis attached to the second research question is that the suppressive ACA model cannot achieve a harsh enforcement pattern as long as the organisational factors have not achieved 'high values' and also until the leadership is 'adequate'. For the preventive ACA model, on the other hand, it is assumed that strong organisational factors are not needed for harsh enforcement. To test these assumptions, a process-tracing will be employed (the use of process-tracing is discussed later in the chapter).

To test whether a distinct logic indeed exists between the two models, it is important to find *typical cases* of the suppressive model that reflect the underlying logic of the broader population of this model (Gerring 2006: 91-94). This may be done if the selected suppressive ACA(s) have such a history whose tracing allows for testing of the argument:

"Because the typical case embodies a typical value on some set of variables, the variance of interest to the researcher must lie *within* the case. Specifically, the typical case of some phenomenon may be helpful in exploring causal mechanisms and in solving identification problems [...]. Depending upon the results of the case study, the author may confirm an existing hypothesis, disconfirm that hypothesis, or reframe it in a way that is consistent with the findings of the case study" Gerring (2006: 93).

More specifically, a typical case of the suppressive model would be one which enables the comparison of how the ACA operates under weak organisational factors and then how a change of the organisational factors in the direction of a strengthening of these factors impacts on the observed outcome (enforcement). It would therefore be needed to find a suppressive ACA which has undergone a genesis from having a set of weak organisational factors to a position in which all its organisational factors are strong. Only then can we conclude whether the presence/absence of the harshest pattern of enforcement is a result of the presence/absence of strong organisational factors.

For the preventive model, ‘typical’ cases do not need to be searched in the wider population of ACAs for the simple reason that the hypothesis associated with the second research question does not point to a specific set of conditions as necessary for a harsh enforcement pattern of preventive ACAs. Given this, the selection of preventive ACAs need not be driven by the ‘typical case’ concern. But, it may be most helpful if the selection of preventive ACAs includes examples that offer some ‘falsification’ opportunities which can show that the logic of enforcement attached to the suppressive model does not hold across the preventive ACA model. Since the hypothesis denies that preventive ACAs can pursue a harsh enforcement *solely* under strong organisational factors, the more ACAs with weak organisational factors are included, the greater the falsification opportunity. If it turns out that the selected preventive ACAs that feature weak organisational factors are unable to achieve a harsh enforcement pattern – this yet does not confirm the claim that strong organisational factors are necessary for preventive ACAs to achieve harsh enforcement – but it would offer some support in that direction. However, if the preventive ACAs that are ‘organisationally weak’ turn out able to achieve harshest forms of enforcement, this would falsify the claim, which would then confirm the hypothesis generated with the second research question. In that sense, the more preventive ACAs with weak organisational factors are included, the better.

The case selection that is comprised of the five ACAs presented in the table below satisfies the requirements of both the diverse case method, which is needed for the first research question, and the comparative needs of the second research question which are discussed above. Table 2.1 offers a review of the three variables across the five ACAs (the variables will be described in more details in the forthcoming empirical chapters):

TABLE 2.1 Constellation of variables across agencies.

	Preventive model				Suppressive model
	Council	Committee	ACA	SCPC	USKOK
De-jure independence	Low	High	High	Medium	High
Resources	Low	Low	High	Low (2002-2007) Medium (2007-)	Low (2001-2005) High (2005-) [gradually increasing]
Leadership	Change in 2004	-	Change in 2012	Change in 2007	Change in 2005

Variation on the independent variables, which is at the heart of the diverse case method, is achieved in the following ways. First, the full range on the de-jure independence variable is encompassed. The Council, on one side, features a 'low degree' of de-jure independence, while, the USKOK and the ACA, on the other side, have high degrees of de-jure independence. The SCPC, having a 'medium degree' of independence, stands in between.

Second, full variation on the organisational resources is achieved as well. The Council and the Committee had been, on the one hand, allocated low resources; on the other hand, the ACA had high resources. In the USKOK's case, there has been cross-time variation in resources, from poor ones (2001-2005) to increasingly abundant from 2005 onwards. Another cross-time variation, through less radical, took place in the SCPC. From 2002 to 2007 the SCPC commanded poor resources, whereas from 2007 onwards, the resources improved to an extent and can be characterised as 'medium'.

Third, variations in the leadership variable are provided too. Obviously, leadership is measured through cross-time variations within ACAs rather than cross-agency variations (as it is difficult

to measure leadership in absolute terms and hence to compare its values between agencies). All the ACAs, except for the Committee, underwent leadership changes. This allows for a 'before-after' testing in which it will be explored whether the leadership as a variable lead to changes in the enforcement, while in most cases the other factors are kept constant.

As can be seen, the present case selection achieves the full range of values on the organisational factors (de-jure independence and organisational resources) through cross-agency variations. It also includes within-agency variations in organisational resources, in two cases (the SCPC and USKOK). In the leadership variable, variation is provided thanks to cross-time variations that took place within four out of the five ACAs.

Cross-time variations within ACAs are particularly valuable for the research potential because they provide for a type of comparisons that are equated with 'quasi-experiments' (George and Bennett 2005: 167). The key advantage of 'before-after' comparisons within cases, which are also called *controlled comparisons*, is that they enable focusing on the effect of one changing variable on the outcome, while the other independent variables are being held constant.

As George and Bennett put (2005: 81):

"...controlled comparison can be achieved by dividing a single longitudinal case into two - "before" and "after" case that follows a discontinuous change in an important variable. This may provide for a control for many factors and is often the most readily available or strongest version of a most-similar case design".

Two things may complicate 'before-after' comparisons. One, if certain factors beyond the set of the identified independent variables causes changes in the outcome, in parallel with the developments in the changing independent variable (George and Bennett 2005: 167). To avoid confusing the causal power of the changing independent variable with the effects of a variable that lies outside the set of the independent variables, the study will check through interviews and press-clippings whether the observed changes in the outcome may have been spurred by some unaccounted exogenous factors. In general, there cannot be many such 'unaccounted'

factors – beyond the already specified temporal, organisational, and leadership-based variables. The interviewees were particularly asked about the role of foreign actors such as the EU and other international observers, as the only prominent factors that may have been relevant – directly or indirectly - for certain enforcement choices.

The other concern about the use of process-tracing is that the observed independent variable should not be examined only immediately before and after, but also *well* before and *well* after the change (George and Bennett 2005: 167). The thesis will therefore pay attention not only to those visible changes in the dependent variable (ACA enforcement) that take place shortly after the change in an independent variable, it will also consider the potential effect in a longer horizon. The thesis will look at the underlying causal mechanism that is in place and how cross-time changes in one variable shape the unfolding of this mechanism, not only the outcome.

External validity

The selected independent variables, as mentioned, include organisational, temporal, and leadership factors. However, beyond these selected independent variables, there are other potentially relevant factors that may have implications for how the analysed ACAs behaved. Macro-political factors are a case in point. How the analysed ACAs behaved may have been affected by the type of the political system, administrative tradition and bureaucratic architecture or, alternatively, the political culture and history.

The present case selection, however, ensures the control of such contextual, i.e. macro-political factors. Serbia, Macedonia, and Croatia, which are the countries the analysed ACAs originate from, had long been republics within one federal state - the former Yugoslavia (from the end of WWI to 1991). They share common history, political culture and the legal-administrative tradition. Today, the three states have similar political systems: they are all semi-presidential parliamentary democracies (Elgie and Moestrup 2008), with directly elected, yet institutionally

weak, presidents, whereas the executive power rests with the government. The differences in the observed outcomes therefore cannot be attributed to possible differences in the macro-contextual factors simply because these factors are similar across the three countries. In other words, focusing on this region enables keeping a number of contextual explanatory factors constant, which allows exploring the effect of the selected *agency related* variables.

Another contextual factor that may have an impact is the process of Europeanisation that the three states have been subjected to, during the period of observation (2001-2012). The EU has unquestionably been a factor in shaping the domestic processes and its role cannot be excluded as important for the development of domestic institutions. In contrast to the contextual 'country level' factors, which have been constant across the sample, the three states have seen different dynamics of EU accession from 2001 to 2012, both in terms of cross-country as well as within-country (cross-time) variations. Yet, as will be explained later, the impact of Europeanisation has in the first place shaped the organisational factors, whereas the enforcement of policies has unlikely been a *direct* function of the Europeanisation. Instead, the Europeanisation process may have contributed to the enforcement of policies only indirectly – by shaping those factors that in the subsequent course of development directly impact the policy. For example, an increased EU's pressure may force the government to increase an agency's resources or to strengthen the agency's institutional design through legislative amendments. Note that these organisational factors are treated in the thesis as *given*, i.e. they are already included as independent variables. Why these independent variables vary the way they do and what factors cause these variations is beyond the interest of this thesis. In that sense, the EU impact (i.e. Europeanisation) shall be treated as an exogenous factor rather than an independent variable.

These considerations about the impact of wider contextual factors – both domestic and international - are important for the question of representativeness and external validity. The question of external validity is about what population the findings can be generalised to:

“External validity refers to the correctness of a *hypothesis* with respect to the *population* of inferences (cases not studied)” (Gerring 2006: 217).

Weak external validity is cited as one of the major shortcomings of case-study method (Gerring 2006: 48-49). Identifying which of the many features of the analysed unit(s) are typical of a larger set of units is a difficult task (Gerring 2004: 346), especially if there are few, rather than a large-N, of the analysed units. Yet, the present research design and case selection offer a good deal of protection against this weakness inherent to small-N studies. First, as explained, the above case selection gives confidence that the ACAs’ enforcement is not a result of the non-agency factors, which enhances the external validity of the findings. Second, the *diverse case* method is a type of case study that „has stronger claims to representativeness than any other small-n sample” (Gerring 2006: 101), for the simple reason that drawing on a wide range of variation in the independent variables increases the representativeness. Given these two circumstances, the thesis’ research design can be said to have ameliorated the problem of weak external validity, which increases its potential for generalisation of the findings.

Process-tracing

The thesis will utilise process-tracing in the empirical analysis. Process-tracing is an investigative technique that:

“[...] attempts to trace the links between possible causes and observed outcomes. In process-tracing, the researcher examines histories, archival documents, interview transcripts, and other sources to see whether the causal process a theory hypothesizes or implies in a case is in fact evident in the sequence and values of the intervening variables in that case. Process-tracing might be used to test whether the residual differences between two similar cases were causal or spurious in producing a difference in these cases’ outcomes” (George and Bennett 2005: 6-7).

“Process-tracing can perform a heuristic function as well, generating new variables or hypotheses on the basis of sequences of events observed inductively in case studies” (George and Bennett 2005: 7).

Out of several possible types of process-tracing, two particular will be employed throughout the empirical chapters: *detailed-narrative* and *analytic explanation* (George and Bennett 2005: 211).

Detailed-narrative serves to portray the chronological development of an event of interest. It does not use particular theoretical accounts but instead presents how the event was unfolding. This is a necessary step in the study, especially before the testing of the explanatory factors can be undertaken. *Detailed-narrative* will be employed in the empirical chapters in those parts where the enforcement history and the enforcement strategy of the observed ACA are reviewed. One objection to this type of process-tracing may be that it represents a mere story-telling, however “a well-constructed detailed narrative may suggest enough about the *possible* causal processes[...]" (George and Bennett 2005: 210). In that sense, the parts of the three empirical chapters (on Serbia, Macedonia and Croatia) which are based on a detailed-narrative will not only serve to describe the dependent variable – what the enforcement looked like throughout the observed period – they will do so such as to reveal what may have been key events and factors. Still, the narrative will be less structured along the lines of the deployed theoretical accounts and more chronologically oriented. For these detailed narratives, interviews with actors involved in the analysed processes and press-clippings will be the major techniques utilised.

The second sort of process-tracing, which will be used in the three empirical chapters is *analytic explanation*. This type of process-tracing is used for couching a historic narrative into a theoretical form (George and Bennett 2005: 211). This means that after the enforcement history of an ACA is presented, the forthcoming *analytic explanation* will reflect on whether the thesis' explanatory factors are able to explain the previously portrayed enforcement. This will be done in the 'discussion' section of the empirical chapters. By the time the analytic explanation starts, the chapter will already have certain preliminary insights into what major

drivers of the enforcement may have been (based on the previous detailed narrative carried out in the ‘enforcement’ section). The analytic explanation will analyse, with the power of hindsight, through the lenses of each of the theories, whether the empirically narrated development in fact fits the predictions that the utilised theory yields.

The thesis embraces three out of the six possible theory-building research objectives (Eckstein 2000: 119-165). It features *disciplined configurative* case studies because it uses established theories to explain particular cases; such studies can impugn existing or point to a need for a novel theory in explaining the observed phenomenon (George and Bennett 2005: 75). As there are no developed theories about ACA enforcement in the ACA literature, the thesis tests competing theories from other literatures and suggests which one is plausible. Next, the study is *heuristic* in that it identifies new variables and causal mechanisms (George and Bennett 2005: 75). This holds for the second research question which is based on a reputation-based argument. The reputation-based logic is hypothesised as important for explaining the logic of enforcement of the two ACA models. To an extent, the study also provides for a *theory testing* as it explores „the validity and scope of conditions of single or competing theories“ (George and Bennett 2005: 75). By addressing the first research question, the thesis investigates whether some theories from adjacent disciplines hold in the case of ACAs and under what conditions these theories are relevant.

Countries’ background

Serbia, Macedonia and Croatia, the countries that the five analysed ACAs are from, are part of the region of Western Balkans, referred to as a ‘Former Yugoslavia *minus* Slovenia *plus* Albania’ (Judah 2009:15). The region of Western Balkans sits within a broader region of South-East Europe, which is seen as a ‘late developer’ compared to the rest of Europe (Anastasakis 2005: 1).

Following the break-up of the former Yugoslavia, Serbia and Croatia waged an armed conflict from 1991 to 1995. During and after the war, the two countries were led by authoritarian regimes, of Franjo Tuđman in Croatia and Slobodan Milošević in Serbia. These regimes were ousted following the turn of the millennium. In Croatia, a Social Democratic Party (SDP)-led coalition came to power in 2000⁸. In Serbia, a Democratic Opposition of Serbia (DOS) staged a peaceful revolution (following a rigged election) in 2000⁹. Macedonia peacefully broke away from the former Yugoslavia in 1991, but it suffered economic and political instability throughout the 1990s (Rubeli 2000)¹⁰. Due to the instability that compounded its democratisation efforts, by the turn of the millennium Macedonia had not progressed far more than Serbia and Croatia.

The legacy of the communist rule had been a compounding factor for democratisation prospects. The three countries had previously been part of one federal political system which was characterised by strong control of political elites over the bureaucracy and economy, absence of party competition and enormous concentration of power in the hands of the executive (Jano 2008: 59). In Serbia and Croatia, the reign of authoritarian leaders Slobodan Milošević and Franjo Tuđman in the 1990s featured formal political competition, but with abundant breaches of citizen and political freedoms¹¹. It was only after the overthrow of these authoritarian regimes, in 2000, that the two countries embraced democratisation.

⁸ See *European Election Database*:

http://www.nsd.uib.no/european_election_database/country/croatia [Accessed: 20 October 2015]

⁹ A short description of the election campaign and results can be found here:

http://www.ipu.org/parline-e/reports/arc/2355_00.htm [Accessed: 20 October 2015]

¹⁰ Macedonia had problems in state-building, particularly regarding the recognition of the country and its territory by neighbours such as Bulgaria and Greece. It had also seen turbulent inter-ethnic relations, particularly with ethnic Albanians, whether from Macedonia, Albania, and the Kosovo (Jano 2000: 8-10).

¹¹ See an analysis of the *Wilson Center*:

<http://www.wilsoncenter.org/publication/346-serbias-october-revolution-evaluating-international-efforts-promoting-democratic>

Against the backdrop of weak administrative capacity (Vachudova 2009), the three countries entered the 2000s with the hope that, through an EU accession process, they will manage to transform their institutional landscape and economy. The transitional reforms that were launched entailed a 'dual transformation' (Bartlett 2007): economic transition into a modern market-based society and political democratisation focused on the developing of the rule of law.

The three countries experienced in the 2000s a considerable degree of conditionality of the EU, however the progress of externally driven transformation proved limited in the region (Anastasakis 2005). As was the case with the CEE region (Falkner and Treib 2008), the EU conditionality in the Western Balkans resulted in a nearly flawless transposition record. However, it was the implementation of policies where the conditionality could not yield satisfactory results (Kmezić *et al.* 2014: 213-262). As the EU accession process advanced in the Western Balkans, the civil service started achieving higher degrees of fit with European principles. Yet, low degrees of rule effectiveness and reform sustainability (Meyer-Sahling 2012) preserved within these three countries.

One of the reasons why the Western Balkans has not seen as deep a Europeanisation as the CEE did is due to the contested normative appeal of the EU within the region. The EU appeal has particularly been limited in domains related to foreign policy, security and statehood issues (Noutcheva 2009). The domestic elites have taken advantage of this lack of 'soft power' of the EU by shifting their policies to internal sources of legitimacy, by asserting domestic reasons for 'fake compliance', or by exhibiting partial or open non-compliance with the EU standards (Noutcheva 2009: 2). Börzel reminds that the initial hopes for Europeanisation in the Western Balkans had been high, but the subsequent experience has been sobering. The prospects for 'deep Europeanisation' unfortunately proved limited in the Western Balkans (2011: 6). Instead, the domestic actors have demonstrated capability in instrumentalising EU conditionality to consolidate their own power (Börzel 2011: 14; Elbasani 2009: 8).

At the time of writing, Croatia is the only of the three countries that has joined the EU, having been made a member in 2013. Macedonia was granted the candidate status in 2005, but with little progress since¹² while Serbia has been an official EU candidate since 2012¹³.

On an administrative level, the region of Western Balkans has seen a deep penetration of international programmes, consultants and externally provided assistance in carrying out the reforms (Fagan and Sircar 2012). The anticorruption domain is not an exception to this either (OECD 2005). While the EU conditionality has mostly advanced the legal and institutional framework (i.e. the adoption part), the externally provided administrative programmes have largely aimed at advancing the capacity of domestic institutions¹⁴. Preliminary and anecdotal evidence about the impact of these sorts of engagement portrays a mixed picture – examples can be found where foreign assistance played a constructive role in capacitating domestic institutions, but more 'pessimistic' evidence also exists illustrating the misfit between the (large) amount of resources invested and the (negligible) impact achieved in practice [any source]. Thus, while being able to push for the adoption of better standards and policies, external actors in the Western Balkans have proved unable to crucially shape the implementation processes of the domestic institutions (Noutcheva and Aydin-Düzgit 2012).

In response to the rampant corruption (Vachudova 2014: 2), Croatia, Macedonia and Serbia signed up to prominent international anti-corruption initiatives and started developing anticorruption institutions in the 2000s. They joined the Council of Europe Group of Countries

¹² See the EU Progress Reports on Macedonia:

http://ec.europa.eu/enlargement/countries/detailed-country-information/former-yugoslav-republic-of-macedonia/index_en.htm [Accessed: 31 September 2015].

¹³ See EU Progress Reports on Serbia:

http://ec.europa.eu/enlargement/countries/detailed-country-information/serbia/index_en.htm [Accessed: 31 September 2015].

¹⁴ See an EU's overview of the instruments of pre-accession assistance, donors and capacity-building programmes: http://ec.europa.eu/enlargement/instruments/donor-coordination/index_en.htm [Accessed: 21 October 2015].

Against Corruption (GRECO) – Macedonia in 2000, Croatia in 2000 and Serbia in 2003¹⁵; they also signed the United Nation's Convention Against Corruption (UNCAC, 2005) – Serbia and Croatia in 2005 and Macedonia in 2007¹⁶. Regarding the enhancement of the legislative framework and the adoption of anticorruption institutions, notable progress was made in the three states, however rampant corruption has persisted as one of the major obstacles to institutional and social reforms (Shentov *et. al* 2014: 12).

As part of the anticorruption reforms, all countries adopted ACAs. Serbia and Croatia were the first, adopting an ACA in 2001¹⁷. Their models of agencies were different: Serbian Anticorruption Council (henceforth: Council) is a preventive while the Croatian Bureau for Combating Corruption and Organised Crime (henceforth: USKOK) is a suppressive ACA. Shortly thereafter, in 2002, Macedonia set up a preventive ACA called State Commission for Prevention of Corruption (SCPC)¹⁸. Later on, in 2004, another ACA – Republican Committee for Resolution of Conflict of Interest (Committee) - was set up in Serbia¹⁹. It was a preventive agency, just as was the Anticorruption Agency (ACA), which succeeded the Committee in late 2009²⁰.

ACAs have spread in the last three decades mainly to regions outside the OECD world (Doig 2012a: 73). These are developing and transitional regions, characterised by an underdeveloped

¹⁵ As part of a former state union, called Serbia & Montenegro.

¹⁶ For the list of signatories, see: <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> [Accessed: 25 August 2015].

¹⁷ Council's and USKOK's websites:
<http://www.antikorupcija-savet.gov.rs/content/cid1015/osnivanje-i-nadleznost/> [Accessed: 12 August 2015]
<http://www.dorh.hr/Default.aspx?sec=607> [Accessed: 12 August 2015].

¹⁸ SCPC's website:
<http://www.dksk.org.mk> [Accessed: 12 August 2015].

¹⁹ Its former website can be accessed from *Web Archive*:
https://web.archive.org/web/*/_sukobinteresa.sr.gov.yu [Accessed: 27 October 2015].

²⁰ ACA's website:
<http://www.acas.rs/o-agenciji/osnivanje-i-status/> [Accessed: 27 October 2015].

rule of law and widespread corruption. The Western Balkans differs from other regions in its exposure to EU conditionality. Due to their geographical position, a large majority of non-OECD countries that adopted an ACA cannot be part of a process of EU accession. As a result, they have not been subjected to such a force that seeks to comprehensively and profoundly shape the domestic institutional settings. Yet, there is no reason to doubt that studying countries from the Western Balkans will yield lessons that are likely to find resonance with most of the other regions ACAs have spread into. As the studies noted above found, the EU conditionality has had strong implications for what policies and institutions will be adopted, however it turned out much less instrumental for how these policies will be enforced in practice. Given this, the exposure to EU conditionality is not expected to represent a key independent variable that, alongside the 'domestic determinants', shapes ACAs' enforcement.

Data and measurement

This section reviews the indicators and data that will be used for measuring of each the variables. The table below provides a list of the explanatory variables and what indicators will be used in their measurement.

The ACA organisational model is determined on the basis of the core distinction in the literature (Klemečić and Stusek 2008; OECD 2013; Kuris 2015a), between those commanding prosecutorial and suppressive powers and competencies, versus those ACAs that are in charge of preventive competencies and non-prosecutorial powers (preventive vs. suppressive model). De-jure independence will be measured by Gilardi's index which converts the legislative provisions into a 0-1 scale of agency's de-jure independence (Gilardi 2002; 2005b). This index is based on various components such as the status of an agency's head, the status of its Board (both in terms of appointment and sacking procedures), financial and organisational matters, regulatory competencies and relationship vis-à-vis government and parliament. Organisational

resources will be worked out based on objective criteria, as set out in the ACAs' annual reports (budgets, staff numbers, programmes of international support), but also subjective assessments whether the provided resources are sufficient or insufficient will be considered (as estimated by relevant experts, agencies themselves, or international reports and factors).

TABLE 2.2 Explanatory variables, their indicators, and sorts of data used.

Approach	Variable	Indicators	Source of data
Organisational explanations	<i>Organisational model</i> <i>Resources</i> <i>De-jure independence</i>	Dichotomous categorisation: (i) preventive ACA; (ii) suppressive ACA. Domestic resources: Budget, staff, technical equipment, training. International resources: grants, programmes of capacity development, skill training, and so forth. Gilardi's index (Gilardi 2002; 2005; 2008)	Legislation (how the agency's powers and competencies are defined). Annual reports of the agencies. Statutory provisions, legislation.
Temporal explanations	<i>Age</i> <i>Election cycle</i>	How old the agency is. Fraction into the election cycle.	Agency's birth-date. Registry of held elections.
Leadership explanation	<i>Leadership</i>	Changes in leadership.	Annual reports, press-clipping.

Next, the temporal variables – life-cycle and political-cycle - are not demanding in terms of measurement, as they automatically evolve (as time passes). To determine their 'values', two

sorts of dates will be referred to: the distance between the agency's birth date and the point of observation, and the distance between the upcoming election's date and the point of observation.

Finally, leadership as a variable cannot be measured in absolute terms. It is hard to compare, through tangible indicators, whether one agency head exerts more or less of leadership than another head. However, what can be established with precision is the binary 'presence/absence' of a certain leader (or set of officials who collectively run an ACA). Leadership, in that sense, involves a relational sort of measurement, that is a comparison of what the enforcement looked like under one leader as opposed to another.

To measure the enforcement of the five ACAs and to identify the underlying processes, the thesis gathered a wealth of data. The collected data cover in total more than 40 years of the work of the five ACAs. Analysed are:

- Legislation (more than 30 laws in the five countries, by-laws, government ordinances);
- The decisions and acts of the ACAs;
- Annual reports of the ACAs (41 in total) ;
- EU and other international organisations' reports about the countries', transitional, and anticorruption reforms' progress;
- More than 7,000 media articles on topics relevant for the work of the five ACAs;
- Interviews with the ACAs' officials and anticorruption experts (nineteen interviews in total); and
- Secondary sources such as studies of some of the ACAs or anticorruption reforms.

The analysed legislation includes the laws regulating the work of the ACAs and also includes other pertinent legal acts. These include constitutions, laws about the regulation of the civil service or the criminal procedure, government decrees, the ACAs' statutes, by-laws, rulebooks and legal directions. The thesis analysed more than 700 enforcement decisions made by the five ACAs. These are mainly decisions dealing with high-ranking officials and they provide for a small portion of the overall pool of the ACAs' decisions. Some of the decisions are available on the ACAs' websites or in the Official Gazettes' databases. However, other decisions were not available so requests were sent to the ACA to provide the text of a decision. For an appreciation of the decisions of major cases (i.e. high-profile scandals), an insight into their text and media history was not sufficient; clarifications from the ACA's staff were critical.

An extensive press-clipping was collated in order to analyse: key events and developments, the patterns of behaviour of the ACAs, and the subjects involved in the scandals. Media articles were collected from Serbian, Croatian, Macedonian and regional news portals, newspapers' websites, and in some cases from TV and radio transcripts. The major challenge was to collect the articles that were published before 2005 because most of the media in the region have a full online archive dating back to 2005, at the earliest. For the period before, especially for Serbia and Croatia, separate searches were conducted of the major print media. For Macedonia, the archive available at a news aggregator *Time* (www.time.mk) sufficed for thorough press-clippings.

The thesis analysed all Annual Reports of the five ACAs (more than 40 reports in total). Not all of them are available online on the ACAs' websites. Some Annual Reports, for instance for the work of Croatian USKOK for the 2002-2004 period, for the overall period of existence of the Serbian Committee (2005-2009), or for the Council work between 2002-2003, or the SCPC's Report for 2007 - are missing. For those to obtain, requests were sent either to the ACAs or the national parliaments to provide a copy of the submitted report(s).

The thesis also analysed more than 70 international reports examining the institutional as well as anticorruption reforms in the three countries. EU Progress Reports about the three states are one sort of such documents. These documents were useful sources of details related to specific periods in the ACA's lives. GRECO Evaluation Papers were analysed as well. These reports are published in rounds, each round focusing on one key aspect of anticorruption struggle (e.g. money-laundering, conflict of interest, and so forth). GRECO Papers are a useful source that provides a detailed picture of the anticorruption developments in the host country, with abundant data collected in the field (GRECO evaluators perform thorough on-site visits). The thesis also looked into World Bank country reports, Freedom House reports (particularly the *Nations in Transit*), reports of the national branches of the Transparency International, and also the reports of the Global Integrity that were produced for the three countries (for Macedonia the 2008-2012 period is covered; for Serbia – 2006, 2008, 2008; no reports are provided for Croatia).

Nineteen interviews were conducted with the ACAs' staff, anticorruption experts and researchers, journalists and civil society activists. See Appendix C for more details about the interviews.

Having reviewed the methodological, the thesis will now turn to a discussion about the theoretical aspect of the study. The next chapter discusses the theoretical frameworks employed in the study and presents the explanatory factors as well as the variable that is sought to be explained.

Chapter 3 Theory

This chapter discusses the independent variables and the dependent variable. It starts with a discussion about the explanatory accounts that the independent variables are drawn from. Three accounts are set out: (i) organisational (including de-jure independence and organisational resources as key variables); (ii) temporal (featuring life-cycle and political-cycle as the variables); (iii) leadership-based (highlighting the role of leaders as crucial for shaping ACA enforcement). Expectations will then be formulated regarding how each of the variables affects ACA enforcement. Then, the chapter proceeds to an analysis of the dependent variable – ACA enforcement. It will be suggested that the regulation literature on enforcement style offers a good basis for developing a framework that can capture the enforcement of ACAs. This framework, called a *3s enforcement pattern*, will consist of three elements: (i) enforcement strategy; (ii) enforcement style; (iii) political selectivity (the '3s' stems from the initial letters of strategy, style, selectivity). The chapter will thus lay the theoretical and conceptual foundation for the empirical investigation of the five ACAs that will be undertaken in Chapters 4-6.

Why enforcement varies: theoretical explanations

Institutional behaviour has been the subject of interest of multiple literatures. Studies have tried to analyse what determines the enforcement of various sorts of organisations and what explains variations in their enforcement. In formulating determinants of ACA enforcement, the thesis will draw particularly on insights from the regulation and ACA literature.

Determinants of regulators' enforcement has been an under-researched theme in the regulation literature (May and Winter 2011: 230). Nonetheless, those rare accounts that dealt with this question sought to systematise the determinants of regulatory enforcement style. Kagan (1989), for instance, highlighted a number of factors as mutually interweaving drivers of

regulators' enforcement style: (i) institutional design²¹ (legal powers, ex-ante/ex-post controls, legal rights of regulated, legal rights of complainants, specificity of legal standards and penalties); (ii) task environment factors (visibility of violations, regulatees' willingness to comply); and (iii) political factors (recent scandals, urgent projects, political controversy, electoral shifts, changes in agency leadership, budgetary cutbacks and attempts to regulate government). More recently, May and Winter pointed to organisational, political, situational and personal factors as candidates for explaining regulators' enforcement style (2011: 223).

As noted earlier, the ACA literature has failed to deal with the question of determinants of ACA enforcement. Still, there is no reason to dismiss the suggested determinants of ACA performance as potential determinants of ACA enforcement too. Most of these determinants have already been highlighted in the regulation literature as drivers of regulators' enforcement and they have also long featured in political science and its sub-disciplines as main theoretical explanations for actors' and institutions' behaviour. The various factors that have been raised so far can be grouped in three major approaches, moving from structural explanations on one end, through temporal explanations, to the 'pure agency' idea on the other end. They are:

(i) Organisational accounts:

- 'de-jure independence matters'
- 'resources matter'

(ii) Temporal accounts:

- 'time (life-cycle) matters'
- 'political-cycle matters'

²¹ Which Kagan calls *legal design* (1989: 110).

(iii) Leadership-based explanations:

- 'the human factor (the leader or the Board²² staff) matters'.

The above accounts summarise the key explanations of institutional behaviour that have featured in the political science literature and related (sub)disciplines. The predominant factors that the ACA literature has raised when explaining ACA performance largely overlap with the above determinants. The thesis will therefore search for plausible explanations of the ACAs' enforcement among the three theoretical accounts listed above. The next part discusses each of the accounts and the role of their individual determinants, as seen by the ACA and related literatures (in the first place the regulation scholarship).

Organisational explanations

'De-jure Independence matters'

De-jure (formal) independence features as the principal structural factor and increasingly cited driver of institutional enforcement. Institutions are said to be constrained, or encouraged, to pursue one or another sort of behaviour depending on how much formal independence its institutional design secures. Arguably, those institutions that have safeguards against the government's intervention through sacking and appointment procedures, the possibility to overrule the institution's decisions, or through financial and organisational autonomy, may expect to have more freedom in their everyday operation. Such institutions have little to fear if they take actions that are perceived as running against the interests of the principal (incumbent). Higher de-jure independence, the argument goes, is likely to lead to higher de-facto independence, which thereafter paves the way for a freer choice of enforcement actions.

²² Term 'Board' is generic. It will be used to refer to the body/staff holding an agency's decision-making powers, even if they are not formally termed 'Board' by the legislation/statute.

There are several operationalisations of de-jure independence (Maggetti 2007: 274). A consensus in the literature seems to exist that sacking and appointment procedures, the government's and parliament's powers over the agency's decisions, and the power over organisational and financial matters of the agency, are the crucial elements of the de-jure independence (Gilardi 2002; Hanretty and Koop 2013).

The ACA literature has had little doubt as to whether (formal) independence is an important factor. There has been almost a consensual agreement that high independence is one of the key prerequisites for optimal ACA performance (see for example Pope and Vogl 2000; Camerer 2001; de Sousa 2010). The fact that de-jure independence is identified as a determinant of ACA performance gives us reason to articulate this factor as a potential determinant of ACA enforcement, too. After all, the enforcement lies 'one step' before the policy outcome.

A vindication to the argument that de-jure independence is a crucial determinant of how policies unfold came from the earliest empirical tests of the impact of de-jure independence. In 1992, Cukierman *et al.* (1992) demonstrated that higher degrees of de-jure independence of independent central banks are associated with lower inflation levels. The findings seemingly confirmed that de-jure independence has implications for policy outcomes. More recently, a study by Van Aaken *et al.* (2010) found that prosecutors' independence is highly correlated with lower levels of corruption. However, some studies show no support for the impact of de-jure independence on the policy outcome. Guidi (2015) shows that, in the EU member states, the national competition authorities' levels of de-jure independence are correlated neither with the amount of direct foreign investments nor with consumer prices.

The empirical findings are also mixed when it comes to the impact of de-jure independence on de-facto independence of agencies (the de-facto, or operational, independence is demonstrated during the on-ground implementation of policies). Maggetti (2007) finds no correlation between the formal independence and factual independence in the work of 16 European regulatory agencies. On the other hand, Melton and Ginsburg (2014) find that the de-

jure independence does matter in the field of judicial policies, but certain elements of the de-jure independence are arguably more important than others. The authors report that the selection and removal procedures for judges are the key elements affecting judicial independence in practice. Hanretty and Koop (2013) find, alongside other factors such as the rule of law and number of veto-players, that de-jure independence constitutes an important determinant of the de-facto independence of regulators in Western Europe.

As Hanretty and Koop (2013: 97) mention, some of the reasons for why de-jure independence may not affect the factual independence may be the presence of other non-legal determinants of de-facto independence, such as leaders' ability to exercise the 'politics of bureaucracy' (Carpenter 2001), political salience and task discretion (Egeberg and Trondal 2009), countries' politico-administrative tradition, policy salience and the institution's size (Verhoest *et al.* 2010: 249-269). Also actors, other than politicians, particularly those regulated subjects (Maggetti 2007: 142), may have an influence on the regulatory policy. Finally, an agency's staff may be subject to a variety of informal pressures and threats. These pressures may render agencies' formal safeguards of independence less relevant for the daily operation.

The thesis will consider two sorts of claims regarding the impact of de-jure independence on ACA enforcement. One claim supposes that high de-jure independence is a sufficient factor for harsher and politically less selective forms of enforcement. In other words, those ACAs that are highly independent are expected to enforce their mandate in a harsh and non-selective way. The other, a more restrictive claim, holds that a harsher form of enforcement is not possible without a high degree of independence. If an ACA has a low degree of independence, its enforcement will not be harsh and non-selective.

‘Resources matter’

The second organisational factor that is considered to be a determinant of ACA enforcement is that of agency resources. Perhaps no single study of regulatory agencies, including the literature on ACAs, has missed mentioning resources as an important factor for enforcement. A number of authors suggested that for an ACA to succeed, sufficient resources must be provided (Langseth *et al.* 1997; Meagher 2004; Doig *et al.* 2005; de Sousa 2010; Camerer 2001; de Speville 2008). That resources are highly important for ACAs’ enforcement has been underlined in the reports of international organisations, too (OSCE 2006; OECD 2008: 3, 27; UNDP 2009). The famed success of the Hong Kong ICAC has been attributed, among the others, to the abundant resources it enjoyed (Quah 1994).

How are resource cuts and increases expected to affect agency enforcement? Kagan said that “smaller budgets may encourage agencies to save resources by avoiding legal contestation, and hence to adopt a conciliatory style” (1989: 56). Another expectation may be that resource-poor agencies are less likely to make forays into others’ turf as they will struggle to enforce even what they are by the statute obliged to. A rise in resources, by the same token, may bring about harsher forms of enforcement, as shown in the study of the effects of rising prosecutors’ funds (Gordon and Huber 2009). Gordon notes that, besides a direct impact, enhanced capacities can foster harsher enforcement by way of reinforcing the prosecutor’s conviction that if she launches a case, the attainment of a criminal sentence is more likely. This awareness, arguably, significantly reduces the fear of failure, which encourages the prosecutor to undertake a harsher enforcement during the prosecution.

While the link between resources and enforcement seems natural, organisational studies warn us that changes in resources may lead organisations to adopt various responses. Thus, one possible answer to budget cuts may be the shifting of responsibilities for certain programmes to other agencies – a strategy that would enable the agency to continue executing the core programmes in a fashion similar to the pre-cuts period (Levine 1978; Hovey 1981). Another

possibility for a 'cut-stricken' agency is internal reorganisation that aims to increase productivity, by accomplishing the same or more with lesser resources (Levine 1978). Provost *et al.* (2009: 170-186) arrived at a surprising finding that, following budget cuts, the American Environmental Protection Agency increased rather than decreased the number of inspections. Is this finding, in which a regulator 'escalates' the enforcement style, not a sign that we should not jump too early to the conclusion that ACAs will resort to less harsh patterns of enforcement if their resources lessen? The possibility that cuts in resources may lead to those directions that, at an intuitive level at least appear less logical, shall be left open nevertheless.

Along the same logic, enhanced resources are not granted to imply better preconditions for an agency to carry out its tasks, particularly in a harsh manner. Receiving greater resources may be part of a more or less informal 'exchange of favours' between the provider and the recipient. In politicised contexts, a government's decision to allocate more resources to an agency may result from an understanding that the government can, in return, get more favourable agency treatment. Thus, a case can be made that resource increases may play out in the direction of 'declining' enforcement, in contrast to the conventional wisdom that more resources will foster a harsher enforcement. Therefore, two distinct expectations, as regards the impact of resources on agency enforcement, will be formulated below.

On a conceptual note, resources do not solely concern budgets and financial means. As Hyman and Kovacic note (2014b: 1474) „capacity is the necessary critical mass of *human talent* and *supporting resources* (prim. aut) to perform the assigned functions well“. Agency resources therefore refer to the capacities of its staff, their *skills* in addition to the *remuneration* they receive. Technical and logistic capacities (e.g. psychical and IT equipment) also constitute an agency's resources. The thesis will therefore account for both material and non-material resources.

Temporal explanations

'Time matters'

De Sousa notes that "the decision to set up an agency (ACA, prim. out) is often the easiest part of the institutionalization process" and that "the hard bone is to guarantee its effectiveness and long-term durability" (2012: 19). This reflects the concern that ACAs de-escalate their enforcement as they age.

Possibly the most widely cited idea for why aging agencies 'de-escalate' their enforcement is that of capture. Regulators are seen as being increasingly accommodative to private interests as they become older. Resultantly, this leads to a life-cycle characterised by 'declining' enforcement (Bernstein 1955; Kahn 1988; Martimort 1999). In Olson's words (1982), there is a tendency for accumulation of private interests over time, which results in greater power over those they seek to influence (e.g. regulators). Bernstein's life-cycle of regulatory commissions implies that in the 'youth phase' regulators are still 'unstained' – they demonstrate zealotry and aggressiveness in protecting the public interest. But, with aging – public interest, as well as interest of politicians in the agency's work – fades, while regulatees persist in seeking to prevent vigorous regulation. This, arguably, leads to the agency becoming more susceptible to external influences, which brings about less zealous forms of enforcement (1955).

Meier and Plumlee (1978) tested the Bernstein's life-cycle logic on a sample of eight American regulators. They find no support for the 'aging argument' which stipulates that agencies de-escalate enforcement as they become older. The findings do not indicate that older agencies have bigger turnover, poorer expertise, increased backlogs, or diminished efficiency (1978: 95).

Other authors, like Downs (1967: 18-21) or Salancik and Pfeffer (1978) anticipate the opposite effects of aging, where agencies' enforcement is expected to be more expanding, or more 'engaged', over time. For Downs, more time means more opportunities to establish the organisation's presence, which leads to a better embeddedness into the societal landscape.

Organisations are said to be driven by an 'expansionary logic', which seeks to exercise greater power over time. (However, it is questionable whether Downs' predictions can be characterised as opposite to the Bernstein's ones because when it comes to the individual level in bureaucracies, Downs predicts that zealots will develop into 'conservers' over time (1967: 19-22)). For Pfeffer and Salancik, one precondition for organisations to develop a mission and purpose is that they have enough time for this sort of endeavour; over time they also become more capable of accruing resources, which boosts the agency's survival prospects. If an agency is more resilient, more able to survive external pressures, it can be expected to be freer in opting for harsher forms of enforcement. Maggetti (2007) finds that, contrary to the declining enforcement hypothesis, regulators' de-facto independence in fact rises over time (in conjunction with a high number of veto players). Thus, the argument could also be heard that aging brings about escalating rather than declining enforcement.

In embracing the life-cycle as one of the possible determinants of the ACAs' enforcement, the thesis will ask whether passage of time has implications for how the ACAs enforce their mandate. If an effect is observed, the question will then be whether this effect resonates with the 'Bernsteinian' or 'Downsian' logic, that is whether the direction is one of declining or escalating enforcement.

'Political-cycle matters'

The next determinant of ACA enforcement considered in the thesis is – political cycle. At the heart of the political-cycle logic are political considerations (whose relevance also cannot be denied for the 'life-cycle' too). Yet, political-cycle is subsumed under the 'temporal accounts' for the simple reason that it is *timing* that determines when the political-cycle logic will be activated, whereas political-cycle is considered as a 'political determinant'.

The risk of *politics of prosecution* has been widely recognised in the literature. The sheer act of ACA creation is likely to accrue electoral benefits to the incumbent (de Sousa 2010: 17). In later stages, the incumbent may push the ACA to demonstrate ostensibly vigorous anticorruption drive, in order to portray itself as devoted to ethical principles. Politicians may go a step further by trying to discredit opposition leaders as corrupt actors (Meagher and Voland: 2006; Camerer 2001: 8; Sampson 2008). Even without direct incumbent's involvement in the anticorruption struggle, anticorruption bodies may be found to exert a pro-government bias (Gordon and Huber 2009; Gordon 2009).

Pre-election times are seen as the most susceptible to anticorruption manipulations. It has long been a truism in the rational choice stream that politicians, as presumably self-interested actors, tend to adjust their moves as an election approaches in order to maximise the re-election prospects. In political economy, for instance, a number of studies demonstrated the tendency of incumbents to manipulate fiscal policies by being more profligate in electoral years (Nordhaus 1975; Nordhaus *et al.* 1989; Alesina and Perotti 1994; Schultz 1995). Regarding the field of anticorruption, Gosh (2006) finds that criminal policy in India tends to get tougher in electoral years, as incumbents seek to use dropping criminal rates as a pre-electoral 'trump card'. Similarly, Vadlamannati (2015) finds that increasing anticorruption crack-downs in India coincide with scheduled elections. Mills (2012: 118-144) reports correlation between arrests of prominent political figures and particular stages in the election cycle. The stage into the election cycle when a high-ranking official will be arrested is dependent on whether the 'corrupt' politician comes from the opposition, whether he represents competition in the incumbent's party, or whether he is a former high-ranking official who may pose a threat in the upcoming events as a widely recognised figure.

While it seems intuitive that as an election reaches its conclusion, the likelihood of political purges increases, a different scenario cannot be excluded either. Instead of opting for purges, ACAs may tend to become 'silent' during election campaigns, just as some regulatory agencies

in the West practice abstaining from major decisions until the election is completed. One possibility therefore is that ACAs perform a sort of 'self-exclusion' from political struggles during elections.

The thesis will investigate, in the empirical analysis, how founded each of these hypotheses are. One step in that direction will be to analyse whether the five ACAs have generally displayed biased enforcement against opposition. Thereafter, the thesis will look into whether this sort of bias has been demonstrated in the latest phase of the electoral cycle, during pre-election years, or, on the contrary, the ACAs used to cut down targeting of politically salient figures prior to an election.

Leadership-based explanation

'Leadership matters'

The final sort of explanation of ACA enforcement is based on the idea of prevalence of agency over structure: it is, arguably, the 'human factor', in spite of the structural and temporal constraints, that crucially shapes ACA enforcement. A large portion of the ACA literature highlights the role of leadership as critical for their performance (Pope and Vogl 2000; Camerer 2001; Dionisie and Checchi 2008; de Sousa 2010). As noted earlier, the 'personal explanations' of enforcement have been highlighted by the regulation literature too (Kagan 1989: 48; May and Winter 2011). Hayman and Kovacic remind us that (in Washington) „it has long been a truism that 'personnel *are* policy'" (2014a: 63).

The notion of leadership may imply various meanings. According to one, the ethical dimension is crucial: those leaders who can lead by their own example in pursuing ethical standards are seen as being able to achieve better ACA performance (Camerer 2001). Somewhat different is the notion of leadership that places the emphasis on managerial skills: [leadership is] a "somewhat ill-defined yet recognisable quality of individual heading up agencies that enables

them to instil a sense of mission and dedication in their staff, and to go after their goals with single-minded determination" (Batory 2012a: 645). Bardach holds a corresponding view in that agency leaders are capable of "inducing resource contributions, nurturing an ethos in interpersonal trust and organizational pragmatism, executing a long-range developmental strategy, and diffusing expectations that one's own personal or agency efforts will be matched by the efforts of potential partners" (2001: 157). Carpenter, on the other hand, points out another characteristic of supposedly useful characteristic - the ability of agency leaders to practice the 'politics of bureaucratic autonomy' (2001: 353-354). Analysing three American agencies from late 19th and early 20th century, he shows how crafty leaders managed to win the support of wider audiences, which helped their agencies fend off external threats, enforce the mandate in an assertive manner and occupy new turfs.

The thesis follows the latest - 'Carpenterian' - definition of leadership. The other definitions point to important elements of leadership, but for the purposes of the thesis, the primary interest is in how ACA leaders interact with the 'outside world' (with the regulatees and other audiences, in particular the electorate and international evaluators). 'Inward oriented' qualities of leaders, enabling better management of the international processes, are no doubt important, but they do not seem as vital for building enforcement patterns as the autonomy and reputation-building elements would suggest.

It is nearly impossible to measure the leadership of the five ACAs in *absolute* terms. Tangible indicators for this sort of variable, in the given context, are hardly obtainable. As an alternative, the thesis will look at the *relative* impact of leadership: primarily, what the consequences of leaders' turnover are? Did the arrival of a new leader in an ACA bring about changes in its subsequent enforcement? It is worth noting that leadership relates not only to individual persons, it may also be about a group of people who have equal and shared powers to run an ACA. Some of the ACAs (USKOK, ACA) are run by single leaders, Directors who hold the executive powers in their hands, but the other ACAs (SCPC, Council, Committee) feature the

Board model which is characterised by collective directorship. In all these cases, 'leadership' refers to the job of running an ACA, regardless of whether an individual or a group exercises this power.

Summary of theoretical accounts

The explanations discussed above point to a variety of factors that have been raised in the literature so far. These factors, which fall within three sorts of theoretical explanations, will be taken as potential determinants of ACA enforcement. As announced, their impact on the five ACAs' enforcement will be explored in the upcoming empirical chapters.

It is important to note that the ACA literature and regulation literature have differing approaches as regards the direction of impact of these determinants. On the one hand, the ACA literature mainly assumes a unidirectional impact for most of the determinants. For example, from its works, it can be deduced that higher de-jure independence 'enhances' the enforcement or that greater resources will lead to an 'enhanced' enforcement too. On the other hand, the regulation literature, together with certain organisational and agency studies, mentions more varied scenarios as to how individual determinants may play out in practice. These scenarios, in general, are less deterministic and also more sceptical about the possibility of particular factors driving institutional behaviour in one single direction. Table 3.1. summarises these differences between the two groups of literatures and their claims.

TABLE 3.1 Summary of the explanatory approaches and determinants.

Explanation/ Determinant	ACA literature	Regulation literature	What thesis explores
<i>Organisational De-jure independence</i>	Positively correlated with escalated ACA enforcement.	Some studies view it as positively correlated with escalated agency enforcement; other studies question this relationship.	<ul style="list-style-type: none"> - Does low de-jure independence prevent harsher and non-selective enforcement patterns? - Does high de-jure independence lead to harsher and less selective enforcement?
<i>Organisational Resources</i>	Positively correlated with escalated ACA enforcement	Rather than predicting 'positive' impact on enforcement harshness, it is suggested that changes in resources may play out in different directions.	<ul style="list-style-type: none"> - Do low resources lead to less harsh forms of enforcement and do high resources lead to harsh forms of enforcement? - Do resource cuts/increases spur decline/escalation in enforcement?
<i>Temporal Life-cycle</i>	Concerns about durability of harsh enforcement, but some studies pose that time is needed for 'optimal' enforcement.	Mixed: some views expect escalating enforcement over time; other studies assume declining enforcement with aging.	<ul style="list-style-type: none"> - Do ACAs change their enforcement as a result of aging? - If they do, does this assume a 'rising' or 'declining' trajectory?
<i>Temporal Political-cycle</i>	ACAs may fall victim to the 'politics of prosecution', particularly in electoral times.	'The politics of prosecution' is not the only scenario; agencies can also carve autonomy, resisting pressures 'from above'.	<ul style="list-style-type: none"> - Are ACAs overall subject to disproportionate targeting of opposition? - Do election years in particular bring notable enforcement changes?
<i>'Personal' Leadership</i>	Positively correlated with harsh ACA enforcement.	Less explicit in suggesting the direction, but assumes positive contribution of crafty leaders to harsh agency enforcement.	<ul style="list-style-type: none"> - Do leadership changes bring about changes in enforcement?

To conclude, the thesis seeks to analyse whether the assumptions about the impact of the key determinants of agency enforcement, which have featured in the ACA as well as the regulation literature, find support in the cases of the five ACAs from the Western Balkans. For most of the variables, this means exploring whether the regulation literature offers better theoretical foundations to assess the impact of particular determinants on agency enforcement. For a few other explanations, where the position of the ACA and regulation literature are closer to each

other (e.g. regarding role of leadership) the question is whether their shared expectation(s) play out in practice.

Do two ACA models direct into different enforcement logics?

The previous part reflected on explanatory approaches for the first research question. The following part turns to the theoretical background for the second research question. This question asks whether ACA model mediates the way the respective determinants shape the outcome (enforcement). It focuses on one class of the outcome – a harsh enforcement pattern. The concern is whether the attainment of harsh enforcement is possible under similar conditions in the preventive and the suppressive model. More specifically, can the harshest forms of enforcement be attained with or without the presence of 'strong' organisational factors in the two ACA models?

ACA model is an organisational (i.e. structural) factor. The extant literature on ACA models is focused mainly on their categorisation and on description of tasks, core challenges, as well as comparative experiences of each of the models (Klemenčić and Stusek 2008; OECD 2013). Sporadically, authors debate ACA models from a normative perspective, evaluating whether one or another model proved more instrumental in curbing corruption (Dionisie and Checchi 2008; Kuris 2015a). But, while certain works argued that one model will lead to more optimal policy outcomes, none of the works has thoroughly probed into the link between an ACA's model and the enforcement so far.

ACA model, as a determinant, has not featured among the determinants of ACA enforcement regarding the first research question. Based on the literature, there is reason to believe that ACA model by itself is *enforcement neutral*. None of the empirical studies nor theoretical works in the ACA literature suggest that ACA model directs into particular forms of enforcement.

Therefore, the fact that one ACA is suppressive or preventive will hardly tell us more about whether its enforcement will be more or less harsh.

ACA model can be relevant nevertheless, in at least one important respect. It can mediate the way the respective determinants shape ACA enforcement, by conditioning their mutual interaction which leads to specific enforcement outcomes. It is argued here that for a particular type of outcome – the harshest form of enforcement – ACA model plays a role by setting the reputational ‘terrain’. The two models are argued to lead to two different reputational constellations, which then direct ACAs into two different logics of operation.

In general, regulators’ organisational model has been a little discussed factor in the regulation and agency literature so far. The extant works that discuss regulators’ models come mainly from the field of administrative law. The field of market competition is one regulatory sector where regulators’ models have been discussed so far (Hyman and Kovacic 2009, 2012; Ottow 2014). In fact, market competition regulators are similar to ACAs in the following respects; both sorts of regulators can take up more than one organisational model; certain models of competition regulators pursue investigations and prosecutions, just as certain (suppressive) ACAs do and, finally, certain models of market competition regulators typically involve inter-jurisdictional conflicts or overlaps - as preventive ACAs do so (Hyman and Kovacic 2012b: 9-11).

Speaking about the link between regulators’ design and reputation (for which they interchangeably use the term - ‘brand(ing)’), Hyman and Kovacic note that “the design of regulatory institutions can influence their ability to create good brands” (2014: 258). In other words, the authors suggest that a regulator’s institutional design has very real implications for its ability to maintain organisational reputation. By the same token, the thesis argues that ACA model, as a key aspect of institutional design of ACAs, shapes their reputation opportunities. It does so by providing different prospects for reputational gains and losses. The preventive model of ACA, to be elaborated below, brings greater room for reputation-seeking strategies. These strategies have the potential of bringing reputational gains while risking very little of

reputational loss. The reputational constellation of suppressive ACAs, on the other hand, is predominantly a reputation-defending one. It poses great and frequent risks of reputational losses, while providing for little opportunity for reputational gains. As a result, harsher forms of enforcement will be more likely in preventive ACAs than suppressive ACAs. Due to the more 'unfavourable' reputational constellation, suppressive ACAs will need a wide array of factors to be in a 'favourable' constellation, before a harsh enforcement is possible. Preventive ACAs, on the other hand, will not need a wide array of factors to be in place in order to undertake harsh enforcement, since they risk little in reputational terms.

The key to understanding why the two ACA models will be operating under different enforcement logics lies in two details: a 'turf' conscious behaviour of agencies (Wilson 1989: 179-195) and a reputation-oriented accountability (Busuioc and Lodge 2015) which derives from Carpenter's reputation-based argument about the source of agency power (2010).

As Carpenter stressed (2010), an agency's reputation among the wider audience is crucial for the creation and maintenance of its power. Busuioc and Lodge (2015), building upon this argument, emphasise that it is the reputation-based form of accountability, rather than those forms centred on hierarchical relations and formal institutional procedures, that crucially drive agencies' behaviour. In brief, regulators are motivated to give account to those audiences whose appraisal of the agency's work is essential for the agency's reputation.

Wilson claimed that agencies will be willing to take up those turfs over which they can command power (1989: 179-196). Accordingly, agencies will be reluctant to engage in execution of policies in those jurisdictions over which they are held accountable but where they cannot command sufficient control. One particular possibility that Wilson did not discuss, yet one that appears relevant from the perspective of the thesis, regards situations where an agency does not pick itself but is instead assigned a turf, which it is unable to crucially change. One key issue that may arise under such circumstances is a discrepancy between the accountability the agency bears for the policy results and the real ability to have command over

the policies that are supposed to produce the expected results. This could potentially cause accountability problems to the agency. How will then the agency behave under such circumstances?

The thesis expects the preventive ACA model to be characterised by lower 'thresholds' for harsh enforcement. 'Lower thresholds' mean that not all organisational factors need to be strong, as necessary conditions for harsh enforcement. According to this expectation, agencies with lower degrees of de-jure independence, for instance, or with poor resources, may achieve a harsh form of enforcement. The suppressive model, on the other hand, is expected to be characterised by 'higher thresholds' for harsh enforcement. These higher thresholds include not only the organisational factors (de-jure independence and resources) but they also include a other factors such as the strength of the ACA's powers and jurisdictions, i.e. the degree of control over the turf it is responsible for.

The operation of preventive ACAs is characterised by looser constitutional and legal restrictions, lower risk of political pushback (as these agencies cannot harm politicians by the most coercive means, for instance that of arrest), lower evidentiary standards when it comes to investigations, lower formal responsibility for the processes of prosecution – which by the definition of the model itself is not in the hands of the ACA - and, finally, by greater space for sending public messages while investigations are in progress (Kuris 2015a: 129-130). All these result from the given nature of preventive ACAs, who command a set of tasks falling under prevention of corruption.

Preventive ACAs may at the same time afford engaging in work related to investigations. Under the pretext of contribution to the anticorruption struggle, preventive ACAs do enjoy certain opportunities to 'jump' onto the prosecution-related turf, which otherwise remains in the hands of the police, prosecutor and court. Preventive ACAs thus may initiate investigations, they may pressure for resolution of scandals and they may accuse particular officials. In other

words, preventive ACAs may decide to become active in the turf occupied by the traditional anticorruption bodies who in fact bear the responsibility for what the policy outcomes will be.

Suppressive ACAs are characterised by the opposite: tighter constitutional and legal restrictions, higher risk of political pushback, higher evidentiary standards, multiple 'veto' possibilities of those prosecuted to prevent the intended outcome (from the perspective of the ACA's interests) since the process takes multiple stages (from pre-investigation to court verdict to appeal process), and, most importantly, high responsibility for the outcomes of prosecutions (Kuris 2015a: 130). Due to all these 'restrictions', the possibilities for successful policy outcomes are more limited. To enhance them, a suppressive ACA needs the key factors that contribute to successful prosecution to be in place. These factors are primarily strong organisational factors such as a high degree of de-jure independence and considerable resources. Suppressive ACAs will also need to be in position to control the turf they are assigned. The hypothesis is that weaker forms of the suppressive model, such as those agencies that command little power over the police, judiciary, witnesses, and other actors in investigations, are unlikely to produce harsh enforcement actions; stronger forms of the suppressive model, on the other hand, are expected to achieve harsher forms of enforcement (provided that the organisational factors are 'strong').

Preventive ACAs enjoy abundant reputation-seeking opportunities. They may take advantage of the 'mitigating' conditions which make potential policy failure little costly for them, for the simple reason that the accountability - primarily materialised through reputational means - lies with the other bodies that are responsible for prosecution. Perhaps in no other domain, as is the case in anticorruption, harshest forms of enforcement bring such reputational gains. Any sort of zealous and assertive action that is said to be aimed against corruption will be greeted by a wider audience. This is expected to be the case particularly in the contemporary context of growing citizens' cynicism about the integrity of politicians and also in societies rife with

corruption. As a result of a harsh enforcement action, preventive ACAs are likely to attain reputational gains.

Despite the ultimate outcome of the process, the preventive ACA is in a 'win-win' position. If it engages in the prosecution turf, calling for an investigation to be undertaken, three possibilities are possible: (i) the prosecutor takes over the case, and the case concludes as successful within a court trial ; (ii) the prosecutor takes over the case, but the case fails to achieve a sentence; (iii) the prosecutor dismisses the case. In all three scenarios, the preventive ACA can claim reputational gains. In the first case, it can claim credit for initiating the case and for 'prompting' the suppressive institutions to convert it further into a verdict. In the second case, the preventive ACA can avoid reputational loss by blaming the prosecutor for 'unprofessional' or 'unskilled' handling of the case. In the third scenario, the preventive ACA can attribute a considerable portion of blame to the prosecutor, shifting the burden of responsibility for the overall state of corruption onto the traditional anticorruption actors, claiming that 'lack of will' or a 'lack of interest' are major factors disrupting an effective tackling of corruption. As can be seen, regardless of the outcome - preventive ACAs can lose little from harsh enforcement actions, while potentially gaining considerable reputational benefits.

Suppressive ACAs, on the other hand, face the opposite incentive structure when it comes to reputation. Due to the higher thresholds for successful outcomes and due to higher obstacles, suppressive ACAs risk much by undertaking harsh enforcement in situations where the prospects of successful policy outcomes are more uncertain. The thesis advances an argument proposing that suppressive ACAs will turn to those forms of enforcement which, given the constraints in its capabilities to exert full command over the turf, bear the least reputational risk. Capabilities „refers to whether an agency has statutory powers (e.g., effective remedies), organizational structure and quality control mechanisms to make good decisions and apply its authority effectively“ (Hyman and Kovacic 2015: 1475). There are suppressive ACAs with weak and strong capabilities. Suppressive ACAs with weak capabilities are those that have limited

institutional control over the processes of investigation and prosecution. For instance, authority cannot be applied vis-à-vis the police, there is a heavy dependence on court decisions and there are no enforcement mechanisms available to the agency for the effective dealing with witnesses. Due to weak capabilities, the ACA faces bigger prospects of policy failure. Unsuccessful outcomes would then tarnish the ACA's reputation. Following the reputation-based argument which stipulates that agencies seek to advance accountability by means of reputation, the thesis hypothesises that suppressive ACAs with weak capabilities will stay away from harshest forms of enforcement. In other words, the condition for undertaking harsh enforcement will be an enhancement of the capabilities. This concretely means - the 'reinforcement' of the organisational factors: de-jure independence, resources, and agency powers.

To sum up the theoretical discussion and the hypotheses related to the second research question, the thesis predicts that the two ACA models will be characterised by two distinct enforcement logics. It is argued here that the ACA models pose different reputational opportunities, with the preventive model allowing for greater reputational gains from harshest forms of enforcement, while the suppressive model risks considerable reputational losses from harshest forms of enforcement. Therefore, an expectation is formulated that preventive ACAs will be facing lower thresholds for harsh enforcement because of low risk of reputational loss in event of policy failure. For suppressive ACAs, policy failure implies higher risks. The reason for this is the fact that, by the nature of their design, suppressive ACAs are assigned responsibility for the turf of investigation and prosecution, which links their reputational fortunes to the ultimate outcomes in court trials. Resultantly, suppressive ACAs are expected to undertake harshest forms of enforcement only when their capabilities of control over the turf are strong. Should this condition be not met, suppressive ACAs are expected to stay away from harshest forms of enforcement.

As introduced in the section about the research design, the thesis is suitable for testing this sort of argument for the following reasons. on the one hand, it provides for four units of preventive ACAs, who exert a variety of combinations on the organisational factors. On the other hand, the suppressive ACA – the USKOK – as a unit of analysis provides for several cases which are characterised by different values of the institutional capability. Shortly, the USKOK has undergone a process of capability enhancement from 2005 on. This cross-time variation allows for testing the reputation based argument and is particularly suitable to explore the underlying mechanisms that framed what sort of enforcement the USKOK will chose.

In summary of the theoretical expectation regarding the second research question, it is hypothesised here that the two ACA models, preventive vs. suppressive, will operate under different logics of enforcement. The preventive model is expected to be able to achieve harsh forms of enforcement, even if the organisational determinants are not 'favourable'. Strong values of de-jure independence or abundant resources are thus expected not to be necessary factors for harsher forms of enforcement of preventive ACAs. The suppressive model, on the other hand, is expected to have strong organisational factors, as a precondition for harsh forms of enforcement.

Capturing regulatory enforcement

Having reviewed the independent variables, this part conceptualises and operationalises the dependent variable. As announced, the thesis seeks to explain the enforcement of five ACAs from the region of Western Balkans. The first question to start with is: How to measure the ACAs' enforcement? Drawing on the concepts from regulatory enforcement literature, the thesis proposes a *3s enforcement pattern* as a heuristic tool for capturing ACA enforcement. This concept includes the following three elements: enforcement strategy, enforcement style, and political selectivity.

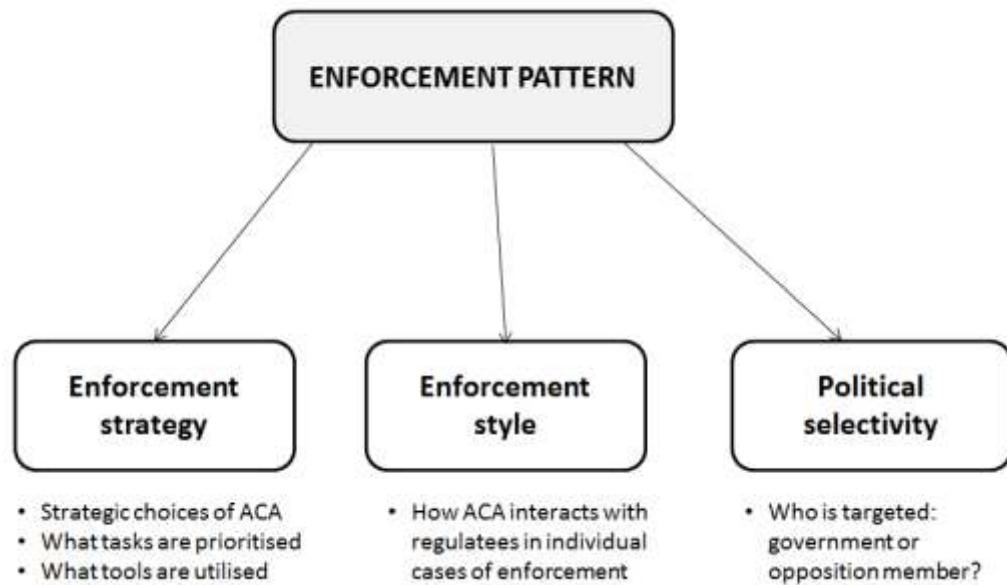


FIGURE 3.1 Elements of '3s enforcement pattern'.

Before turning to each of the elements, it is worth noting that the phrases 'enforcement strategy' and 'enforcement style' referred, within the extant literature, to the enforcement of different sorts of units of analysis. 'Enforcement strategy' was more commonly used for agencies, whereas 'enforcement style' is largely applied to inspectors as units of analysis (in inspectors' interactions with regulatees) (May and Winter 2011: 223-224). Agencies are conceived as 'desk actors', distant from the fieldwork and preoccupied with strategic choices, whereas inspectors are those who pursue enforcement in the field.

This thesis breaks the tradition of mutual exclusivity of the two concepts, arguing that certain sorts of agencies, such as the ACAs, need to include both considerations - about enforcement strategy as well as enforcement style of individual actions - in order to get a full picture about an ACA's enforcement. Unlike those regulators whose work is based predominantly on inspections, ACAs enforce tasks from 'the desk', interacting with officials on a one-by-one basis as an *institution* rather than a set of inspectors or individual regulators. At the same time, ACAs

deal with individual enforcement cases which require contextualised decisions. Given this, to capture all salient aspects of an ACA's enforcement, one needs to include both the enforcement strategy of the ACA and the enforcement styles of the individual actions undertaken by an ACA.

Enforcement strategy

The first element, enforcement strategy, had been used in the regulation literature, as the word says, to describe strategic choices an agency must make regarding its work. Key questions behind enforcement strategy include; what tasks must be prioritised? How must resources be allocated against tasks? What tools must be utilised in the enforcement? (May and Winter 2011: 223). Enforcement strategy, in other words, concerns a 'macro' approach regulatory agencies undertake.

In the world of ACAs, enforcement strategies can range from assertive and expansionary strategies to confined and reserved ones. Assertive strategies include an ACA acting aggressively by means of its rhetoric; expansionary strategies tend to take up issues that go beyond the strictly delegated set of tasks. For example, an ACA who is responsible primarily for conflict of interest and asset declarations may tend in its enforcement to address questions of systemic corruption that involves wrongdoing in privatisations or procurements. Seeking to make itself a relevant actor for a turf which is broader than the strictly delegated set of tasks, renders its strategy expansionary. 'Milder' strategies, on the other hand, involve 'confined' or 'reserved' forms of behaviour in which the regulator does not seek to address wider issues beyond the legally defined remit.

Assertive and expansionary strategies are usually pursued through the deployment of a variety of tools, some of which are widely available not only to the ACA but also to other institutions and subjects. For example, assertive ACAs often tend to carry out their own investigations,

which, due to the ACA's lack of coercive powers, rely on provision of information from various sources. Information of public interest, which is mandatory in many countries to be accessible to the public, whistleblowers' tip-offs and hired experts' reports are some of these diverse tools. 'Confined' or 'reserved' strategies, on the other hand, are characterised by the use of those tools that are delegated to an ACA, for the execution of the delegated tasks.

In general, an ACA's enforcement strategy will easily be determined by looking at how it behaves toward the wider anticorruption turf. One indicator for this is whether an ACA tends to act as a relevant actor for the tasks the prosecutor, police, and judiciary are traditionally responsible for, or it strays away from such questions. Another indicator is whether an ACA is engaged in advocacy for anticorruption reforms. Those ACAs pledging for substantial changes of the institutional framework can be considered to have pursued expansionary strategies.

Enforcement style

Enforcement style is the next and also the critical aspect of the '3s enforcement pattern'. Enforcement style is a crucial descriptor of how ACAs behave in individual actions in which they deal with officials suspected of corruption or breaches of ethical standards. Before proceeding to a discussion on what sorts of details an ACA enforcement style concept needs to include, it is worth saying that the ACA enforcement style to be proposed here draws on some previous frameworks of enforcement style. Yet, it also moves beyond them by incorporating new details in order to accommodate the specifics of the anticorruption domain.

One problem with the frameworks of enforcement style, developed for specific policy domains, is that they are unable to 'travel' across many other policy sectors. Most domains are characterised by specifics that cannot be captured with the 'universal' dimensions of the extant frameworks. Take, for instance, the present domain, that of anticorruption. One of the crucial details in the work of ACAs is how fast they act, to be described later in more detail. When a

suspicion arises that an official engaged in a corrupt act, it is critical that the ACA takes a swift action, either by opening an investigation or by compelling the official to provide the needed information. In other domains, such as construction or environmental protection, swiftness of regulators' reaction in opening a case may not be as critical as in the work of ACAs. Thus, unlike in the other domains, a proper framework for measuring enforcement style of ACAs should include a component of 'swiftness'.

At the same time, degree of formalism – a prominent dimension in extant frameworks – appears redundant for measuring ACAs' enforcement style. The typical anticorruption standards leave little room to ACAs to decide whether an official who violates the law should be sanctioned or not; since the sheer idea of anticorruption struggle implies culpability of those who engaged in corruption, there is no discretion which may lead to a sort of 'accommodative' approach. In that sense, having the dimension of formalism, as defined by McAllister (2010) and the predecessors, would unnecessarily complicate any framework that tends to capture ACA enforcement.

Furthermore, the extant frameworks of enforcement style do not discriminate between who the targeted regulatee is. The reason is simple: the regulatees come mainly from the business world, therefore there are no strictly 'opposed' camps in the sense of the political divide on government and opposition. For this reason it would be redundant to include the information of who the target is. However, the work of ACAs is characterised by high political salience, whereby one single enforcement action can ruin reputation and career, or can drastically affect the political/electoral fortunes of the contenders. Therefore, inclusion of the information on who is targeted by an ACA's enforcement action is indispensable for suitable frameworks of ACA enforcement style.

Given the above, it is clear that certain modifications to the prior frameworks of enforcement style, which are developed for other policy domains, need to be made in order to

accommodate the specifics of ACAs as a peculiar sort of regulators. The following part proceeds to concrete suggestions for the conceptualisation of ACA enforcement style.

ACA Enforcement Style

Anticorruption policy is primarily about: (a) finding those engaged in corruption, and (b) punishing them for being involved in corruption. The work of ACAs, just as the work of other regulators engaged in investigative activities, can therefore be divided in two stages: pre-discovery and post-discovery stage. Pre-discovery stage involves two key sorts of tasks – routine data collection (e.g. collection of declared assets, keeping registers of officials, and so on) and detection of violations. These are information-gathering activities (Hood *et al.* 2001). Post-discovery stage is about the application of sanctions for the spotted violations, which can be considered to be a variation of behaviour-modification activity (Hood *et al.* 2001).

To capture the key details of ACAs' enforcement, a framework of enforcement style therefore needs to reflect on the nature of an ACA's activities in the two stages:

- (i) *Pre-discovery*: What is an ACA doing to identify a misconduct?
- (ii) *Post-discovery*: Once established, what sort of sanction is applied for the given misconduct?

These questions reveal degree of zealotry of ACAs. Zealotry is a quality that refers to how much effort one ACA makes in order to find a breaching official, plus whether it resorts to the harshest possible measure once a breaching official is caught. What is called zealotry here largely corresponds to the McAllister's (2010) notion of capacity. But the notion of zealotry is somewhat broader than the McAllister's capacity: it includes how active an ACA is in gathering evidence after someone else reported a violation. Zealotry is an important attribute not just because it directly determines the chances of corrupt officials being caught, it also serves a communicational purpose, sending a message that misconduct will be vigorously addressed.

As to the second aspect, the question is what sort of sanction an ACA imposes against a breaching regulatee. ACAs' sanctions may be benign ones, such as 'naming and shaming' or formal pronouncements that the law was breached (which do not imply concrete fines), but sanctions can also be stringent - criminal charges, detentions, or indictments, to mention just a few. The dimension of stringency, which is about how harsh a sanction is, is included as a second component of ACA enforcement style because only by having an insight into the repercussions for regulatees we can appreciate the nature of an ACA's enforcement. For example, a high degree of zealotry demonstrated in a situation in which the sanction is 'benign' is a fundamentally different sort of enforcement compared to a high degree of zealotry which is applied where the sanction that followed was severe.

The framework for measuring ACA enforcement style follows these two dimensions. They can both exert a 'high degree' or a 'low degree', yielding four possible enforcement styles:

TABLE 3.2 Taxonomy of ACA enforcement style.

		Degree of stringency	
		Low	High
Degree of zealotry	Low	1. <i>Retreatist</i>	2. <i>Aloof</i>
	High	3. <i>Entrepreneurial</i>	4. <i>Predatory</i>

Retreatist style represents the 'weakest' enforcement style. It signifies an enforcement that is inactive in detection, in situations in which the potential sanction is benign. Even though a regulatee does not face grave legal consequences, the ACA does not maximise the effort

towards having a suspect official punished. The term 'retreatist' is hence used to denote the sort of conduct which 'backs away', even when the stake is low.

If a severe sanction is envisaged for a given misconduct but the ACA acts in an inactive manner in detection or is inactive in evidence collection, then its enforcement style is *aloof*. These are, for instance, situations in which an ACA is aloof in searching for evidence in places where it can be found (e.g. by applying special investigative measures, or by demanding incriminating data from another institution such as a Tax Office or a bank), or simply situations in which an ACA does not react to raised suspicions (e.g. when informed about an official's misconduct by through media) in a timely manner. The aloof enforcement style signifies what McAllister (2010) calls an inactive approach (on the capacity dimension).

In *entrepreneurial* enforcement style, an ACA acts zealously despite the awareness that the maximum sanction the official can get is 'benign'. Despite the limited punishing possibilities, the ACA demonstrates zeal and proceeds without hesitation in seeking to find evidence and apply a sanction against the official that is suspected to have been in breach of the law.

The label *predatory* is assigned to zealous ACA actions which are accompanied by severe sanctions. Predatory enforcement style involves a situation where an ACA 'hunts' an official who faces a threat of ending up with a severe legal penalty. For instance, prosecution of a corrupt act which bears criminal liability, in which the ACA acts in a zealous manner, will be qualified as predatory enforcement style.

The following discusses the operationalisation of the dimensions of *zealotry* and *stringency*. It is explained how the values of those two dimensions will be worked out when reviewing individual enforcement actions of ACAs.

Zealotry

Zealotry dimension is defined by way of incorporating two elements, *formalism* from Kagan's (1984) and *capacity* from McAllister's (2010) framework. Formalism (elsewhere called 'rigidity', or 'flexibility') refers to how flexible in interpreting the legal framework an ACA is. One law setting out an ACA's tasks may be so precise that there is not much room for the ACA to take up a wider set of tasks than those spelled out in the legislation. It may, however, also be possible that the legislation leaves some room to the ACA to apply discretion in deciding what measures need to be taken in order to attain the general values and principles featuring in the legislation. For example, a provision that an ACA „will ensure that officials conform to high integrity standards“ may serve as ground for the ACA to take a wide variety of measures, some of whom are not spelled out as part of the ACA's institutional repertoire. In such a scenario, the ACA exerts a high degree of flexibility.

Capacity (McAllister 2010: 65-67) is the other element that together with flexibility determines how high an ACA's zealotry is. It is defined by how active agencies are in identifying violations. To tailor this element to the world of ACAs, its meaning will be slightly revised as 'how active agencies are *in identifying or responding to already identified violations*'. Therefore, the key concerns is not solely about an ACA's initiative to detect a violation itself, it is also about reacting to others' discoveries that have been presented to the ACA.

To be characterised as zealous, an ACA's reaction should meet several conditions. It needs to be either (i) proactive or (ii) swift, and it needs to be (iii) severe. A proactive action occurs when an ACA actively searches opportunities to address suspicious cases. If an alleged misconduct is identified by an ACA, then its action is no doubt proactive. Proactive actions can also occur as a result of an ACA's high degree of flexibility. For instance, when through flexible interpretations

of the law an ACA seeks to address a case, or when under a low degree of flexibility an ACA demonstrates initiative in tackling a case which falls under its remit.

When it comes to responding to others' provision of information, how zealous an ACA's action is will be determined by how swiftly it reacts. If an official, for example, gets accused by another official, or if newspapers point to a corrupt act, the ACA can respond in two substantively different ways: (i) it can react immediately, by asking the official to provide the full information about the case and by undertaking the envisaged measures of investigation; or (ii) it can react in a protracted manner, leaving some time to the official to come up with a response. Swiftness of reaction is perceived as a critical quality of ACAs' enforcement. As cited by Liu (2015:420: „The key to successful anti-corruption lies in the fast investigations and solutions of authority agencies“²³. It was mentioned in nearly all thesis' interviews that swiftness of an ACA's reaction is a crucial determinant of the prospects of the suspect to 'get away' unpunished.

„With each new day as non-investigated persons, their (suspects, prim. aut) chances of survival drastically increase because they can manipulate the evidence; they can also collude with the accomplices, obtain false witnesses and who know what else they can do“ (C1).

It is not surprising then that 'fast responsive' ACAs are therefore seen as „responsible“ and „reformative“ (Liu 2015: 48-49).

To establish whether an ACA reacted swiftly in a particular case, a '10-day benchmark' will be applied. If the ACA responded within 10 days following the appearance of the case (e.g. in media), by opening a (pre) investigation or by declaring publicly its competence over the matter, then such action will be deemed swift. The 10-day criterion is derived from a survey of 16 of the total of 19 interviewees (ACA staff, NGO representatives, scholars). As many as 15,

²³ *Information times*, from Xinhua news agency (27 December 2012)

out of the 16 surveyed experts, agreed that if an ACA does not react within ten days, it indicates a protracted reaction.

Finally, to be qualified as zealous, an ACA needs not only act proactively or swiftly. It shall also pledge for the harshest fine from those that may be applied for the given misconduct. Typically, ACAs have little discretion in choosing between two or more fines, but, in certain cases, especially with the preventive organisational model, an ACA may be in position to decide whether, for example, to apply a 'naming and shaming' sanction or to suggest the official's removal from office. Opting for the less favourable option for the suspect (in this example - removal from office), will be considered as a sign of zealotry²⁴.

An objection may be made that a flexible interpretation of legislation, where the ACA opts for a milder fine, is not necessarily a result of low zealotry but rather of a different enforcement philosophy. As thoroughly discussed in the literature, lenient - or more accommodative enforcement - is not always a sign of the regulator's weakness. It may represent an attempt to elicit greater compliance. As enforcement pyramid literature points out (Ayres and Braithwaite 1992; Braithwaite 2002: 29; Mascini 2013), the application of a milder fine may be just one step in the enforcement ladder in which the sanction will be escalated should the non-compliance persist. Is the coding of an ACA's action as non-zealous, solely because it has applied a sanction which is not deemed the harshest available, thus misplaced? No, It is not, because within the anticorruption field, in contrast to other regulatory domains, enforcement pyramids are neither common nor advisable; they may rather be an indication of tolerance of corruption and unethical conduct.

²⁴ Obviously, the nature of sanction is conditioned by the nature of the ACA's toolbox. If the ACA commands only one "tool", it enjoys only one sanctioning possibility. Consequently, it will be regarded as severe, regardless of how stringent this fine is in absolute terms. However, if the ACA has the option of choosing between two tools from its "toolbox" and if it opts for the more "benign" one, its degree of zealotry will be coded as "low".

The following tree-diagram summarises the steps for coding an enforcement action's degree of zealotry. These steps reflect nothing else then the above discussion about the elements of a zealous enforcement action.

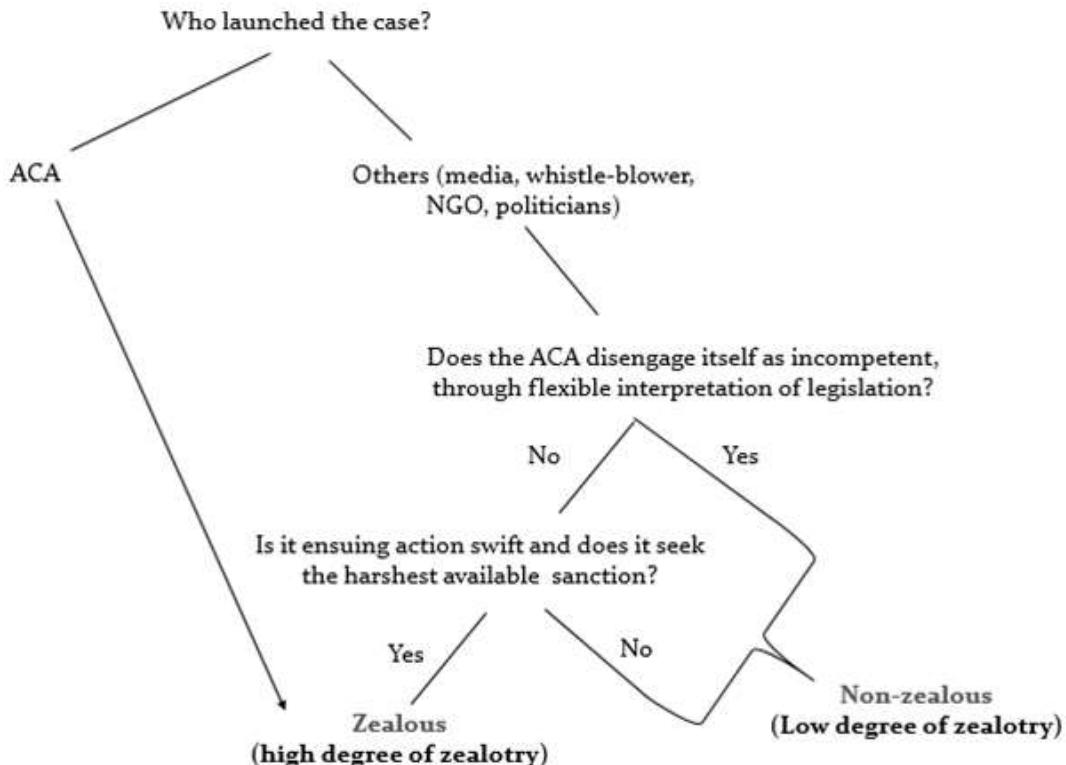


FIGURE 3.2 When is enforcement action (non)zealous.

The fact that there are several ramifications in the figure may seem uncharacteristic for gauging one dimension within an enforcement style framework, but the rationale lies in the specific nature of ACAs' enforcement. Namely, for one ACA action to be zealous, several conditions need to be met, i.e. there is more than one factor to be fulfilled. How zealous can an ACA be considered from the perspective of outcome? Does an ACA's action maximise the chances for the harshest possible sanction eventually? As can be seen in the scheme, if an ACA undertakes

an initiative itself by launching a case, it demonstrates a zealous action. If, on the other hand, another subject raises a suspicion, the first sign of zealotry would be the ACA's readiness to take up the case. If it does so by linking the case to its mission and responsibilities, claiming grounds for intervention, then the question to ask is: does the ACA strive for the harshest available action? If so – the action will be coded as zealous.

Stringency

As studies of deterrence of criminal behaviour show, harsher sanctions lead to lower rates of criminality (Thomas 1977; Steele and Wilcox 2003). When considering ACA enforcement style, it is therefore important to account for how harsh the available sanctions are. This is referred to as *stringency*. Alongside zealotry, which is the first dimension, stringency makes for the second dimension in the framework of ACA enforcement style.

There are two sorts of fines, mild and harsh. Mild ones include the following: (a) a warning; (b) a pecuniary fine; or (c) a recommendation for removal from office. As they do not imply criminal liability, these fines represent instances of low degree of stringency. In contrast, a high degree of stringency occurs when the sanction includes criminal liability, or alternatively, when it takes drastic forms of non-criminal liability such as a ban of performing office or a ban of political career. Below is an overview of mild and harsh sanctions, which defines the stringency dimension of ACA enforcement style:

TABLE 3.3 Indicators of low and high degree of stringency (mild and low sanctions).

Value of stringency	Sanctions
Low (lenient)	Warning Pecuniary fine Sacking recommendation
High (stringent)	Criminal charge Criminal sentences Ban of political career Ban of performing political functions

Illustration of application of ACA enforcement style

In summary, the thesis suggests a framework for measuring ACA enforcement style that consists of two dimensions: zealotry and stringency. To illustrate how the framework will be applied in empirical analysis, the following table provides exemplary cases for each of the four enforcement styles. These are taken from the pool of cases analysed in the forthcoming chapters. The cases are meant to illustrate the thinking behind the coding of the enforcement actions the Serbian, Macedonian, and Croatian ACAs undertook.

FIGURE 3.3 Examples of the four enforcement styles.

		Zealotry	
		Low	High
Stringency	Low	Aloof enforcement action Some administration units have missed the deadline for drawing integrity plans, thus breaching their obligation toward the ACA. The possible sanction by the ACA is 'naming and shaming' through a public statement. The ACA, however, grants a deadline extension instead of 'naming and shaming'. <i>The agency's extension of deadlines, when the sanction is otherwise mild, renders the enforcement action – aloof.</i>	Entrepreneurial enforcement action An ACA expediently starts an investigation into whether a 'tipped' Director of a state-owned enterprise director occupies three other public posts, which would be illegal. Upon establishing the facts, the ACA finds the official guilty. The fine, however, cannot be harsher than a recommendation for removal from office. <i>The ACA demonstrated zealotry through a swift response; the absence of harsh fines means that the level of stringency is low, so the enforcement style is - entrepreneurial.</i>
	High	Retreatist enforcement action A tabloid caught a minister with an undeclared yacht. The fine for this offense ranges from 6 months to 5 years of imprisonment. The ACA hesitates for a few weeks to comment on the case and eventually launches a proceeding under pressure. However, during the decision-making the ACA highlights political rather than criminal liability', opting for a pecuniary fine rather than a criminal charge. <i>The ACA's protracted reaction indicates a low degree of zealotry. Reaching for a milder fine is another indicator of a low degree of zealotry. At the same time – stringency is high as the given offense implies criminal liability.</i>	Predatory enforcement action A minister is suspected of a corrupt scheme involving the privatisation of a state-owned company. Based on the provided evidence, the ACA opens an investigation and ultimately files a criminal charge. <i>The sanction is harsh and the ACA reacted zealously (as it declared itself competent for the given case and also by proceeding to evidence collection without major delays). Both dimensions of the enforcement style are therefore of "high" value, so the action is coded as 'predatory'.</i>

Political selectivity

Anti-corruption policy is largely about regulation of the public sector. It is specifically about control of officials' compliance with anticorruption and ethical standards. Since a large portion of these officials are recruited to conduct public affairs on behalf of political parties, perhaps no other regulatory domain could be as important for the politics of one country as the domain of anticorruption.

The high political salience of anticorruption regulation is best reflected in high voters' sensitivity to corruption scandals, which may be a decisive factor in electoral competition and also in politicians' careers (Bågenholm 2009). It is therefore crucial to know who an ACA's action is directed at, particularly given the high risk of politicisation of anticorruption campaigns (Davidson 2007; Precupetu and Preoteasa 2008; Lawson 2009; Smilov 2010; Sberna and Vannucci 2013). An action against a government official may be understood as an attempt of tackling corruption. However, if exercised against opposition, it is more likely that the same sort of action will be a sign of less benevolent motivations, for instance - political persecution. Hence, when describing an ACA's enforcement style, we need to include the information about who the target it.

The thesis focuses on high-level politicians only, named 'big-fish' here. The term has featured in the literature to denote high-ranking (top-level) politicians (Huther and Shah 2000: 12; Meagher 2005: 185; Taylor 2006; Lawson 2009; Batory 2012b: 75; Mills 2012: 118-145). 'Small-fish' is not analysed in the thesis for several major reasons. First, ACAs' individual actions that deal with lower-ranking officials do not have as strong political ramifications as those involving 'big-fish'. Second, Inclusion of 'small-fish' would lead to an enormous pool of data, which exceeds the limits of one PhD thesis. Additionally, the data describing the full details about the individual 'small-fish' cases are not available.

The crucial consideration here is that „emphasis on inspection of major categories of violations is an important aspect of effective regulation“ (May and Winter 2011: 224). Precisely corruption perpetrated by top-level politicians (i.e. 'big-fish') has been typically viewed as the most problematic one (this is not to dismiss the destructive potential of 'administrative' or 'petty' corruption). Indeed, poor effects of some previous donors' anticorruption efforts were blamed on the failure to address high-level corruption (Klitgaard 2015: 8). Tackling high-level corruption has also appeared as the key interest in international organisations' report on anticorruption reforms and international anticorruption documents such as United Nations' Convention against Corruption (2005). Corruption perpetrated by 'big-fish' corruption is therefore the major category of violations, which May and Winter (2011) and Sparrow (2000) point to.

The 'big-fish' includes the following sorts of politicians: state presidents, members of government (including prime ministers), party leaders and their deputies and vice-presidents, presidents of parliamentary groups of parties, high-profile mayors such as those from capitals, and politically appointed directors of major public enterprises.

Summary of '3S Enforcement Pattern'

To summarise, the thesis will utilise the 3S enforcement pattern to measure the enforcement of the five ACAs. Enforcement pattern is comprised of three elements: enforcement strategy, enforcement style, and political selectivity. Enforcement strategy refers to what priorities an ACA makes regarding its core tasks, allocation of attention and resources across tasks, and selection of tools. Enforcement style describes the nature of individual enforcement actions. It is comprised of two dimensions - zealotry and stringency – which yield four possible enforcement styles. Political selectivity concerns where targeted officials come from – is it the incumbent party(ies) or opposition. The focus is on 'big-fish' cases only.

Variations in the value of enforcement pattern are indicators of variations in the ACAs' enforcement. The thesis will therefore seek to explain why we have different sorts of enforcement patterns, that is why they vary across and within the analysed ACAs.

From theoretical discussion to empirical analysis

Having set out the methodological and theoretical framework, the thesis will proceed to an empirical analysis. The following three chapters analyse the enforcement of the five ACAs from the three Western Balkans' countries. The ACAs will be analysed on a country by country basis. The next chapter, focusing on Serbia, looks into three ACAs, whereas the other two chapters have one ACA each. The analysis will be driven by the concerns and frameworks set out in this chapter.

For each of the agencies, first to be analysed are the institutional/organisational factors. Thereafter, the analysis will turn to the empirical evidence about the ACA's key developments as well as the enforcement in the observed period, from the date of creation (2001 at the earliest) to the end of 2012. Then, the analysis will reflect on the central research questions and how the gathered evidence matches the hypothesised theoretical frameworks set out in this chapter.

This way, the individual case studies will deploy the frameworks and tools set out in Chapter 3 in order to approach the evidence from the perspective of the thesis' questions. Based on the studies of the respective ACAs, a comparative analysis will move the analysis forward in Chapter 7 with its conclusions from cross-case comparisons.

Chapter 4 Serbia

This chapter analyses three Serbian ACAs that were created in the period 2001-2012. Two of them are still active at the time of writing, whereas one was abolished in 2009. As they originated in different times, these ACAs started working under different circumstances. This chapter starts by explaining these circumstances and the origins of the ACAs. Then, the chapter compares the de-jure independence of the three ACAs. This will paint a picture about the 'strength' of institutional positions that they were assigned through the formal institutional design. Thereafter, the chapter moves on to an agency-by-agency analysis, following the order of their maturity – first to be considered is the Council (2001- 2012), then the Committee (2004-2009) and the last will be the ACA (2010-2012). The analysis of the individual agencies reflects on their institutional design, organisational resources, the enforcement the agency espoused over the course of their lifetime, which is then followed by a discussion about which of the thesis' theoretical accounts explains the observed enforcement.

The three agencies' origins

Anticorruption Council (2001-)

In 2000, a coalition of 18 parties, called a Democratic Opposition of Serbia (DOS), defeated the authoritarian regime of Slobodan Milošević and won power. Curbing the rife corruption had been among their core election pledges (DOS 2000). To honour this promise, the first post-Milošević government created, in 2001, an ACA called the Anticorruption Council (henceforth: Council) (*B92 19 October 2001*).

The Council was created as a body with an advisory role which acts as a watchdog. In interpretation of what this advisory role will mean in practice, the Prime Minister Zoran Đindić stated that the Council will be analysing how various bodies such as the police, prosecutor and customs administration coordinate among them (*B92* 19 October 2001). However, in reality, this sort of role never materialised. Instead, the Council's fate was largely tied to the forthcoming privatisation process that was at the heart of the ongoing transition.

The Council's history was marked by severe disputes with the various governments under which it operated. Possibly the largest crisis occurred in 2003, when a majority of Council's staff resigned due to the government's 'lack of political will' to support the anticorruption struggle²⁵. The Council, however, managed to elect a candidate who would take over the role of leader, as well as people who would fill in the vacant places (Barać 2005a). The Government confirmed the nominations so the Council continued its work. Later on, the idea of disbanding the Council was occasionally mooted, as it was allegedly redundant in an environment in which another ACA already exists to perform concrete anticorruption tasks (Barać 2005b). But, after 2003, none of the governments dared to realise this idea. The Council has remained operational up to date, despite the fact that two other ACAs were created in the meantime (the Committee in 2005 and the ACA in 2009).

Republican Committee for Resolution of Conflict of Interest (2005-2009)

As the transitional reforms and the EU accession process progressed, Serbia adopted a number of international standards and policies. Integrity policies such as those regulating conflict of interest of public officials or advancing anticorruption strategies were some of those standards.

²⁵ Most of the Council's members resigned protesting alleged government's breach of the initial agreement that Council's words will be respected when considering anticorruption policies. See, for example, the explanation of Nikola Milošević's resignation in his interview to weekly *Svedok* (2003).

To adopt them, the second post-Milošević government, led by Prime Minister Vojislav Koštunica from Democratic Party of Serbia (DSS), set up a new ACA in 2004 called a Republican Committee for Resolution of Conflict of Interest (abbreviated: Committee). The Committee shared the preventive ACA model. It became operational in 2005.

Unlike the Council, whose mandate included anticorruption affairs in the broadest sense, the Committee was the first specialised ACA in Serbia to deal with particular anticorruption issues. The Committee's tasks included collection of officials' asset declarations, control of officials' conflict of interest, and monitoring of officials' accumulation of tasks. The Committee was among the first Serbian bodies to deal with integrity standards and to control the work of public officials. Following its adoption, Serbia embarked on a process in which a number of other controlling and integrity bodies were set up. Republican Commissioner for Information of Public Interest (2004), Ombudsman (2005), and State Audit Office (2005) are some of the examples (Zurnić 2013: 71-78). Since then, these bodies have been operated as part of an emerging network of 'integrity warriors'.

Intermittently, the Committee complained about the lack of respect and support by the government, whether in terms of logistic matters (Beljanski 2005) or when it comes to (non)compliance with the recommendations the Committee provides (Beljanski 2009). One threat that had been continually present was the possibility of creation of another ACA. From 2005, the government repeatedly mooted the idea of adopting a novel, 'more appropriate' ACA. This, as the Committee's staff admitted (Kovačević 2005), not only brought a sort of uncertainty in terms of duration of their institution, but also diminished its authority in the eyes of the regulatees. Eventually, in 2008, with the adoption of a Law on Anticorruption Agency, a novel agency called an Anti-Corruption Agency (henceforth: ACA) was set up.

Anticorruption Agency (2010 -)

The Law that established the ACA dates back to 2008, but the agency did not become operational until 2010 (*Beta* 02 January 2010). According to the government, the ACA was created in order to “enhance the anticorruption framework and escalate the struggle against corruption and to meet the standards of the United Nation Convention against Corruption”²⁶. Formally, the ACA represented a novel organisation. It had a new name, legal entity, location, a specific legislation regulating its work, and, logically, it had a Board elected ‘afresh’ in Parliament. All of these were elements of institutional discontinuity with the Committee.

Certain elements of continuity existed too. Like the Committee, the ACA took the form of the preventive ACA model. It does not have repressive powers nor is expected to prosecute officials. The ACA inherited the integrity policies regulating conflict of interest, accumulation of posts, and officials’ gifts. Of course, the ACA obtained a wider set of competencies and stronger powers. A further element of continuity was that some of the members of the first Board of the ACA came from the abolished Committee²⁷. This ensured a sort of continuity in terms of institutional memory and expertise.

Over the course of the three years, from 2010 till the end of 2012, the ACA drew considerable media attention and had been at the heart of several scandals. The most active role that the ACA displayed was in the run-up to the 2012 parliamentary and presidential elections, where, as will be described later, it launched several high-profile cases which were to become important themes within the election struggles.

²⁶ See a statement by the Minister of Public Administration Zoran Lončar (*Kurir* 08 April 2004).

²⁷ For example, Slobodan Beljanski and Branko Lubarda moved from the Committee to the ACA (ACA 2010: 15-16).

What follows is a comparison of the three agencies' de-jure independence. It will serve to understand the similarities and differences in this key structural setting among the agencies and will provide a basis for further analysis of the respective agencies.

De-jure independence of the three ACAs

When it comes to de-jure independence, major differences exist between the Council, on the one hand, and the Committee and the ACA, on the other hand. While the Council commands an extremely low degree of de-jure independence, amounting to only 0.23 Girardi's points, the Committee and the ACA are highly independent agencies in formal terms, with 0.67 and 0.77 Girardi's points respectively (see Appendix A).

Operating under the governmental hierarchy, the Council has even been 'underqualified' for the status of non-majoritarian institution, as defined by Majone (1996: 6). Its role and position are defined by a (half-page long) government ordinance²⁸. According to the ordinance, government commands full appointment and sacking powers (paragraph 3). Organisationally, government sets the number of staff, the structure of the Council and manages its administration (paragraph 7). For financial matters, the Council sets the salary of its employees, but according to the government's budget; thus the Council is dependent on annual budgets, with government allocating and Parliament approving funds for Council's work (paragraph 6). The Council therefore possesses nearly non-existent institutional protection from the interference of government into its work. If the prediction is that the de-jure independence determines enforcement harshness, an expectation can be made that the Council will unlikely have pursued harsher forms of enforcement.

²⁸ Government Decision on the Foundation of the Anti-Corruption Council, *Official Gazette RS* 59/01; 3/2002; 42/2003; 64/03; 14/2006.

The Committee, on the other hand, enjoyed much higher de-jure independence over the course of its lifetime. The appointment procedures involved nominations of the nine members of the Committee's Board - three by the Supreme Council, one candidate by a Bar Association, and the nomination powers for five members held directly by the Parliament²⁹. This was supposed to mitigate undue influence of the government (and its parliamentary majority) over the appointment of the Committee's staff. Dismissals are not possible on Parliament's initiative, but only if the Board recommends its member's dismissal (Article 21). Financially, the Committee is fully dependent on the government³⁰. Organisationally, full freedom in managing internal administrative affairs is ensured³¹. The Committee commands full authority over the tasks it is responsible for. Overall, the Committee ranked as a highly independent ACA since its design provided for 0.67 Gilardi's points (see Appendix A). If de-jure independence is regarded as the key factor that shapes the enforcement, the expectation will be that the Committee has pursued a harsh enforcement pattern.

The ACA is highly independent (in formal terms), too. A mixture of political and non-political institutions nominates ACA's Board members, who are then appointed in Parliament (LAA, Article 9). The sacking procedures for ACA's Board members entail first a dismissal recommendation by the Board and then a Parliament's confirmation is needed (LAA, Article 13). The ACA differs from the Committee in that, in addition to the Board, it is run by a Director. The executive power fully rests with the Director, while the Board considers strategic matters and also rules about regulatees' appeals³². The Director therefore represents the key authority

²⁹ Article 19 of Law on Prevention of Conflict of Interest in Discharge of Office, *Official Gazette RS 43/04*.

³⁰ The Law does not explicitly set out how the Committee shall be funded, meaning that the 'default' option of funding through an annual state budget shall be provided. As to the employees' salaries (including the Secretary), they are determined by a Parliamentary Committee (Article 22).

³¹ According to Article 22 of the Law, the Professional Service of the Committee is being appointed and managed by the Committee.

³² The Board appoints and sacks ACA Director, determines her salary, rules about appeals on Director's decisions, adopts an annual report which shall be submitted to National Parliament, monitors the work and property of Director, proposes ACA budgets, and adopts a rulebook about its work (Article 7).

in the ACA. A Director is appointed by the Board and only the Board is authorised to sack the Director (Article 7). This arrangement fully prevents the impact of the government and Parliament on the status of ACA's Director. The source of funding is the state annual budget, which is drafted by government and adopted by parliament. Organisationally, the ACA enjoys full freedom in managing its administration and personnel policy. In total, the ACA scores 0.77 Gilardi's points (see Appendix A for details), which renders it a highly independent agency in formal terms.

The legislation endowed all three Serbian ACAs with the preventive ACA model. Yet, the Council deviates from the standard preventive ACA and it also deviates from the other two Serbian ACAs in two important respects. First, as will be elaborated later, Council's competencies are not tied to any formal sort of tasks. Instead, the Council is assigned an advisory role which is linked to general anticorruption policy. Second, the Council commands drastically lower de-jure independence compared to the Committee and ACA. In formal institutional terms, the Council lacks safeguards against government's interference into its operation. The de-jure independence is so low that the Council ranks probably among the least formally independent ACAs in the world.

The Committee and the ACA, on the other hand, had good preconditions for independent work. The diversified appointment process and, even more importantly, a sacking procedure that prevents government's involvement are the key advantages in that regard. The result is that 'retaliation' through removal of staff cannot be performed. Committee's and ACA's staff therefore had no reason to fear that their potential decisions hurting the principal's interest will have negative implications for their institutional status. Given this design, the 'de-jure independence matters' argument suggest that we may expect the two agencies to have demonstrated harsh patterns in their enforcement.

Domestic considerations - to fulfil an election promise – was the factor that drove the Council's creation, whereas meeting international standards was the key driver behind the Committee's

and the ACA's creation³³. At the time of the Council's creation, Serbia faced major political challenges. The upcoming privatisation, which lied at the heart of the transitional reforms that followed, was seen as the key challenge in terms of corruption³⁴. In that period, no semi-autonomous agencies existed in Serbia. This may explain the low independence of the Council, as ensuring high independence of agencies did not feature as a standard in the political life. Later, as the EU accession process advanced, providing the newly formed agencies with sufficient independence was seen as an imperative.

This has likely been the cause of the Council's weakest structural position. Whether this sort of arrangement had negative implications for the enforcement, in the direction that the 'de-jure independence matters' school predicts, remains to be seen in the forthcoming empirical analysis. At this point, a provisional expectation can be formulated that the Council espoused a less harsh enforcement than the other two ACAs.

This chapter now turns to an agency-by-agency analysis, in the order of their birth-dates. The following three analyses will yield first results as regards the plausibility of the explanatory accounts set out in Chapter 3.

CASE 1. Anti-Corruption Council (2001-2012)

This section provides a case study of the Council. The forthcoming analysis indicates that the Council had weak organisational factors throughout the whole lifetime. Not only was its de-jure

³³ Zurnić (2013: 87) mentions that the adoption of the Law on Prevention of Conflict of Interest in Discharge of Public Office was driven by GRECO, UNCAC, and EU's requirement. The creation of the ACA, similarly, resulted from international drivers (Zurnić 2013: 91).

³⁴ For more discussion about the propensity of privatisation in transitional contexts toward corruption, see for example Šuković (2001) and Trivunović *et al.* (2007).

independence low, its powers have been non-existent and the resources were minimal. However, the Council's enforcement pattern will turn out harsh. This is surprising, in view of the organisational argument. A harsh enforcement pattern marked the Council's work particularly under the leadership of Verica Barać, who served as Council's President from 2003 to 2012. The evidence will demonstrate that the leader's role was crucial in directing the Council's enforcement toward the harshest pattern. It will also be shown that the preventive organisational model provided the Council's staff with reputational opportunities, which played a role in fostering harsher enforcement.

Institutional design

As mentioned, the first post-Milošević government set up the Council in 2001. According to the legal setup, the Council's design comes closest to the preventive ACA model (Klemenčič and Stusek 2008; OECD 2013). The preventive ACA model is characterised by focus on preventive tasks and does not command prosecutorial powers. While sharing these features, the Council differs from the standard agency within the preventive model in the following details. First, its mission is broadly, and some say – vaguely defined (Trivunović *et al.* 2007: 3), without concrete competencies and tasks assigned. Second, the Council commands no enforcement tools, not even the most benign ones.

Competencies

The Council was set up by a government's ordinance in 2001³⁵. As no major changes of the ordinance occurred since, the same set of competencies has persisted until the end of the observed period. According to this piece of legislation, the role, mission, and tasks of the Council are as follows:

³⁵ *Official Gazette RS* 59/01; 3/2002; 42/2003; 64/03; 14/2006.

TABLE 4.1 Council's functions and tasks.

Function and task
<p>Policy development Considering activities in the fight against corruption; Giving initiatives adopting acts, programmes, and other measures in the field.</p>
<p>Policy implementation Suggesting the Government measures that shall be taken in order to fight corruption; Tracking the implementation of the above measures.</p>

Source: Ordinance about Formation of Anti-Corruption Council (2001)³⁶.

As can be seen, the Council has not been assigned concrete jurisdictions nor tasks to deal with. Likewise, no domains (e.g. health-care, procurements, bribery, privatisation...) are prioritised as part of the Council's remit. Its policy development function includes analysis of anti-corruption related activities and legislation. The policy implementation function, likewise, concerns the recommendation of anticorruption measures and monitoring of their implementation in practice.

The result of this constellation of competencies is that the Council holds no accountability for any particular domain, issue, or task. This leaves the Council full freedom as regards what issues need to be prioritised in the work. From the ordinance it may be inferred that the Council may deal with systematic issues rather than individual corrupt cases. Yet, the broadly defined mission leaves room to claim relevance to engage in individual cases, which, if undertaken, would likely fall under the turf of another institution.

³⁶ There have been several changes to the Ordinance over time (in 2002, 2003, 2003, 2006), yet these were minimal and did not alter the Council's tasks. All amendments can be found on:
<http://www.antikorupcija-savet.gov.rs/content/cid1016/osnivacka-dokumenta> [Accessed: 18 October 2015].

Indeed, as the analysis of the enforcement will demonstrate, in various episodes in its history the Council linked its mission to different issues. Some of the engagements resulted in inter-institutional tensions in which the Council was accused of overstepping its competencies and of creative interpretation of its mission. Those engagements that dealt with systematic questions concerning anticorruption fight drew less controversy.

Powers

The Council's setup is unique in that it neither possesses enforcement instruments nor has a single sanctioning power over regulatees. The Council can advise a government to (not) adopt certain legislation, but it has no formal authority to shape the legislative agenda. Furthermore, the Council has no authority over the administration to order provision of data about cases of interest. (Unless this possibility is available to any private and legal entity, as for instance, introduced by a Law on Free Access to Information of Public Importance in 2004³⁷). The Council is not authorised to apply sanctions either. Its enforcement toolbox can therefore be characterised as empty.

Resources

The following reviews what resources the Council held from 2001 till the end of 2012. The review distinguishes between domestic and international resources, the former being provided by the government/parliament and the latter being supplied by international sponsors.

³⁷ *Official Gazette RS 120/04.*

Domestic resources

Annual budgets of the Republic of Serbia have been the only domestic source of Council's funding so far. The following graph displays the budgets allocated to the Council in the period 2002-2013:

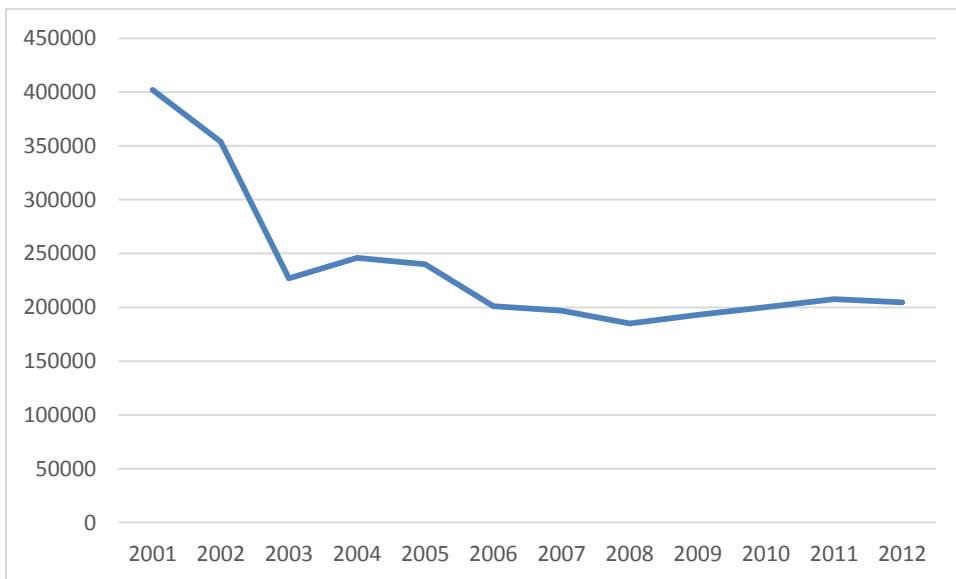


FIGURE 4.1. Annual budgets of the Council (2001-2012), in EUR.

Source: Annual Reports of the Council (2004-2012) and the website of the Ministry of Finance (www.mfin.gov.rs).

In the first two years, the budget was the highest in the Council's history – around €400.000 in 2002 and €350.000 in 2003. In the next ten years, the budget oscillated between a €250.000 and a €190.00, but it generally stabilised on an average of roughly a € 220.000 per year.

There were no compulsory tasks for the Council to perform, which is resource-sparring. Nevertheless, the given budget was very limiting for any sort of thorough activities. For example, from 2003 onwards, the Council launched several programmes of investigations of

complex schemes of corruption: „If an expertise is needed, we must hire an expert – for money laundering, for financial forensics, for criminal law, for any sort of report that needs to be analysed or produced; the only way to fund such contracts was to raise a donation as the annual budget is small” (S2). In public appearances and in its Annual Reports³⁸, the Council complained about the lack of resources on multiple occasions.

The Council has been facing permanent shortage of staff as well. Depending on period, there were between nine and thirteen people sitting on the Board³⁹. They were aided by a technical service, whose staff has included a maximum of fifteen employees. From 2001 to 2013, about ten people comprised this technical service, most of the time⁴⁰.

How this shortage of resources affected their work, explained a Council’s member:

“If we had more people and better technical support, we would have processed documentation faster and we could have worked on multiple cases at a time. In reality, however, we were stretched, especially in those investigations where we needed to rely on external expertise. Sometimes we could not act assertively because we lacked professional expertise about a certain issue, which we initially thought we can obtain” (S1).

With a low budget and a low number of staff, the Council has been an under-capacitated institution throughout most of its lifetime (the first two years, characterised by higher budgets, were to an extent an exception).

³⁸ See, for example, President Barać’s complaints about the lack of resources from 2005 in an interview to *Glas Javnosti* (2005b). Also, in the Annual Report, the Council was drawing attention to the lack of resources (Council 2004a: 6-7; 2005a: 7; 2007a: 5).

³⁹ The original Ordinance from 2001 stipulated 13 members, but the first amendment from 2002 cut it down to 11 members and then one year after, in 2003, the number of the Council’s members was reversed to 13.

⁴⁰ The figure not available from the official documents, but one interviewee recalled that there were “about ten people as expert staff at the beginning, I think” (S2).

International support

From 2001 to 2013, various international organisations like the UNDP and OSCE, foreign embassies (e.g. Norwegian, US, Belgian), the European Union, and foundations assisting transitional processes (e.g. German GTZ), provided support to the Council. Their partnership largely involved funding of individual programmes or actions (for more details, see Appendix B). Joint meetings, conferences, awareness-raising and educational activities, were held too. Without this sort of external support, the Council would have not been able to complete certain important programmes from its agenda. For instance, the investigation of suspicious privatisations entailed skills such as financial forensics for tracking of money-laundering activities. This could only be obtained if external experts are hired.

While the international means of support were indispensable for completion of particular Council's programmes, they still could not resolve the problem of the chronic under-funding. In contrast to one-off funding schemes, the Council needed long-term resource stability to ensure it can realise the intended projects.

Summary of resources

Apart from the first two years (2002, 2003), the Council has been facing a permanent shortage of both material and non-material resources. It has therefore operated as an under-capacitated agency.

Having seen that the Council has commanded a low degree of de-jure independence and poor resources, it can be characterised as an organisationally weak agency. Whether this 'unfavourable' combination of organisational factors has affected its enforcement by way of diminishing its harshness, as the organisational theory would predict, remains to be seen in the forthcoming empirical analysis of the Council's enforcement.

Enforcement

What follows is an analysis of the Council's enforcement in the period from 2001 to the end of 2012. The enforcement will be measured by the concept of '3s enforcement pattern'. The first component of the '3s enforcement pattern', enforcement strategy, is first reviewed. Then the section reviews the enforcement style and the political selectivity.

Enforcement Strategy

At the time of the Council's start of operation, Serbia lacked an adequate legislative and institutional framework for tackling corruption. Apart from the classic institutions such as the police, prosecutor and judiciary, the Council had been the first body to deal exclusively with anticorruption (Zurnić 2013: 71). Serbia was lacking the legislation that regulates conflict of interest, audit of state budget expenditure, transparency of public administration, control of party financing, protection of citizen rights from bureaucratic abuse, and many other areas that concern abuse of power and the related integrity dimension.

Council's work can be divided into two stages (Trivunović *et al.* 2007: 67). The first was the 'formation stage', which lasted from 2001 to 2003. It was characterised by attempts to establish institutional identity. The second stage, from 2003 onwards, can be called a stage of Council's assertiveness and expansionary enforcement.

During the formation stage (2001-2003), the Council was most active in proposing changes to the legislative framework (Trivunović *et al.* 2007: 67). The adoption of a law on extra-profit, the prohibition of performing multiple public posts, the introduction of regulation of financing political parties, and the pledge for a law probing into the origins of profits gained during the notorious 1990s (*Glas javnosti* 18 January 2002), were some of the key initiatives the Council

undertook in this period. These were meant to start overhauling the system which was seen as greatly susceptible to corruption. Recalling the challenges from that period, a member of the Council said:

„We were given a broad mandate, but no specific tasks and powers. It was a bit confusing at first... what can we achieve in this situation and what sort of work to focus on? The legal system was full of loopholes, there was much discretion in the hands of bureaucracy. Not to speak of the massive privatisation that was coming to the political agenda, whereby the regulation left plenty of opportunities for corruption. It became obvious to us that the system needs first to build the foundation – let's first try to introduce the basic standards every decent society has and then we'll see how it goes in practice. So, we opted for a *systemic* (prim.aut) approach. We suggested anti-corruption measures such as that on charging extra-profit or checking the origins of wealth. We also thought one cannot speak about anticorruption until a regulation on conflict of interest is adopted, especially as the culture was that politicians are allowed everything to do and that it was 'normal' to drain state resources in order line own pockets“ (S3).

In practice, however, all of the Council's proposals that were put forward between 2001 and 2003 were ignored by the Government. In protesting this disregard upheld by the Government, some Council's members resigned between 2002 and 2003 (Trivunović *et al.* 2007: 67)⁴¹. A question was raised about the government's will to tackle corruption and also of their intention to stand behind the work of anticorruption bodies⁴². This led to a crisis which raised the question of the Council's existence as it seemed helpless and 'crippled' as an institution. With the adoption of a new Anticorruption Strategy, the creation of a novel ACA was announced (Trivunović *et al.* 2007: 69), which reinforced the fear that the Council may soon be dissolved.

However, the Council endured the crisis 'alive'. The government allowed the election of new members, who replaced those that resigned out of protest. A new President, Verica Barać, was

⁴¹ See, for example, Nikola Milošević's reasons for resignation from the Council given in an interview for *Svedok* (2003). Slobodan Beljanski similarly explained his resignation in 2002 in a statement to *B92* (Radojević 2002).

⁴² See, for instance, the harsh critique of Ivan Lalić and Slobodan Beljanski, who were members at the time, of the Government's rejection of the proposed regulation of conflict of interests (Radibratović and Nikolić 2003).

also elected, in May 2003 (*Beta* 23 May 2003). Verica Barać was a lawyer, with experience in local administration, in the city of Čačak; before coming to the Council in 2003, she had been active in the civil sector, first as an anti-Milošević and anti-war activist in the 1990s and later, from 2000, as a President of an NGO called Citizen Parliament of Serbia⁴³. With the new members and President, the Council set out to change its enforcement strategy. The focus on systematic measures has shifted toward investigations of individual cases of corruption. The Council's strategy became assertive and expansionary in nature, the usage of tools diversified, and the rhetoric became increasingly aggressive.

The first big scandal that broke out following the 'consolidation' of the Council perhaps best illustrates this change in enforcement strategy. In 2002, the European Commission granted Serbia a preferential status for exports of certain agricultural goods in order to prop up Serbian agricultural industry (Council 2003). However, somewhat later, in 2003, the EU discovered that huge amounts of sugar were likely imported from a neighbouring EU country to Serbia, repackaged thereof, and soon after exported to the EU market under a false 'made in Serbia' label. In response to the 'sugar laundering' scheme, the EU imposed sanctions on sugar exports from Serbia. They demanded a prompt investigation that would discover who from the administration organised the scheme. The Government, however, failed to provide an adequate answer which resulted in the EU extending its sanctions for an undefined period (Boarov 2003; Council 2004b; 2005b; *Vreme* 27 March 2004).

State institutions did not proceed to fully investigate the case, but it was the Council who did. Though lacking coercive investigative mechanisms, the Council conducted a field research based on which it accused the Ministry for Public Administration and the Ministry for Economic Relations with Foreign Countries for failing to take on the problem. The Council suggested a more determined approach by those responsible instead of searching for excuses for inaction in

⁴³ Barać's biography is available at: <http://www.antikorupcija-savet.gov.rs/content/cid1069/biografija> [Accessed: 12 March 2015].

investigation (Council 2003). In two successive steps, the Council presented the findings to the public and the EU. The first report came towards the end of 2003, in the wake of a general election. The second, a follow up report, was produced in 2004, after Democratic Party of Serbia (DSS) formed a new coalition government. This report supplemented the previous conclusions by new findings which were obtained in the meantime (Council 2004b)⁴⁴. Since the implications of the 'Sugar affair' were wide⁴⁵, the Council managed to position itself as a prominent player not only as an anticorruption actor, but also as someone who is able to find a way to prioritise its findings as a key issue of the public debate.

The shift in the Council's approach demonstrated in the 'Sugar affair' marked the beginning of a new epoch in the Council's life. From then on, the Council retained the same enforcement strategy until the end of the observed period. Over the course of the next 10 years, a number of prominent scandals were investigated. Most of those scandals involved privatisations conducted after 2001. In 2004, the Council published reports about supposedly corrupt privatisations of a steel-mill *Sartid* by the American giant *US Steel* (Council 2004c), a Veterinary Institute (*Veterinarski Zavod*) (Council 2004d), a factory of agro-seeds (*Agroseme*) (Barać 2004), and a number of other privatisations. Over the coming years, the Council continued investigating suspicious cases of privatisations, publishing dozens of reports⁴⁶. These reports have become the trademark of the Council, not only widely recognised by the electorate but also referred to by international forums such as the EU (European Parliament 2011).

In all these actions, a similar pattern recurred: upon completion of an inquiry, the Council publishes a report, informs the public, and calls on the Prosecutor to launch an official investigation. In a way, the Council acted as a quasi-investigative body. They did not have

⁴⁴ Later on, in 2005, a third report was published to supplement the first two reports (Council 2005b).

⁴⁵ The scandal came in an unsavoury moment - just months before an (2003 general) election campaign.

⁴⁶ For the list of all cases, see: <http://www.antikorupcija-savet.gov.rs/izvestaji/cid1028/index> [Accessed: 19 October 2015].

prosecutorial powers, nor the mandate to focus on individual cases of corruption, but in practice they stretched the meaning of the institutional mission to justify the investigations of major scandals. Unlike traditional prosecutorial bodies, the Council waged extensive media campaigns. Some reports and the scandals that resulted from their investigations were recurring for long periods in Council's media appearances⁴⁷.

From the outset of the Council's expansionary enforcement, the Prosecutor was largely unresponsive to its investigations. In 2004, Council's President Verica Barać stated that the Council submitted reports about all their investigations to the Prosecutor and Government, but these reports were said to have 'fallen on deaf ears' as no response for a single initiative was ever received from the Prosecutor. Over the course of the coming years, the Council repeated the same sort of accusation against the Prosecutor multiple times⁴⁸. In most cases, the Council filed criminal charges against the major actors in investigated scandals. Sometimes the Prosecutor dismissed a charge on grounds of a lack of evidence, other times the information about the 'fate' of a charge never appeared. Up to now, according to a research by an investigative journalist network *Javno* ('Publicly'), it is known that official investigations have been launched into a minor portion of the cases, yet most remained 'untouched' (Milivojević 2015). This lack of Prosecutor's responsiveness caused inter-institutional antagonism in which the Council ascertained that „the institutions are captured“ and that „there is not will to tackle corruption“ (Barać 2010).

⁴⁷ This is, for example, the case with all privatisations which were later compiled into a compendium called *24 Contentious Privatisations*. For a review of the 24 privatisations, see Telesković and Minić (2012).

⁴⁸ In an interview to daily *Blic* in 2010, Verica Barać reminded that they have not heard from the Prosecutor and Court about most of the launched cases.

In 2011, the Council underlined that this sort of problem has persisted over the years. See *Questions that remained unanswered*: <http://www.antikorupcija-savet.gov.rs/pitanja-koja-su-ostala-bez-odgovora/cid1013-1465/najvazniji-izvestaji-i-inicijative-o-fenomenima-sistemske-korupcije-koje-je-savet-dostavljao-vladi-i-tuzilastvu> [Accessed: 19 October 2015].

Besides the investigations of corrupt privatisations, the Council acted in a variety of other domains too. In 2006, in an ‘Ericsson affair’, Vice-President of Government Miroljub Labus was accused by the press to have received a scholarship from the Swedish producer of phone equipment *Ericsson* for the schooling of his daughter in the USA. In exchange, Labus was suspected to have helped *Ericsson* establish themselves in the Serbian market (*B92* 22 April 2005; *Tanjug* 08 May 2005). The Council investigated the circumstances and demanded Labus to resign, citing conflict of interest (Barać 2005c). Furthermore, non-transparent contracts signed by public authorities drew particular Council’s attention. The first Koštunica Government (2004-2007) gave a concession in 2006 to an Austrian consortium *Alpina-Por* to build a highway *Hogroš-Požega*, but the contract was declared a state secret (*B92* 16 August 2007). Leading the efforts to compel the Government to disclose the details, the Council waged a campaign against ‘secret deals’ as a potential source of corruption. A few days before the 2008 election, Serbian Government brought Italian car manufacturer *FIAT* to the city of Kragujevac (*Tanjug* 02 May 2008). Yet, the contract details remained unknown, which prompted the Council to militate against the deal⁴⁹.

On all these occasions, the Council acted in an *expansionary* manner. The cases that were taken on were not primarily about systematic matters, but rather involved individual schemes of alleged corruption. While it is systemic failures that enabled the occurrence of such schemes, the Council placed an emphasis on personal liability of the major actors rather than on the systemic problems. The latter had often been highlighted by the Council, too, but they were not given the central priority.

In parallel with the investigations into individual scandals, system-oriented actions that sought to enhance the anticorruption framework were undertaken either. The Council took initiatives to improve the work of the Prosecution Service⁵⁰, to contribute to a better design of a

⁴⁹ See Barać’s statement (*Beta* 03 November 2011).

⁵⁰ Council (2005a: 2).

forthcoming Anti-Corruption Strategy⁵¹, and also showed initiative to advance the anticorruption legislation. Its actions focused on improvements of the Law on Privatisation⁵² (2005), financing of political parties⁵³ (2005), a pilot project on integrity plans⁵⁴ (2006), commentary of a Law on Protection of Competition⁵⁵ (2007), development of an Action Plan for reforms of the public administration⁵⁶ (2009), an initiative to the Constitutional Court to repeal a Decree on Conversion of Land⁵⁷, commentary on a draft Law on Electronic Communications⁵⁸, a Construction Industry Law⁵⁹, a comprehensive analysis of the enforcement of antimonopoly laws between 2006 and 2010 (all these initiatives were taken in 2010)⁶⁰, commentary on an Act of Land Acquisition⁶¹, a Rulebook about whistle-blowers⁶² (2011), an Anticorruption Strategy for 2013-2016 (Council's member took part in its drafting)⁶³ and a number of other actions.

In absence of enforcement tools and coercive means, the Council took advantage of its nodal position of 'information collector'. Civil society, whistle-blowers, trade unions and workers, were those reporting suspect cases to the Council (Council 2005a). From 2003 onwards the

⁵¹ Council (2005a: 2).

⁵² Council (2004a: 4; 2005a: 1).

⁵³ Council (2005a: 3).

⁵⁴ Council (2006: 7).

⁵⁵ Council (2007a: 5).

⁵⁶ Council (2009: 6).

⁵⁷ Council (2010: 5).

⁵⁸ Council (2010: 6).

⁵⁹ Council (2010: 6).

⁶⁰ Council (2010: 11).

⁶¹ Council (2011: 8).

⁶² Council (2011: 9).

⁶³ Council (2012: 9).

Council had been informed about a vast number of improprieties in the ongoing process of privatisation. In those instances where the evidence was assessed as sound, a serious investigation ensued. „Thus we did the major reports that are today widely known“ (S2).

Strained relationship between the Council and government has been more or less a regular state. This ‘uneasy’ relationship dated from the early days and intensified with the first major investigations. In 2004, reacting to an accusation that he enabled a rigged privatisation of *Sartid*, the Minister of Economy and Privatisation Aleksandar Vlahović described the Council as incompetent and laymen (Jovanović 2004). Later on, the Council complained about unresponsiveness of government to their initiatives and a lack of communication (Barać 2007; Council 2010: 16). The Council also complained about the Government trying to further deplete its otherwise poor resources, through administrative tricks (see, for example, Council 2005a: 7).

As time passed, particularly from 2008 on, high-level politicians changed the tactics. They avoided direct public confrontation with the Council, trying to ignore its initiatives. The Council suspected that the authorities pressured the media not to provide them public space (Council 2010: 16). A particularly ‘paradoxical’ situation occurred after the Council presented a report in 2011 which was argued to prove that the media were under control of advertising agencies run by politicians’ associates (Council 2011c). Only one major national media outlet reported on the Council’s findings – surely paradoxical given that the media themselves were the interested party (Council 2011a: 3). Some of the oligarchs investigated in various projects sued the Council, in what was characterised as „a campaign of intimidation and an attempt of pressuring the Council“ (Council 2010: 14-16; Council 2011a: 14-15). The government stayed conspicuously silent, failing to leap to the defence of its anticorruption body.

The role of the Council’s leader seems to be the crucial factor behind the assertive and expansionary enforcement in the period 2003-2012.

„Verica (Barać– President; prim. aut) pushed us in that direction and as soon as we saw how unrelenting she was in deflecting pressures and in her public appearances, we followed the lead... we persisted in our focus on investigations despite the objection that it's not what we're supposed to do.

It was her idea that if we keep dealing with analysis of legislation only, as we did from 2001-2003, we risk being further marginalised. We recognised there was much space for action against corrupt practices, especially as the citizens recognised the problem yet none authority seemed ready to react" (S1).

Some, however, disagreed with the expansionary approach the Council took. A former member of the Council, who resigned a few years into Barać's chairmanship, explains the reasons:

„Obviously, the way the Council acted was a good strategy for winning the hearts of the citizens. But in my opinion the assertiveness we were showing was not always founded in facts, at least those facts that would serve as evidence in a judicial process. We were easily blaming politicians, businessmen, all that – publicly, but without proper evidence... We know they are corrupt, we have strong indicators, but this is not yet firm evidence that would send them to prison. I see how this was a political skill to build societal support, but being a lawyer by training I disagreed with this sort of 'lax' accusatory style. And what was the basis for jumping into the police's work, the prosecutor's sphere of work? Sure, they didn't work properly, but we can't say 'let's compensate for their fallacies'. What was the Council doing was beneficial in sense of reputation, but reputation chasing is one thing, however legal processes and the rule of law is another thing" (S2).

Though not often, this sort of criticism could previously be heard in other places as well. In an early report, the Serbian branch of the Helsinki Committee for Human Rights accused the Council of „overstepping the boundaries of their jurisdictions and acting out of ideological and demagogical concerns" (2003: 12-13). Later, Trivunović *et al.* (2007: 67) noted that: "A frequent criticism, particularly in the later years as the Council increasingly attempted to "investigate" corruption scandals, would be that the Council has repeatedly exceeded its authority, a claim that has some merit, particularly from the perspective of the principle of rule of law."

Assessments about the soundness of the enforcement approach aside, the Council undoubtedly built a reputation of a harsh anticorruption body. This encouraged them to undertake further expansionary and assertive enforcement, while also serving as a protection against political pushback. In formal institutional terms, as noted, the Council had been fully unprotected - the Government could have easily sacked its staff, cut its budget or terminated the Council. Yet, what prevailed were the reputational concerns.

Former Prime Minister Mirko Cvetković, who led a government from 2008 to 2012, admitted later, in his autobiography, that he was aware of the high societal esteem for the Council. He argued that the Council managed to build critical support because it tapped into the deep-seated cynicism toward politicians. Cvetković disagreed with the Council's approach, but seemed powerless to intervene despite having the institutional levers to do so:

„One institution which needs to provide systemic advice was undertaking individual prosecutions, beyond its mandate[...] However, I didn't take any action in the direction of change of the Council's status because it would have been vastly unpopular and everything that was happening with the Council was attracting outstanding interest.“⁶⁴

That Council's President Verica Barać managed to build a reputation of a reliable anticorruption professional can also be seen from the reports of international evaluators. She appeared in Freedom of House's *Nations in Transit* reports as a „well-known anticorruption activist“ (see Nenadović 2012: 485). The EU used the cases from the Council's most prominent investigations (so called *24 Contentious Privatisations* report) as benchmarks for evaluating how far the anticorruption reforms in Serbia have gone (see EU Progress Report on Serbia 2012).

Verica Barać died of cancer, in 2012. Reporting about her death, the media widely credited her for a bold fight against corruption. The UK *Independent* called Barać „Serbia's most prominent activist“⁶⁵, a journalist network Organized Crime and Corruption Reporting Project (OCCRP)

⁶⁴ As reported by a daily *Danas* (8 December 2012).

⁶⁵ *Independent* (27 March 2012).

ascertained that „she was an outstanding leader in the fight against corruption”⁶⁶, the *Radio Free Europe* reported that „Serbia’s most prominent anticorruption activist died”⁶⁷, and the *Balkan Insight* portal called Barać an „Anti-Corruption Heroine”⁶⁸. Even the Mayor of Belgrade, Dragan Đilas, who had previously been marked by the very Council as a key oligarch behind a scheme of media control⁶⁹, described Verica Barać as “the most courageous anticorruption actor Serbia has ever seen” (in Bilbija 2012). Perhaps no other example better exemplifies that failing to praise the merits of the Council’s and Barać’s work, even from a position of ‘enemy’, may be detrimental for one’s reputation.

Following her death, the Council continued with a similar course of action - investigating big cases of corruption. Its activities, however, remained largely beyond the media’s focus.

From 2010 on, the Council’s enforcement extended in some instances beyond the realm of (anti) corruption. One of the most salient Council’s actions was an analysis of a recent judiciary reform (Council 2014), which was undertaken in the period 2010-2012 by Cvetković’s government. The reform caused vigorous resistance by employees in the judicial system, bar associations, and prominent lawyers⁷⁰. It also drew criticism of the EU (in Glavonjić 2012) and is seen as one of the key factors behind the government’s loss in the 2012 election (in Diković 2012). The Council also sought to closely collaborate with regulatory and controlling bodies, for instance with the Commissioner for Public Information whose assistance and public support

⁶⁶ OCCRP (19 March 2012).

⁶⁷ *Radio Free Europe* (19 March 2012).

⁶⁸ Barlovac (2012).

⁶⁹ See President Barać’s interview (2011)

⁷⁰ One of the most vocal critiques had been, for example, the President of the Society of Judges of Serbia, Dragana Boljević (RTS 09 July 2012).

were precious for advancing the accountability of political institutions⁷¹. To sum up, toward the end of the observed period the Council retained its dominant focus on investigations of corrupt cases, but it also proceeded to broader questions of good governance and the government's abuse of power.

In summary, the enforcement strategy of the Council had been 'confined' during the first, so called formation phase (2002-2003), but with the appointment of a new leader and staff the Council shifted its strategy toward an assertive and expansionary one. Rather than preventive, the Council took on an investigative role, which, despite the lack of coercive instruments, was focused on urging prosecution of those involved in large privatisations and other potentially corrupt schemes. The Council 'stepped into' the terrain traditionally occupied by the police and prosecutor, pledging for escalation of suppression of corruption. From the empirical data and from the interviews it can be seen that this sort of enforcement strategy, as well as the change compared to the 'formation' stage, can be attributed to the Council's leadership. Through assertive conduct, those running the Council managed to build and sustain a reputation of a harsh anticorruption warrior. This, despite the permanent tension in the relationship with all governments that served from 2004 to 2012, protected the Council from political pushback and from more radical measures such as termination.

'Big-fish' scandals

Having reviewed the Council's enforcement strategy, its enforcement style will be analysed next. As elaborated in Chapter 3, the enforcement style is measured for actions involving high-ranking politicians ('big-fish'). As will be seen from an empirical analysis of the overall pool of

⁷¹ There were many examples of mutual support, one of which was, for instance, when the Commissioner publicly argued that the Council's right to obtain the information they required about the allegedly corrupt privatisation of the Port of Belgrade, cannot be ignored or denied (Šabić 2009).

'big fish' cases, the Council's enforcement style has been remarkably uniform across time. The section will describe in the end several 'big-fish' cases in more detail in order to illustrate the usual pattern of action that has been undertaken in more or less all cases.

Figure 6 below displays the enforcement style of the Council's actions involving 'big-fish', taken against government and opposition officials respectively. The data is derived from an empirical analysis of the Council's enforcement action against 'big-fish'. To remind, the enforcement style is measured according to a scheme developed in Chapter 3. The framework consists of two dimensions describing enforcement actions – zealotry and stringency, which yields four possible enforcement styles⁷².

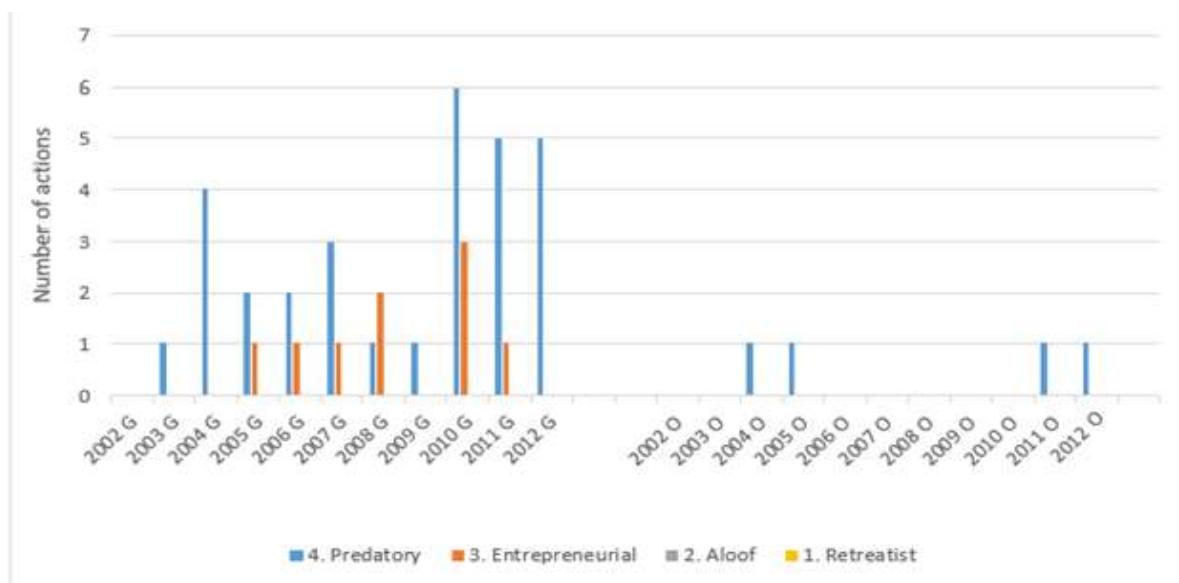


FIGURE 4.2 Council's enforcement actions against "big-fish" ('G'-government; 'O'-opposition).
Source: Author's compilation, based on press-clipping and official documents.

The graph indicates two key things. First, all Council's actions have been zealous. As can be seen, no single non-zealous action occurred from 2002 to 2013. This may seem an overly

⁷² The four enforcement styles are: 1. *retreatist*: low stringency, low zealotry; 2. *aloof*: high stringency, low zealotry; 3. *entrepreneurial*: low stringency, high zealotry; 4. *predatory*: high stringency, high zealotry.

zealous approach. Yet, since the Council is not responsible for a single sort of task, all actions it takes are a result of its own initiative, which qualifies it as 'zealous'. The number of zealous cases therefore equals the number of cases the Council decided to address in its enforcement.

Most of these zealous cases were 'predatory' in nature. This reveals the Council's priorities. The aim had been to target cases implying severe rather than mild sanctions. Specifically, in most of its investigations, the Council called for criminal liability. The Council therefore deployed the harshest type of enforcement style throughout its second stage.

Secondly, the graph shows that the Council predominantly targeted government officials. This has been the case no matter which government is in power⁷³. There were sporadic cases when opposition members were targeted, but only on four occasions. In some of these cases, opposition leaders were investigated because of their 'sins' from a previous office⁷⁴. In contrast, government officials were targeted in more than 30 cases. The two points to pick up here are – opposition was not targeted selectively, and among those government-targeting cases no single party, or no single government, was treated drastically harsher than the other governments were.

To sum up, the Council pursued a zealous enforcement style, which has to a large extent been 'predatory' in nature (involving severe sentences). Political selectivity could not be observed – neither against opposition nor against ruling parties who were in power at various points during the observed period.

⁷³ Four governments alternated in power from 2001 to 2012:

See *Election Guide*, Republic of Serbia:
<http://www.electionguide.org/countries/id/242/> [Accessed: 19 October 2015].

⁷⁴ For example, such was the case with a former Minister of Economy Predrag Bubalo, who was charged by the Council for an allegedly corrupt selling of the Port of Belgrade's shares (Council 2010: 4).

The following will describe three exemplary ‘big-fish’ cases addressed by the Council. They serve to illustrate the Council’s approach and style. While these cases do not exhaust all sorts of situations that the Council was dealing with throughout the observed period, they offer an insight into the key elements of its enforcement approach. As stated, the pattern of Council’s action has been more or less repetitive regardless of the cases’ specifics.

TABLE 4.2 Exemplary ‘big-fish’ cases.

Date	Target/scandal	Who raised	How Council reacted	How it ended
2004	Sartid privatisation	Council	Investigated the case, compiled report, filed a charge, called the Prosecutor to react.	Investigation started, but never finished. No judicial process.
2007	C-market privatisation	Council	Investigated the case, compiled report, filed a charge, called the Prosecutor to react.	Investigation started, but never finished. No judicial process.
2008	Privatisation of media	Council	Investigated the case, compiled report, filed a charge, called the Prosecutor to react.	No judicial process.

Sartid privatisation

In 2003, the American giant *US Steel* took over the ownership of Serbian steel-mill *Sartid*. *Sartid* had been an industrial engine of the former Yugoslavia. Following the democratic changes in 2000 and the launch of a transition and accompanying privatisation, *Sartid* attracted investors’ attention. In 2002 the Government of Zoran Đinđić signed a letter of intent with *US Steel Košice*, which was a prelude to takeover by the American company that took place in 2003⁷⁵.

⁷⁵ The official website of Železara Smederevo (former *US Steel Serbia*, which in the meantime bankrupted so the state took over the company again).

Available at: <http://www.zelsd.rs/index.php?link=en/menu/3761/history> [Accessed: 19 October 2015].

The process of change of ownership structure was marked by controversy, so the case of *Sartid* appeared as one of the key election themes in the 2003 general election. Several months later, the Council produced a report that described the process preceding the privatisation as corrupt. The trade unions, employees, prominent experts, and also the creditors expressed their discontent too⁷⁶.

The report about the takeover of *Sartid* was several months about the 2003 general election (2004c). It explicitly claimed that the takeover represented a corrupt deal between the state and investors. The Council highlighted that *Sartid*'s value was intentionally decreased prior to the takeover and that the investor did not take over the enormous debt as part of the deal. According to the Council, the Law on Bankruptcy was breached, because the accepted offer did not represent the most favourable option as other investors placed better offers (Council 2004c). The Council asked why the takeover was not realised in a form of privatisation, through a tender, but rather through an ad-hoc arrangement that led to a bankruptcy; thereafter, a local court from Belgrade played a role in awarding the contract to the American investor. Based on the findings, the Council called for an investigation into the case and for prosecution of the responsible persons (Council 2004c).

The competent ministers denied wrongdoing and shifted the blame to the Court that led the bankruptcy and a commission that carried out the process of takeover⁷⁷. The major opposition party (DSS) criticised the deal as corrupt. Soon after, they came to power and opened an investigation, however the process then stalled and the public has never been informed about the epilogue (Zurnić 2013: 147-148; Antonić 2006). In institutional terms, the takeover of *Sartid* never saw a legal process.

⁷⁶ See Antonić's description of the genesis of the 'Operation Sartid' (2006).

⁷⁷ Minister Vlahović described the Report as incompetent and said that is disturbed the public unnecessarily (B92, 23 January 2004).

In this case, the Council demonstrated a predatory enforcement style. It acted zealously as it swiftly opened an investigation into the case, on its own initiative and based on the data they received. The Council had openly called the deal corrupt and called for criminal liability of the involved persons. Over time, the Council had been repeatedly bringing up the case of *Sartid*, urging the authorities to fully investigate the case⁷⁸. The case of *Sartid* appeared again in a compendium of the biggest privatisation ‘frauds’ which the Council compiled in 2008, under the label *24 Contentious Privatisations*. As noted earlier, this compendium still features one decade after the case as a key reference to the Serbian privatisation and also as a benchmark for evaluating whether the authorities are indeed ready to prosecute the previously corrupt elite.

C-market privatisation

C-market had been the largest retail store in Serbia, taking up about 30% of the market; a quarter of its shares were state-owned (Zurnić 2013: 153). In 2002, the Ministry of Economy initiated a privatisation of C-market shares, by giving out a 30% of the state’s shares to the citizens and allocating the remaining 70% to a newly formed state fund. It took several years, however, before the privatisation was completed⁷⁹. The process, which saw a withdrawal of foreign investors who expressed interest in buying out the shares and a non-transparent handling of the whole process, eventually ended in 2006 when *Delta* company announced that they have acquired the majority of shares. The owner of *Delta* company was Miroslav Mišković, an oligarch widely seen as the most powerful business figure with alleged strong control over the political scene in Serbia.

⁷⁸ This has been the subject of numerous Council’s statements many times until the publication of *24 Contentious Privatisations* compendium (2012), but also thereafter.

⁷⁹ An article “History of C-Market: ‘Planned Economy’ of Košunica and Tycoons” by CINS and OCCRP (2011) provides an overview of the facts and key developments that are recapped in this section: <http://www.cins.rs/srpski/printer/article/252> [Accessed: 19 October 2015].

The privatisation drew controversy as the process unfolded. It was characterised by unclear rules, pressures on the shareholders, mutual accusations of the bidders and even campaigns against foreign investors. Yet, the key controversy appeared later, in 2007, when one of the participants who tried to buy out the *C-Market* shares, former Director of *C-Market* Slobodan Radulović, sent a public letter from his refuge in Spain⁸⁰. Radulović revealed that the final step in the privatisation of *C-Market* was preceded by a meeting in the cabinet of Prime Minister Koštunica, who, the accusation was, colluded with two oligarchs, Milan Beko and Miroslav Mišković. This scheme, through mutual transactions, would eventually allow *Delta* company to gain the shares. To realise the plan, a memorandum was signed to state a principle of economic patriotism, according to which the shares can only be sold to domestic companies. Radulović also accused a number of ministers and Prime Minister's aides for corrupting this process, allegedly in exchange for material gains and political support. Allegations pointed to the unlawful interference of politics into the free market and the collusion between business and politics, in which the shareholders were allegedly damaged. The details about the 'secret deal' remained unknown to the public until the letter came out, causing a heated public debate.

Soon after the letter appeared, in 2007, the Council sent an official letter to the Prime Minister Koštunica asking for the authenticity of the Memorandum he was accused to have signed with the oligarch(s) involved in the privatisation of *C-Market*⁸¹. Simultaneously, the Council was investigating the case itself. A month later, in September 2007, the Council released in a report how the process of the *C-Market* privatisation unfolded and what the contentious details are (Council 2007b). Although the Report did not claim that particular laws were breached, it did hold that the deal was corrupt because it resulted from a collusion of several political and business actors (Council 2007b). In 2007, a special police force opened an investigation into the

⁸⁰ Available at: <https://www.cins.rs/uploads/useruploads/Documents/Slobodan-Radulovi%C4%87-2007.09.09.-Pismo-Savetu-za-borbu-protiv-korupcije.pdf> [Accessed: 19 October 2015].

⁸¹ Available at: <http://www.antikorupcija-savet.gov.rs/obracanje-institucijama/cid1029-1186/pismo-predsedniku-vlade-vojislavu-kostunici-povodom-preuzimanja-akcija-c-marketa> [Accessed: 16 October 2015].

privatisation of *C-market*, but so far the *C-Market* case had remained without an epilogue in institutional terms (Milivojević 2015).

In the *C-Market* case, the Council did not go as far as in the previous reports, in which it harshly criticised deals as corrupt and swiftly filed criminal charges. However, they made it clear that the links between politicians and businesses were unacceptable, that this nature of work is against the principles of fairness and transparency and that elements of corruption or unlawful conduct existed. The enforcement style in this case therefore had been 'predatory'. The Council's zealotry was reflected in the fact that they swiftly responded to the events, by opening a swift investigation. They also placed pressure upon the Prime Minister to act and justify his position, thus targeting the biggest of the 'big-fish'.

Report about Corruption and Pressures in Media

Arguing that a positive role of media is indispensable for the fight against corruption, the Council decided to examine the media scene in Serbia. In particular, the Council tried to explore in 2010 and 2011 whether the media provide for an environment that enables tackling corruption or, on the contrary, it serves to underpin corrupt elites. They conducted a research in collaboration with about 50 state institutions (Council 2011c: 2) that provided a variety of information from their jurisdictions. The subjects of the investigation were the 30 most prominent media institutions in Serbia – 12 dailies, seven weeklies, six TV stations, and five radio stations. The Council focused on the flow of money in and around the media, including the mechanisms of influence over the media. The resulting report was presented in 2011 and was named *Report about Pressure and Control of Media in Serbia* (Council 2011c).

The report found that a large majority of the media have non-transparent ownership. According to the findings, as many as eighteen media, of whom nine radio and TV media with a national licence had a non-transparent ownership. Due to this, the Council's conclusion went, the

possibility to appreciate whose interests are being upheld in these media is quite limited. Only in some recent events, due to accidental developments, the public found out that oligarchs stood behind some of the media⁸², which, in the Council's view, is problematic because it leaves much scope for manipulation and private interests taking precedence over the truth and public interest (2011c: 2).

The Council found that undue economic influence of the state over the media is another key problem. The findings revealed that the state directly allocated an aid of between €20mil and €25mil to the media through programmes of support. An additional €15 million per year was estimated to be invested by the state into advertising in the media, through various campaigns such as "Let's Cleanse Serbia" (by the Ministry of Environment), promotion of start-up loans by the Ministry of Economy, a campaign "Kosovo is Serbia" by the Ministry for Kosovo and Metohija, or a campaign for the use of flu vaccines (Council 2011c: 17). The Council identified a number of mechanisms through which the media were acquiring profits from state institutions.

This report and the subsequent calls for action encountered a wall of silence in the media, with only one media reporting about the investigation (daily *Danas*). Nor did the authorities launch an investigation into the Council's claims about the politics-business nexus and abuse of state funds in 'oiling' the media reporting. Yet, the Council kept insisting on addressing this issue. Later, in 2015, they published a follow up report which sheds further light on the state of media, particularly the developments from 2012-2015 (Council 2015), but the authorities did not follow up the pledges so far.

Nonetheless, this enforcement action can be characterised as featuring the predatory style. Its zealotry was high, for the Council itself launched the action and insisted on its resolution. It was

⁸² For example, the formerly state-owned newspaper *Novosti*, had been privatised in 2005 and 2006, by investment funds from off-shore destinations. When questioned, the company declined to reveal who or which institution was behind those funds. Only later was it revealed that the owner of *Novosti* was the oligarch Milan Beko (B92 05 July 2011).

also stringent because the calls to the traditional anticorruption bodies to intervene assumed applying harsh sanctions.

Summary of the 'big-fish' cases

The three 'big fish' cases are indicative of the overall enforcement approach of the Council from 2003 onwards. They dealt with high-level corruption, the targets coming from different parties, that is to say different governments. The three cases point to 'big fish' officials from three different regimes, whereby the Council exerted the same sort of zealotry, regardless of what stripe the ruling party is of.

Summary of enforcement pattern

In the first, shorter, stage, the Council espoused a 'confined' enforcement strategy coupled with a lack of 'big fish' cases (hence the inability to determine the enforcement style). The Council acted assertively, through its rhetoric, and often through consistent and rigorous critic of the regime. However, in this period, their enforcement did not involve dealing with broader issues that are relevant for the anticorruption agenda. From 2003, however, the Council started pursuing the harshest form of enforcement pattern. Its strategy became assertive and expansionary, and targeting of high-level politicians and powerful oligarchs became a regular feature. The enforcement style in dealing with individual cases was characterised by a zealous approach and predominantly predatory actions, which implied severe sanctions. This enforcement style was applied in a non-selective manner, according to the ratio of zealous actions taken against government, as opposed to opposition 'big-fish'. Overall, from 2003 onwards, all '3s' (strategy, style, selectivity) have featured the harshest 'values'.

Discussion

What does the Council's story tell us about the explanatory power of the organisational, temporal, and leadership-based accounts? Are the findings surprising given the expectations based on the introductory insights into the organisational factors the Council has been characterised by?

This case is curious in many respects. The Council has been an unusually weak, 'preventive minus-minus' ACA, with non-existent formal instruments and sanctioning powers. The Council's de-jure independence has been extremely low throughout the whole of its existence. In fact, the Council has been hierarchically subordinated to the Government. Its structural settings, therefore, did not give much promise when it comes to the possibility of harsh enforcement. In addition to the weak structural settings, the other organisational factor – resources - has been weak too.

Such a constellation of organisational factors, from the perspective of the organisational theory, would suggest that the Council is unlikely to espouse a harsh enforcement pattern. But, despite these 'adverse' organisational factors, the Council undertook in practice the harshest pattern of enforcement. This pattern persisted throughout the whole of the second stage (2003-2012), for almost a decade. How was this possible given the limitations of the organisational factors?

The role of leadership comes out crucial here. It could be seen that with the 2003 change in Council's leadership and the personal structure of the Board, a major shift in the enforcement occurred. A novel strategy, to 'venture' into the turf occupied by the police and prosecutor and to carry out investigations which are associated with suppression rather than prevention of corruption, developed. While the formal organisational mission highlighted a systematic perspective in dealing with anticorruption affairs, the Council's leader (together with the rest of

the Council's members) proceeded in a different direction – of investigating individual cases of corruption.

The lack of formal independence is always a hindering factor in attempts to preserve an enforcement which goes against the principal. The principal, clearly, can easily take institutional measures to undermine the agency, in a variety of ways – from personal changes, to statutory amendments, to budget cuts. The institutional design of the Council, reflected in very low formal independence, provided the government with all these opportunities to 'strike back'. However, the Council managed to build a reputation for integrity and to position itself as a 'societal consciousness'. The effect was a heightened protection of the Council's formal institutional wellbeing. A telling fact in this regard is that officials sporadically mentioned termination of the Council as a possibility, citing its 'redundancy' as other ACAs were in place, but they clearly did not dare to take this measure in practice. Even their coping strategy shifted over time: from initial charges of 'incompetence', 'witch-hunting', 'demagogic' and the likes, they had to back away and to try out an 'ignorance' strategy instead. The Council, hence, managed to overcome its severe organisational limitations and, moreover, to assert certain primacy over those who had formal instruments of control over the Council. For this reason, the organisational factors do not offer explanation for the Council's enforcement choice.

Age does not seem to have played a role either, not least in the way predicted by the 'declining life-cycle' accounts. No signs can be observed on the graph above of a 'decay' in the Council's enforcement as time passed. The Bernstein's logic, therefore, finds no support (1955). The enforcement style has not been changing over time, but if variations can be found, then a rise in the number of cases the Council launched per year would be the only ones. In 2010 and 2011, for instance, the Council launched on average more cases than it used to from 2003 to 2007. Yet, this is not necessarily an indicator of a substantively different approach, since most of these cases became 'enforceable' only after a lengthy period of investigation. The dynamics of the Council's enforcement, therefore, do not seem to feature substantial variations.

Political-cycle, on the other hand, may have played a role. Figure 4.2 below portrays the average number of cases the Council launched per three months (quarter). The graph shows the numbers of cases in the pre-electoral times (the three months preceding an election) as well as how many actions were undertaken on average per a quarter beyond the election time. To assess whether the Council was considerably changing its enforcement style during the election campaigns, the extreme right bar in each of the two halves ('government' and 'opposition') needs to be compared to the bars on the left of the given half of the graph, which denote the data for the election campaigns.

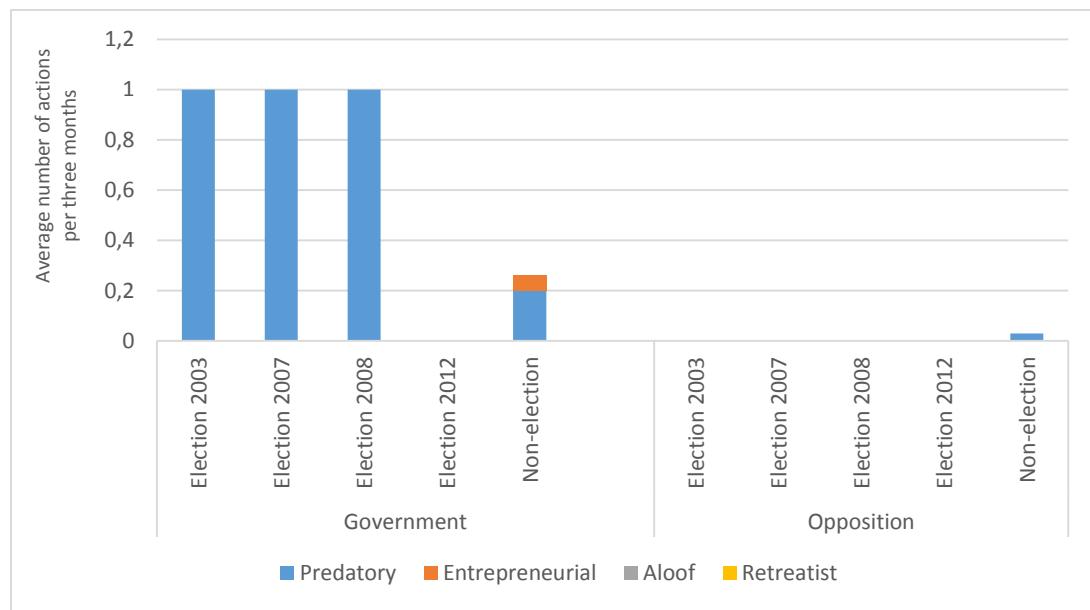


FIGURE 4.3 Comparison of Council's enforcement action in non-election vs. pre-election times (the bars represent the number of cases per quarter).

Source: Author's compilation (see Appendix D for more details about individual cases).

By looking at the average number of actions, it can be seen that *incumbents* were subject to increased targeting during election campaigns. For almost each of the three elections (2003, 2007, 2008, but not for 2012), the average number of 'predatory' action against government was conspicuously higher than the average number of 'predatory' actions beyond the election

campaigns. Compared to the average number of actions in non-election times, this is a considerably higher figure (1.00 vs. 0.24). Yet, no matter how higher, can we regard one enforcement action per an election as a significant increase in targeting of incumbents? While it is debatable whether the extent of this difference is so big, this is likely a sign of intentional enforcement against government. Some of the interviews reveal that the Council's thinking was to show the government that they will not be spared in those sensible (pre-election) times when the cost of being targeted is much higher than in the 'normal times' (S2, S4).

In that sense, the political-cycle has been a factor in shaping the Council's enforcement. However, it unfolded in a form of increasing targeting of government rather than in the two initially hypothesised directions (Chapter 3: (a) 'silence before the storm'; and (b) the 'increasing targeting of opposition'). We can see that the political-cycle is not necessarily a factor of potential gains for politicians, where they can benefit by manipulating policies. This can also be an 'area of risk' in which politicians' increased vulnerability in reputational terms can be tapped into by those who regulate them and who are seeking more compliance.

Moving from the question of impact of the individual determinants of the Council's enforcement to the question of whether and how the organisational model shaped the possibilities for harsh enforcement, the following can be said. The preventive model allowed the Council a sort of 'creative reading' of its jurisdictions. It enabled the Council to 'venture' into the turf traditionally occupied by the police and prosecutor. At the same time, the Council faced no reputational risk for this endeavour, since it is precisely the long-standing policy failure the Council drew legitimacy from for own actions. By criticising the system, and in particular the suppressive bodies, the Council managed to justify its actions as 'evidently' necessary under the given circumstances. This sort of conduct resonated with the wider audience, i.e. electorate, who were disenchanted with the rampant corruption and whose growing cynicism toward politicians further fostered the approval of 'zealous' anticorruption actors.

At the same time, the Council saw the international organisations that were involved in the Serbian reforms as an important partner who may help them 'fend off' government's attacks.

„We, of course, realised that the government cares about what the EU will say and that they didn't want to leave the impression that they are subverting anticorruption efforts. As we built good relations with foreigners, this gave us some leeway in our actions, despite the fact that we didn't have any institutional safeguard against government's pushback. We even had a plan that, if the government terminates us, we can continue our investigations as an NGO. No formal powers - and hence no formal status of a state authority - are needed for such actions. And then we got assurances from some foreign donors that they would fund our work, should the government abolish the Council“ (S1).

We can see that the reputational basis was the key element in the Council's choice of harsh enforcement. On the one hand, the awareness about potential reputational gains served as an encouragement to the Council to pursue and sustain the harshest forms of enforcement. On the other hand, this sort of engagement created a 'reputational protection' which compensated for the lack of formal safeguards of institutional 'wellbeing'. Thus the reputational sort of accountability overrode the formal institutional hierarchy (Busuoic and Lodge 2015). The key factor that allowed the Council to develop harsh enforcement, the reputational constellation – of possible gains and losses, is in fact shaped the organisational model itself.

Conclusion

The case of the Council paints a rather 'pessimistic' picture when it comes to the organisational theory and it lends credence to the 'leadership-matters' account. The case also shows that ageing is not necessarily negatively correlated with the harshness of enforcement. Regarding the political-cycle logic, the case study shows that, in contrast to the two initial hypotheses, a third possibility exists. Rather than increasing accommodative enforcement, an agency may undertake, during election campaigns, an increasingly aggressive enforcement toward the incumbent.

Furthermore, the Council's example lends support to the logic that links a 'reputation-based' approach to the organisational model. The analysis demonstrated two things in this regard. First, the preventive model, as predicted, set the constellation for reputational gains and risks by allowing reputation-seeking opportunities while at the same time keeping at a minimum reputation-losing possibilities. Second, this served for the Council to exploit the 'reputational accountability' rather than 'formal hierarchical accountability'.

CASE 2. Republican Committee for Resolution of Conflict of Interest (2004-2009)

This part analyses the work of the Republican Committee for Resolution of Conflict of Interest (Committee), which had been in place from 2005 till the end of 2009. The analysis will show that the Committee commanded a preventive ACA model, with a very narrow set of competencies and limited powers. Committee's de-jure independence had been high, whereas its organisational resources were scarce. It will be shown that the Committee's enforcement strategy had been assertive, but not an expansionary one. Committee's enforcement style against 'big-fish' had consistently been zealous, and more specifically - predominantly entrepreneurial. The empirical evidence does not lend strong support to any of the theories; it questions the explanatory role of the hypothetical accounts set out in Chapter 3. Most prominently, the impact of organisational resources and aging will turn out not to be able to explain the Committee's enforcement, at least not in the direction predicted in Chapter 3.

Institutional Design

The Committee had been endowed with the preventive ACA model (Klemenčić and Stusek 2008). To remind, the preventive model is characterised by focus on preventive tasks, commanding non-prosecutorial powers. Unlike the Council, who shared the same model but

had no tasks nor powers, the Committee had defined competencies and specific powers provided to regulate the delegated tasks. The following part reviews in detail those competencies and powers.

Competencies

The Committee had been the first body in Serbia to deal with integrity standards of public officials. According to a Law on Prevention of Conflict of Interest in Discharge of Public Post (LPCIDPP 2004), it had been authorised to perform the following competencies:

TABLE 4.3 Functions and tasks of Committee.

Function and task
Policy implementation Control of official's property status (Article 14) Control of conflict of interest (Article 8 to 11) Control of gift reception (Article 15, 16, 17)

Source: Law on Prevention of Conflict of Interest in Discharge of Public Post (2004)⁸³.

As can be seen, the Committee's mission was comprised of three main tasks. Monitoring of the status of officials' properties had been the first one. According to LPCIDPP, public officials are obliged to submit their asset declarations to the Committee. They shall do so not later than 15 days following their appointment or election to a public post. While in office, officials must also re-submit their asset declaration to the Committee each year (Article 12). The Committee keeps a register of officials' property (Article 14) and, should a need arise, checks the data veracity. It does so by examining whether the declared assets correspond to the officials' property in reality. This may be done by comparing the declared data to the one from the Tax Office or

⁸³ *Official Gazette RS* 43/04

from other institutions that keep information about citizens' properties. The purpose of this regulation is to track whether and how much an official's property has grown during her time in office.

The second Committee's task was about conflict of interest. Officials are forbidden "to perform a public post in order to achieve personal or gains for someone else, to acquire an entitlement or a privilege, to conclude a legal job or in any other way bring benefit oneself or to another person" (Article 6). According to the legislation, officials shall not hold a position in a private company which has a commercial interest that may be affected by the performance of their public function (Articles 8). Accumulation of functions is not allowed either (Article 9); for MPs and local MPs not more than one function in a Board or supervisory Board is allowed (Article 10).

The third Committee's task was keeping a register of the gifts that the officials received. Gifts are defined as "any money, commodity, or a service received without paying a fee, as well as any sort of benefit that is provided or promised to an official or a related person, which are in connection with the discharge of public office" (Article 15). Officials are obliged to decline all sorts of gifts that are received in connection with the discharge of the post, with the exception of protocol gifts which by definition do not exceed in value half the official's monthly salary, and even is the value of the gift is not bigger than this it cannot be money (Article 16). If any gift above this value is received, the official is obliged to decline the gift; if there are objective reasons the gift cannot be declined, that the official needs to pass it to the body that appointed her (Article 17).

Compared to the 'average' ACA that is characterised by the preventive model, the Committee commanded quite a narrow set of competencies. The roles that are commonly seen across preventive ACAs, but which were not part of the Committee's mission, mainly refer to coordinative tasks. These for instance include dealing with anticorruption strategies and action plans, educational tasks (awareness raising, education of official), and also tasks related to

particular corruption prone areas such as procurements, elections, financing of political parties, and the likes (OECD 2013).

Also important is the fact that, despite its institutional status of ACA, it was hardly possible for the Committee to find a basis to link its mission to a broader anticorruption field. The legislation defining the Committee's status was so distinct that it does not even mention the word 'corruption' a single time. One consequence of this is that the Committee will find it hard to justify any sort of engagement that does not fall strictly under its competencies. Even the weakest grounds that would enable referring to a wider concern about the state of corruption in the society were not provided in the legislation.

To conclude, the Committee had been a preventive ACA that commanded a narrow set of competencies. What powers the Committee relied on for the execution of these competencies will be the subject of the following section.

Powers

The powers that the institutional design provided to the Committee had been limited, in all three major respects – enforcement, monitoring, and steering (Geeraert and Drieskens 2015: 1453). The table below summarises the powers that had been at the Committee's disposal:

TABLE 4.4 Committee' sanctioning abilities over regulatees.

Task	Type of sanction
Conflict of interest	Non-public and public warning (Article 25); Dismissal recommendation (Article 29)
Assets declarations	Non-public warning; Public warning; Pronouncement of a decision about a violation of the Law; dismissal recommendation (Article 31).
Gift receipt	-

Source: Law on Prevention of Conflict of Interest in Discharge of Public Post (2004).

In the exercise of tasks, the Committee could apply three sorts of sanctions. The first was the measure of *non-public warning*. This sort of measure is applied against officials for breaches that “do not affect the discharge of the post they hold”⁸⁴. The measure of non-public warning shall also be applied if an official is late in complying with an obligation that is set out by the Law, provided that a decision stipulating the deadline and the manner the compliance should be ensured had previously been delivered to her⁸⁵.

The second sort of sanction the Committee could apply is a *public recommendation for dismissal*. This sanction is applied against those officials who have failed to comply with a prior Committee’s instruction accompanying an issued non-public warning against the official⁸⁶. When an official is caught in conflict of interest, in a commercial arrangement, the measure of *public recommendation for dismissal* will be applied. This measure is taken if, following receipt of a non-public warning by the Committee, the official fails to follow through the requests provided by the Committee thereof⁸⁷. Dismissal recommendations, however, were not applicable to directly elected officials. Against them, the Committee could only apply the sanction of a *public pronouncement of a breach of law*⁸⁸, which is a typical ‘naming and shaming’ measure.

One of the deficiencies in the Committee’s powers was the inability to establish full facts, in order to examine a raised suspicion about an official’s conflict of interest or hidden asset(s) (Trivunović *et al.* 2007: 65). The only way for the Committee to check whether the data an official submitted in her asset declaration form is accurate was to consult the Tax Office, the Land Register, or the bank the official has account(s) with. But, since the Committee lacked the

⁸⁴ LPCIDPP, Article 26.

⁸⁵ *ibid.*, Article 26.

⁸⁶ *ibid.*, Article 27.

⁸⁷ *ibid.*, Article 27.

⁸⁸ *ibid.*, Article 28.

formal institutional means to make them compelled to provide required data, the prospects of such cooperation depended on the will of these bodies.

Overall, weak enforcement tools, very limited monitoring, and non-existent 'steering' abilities (to shape the conduct of regulatees) characterised the Committee's powers. Due to its weak powers and the fact the set of competencies was narrow, the Committee can be characterised as a 'weak' preventive ACA.

Resources

This section reviews the second organisational factor – resources. It shows that the Committee did not enjoy abundant resources and that, additionally, serious technical problems marked its 'formation' stage. International sources of support were deficient, too.

Domestic resources

The Committee was formed in 2004, but its start of operation had been delayed for January 2005. First the Government missed the deadline for appointments of the Committee's members (Šabić 2004) and then, due to the lack of basic technical preconditions, the constitutive session was delayed for 2005 (*Politika* 19 January 2005).

Just as it faced problems with technical capacities before it became operational, the Committee faced technical issues during the early stage of operation too. At the beginning, adequate premises, technical staff, and suitable budgets - were all deficient (*Politika* 19 January 2005). While waiting for the government to find them permanent premises, the Committee had been located in a Parliament building room. Several months later, the Committee got and moved to new premises (*Dnevnik* 14 February 2005), but technical problems, such as those relating to the lack of IT and psychical equipment, remained (Committee 2005: 22). Over the

years, particularly from 2006 on, the technical conditions improved, but still with limited financial resources (Trivunović *et al.* 2007: 64-68).

Committee's budget trajectory, drawn for the whole period of its existence, resembles a reversed J-shaped curve (see Figure 4.4). After the first year, the budget rose, but soon after repeated declines occurred. The Committee started off with a budget of about a €250.000 per year, then saw a considerable increase in 2006 – reaching about a €350.000, and then over the course of the next few years the budget was continually declining for an average of about a €50.000 per year. In 2009, the last year of its existence, the Committee had the smallest budget, of about €200.000.

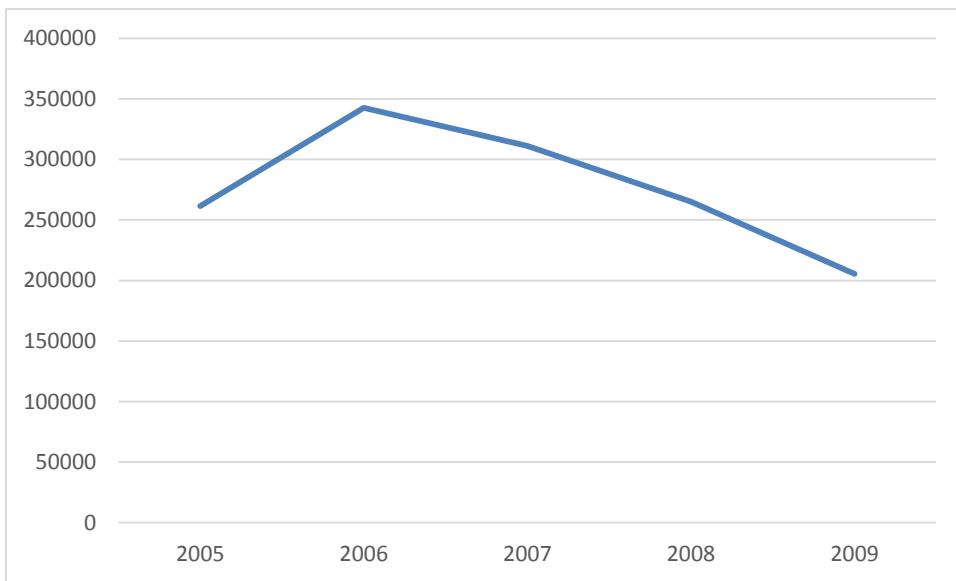


FIGURE 4.4 Annual budgets of the Committee (in EUR).
Source: Annual Reports (2005-2009).

These financial means were barely sufficient for the execution of the delegated tasks⁸⁹. Although Committee's narrow range of competencies meant that its staff did not have to 'sprawl' across a variety of tasks, some major routines such as collection of asset declarations were resource-demanding nevertheless. According to some estimates, around 10.000 of asset declarations were supposed to be dealt with each year (Minić 2005).

Committee's human capacities were limited too. Alongside the nine Board members, no more than 10 to 13 employees served as administrative staff over the course of the four years of the Committee's existence (Committee 2005, 2006, 2007, 2008, 2009).

In sum, the Committee enjoyed low resources throughout the whole of its life. Its financial means were scarce, human capacities limited, and technical challenges significant. The fact that the small number of tasks that needed to be performed posed smaller strain than is usually the case with typical preventive ACAs, only to an extent featured as a mitigating factor.

International support

To enhance its capacities, the Committee partnered with foreign anticorruption bodies. Slovenia, United Kingdom or Slovakia, were some of the countries that the Committee paid visits to⁹⁰. Increasing the Committee's awareness about the possibilities, constraints, and opportunities that foreign integrity bodies face, had been one of the aims of these exchanges. A host of seminars and conferences, particularly from 2007 onwards, were organised in Serbia as well⁹¹.

⁸⁹ Committee's President Slobodan Beljanski said that the budget is sufficient for the basic tasks, but not for additional ones (in Baković and Petrović 2008). The EU Progress Report for Serbia also mentioned that the resources were insufficient (European Commission 2008a: 13).

⁹⁰ Committee's *Annual Reports* (2005; 2006). The mentioned visits took place in 2005 and 2006.

⁹¹ See Committee's *Annual Reports* (2007; 2008; 2009).

From 2006 on, the Committee developed collaboration with international organisations too. Meetings with GRECO and OECD were some of these activities. The core considered themes were how to implement the international standards from the field of conflict of interest and what the previous experience of enforcement in this field suggests (*ibid*).

While certainly adding to the Committee's human capacities, the effect of these activities when it comes to resource enhancement, was limited, though. One limitation, obviously, was that specialised skill development was not an option in these international exchanges, primarily because the preventive ACA model does not entail so. The financial means that the international partners provided were modest, too. The OSCE's programme of support, for instance, funded the print and dissemination of the Committee' Annual Reports (2006, 2007) and even this sort of support had been in 2008 withdrawn (Committee 2008).

Summary of resources

The domestic resources constituted the bulk of the Committees' resources. At first, they were limited; while certain technical improvements occurred over the years, the financial aspect deteriorated though. The observable implication of this sort of constellation, in the 'resources matter' view, would be that the Committee is expected to have failed to pursue harsh enforcement. Whether this implication had indeed taken place in practice, will be the one of the questions the remainder of this part of the chapter addresses.

Enforcement

Enforcement strategy

The Committee had been the first Serbian ACA to implement a concrete set of anticorruption standards. Previously, the regulation of conflict of interest and related themes had never featured as part of officials' duties. One implication of this was that over the formation period of the Committee's work (2005-2006), the awareness among officials about the importance of complying with the given regulation had been limited⁹². The challenge for the Committee therefore was to induce the habit among the officials to respond to calls for submission of asset declarations and also to make them aware of what constitutes a conflict of interest and how to act in that regard⁹³.

As a new institution, the key challenge for the Committee in the first year was to establish the presence and to elicit a high response rate of the regulatees. In 2005, the national-level officials achieved a high compliance rate in submission of asset declarations, but the local officials from central and southern part of Serbia did not (Committee's *Annual Report* 2006). Yet, despite these starting difficulties, an upward trend in compliance with the regulation followed the formation phase (Committee 2006). Preserving personal credibility was seen as the major driver behind officials' compliance (Committee's *Annual Report* 2007).

While the Committee could suggest sanctions against all officials who were discovered in a violation, its enforcement possibilities were weak. The Committee did not enjoy the possibility to check whether the principal (e.g. Director, Chief) of the fined official indeed applied the recommended sanction (Committee 2006). The Committee had no power to monitor what

⁹² For example, the Committee stated that the number of those who comply with the obligation to submit an asset declaration is “[...] about a 70% of the overall number of functionaries in the Republic of Serbia” (2006). In the same report it added that “The attitude toward the duty, in general, is not satisfactory”.

⁹³ “One of the reasons for the lack of compliance with this obligation (to submit an asset declaration, prim. aut) is insufficient knowledge of the functionaries, especially at the local level” (Committee's *Annual Report* 2006).

occurs on the 'receiving end' of the sanction. The only exception, in a way, was high-profile cases. When the Committee deals with a minister, MP, or another high-ranking official, the attention is greater so the media traces the epilogue of the enforcement process. Nonetheless, the Committee complained that its inability to monitor how the sanctions are executed by the principals, over the breaching officials, weakens its authority (Committee 2006).

In addition to its implementation function, the Committee pursued a policy development role as well. From 2005 to 2009, it proposed several legislative amendments and the introduction of some new laws. In the Committee's view, though introducing novel standards in the regulation of officials' ethics, the actual legislation was arguably incomprehensive and ineffective. The Committee therefore suggested amendments which would bring harsher sanctions for violating the regulation of conflict of interest (*Politika* 08 April 2006). Another draft of Law was submitted to better define who 'public officials' are and who is under the remit of the Committee (*ibid*).

One of the main distractions to the Committee's work was the anticipation of a new ACA. Even before the Committee was created, the Minister of Justice Zoran Stojković announced the government may set up an Anticorruption Agency in a foreseeable future. Committee's member Slobodan Beljanski greeted this with criticism, fearing that this sort of government's attitude would undermine the credibility of the Committee among the regulatees (Beljanski 2005). An additional problem was that operating in conditions of uncertainty about the institution's abolition does not boost the staff morale. Not long into the Committee's life, in 2006, a commission formed by the Ministry of Justice adopted an Anti-Corruption Strategy which confirmed the intent for a novel ACA. As it became more and more certain that the government will eventually realise this intention, the Committee's members criticised the move again (Malešević 2006). The leader of the Council, Verica Barać, 'sided' with the Committee too, stating that with a novel ACA the government in fact shuts down "impartial institutions, like the

Committee, which has achieved positive results and made progress in the anticorruption struggle”⁹⁴.

With the adoption of a Law on Anticorruption Agency (LAA), a new ACA was eventually established in 2008, becoming operational in late 2009⁹⁵. The LAA adoption caused additional problems to the Committee as the officials’ compliance dropped in the last year. In view of Committee’s members, the adoption of the ACA led the officials to disrespect the Committee as a ‘dying institution’ which affected the compliance rate (Marković and Lapčić 2008).

Although its competencies were narrow, the powers limited and the resources poor, the Committee’s enforcement had been assertive over the four years of its operation. The Committee insisted on amendments to the ‘original’ legislation – LPCIDPP – suggesting broadening of the definition of functionaries falling under the remit of the law⁹⁶. The Committee also demanded stronger powers, as the existing ones that were based on moral and reputational sanctions were considered inadequate. Obtaining bigger powers in data collection, particularly for the competencies where checking the veracity of the received data is crucial (e.g. declared assets), was one such demand (Committee 2006, 2007, 2008). The government, however, did not acknowledge most of these requests.

The Committee’s assertiveness was also reflected in its public appearances. Most of the comments the Committee staff made were critical of the state of (anti)corruption in Serbia and of the ‘irresponsibility’ of political elites and officials. Slobodan Beljanski, first a Board member and later in 2008 and 2009 President of the Committee, repeatedly condemned the alleged

⁹⁴ A letter that Verica Barać sent to the Government, Ministers and President of Parliament, from 14 October 2008. Available at: <http://www.balkanmagazin.net/novosti-i-politika/cid128-26138/poziv-da-se-povuce-zakon-o-borbi-protiv-korupcije> [Accessed: 20 October 2015].

⁹⁵ Details about the establishment can be found on the official ACA’s website. Available at: <http://www.acas.rs/o-agenciji/osnivanje-i-status/> [Accesses: 20 October 2015].

⁹⁶ Which has featured as a recurring initiative expressed in their public statements and *Annual Reports* (Committee 2006-2009).

contempt the party leaders and elites held for basic integrity principles (Beljanski 2009). He suspected that the purpose of having a Committee with ‘negligible resources and powers’ was to delay serious reform and anticorruption efforts (Beljanski 2009). Beljanski openly characterised the government (both the first Koštunica government 2004-2007, and second Koštunica government 2007-2008) as lacking political will to seriously tackle corruption.

For all its assertiveness, the Committee’s enforcement had not been expansionary though. Unlike the Council, the Committee did not venture beyond its strictly delineated turf. The regulation of conflict of interest, officials’ integrity, and the other sorts of tasks that were subsumed under the institutional mission were the issues. The Committee did not make a single attempt to ‘encroach’ on another institution’s turf for the four years of existence.

Two factors may explain the absence of expansionary enforcement. First, in contrast to the usual practice in which ACAs’ mission is framed in terms of the general question of anticorruption, the Committee’s mission and tasks were so narrowly defined that it could not find even the smallest ground to justify enforcement in another turf. As mentioned, it is striking that the word ‘corruption’ does not even appear in the LPCIDPP. Second, limited capacities played a role from the outset. As noted earlier, the estimates were that about 10.000 individual cases needed to be dealt with on an annual basis. Having an administrative staff of only about 10 people, the Committee obviously had to spend all its time only on those the tasks that fall under the remit. Even if there was a possibility to take on cases outside of their jurisdictions, the Committee could not psychically achieve that.

According to an analysis, a large majority – of more than 95% of the cases the Committee addressed from 2005 to 2009, involved officials from the lower levels of the political ladder. How the Committee treated the rest, that is ‘big-fish’ cases, is the subject of forthcoming empirical analysis of the enforcement style, in the next part.

The Committee had two Presidents throughout its lifetime. The first President was retired judge Milovan Dedijer. He was elected in January 2005, by the Board, in the constituent session. Dedijer headed the Committee until the second half of 2008 when he resigned citing illness (*B92* 20 March 2008). Slobodan Beljanski, one of the Board members, took over the Presidency, and served in this capacity for the last year and a half of the Committee's existence.

Since the Committee was deciding collectively, the leadership change in 2008 did not represent a major change in the Committee's work. A President, according to the institutional design, has no bigger powers than the other members on the Board. The only difference is that a Director is likely to appear more in public, though an analysis of the collated press-clipping covering Committee's work from 2005 to 2009 reveals that even before the change in leadership it was the 'Dedijer and Beljanski' duo who were giving statements on behalf of the Committee. In other words, who the formal President was made little difference as regards who will be speaking in the public.

It can be argued that regardless of the equal powers a collective decision-making body allocates to its members, some may demonstrate leadership by way of swaying the other members. This resembles, as described in the first part of the chapter, the case with the Council and its President Barać in the second stage. Yet, in the Committee, dilemmas in regards to what course of action to take and how to format the Committee were less acute. This was the case because the design and resources were so constraining that there was no room for 'creative interpretations' of what the Committee may or should do in practice (*S6*).

In summary, the Committee focused its enforcement on the delegated integrity tasks. In conducting them, the Committee used tools provided by the law, elsewhere criticised as 'weak' and 'ineffective'. In its public appearances and formal initiatives such as those demanding better legislation, the Committee acted assertively. Refraining from expansions into others' turf, the Committee pursued its narrow set of tasks in an assertive manner.

‘Big-fish’ scandals

The Committee dealt with tens of thousands of cases during the five years of its presence. Since most of them involved lower-level officials such as those from the local governments or less prominent members of parties⁹⁷, many cases never hit the headlines nor had serious political ramifications. As regards high-profile politicians, so called ‘big-fish’, Figure 4.5 depicts what enforcement style the Committee undertook:

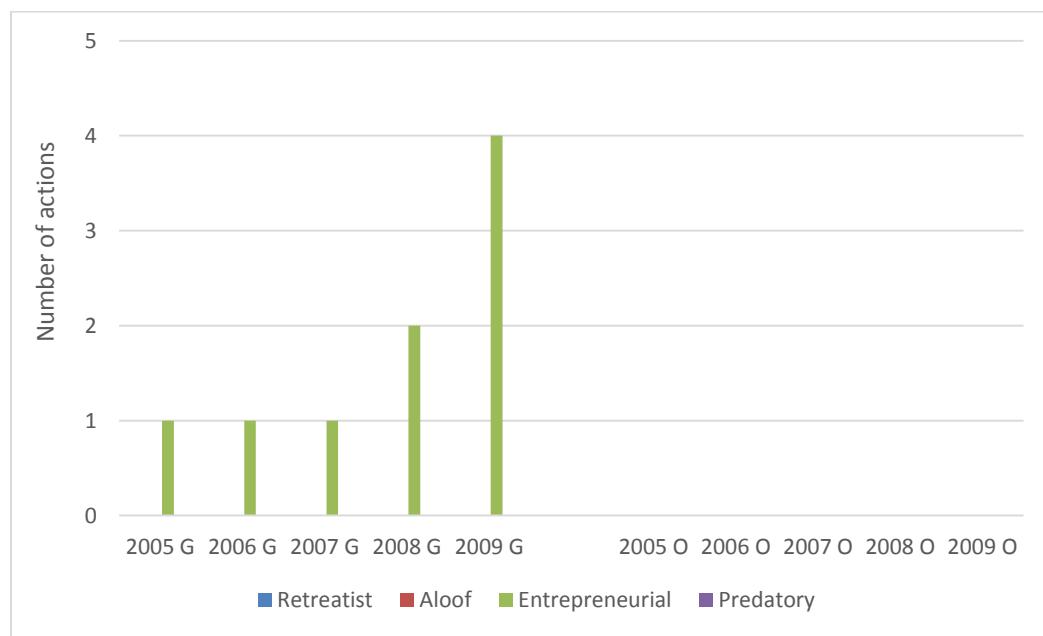


FIGURE 4.5 How Committee addressed big fish cases (G-government member; O-opposition member)
Source: Author’s compilation based on press-clipping and Committee’s Annual Reports (2005-2009).

Two conclusions follow from the graph. First, entrepreneurial enforcement style, which involves a high degree of zealotry, predominated in the big-fish cases. In all these situations, the Committee reacted swiftly, by addressing the case that arose and also by declaring, rather

⁹⁷ As can be seen from the Committee’s announcements and the database of the cases that they launched.

than dismissing, own competence over the matter. The empirical analysis shows that in dealing with the given big-fish cases the Committee acted in an open manner toward the media and public, providing timely information and explanations, which further confirms the high level of zealotry. On the other hand, the degree of exerted stringency in all nine big-fish cases was low. With limited powers and mild sanctions that may be applied, all determined by the institutional design (as explained in the 'Powers' section above), the Committee's actions could not exhibit high levels of stringency. The lack of possibility to impose severe sanctions automatically rendered any sort of 'stringent' enforcement impossible in practice.

Second, the Committee's actions overwhelmingly targeted government. Since the legislation puts 'on the radar' primarily ruling officials - as the ones who may abuse their function for personal gain – the fact that all targeted 'big-fish' were incumbents comes as no surprise. True, if intending for political selectivity, the Committee could have found a justification, whether sound or not, to attack opposition. But, in reality they did not do so, which testifying to a lack of (anti-opposition) political selectivity.

As the termination of the Committee came to a close, a certain degree of increase in the number of big-fish cases (per-year) is noticeable in 2009. Whether this was a substantial change in sense of a shifting priority to 'chase' big-fish, it is difficult to say because the figures are low in absolute terms. One or two more cases per year do not make for a drastic difference.

In summary, the Committee's enforcement style has been *entrepreneurial* in the 'purest sense', in all 100% of the 'big-fish' cases. Since opposition members were not targeted disproportionately - quite the contrary, opposition big-fish was not targeted at all - the enforcement style also qualifies as non-selective.

What the next part will provide is a review of three examples of those big-fish cases the Committee addressed. As there had been a high degree of uniformity in the enforcement style

across all enforced cases, they will suffice to illustrate the overall Committee's approach. The three examples are:

TABLE 4.5 Summary of big-fish cases addressed by the Committee (2005-2009).

Date	Target/scandal	Who raised	How Council reacted	How it ended
2006	Minister of Public Administration, Lončar	Anonymous tip	Ordered resignation from one public post	Lončar resigned from the post at the University of Novi Sad
2009	Parliament Speaker, Mrs Dejanović, incompatible post	Media	Demanded terminating the commercial contracts that were found to breach the conflict of interest regulation	Terminated the commercial contracts
2008	State Secretaries in the Ministry of Economy and the Ministry of Justice, Homen and Ćirić, pressured the judiciary to cease legal processes	Media	Demanded dismissal	Ignored the dismissal recommendations

What follows is a brief overview of each of the cases, explaining how they occurred, what the Committee's role and reaction was, what enforcement style it undertook, and how the cases ended. This overview provides a picture of the Committee's zealous, and across time and parties remarkably constant, enforcement style.

Minister of Public Administration Lončar in conflict of interest

In 2006, the Committee received an anonymous report indicating that the Minister of Public Administration Zoran Lončar performs two public posts. While serving the ministerial post, the Minister acted (as a university professor by profession) as a member of the Council of the School of Law of the University of Novi Sad (RTS 05 August 2006). Since the university is state-

owned, the post in the Council could be considered a public one, meaning that Minister Lončar violated the law as he performed multiple posts.

Upon receipt of the information, the Committee opened an investigation into the case. Originally, Minister Lončar denied being in breach of law, even though he did not deny the fact that he served on a university council (*RTS* 05 August 2006). He stated that he informed the Committee of his position and added that the Committee provided an interpretation that he is not in breach of law (*Glas Javnosti* 08 August 2006). However, the Committee discovered in due course that they had not given him permission. Despite the Minister's reluctance, the Committee formally opened and completed the procedure, as envisaged by the law. Eventually, the ruling stipulated that Lončar has violated the Law (*Glas Javnosti* 08 August 2006). To preclude undertaking the further sanctioning steps, Lončar resigned from the Council of the University of Novi Sad.

Although the case did not involve serious accusations nor indictment of corruption, it carried weight for two reasons. First, it was Minister Lončar himself who authored the Law that regulated conflict of interest (*Kurir* 08 April 2004). Second, this was one of first big-fish cases to be enforced, in which an official had to comply with an integrity regulation that is meant to impose limits to what one public official can and cannot do. The importance of the case had thereby been symbolic. By taking on a minister, who first declined to comply with the regulation and who possibly expected some sort of 'discount' in interpretation of the law (e.g. it was questionable whether university posts are to be regarded as 'public functions'), the Committee signalled a strong commitment to 'faithful' implementation of the law.

Dismissal recommendations for State Secretaries Ćirić and Homen

Labour lawsuits became increasingly popular in the 2000s in Serbia (Savanović 2009). A number of aggrieved trade unions and workers found the new employers, who privatised their

companies, to have violated the labour rights. It became a commonplace to argue that the new owners were so powerful that they were able to breach the Labour Act, by unlawfully dismissing the employees or not compensating them for dismissals, without any legal consequences.

In March 2009, the State Secretary of the Ministry of Economy Nebojša Ćirić, sent a letter to the Ministry of Justice demanding the courts to cease all ongoing cases featuring workers' lawsuits against their employers (*Beta* 22 April 2009). On behalf of the Ministry of Justice, the State Secretary of the Ministry of Justice Slobodan Homen passed this instruction to the courts as an order. It was speculated that the reason for this 'stall' of lawsuits lied in a forthcoming change of legislation, which was supposedly expected to make it harder for the aggrieved workers to win the cases against the state and employers alike.

When it came to its attention that the two State Secretaries had issued instruction for the judiciary, the Committee vigorously reacted. The Committee described the conduct as unacceptable, constituting an interference of the executive branch of government into the work of judiciary, which rests on constitutional guarantees of independence and division of powers. The Committee soon after launched a proceeding, ruling that Ćirić and Homen committed a conflict of interest (*Beta* 22 April 2009), so dismissal recommendations for both State Secretaries were sent to their two Ministries.

The Government and the respective Ministries, however, used a legal possibility to ignore the Committee's recommendation (*RTS* 23 April 2009). This, in turn, prompted a fierce Committee's reaction. Its President Beljanski condemned the Government's and Ministries' decision to disobey the recommendation, adding that it shows that they are not ready to observe the Law they adopted themselves (*Blic* 24 April 2009). Consequently, the state Secretaries remained in office, whereas through the measures it issued and through the subsequent reaction to the Government's non-compliance the Committee exhausted its possibilities.

This case drew considerable attention, not only because the two officials were important members of two ministries controlled by two major coalition parties (DS and G17), but also because it cast doubt on the Government's readiness to respect the rule of law and the independence of judiciary.

Conflict of interest of President of Parliament Dejanović

In August 2009, the Committee launched a proceeding against the President of Parliament Slavica Dejanović for alleged conflict of interest (Milenković 2009). The Committee received information that Dejanović had been hired as a medical expert within a state owned producer of pharmaceuticals, *Galenika*. In addition, she had a similar honorary engagement in a Clinical Centre in the city of Kragujevac (RTV 26 August 2009). Arguably, this constituted a breach of the regulation of conflict of interest, on two potential counts. One, by performing one public post Dejanović could be in position to bring benefits to the companies involved in businesses that relate to her private arrangement as an expert (RTV 26 August 2009); and two, Dejanović could have concealed assets gained through the engagement in *Galenika*.

Upon completion of the enforcement procedure, the Committee ruled that Slavica Dejanović had indeed been in conflict of interest. However, the second count was dismissed (Rovčanin 2009). Though the warning the Committee proclaimed as a measure in this case was non-public, it soon appeared in the public nonetheless (Rovčanin 2009). In response to the ruling, Slavica Dejanović said she did not expect the order to resign from the 'extra' posts. Yet, she added that she will comply to the decision, which she eventually did (Rovčanin 2009). Despite its upcoming termination, the cases demonstrated that the Committee had authority to direct officials' conduct with its decisions.

Summary of enforcement pattern

The present section reviewed the enforcement that the Committee demonstrated over the course of the five years of its existence. It showed that the Committee's enforcement pattern had been stable and harsh throughout the whole period, even though it was not the harshest possible enforcement pattern. The enforcement strategy had been assertive but not expansionary. The enforcement style had been predominantly zealous, more specifically - entrepreneurial, lacking political selectivity against 'big-fish'. The rest of the chapter analyses what factors may explain the observed enforcement pattern.

Discussion

What does the case of the Committee tell us about the explanatory power of the theoretical accounts set out in Chapter 3? Do the organisational, temporal or leadership-based factors explain the Committee's enforcement over the course of its five-year long existence?

The Committee espoused a zealous enforcement in a consistent manner throughout the whole of its enforcement history. By targeting predominantly government officials in a zealous manner, it showed no signs of political selectivity. To be sure, the nature of the tasks predisposes a greater emphasis on incumbents due to the simple fact that it is the ruling officials who are under the Committee's remit. However the Committee's enforcement strategy had been strictly confined to the few tasks it commanded. 'Expansionary' intentions to address related, yet not directly delegated, corruption issues did not appear in the Committee's enforcement. In that sense, the Committee showed little ambition of venturing beyond its delineated turf. At the same time, the enforcement had been 'assertive' within the turf the Committee was moving. Committee's conduct throughout most of its lifetime was characterised by harsh rhetoric and persistence in pledging for improvements in the legislative and institutional framework.

The first theoretical account set out in the thesis assumes that high de-jure independence leads into a harsh ACA enforcement. While in the Committee's example a high degree of independence was accompanied by a harsh form of enforcement, it is difficult to say whether the link was directly from the former to the latter, or, another factor contributed to the harsh enforcement as the outcome. Strong safeguards against principal's interference, encapsulated in the high level of formal independence, surely added to the confidence of the Committee's staff that their harsh enforcement can hardly bring about negative consequences for their institutional position. In that sense, the high de-jure independence has probably played a role in encouraging the harsh enforcement.

Yet, what is interesting about the Committee is that for most of its lifetime a threat of termination was present. Since early days, from 2006, the option that a new ACA will be created, was sporadically appearing. The Committee's members opposed the idea, but they had no power to prevent its realisation. It is therefore questionable how actually important high de-jure independence is, because the fact that changes into its personal and organisational policy cannot be made 'from outside' is paralleled by one bigger threat – that the agency may be abandoned at all. In that situation, the high independence meant little, particularly given that the Committee's staff had reason to 'tone down' its harshness against the incumbent while anticipating to see whether they will be appointed to the newly created ACA or not. From this perspective, which includes career concerns as well as a possibility to speed up the termination of the Committee, it seems that harsher form of enforcement needed more than the structural settings as precondition.

As we saw in the empirical analysis, the role of the Committee's staff appeared instrumental for the attitude the Committee was taking up. The Committee had two Directors, both of whom were, by statute, sitting on the Board. The first Director, Milovan Dedijer (2005-2008), and the second, Slobodan Beljanski (2008-2009), led the Committee in similar manners. Under the direction of Slobodan Beljanski, the Committee demonstrated to an extent a harsher rhetoric,

with a more assertive tone⁹⁸, but this did not reflect on the ongoing enforcement actions. Although certain differences could be observed on the rhetorical part, the changes in Directorship therefore did not prove substantial for the way the Committee enforces its mandate. One reason for this may be the fact that the change in leadership was not accompanied by major changes in the Board's composition, i.e. the same people kept running the agency through a collective decision-making model. As a result, the role of Director could have been most relevant in the 'outward appearance' of the Committee, for passing messages about the internally made decisions.

As to the role of resources in shaping ACA enforcement, the case of the Committee is another in which it turns out that for a harsh form of enforcement abundant resources are not necessary. Despite modest financial and low human and technical capacities, the Committee managed to espouse a zealous style and non-selective enforcement. Yet, it did not pursue an expansionary strategy by tending to occupy other turfs. This case, nevertheless, demonstrates that one preventive ACA may target government in a zealous manner even though its resources are not high.

Next, turning to the temporal accounts, the enforcement pattern had been stable over time. No variation is observed in all three elements of the Committee's work – strategy, style, and selectivity. The time span is not large enough for firmer conclusions, yet from the available material there is no evidence that age played a role in shaping the Committee's enforcement. The graph above that portrays the enforcement style reveals a surge in the number of launched cases as time passed. Yet, it is hard to assess whether a difference of one or more launched cases per year represent a substantial increase or instead result from random developments that brought a few more potential cases of misconduct to the public and Committee's attention.

⁹⁸ As evidenced by the statements of Slobodan Beljanski mentioned above.

If age did not appear to have played a role, did the elections? The graph below shows a comparison of the Committee's enforcement against big-fish during non-election times compared to the 2007 and 2008 pre-election period.

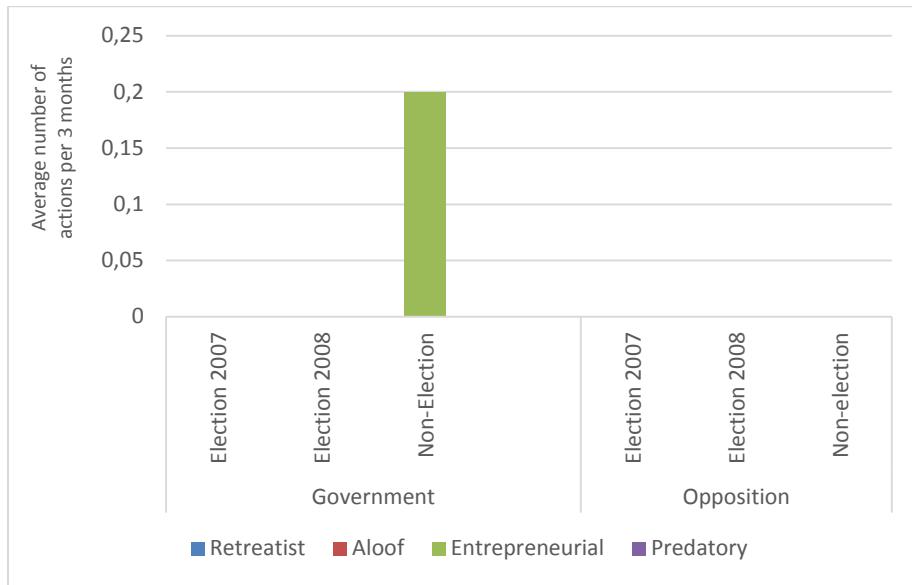


FIGURE 4.6 Regular vs. pre-election action of Committee (per three months).
Source: Authors' compilation based on coding of Committee's enforcement actions.

Clearly, big-fish enforcement was all undertaken in a period outside the two election campaigns. This may lend support to the 'pre-electoral silence' hypothesis which states that an agency will keep its activity to a minimum in the run up to an election, with the rationale that postponing major cases for the election aftermath will prevent afflicting the electoral contenders. The question that can be raised is whether the constellation observed in the graph derives from the cyclical nature of the Committee's tasks. In other words, was the observed silence in the two electoral campaigns a result of a deliberate strategy of the Committee, or, a mere coincidence in which the elections took place at the same time when the Committee's activity usually dies out? According to a member of the Committee's Board, they were indeed

making „efforts to avoid any sort of interference into electoral fortunes, tending to postpone any sort of enforcement that may have elements of political struggle“ (S6). The political-cycle argument, therefore, seems plausible in the case of the Committee, but through the neutral (‘silence before the storm’) rather than the ‘increased politicisation’ logic.

Unlike the Council, the Committee did not pursue an expansionary enforcement strategy. They did not link to investigative and prosecutorial matters in their work, nor interfered with the turf occupied by the police and investigator. One significant obstacle to this sort of conduct was posed by the design. As mentioned, the Committee’s mission did not link to general state of corruption nor anticorruption affairs. In that sense, the Committee faced an objective limitation regarding how ‘far’ it can go in applying its potentially assertive mandate.

Conclusion

What does the example of the Committee’s bring to the table concerning the key thesis’ interest in the determinants of ACA enforcement? The Committee is an instance of an ACA who espoused a harsh, though not the harshest possible, enforcement pattern, in presence of a high-degree of independence. The nature of the case and the constellation of the explanatory factors is such as to not allow definite answers. High de-jure independence may for certain played a role in fostering a harsh enforcement pattern, yet evidence exists also that the role of the ‘personal factor’ cannot be dismissed either. What is more certain, resources and age proved unable to account for the observed enforcement, thus qualifying for ‘failed’ determinants. It turned out again in this thesis that abundant resources are not a precondition for a harsh enforcement pattern. Age does not seem to be correlated with declining enforcement, however time span is too short for outright dismissal of the power of this factor.

CASE 3. Anti-Corruption Agency (ACA) (2010-2012)

Institutional Design

The Anti-Corruption Agency (ACA) emerged as the Committee's successor. It became operational in 2010 and had been in place for almost three years before the observed period of this thesis ended (late 2012). As another preventive agency in Serbia, the ACA was set up arguably to enforce the United Nations Convention Against Corruption's (2005) standards requiring independent and well-resourced ACAs to be in place as a key precondition for successful fight against corruption (Trivunović *et al.* 2007: 70). The following two sections review the ACA's institutional design. First will be the competencies considered and then the powers are analysed.

Competencies

The ACA has been endowed with a wide variety of functions and tasks. They can be divided into three sorts of functions: policy development, policy implementation, and educational functions. Table 4.6 below summarises the tasks related to each the functions.

The policy development and coordination function derive from the ACA's role in the development of anticorruption strategies. The ACA is charged with drafting an anticorruption strategy (in coordination with other relevant bodies), as well as monitoring of how the strategy is being implemented (LAA, Article 5). Another task that falls under this function is the development of integrity plans. Integrity plans serve to identify and remedy the places that are particularly vulnerable to corruption, across various units in public administration. The ACA is authorised to issue guidelines to the state bodies for the creation of integrity plans (Articles 58-61). Based on the guidelines, the state authorities will apply integrity checks on their particular domain and will return a resulting 'integrity risk' card to the ACA.

TABLE 4.6 ACA's functions and tasks.

Function and task
<p>Policy development</p> <p>Participates in drafting of integrity plans and monitors their implementation (Article 5) Initiates legislative changes regulating anticorruption (Article 5)</p>
<p>Policy implementation</p> <p>Monitors the implementation of a Strategy and Action Plan (Article 5) Coordinates activities of institutions in anticorruption struggles (Article 5) Enforces the regulation of conflict of interest (Article 5) Supervises and controls financing of parties (Article 5) Conducts proceedings and actions following violations of LAA provisions (Article 5) Keep registry of officials' assets and controls officials' assets (Article 5) Monitors international collaboration in the domain of anticorruption (Article 5)</p>
<p>Education</p> <p>Conducts education of officials, journalists, and the wider public on corruption related matters, through conferences, seminars, and other means of education (Article 5) Conducts research about corruption (Article 5)</p>

Source: The provisions of the Law on Anticorruption Agency (LAA) (2008)⁹⁹.

The second function, prevention of corruption, relates to integrity policies such as those regulating conflict of interest, financing of political parties, accumulation of public posts, and so on. Compared to the Committee's competencies from the period 2005-2009, the regulation of conflict of interest had been expanded to recognise novel forms of regulatees who may include both elected and appointed officials, from political institutions, public administration, through public enterprises, and subjects appointed by Parliament (e.g. judges) (Articles 27-38). Next, the provisions regulating control of officials' assets¹⁰⁰ oblige officials to submit an asset declaration

⁹⁹ *Official Gazette RS* 97/08

¹⁰⁰ *Property* includes the rights over immovable assets in the country and abroad, the right of ownership of various sorts of movables, bank deposits, shares, author and patent rights, financial debts and claims, income, and the right to use a state-owned flat (Article 46).

not later than 15 days following their election or appointment to a public post¹⁰¹. The ACA will keep a registry of the declared assets. The data from the registry are publicly available (Article 47). Officials are also obliged to inform the ACA about the state of their assets over the course of the two years following the cessation of office (Article 38). Regulation of gifts that are received during the discharge of the post allows gifts of a maximum value of the average national salary to be held by the official. All pricier gifts must be handed over to the ACA (Articles 39-42).

In 2012, a Law on Financing Political Activities (LFPA)¹⁰² was adopted to regulate arguably one of the crucial spheres where political corruption takes place - party funding. The Law authorises the ACA to control the funding of political parties, through collection of annual and post-election reports about the sources and sums of the parties' financing (Articles 28-34).

As part of its educational competencies, ACA may educate state bodies and organisations¹⁰³ on questions relevant for the anticorruption domain. The ACA can also carry out research into corruption related phenomena and present the findings to public institutions in order to raise awareness and contribute to a better anticorruption response (Article 66). The ACA may also "cooperate[s] with scientific organisations and civil society in the conduct of preventive activities" (Article 5). Part of the educational responsibilities of the ACA are linked to integrity plans; officials who are responsible for the creation of integrity plans are entitled to receive the necessary training (Article 60).

The ACA has therefore commanded a wide range of competencies, which include policy development, policy implementation and educational tasks. Compared to the Committee, the ACA exercises control over a broader turf, not only in sense of the number of individual policies

¹⁰¹ *ibid.*, Articles 43-49.

¹⁰² *Official Gazette RS* 43/11.

¹⁰³ LAA, Article 5 and Article 64.

it deals with, but also regarding possibilities to engage in the general anticorruption struggle. Its mission can be interpreted as referring to curbing corruption in the society, as its general aim (Article 5).

Powers

The ACA commands stronger sanctioning powers than the Committee. However, given the limited enforcement tools, monitoring and steering abilities (Geeraert and Drieskens 2015: 1453), these powers are mild in absolute terms. The greatest difference in the ACA's powers compared to the Committee's concerns the sanctioning policy. According to one of the novel fines that have been introduced, a concealed asset warrants the official imprisonment between six months and five years¹⁰⁴. Yet, though the ACA launched a process for such violations, criminal liability can only be established by court, in the final instance. Thus, the ACA alone can issue light sentences only (non-public and public warnings, pecuniary fines, and dismissal recommendations). The table below summarises the sanctioning powers.

The sanctioning procedure of the ACA has two stages (Article 51). In the first stage, the ACA issues a warning to an official who is caught in breach of law. The ACA gives a deadline to the official to remove the cause of the breach, for example to resign from one of the two posts. If the official disobeys and passes the deadline, in the next step the ACA issues a dismissal recommendation (if the official is appointed) or a public revelation of the prior measure of warning (if the official is directly elected) (Article 51). In either case, the official will primarily suffer reputational damage, but she can keep the status quo, without changes. If the official's principal accepts the ACA's dismissal recommendation for dismissal, the official will, logically,

¹⁰⁴ LAA, Article 72.

be sacked. However, if the principal endorses the official by disregarding the ACA's recommendation, then the status quo will persist¹⁰⁵.

TABLE 4.7 ACA's sanctioning abilities over regulatees.

Task	Type of sanction the ACA can impose
Conflict of interest	The ACA may prohibit an official to perform a job, if, according to the ACA's estimate, it endangers impartial discharge of the function she holds (Article 30).
Accumulation of posts	The ACA may forbid an official to hold a second post on grounds of acting against accumulation of posts, which impedes impartial and efficient discharge of post (Article 28). The ACA shall first pronounce a measure of public warning and if the official does not resign one of the posts within 30 days, the ACA issues a dismissal recommendation to his superior.
Asset declarations	An official who fails to report her property or gives false information with the intention to conceal the real state of the property, shall be punished by a prison sentence between six months and five years (Article 72). On such occasions, the ACA files a charge and the court makes a ruling. If an official is late with submission of his property, the ACA shall apply a fine of between €500 and €1.500 (Article 74)
Post-office employment	ACA decides on whether an official is allowed to form an employment relationship less than two years after his termination of the post (Article 38).
Gift receipt	A pecuniary fine between €2.000 and €20.000 will be applied against an official who fails to ask the ACA for permission to enter an employment relationship less than 2 years after termination of the office (Article 75).
Procurement notification	A fine of between €500 and €1.500 shall be applied against an official who fails to report the receipt of a gift worth more than a 5% of the salary. If an official has more than 20% of ownership in a legal entity which concludes a contract with a state body or public enterprise, through a privatisation, procurement, or a third form, the official must inform the ACA about the process not later than three days after the first step in the process is undertaken (Article 36)

Note: Compiled from the Law on Anticorruption Agency (2008).

There are two other sorts of fines defined by the Law: pecuniary and criminal. Pecuniary fines are automatically applied if an official is discovered to hold more than one public post (Articles 74-76). The breaching official will have to resign and to return to the state budget all the

¹⁰⁵ The only obligation that the principal has is to inform the ACA about the outcome, i.e. whether the ACA's dismissal recommendation is accepted or not, within the 60 days upon the issuance of the measure (LAA, Article 51).

income made in the discharge of this second post (Article 55). This sort of sanction therefore amounts to a pecuniary fine.

Criminal fines, as mentioned, will be applied for those officials who have misreported their possessions, provided that this misreporting “was the result of the *intention* (prim. aut) to hide personal assets” (Article 72). However, these two fines are not applicable by the ACA but by judiciary. The first, pecuniary fine, will be applied automatically, after each ruling confirming that an official performed two posts. For the second sort of fine to take place, the ACA files a charge to the court¹⁰⁶. Given this constellation, the ACA’s sanctioning powers can overall be characterised as light, despite the fact that an official who hid assets may be subjected to criminal liability.

The sanctioning abilities also link to the ACA’s position within the broader chain of anticorruption institutions and to its ‘steering’ capacity. The ACA is, obviously, dependent upon the partners’ (police, prosecutor, judiciary) work when the harsher fines (involving criminal liability) are being considered.

Next, concerning the monitoring abilities and the data collection that lies at their heart, the ACA cannot order other bodies to provide the necessary data. For instance, the ACA can demand from a bank to reveal the details of the account(s) of a suspected official, however the bank is allowed to decline. The same hold for state bodies. Institutions such as the Tax Administration or Procurement Office are not obliged to collaborate with the ACA and to provide those data that may serve ACA’s monitoring purposes (e.g. checking the income or properties of a suspected official). The ACA, therefore, does not enjoy a strong position of ‘information collector’.

¹⁰⁶ It is not precisely stipulated that the ACA files a criminal charge, but according to the Law and the breaches that are defined as punishable by the ACA, it follows that the ACA files charges. After all, this has been the case in practice so far.

The ACA's coordinating role ensures a somewhat better inter-institutional position. In matters dealing with anticorruption strategies, integrity plans, action plans, as well as education and awareness raising activities, the ACA plays an important role within the broader set of anticorruption actors. Drawing on Article 5 of LACA (2008), the ACA can claim authority to request various state administration units to submit annual reports concerning the implementation of integrity plans and, likewise, it can ask others about the execution of the tasks allocated by the Strategy.

In summary, the ACA has commanded more or less a standard set of competencies that the average preventive ACA commands. These include a variety of roles but exclude for instance prosecutorial and investigative tasks. As to the powers, the ACA's enforcement, monitoring, and steering abilities are limited. Though commanding a broader set and also harsher powers than the Committee, the ACA's powers in general cannot be regarded as harsh.

The next part analyses what have been the resources the ACA disposed with over the course of the three observed years. It will consider both domestically and international provided resources used for the ACA's operation.

Resources

In contrast to the Council and the Committee, the ACA enjoyed considerable financial and technical resources over the three years. The following two part presents the budget and the international sources of support.

Domestic resources

During the first three years, the ACA's budget fluctuated around a €1.500.000 per year. Figure 4.6 displays the annual budgets from 2010 to 2013:

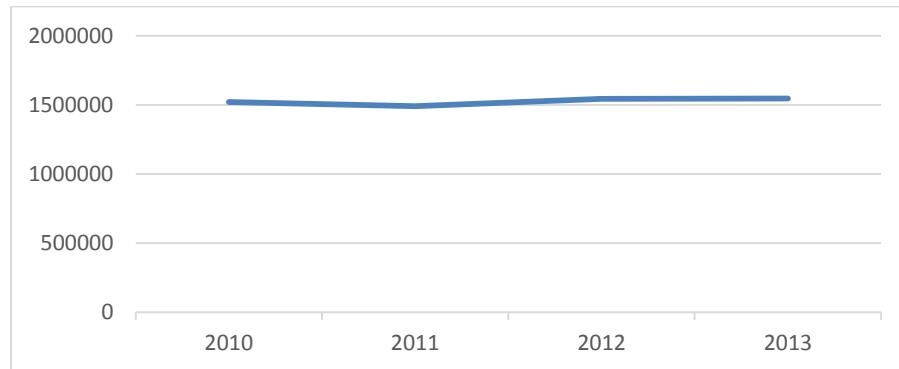


FIGURE 4.7 Annual budgets of ACA (2010-2013), in EUR.

Source: Annual Reports of ACA (2010-2013).

When rough figures are compared, this makes for a several times higher budget than the other two Serbian agencies'. Yet, as Quah (2015) warns, unless we are taking into account the scope and nature of competencies - absolute budgets mean little as an indicator. The ACA has had a wider set of competencies and more resource-demanding tasks than the Council and the Committee did. It has had to deal with financing of parties, development and monitoring of a National Strategy, integrity plans and several other issues that had not previously been under the Committee's remit, nor were part of the Council's mission. But, still, these competencies do not entail drastically higher resources, therefore even if the difference in the amount of work the ACA needs to perform is taken into account, the budget of a about € 1.5mil a year provides for considerable capacity.

ACA could also rely on significantly higher staff numbers. From 2010, the ACA's personnel grew from about more than 50 employed to about 100 staff in 2013¹⁰⁷. This, the estimates go, represents a good deal of human resources to handle the caseload the ACA is faced with¹⁰⁸. To remind, the Council and the Committee had a staff of about 15 or fewer people throughout the whole of their lifetime. Compared to their capacities, even when the nature of caseload is considered as a factor, the ACA's resources can be characterised as drastically better.

The ACA faced problems with a delayed start of its operation and it also waited for one year to get accommodation procured by the government (ACA 2011: 13). Yet despite these issues, the ACA has enjoyed excellent working conditions so far. In 2011, the government purchased and allocated to the ACA an eight-storey building of more than 1.800 square meters in size (Spaić 2012). In its Annual Reports, the ACA acknowledges the enhancing technical conditions, including the acquisition of software that helps it better manage the caseload and to carry out the routines comprising its tasks (2011: 38).

Overall, the ACA has enjoyed considerable material and non-material resources from the early phase. Its budget persisted at a high level over the first three years and its human and technical resources gradually grew. The ACA can therefore be considered as a highly capacitated agency.

International sources of support

International programmes and donations have also comprised part of the ACA's capacity building. The foreign donors focused largely on workshops, seminars, and conferences as means of support. These were meant to facilitate knowledge exchange between the ACA and other agencies, whether from the country or abroad. Appendix B provides the full list of the

¹⁰⁷ Compare the *Annual Report* from 2010 (ACA 2010: 61) to the *Annual Report* for 2013 (ACA 2013: 91).

¹⁰⁸ According to some opinions, the ACA was an expensive and enormous body (Trivunović *et al.* 2007: 4)

sources of international support the ACA received during the first three years. All these programmes no doubt benefited the ACA, but not as a crucial factor that makes a big difference regarding how capacitated the ACA is for the enforcement (S4).

To summarise the section on resources, the ACA has enjoyed far greater capacities than the other preventive agencies analysed in the thesis (including the Macedonian one, which features in the next chapter). The financial resources have been at a high level from the earliest days, the staff number have been considerable and constantly rising, and finally - the technical resources provided for adequate working conditions. If the claim that greater resources will direct into a harsher enforcement is true, this would formulate an expectation that the ACA has pursued a harsh form of enforcement.

So far, the chapter reviewed the ACA's institutional design and resources. Next comes an analysis of the enforcement the ACA demonstrated from 2010 to late 2012. The following sections analyse in particular the enforcement strategy, the enforcement style and selectivity demonstrated throughout the enforcement.

Enforcement

Due to its recent start of work, the analysis of the ACA encompassed a short period of time, namely less than three years. Nevertheless, the empirical evidence from those three years of the ACA's enforcement will be beneficial, from the perspective of the thesis' inquiry. The following analyses the three years of the ACA's enforcement and then proceeds to a discussion of the drivers of the examined enforcement.

Enforcement strategy

The creation and the start of operation of the ACA received extensive media attention. These were touted by the government as important steps in the fight against corruption (*RTS* 16 May 2012). In the first year only, between 20-30 media articles per month appeared discussing the ACA¹⁰⁹. Later on, with a hindsight, views appeared that the initial ‘clamour’ may have actually so excessively raised the expectations that they later backfired against the ACA (S5).

In 2009, the Parliament first elected the members of the Board and thereafter the Board appointed a Director in an open competition (*RTS* 3 July 2009). Some of the Board members moved from the just abolished Committee¹¹⁰, others came from the ranks of university professors, anticorruption activists, and journalists, some of whom previously served on the Council¹¹¹. The Board elected Zorana Marković for the first ACA Director. Marković is a lawyer with prior experience in the private sector and also in the NGO sector where she was working on reforms of public administration (*Večernje Novosti* 3 July 2009). Following the appointment of the Board and Director, and the settlement of the basic technical conditions, the ACA entered its second year (2011).

Conflict of interest and asset declarations were the issues that took up most ACA’s attention in the first two years¹¹². In 2010 and 2011, the ACA addressed thousands of cases in which it considered officials’ compliance with the means of the integrity policies it was authorised to

¹⁰⁹ According to an empirical analysis of the press-clipping compiled for the thesis’ purposes.

¹¹⁰ For example, Branko Lubarda and Slobodan Beljanski. Also, one of the administrative staff of the Committee was Tatjana Babić, who will later work as Secretary of the ACA, before being appointed for ACA Director in 2013 (Pantić and Milošević 2013).

¹¹¹ For example, Professor Radmila Vasić served on the Council from 2003 to 2009:
<http://www.ius.bg.ac.rs/Biografije/vasrad.htm> [Accessed: 20 October 2015].

¹¹² According to a press-clipping analysis, this was the issue that the ACA most commented upon, but the ACA itself also gives the central place to the issue of conflict of interest in its annual reports (see, for example, ACA’s Annual Report 2011: 21-34).

pursue. In regards to the data, the ACA entered 20,000 public officials into a Registry of Public Officials and registered 12,000 asset declarations (ACA 2011: 28).

In 2011, a number of officials who were holding two public posts declined to comply with an ACA's order to resign from one of the posts as they are in conflict of interest¹¹³. Most of these officials came up with a different interpretation of the Law, according to which they are allowed to perform two public posts if they are elected by the citizens for one of them. The mayors of two cities, who at the same time acted as MPs in National Parliament, were among the most prominent members of this group. Among those who were holding both executive and representative functions at the same time were also functionaries from the northern region of Vojvodina¹¹⁴. Since its early attempts to enforce the regulation were met not only with resistance but by a more fundamental contestation of the legal principles that underpinned its work, the ACA faced a major challenge in this period. Reacting fiercely, the ACA called the officials to return to the principles of constitutional democracies¹¹⁵.

„The worst thing that can happen to a young institution is to get contested by those who need to comply with the institution's order. We realised that if such an open breach of the law goes smoothly, then the ACA has nothing to hope for in the future. The Government, obviously, gave a tacit support to those who officials who defied us, which made clear that the ACA, in fact, may not have been as supported by the political authorities as widely claimed“ (S5).

The ACA turned to the Constitutional Court for a ruling about the contentious provision of the Law¹¹⁶. The Constitutional Court did not respond for about nine months. Discontented by the way the Constitutional Court delays the decision, a Board member Čedomir Čupić threatened

¹¹³ An overview of the whole case of duplicate functions, from 2001, is provided in Latković (2011) and *Politika* (07 September 2011).

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

that the ACA will launch a petition for the President of the Constitutional Court to be dismissed (Valtner 2011). A ruling came, however, shortly after: the Court confirmed the ACA's position and the officials got three days to resign from their double posts, otherwise they will be liable to the ACA for violating the Law (Latković 2011). Following this ruling, the ACA faced no major issue in its dealings with the integrity policies, primarily those involving conflict of interest as the key concern.

ACA demonstrated an active role in the development of an Anticorruption Strategy and Action Plans, too. In 2011 and 2012 the ACA took the leading role as the coordinator of the Anticorruption Strategy, a document that had been the cornerstone for the forthcoming anticorruption reforms, which were particularly important in context of EU integration (S5). The ACA organised dozens of meetings, coordinated a myriad of state bodies and monitored the work of other anticorruption bodies. Yet, despite the effort, in reality it proved difficult to arrive at a consensus with both the government and those anticorruption actors that did not share the political interests¹¹⁷. As a result, the adoption of the measures from the Action Plan was incomplete and progress of the Strategy limited (ACA 2012b: 9).

While giving priority to the core integrity tasks, such as asset declarations, conflict of interest, and work on an anticorruption strategy and action plan (in cooperation with other state bodies), the ACA paid somewhat less attention to the other integrity tasks. Integrity plans, for instance, as a tool that maps the vulnerable spots across the administration, did not live up to the expectations. Only sporadically did the ACA talk about them during 2011 and 2012. In its Annual Report 2012, for instance, the ACA notices that only about 20, out of more than 3000 units within the public administration, submitted their integrity plans (ACA 2012a). Little progress was made in this domain, and also little emphasis was put by the ACA itself on integrity plans in everyday work.

¹¹⁷ The response of the state bodies to the Action Plan was assessed as relatively poor (ACA's Annual Report 2010, 2011).

While showing initiative in prevention-oriented tasks, the ACA shied away from linking its work to general problems related to corruption. In particular, the ACA showed a lack of interest for the big scandals that were breaking out at the time, which were not in its remit. Likewise, the ACA distanced itself from the question of prosecutions of some prominent cases that preoccupied the public attention for a number of years back¹¹⁸. Yet, certain 'cracks' in opinion appeared regarding the understanding of what the ACA should do to give a contribution to the anticorruption struggle. While the formal enforcement and the decisions of the ACA focused on the tasks that were precisely assigned to the ACA, voices could be heard from the Board that that a different role should be taken:

„To establish all these standards for conflict of interest and so on is a precondition to contain corruption and that is not only our legal obligation but also the right thing to do to limit officials' abuse. But that's not enough. We must go beyond that, we are an *anticorruption* Agency... the name obliges! We're responsible, objectively and that is the citizens' subjective perception, for much corruption there is, how red the Transparency's index will blink... I think if we limit ourselves only to the prevention, we'll be soon in trouble to explain our purpose.

I don't mean we need to go around waving with our name and picking who should be prosecuted or not, but look at the Law – how many times it says 'the Agency considers matters relevant for the state of corruption... the Agency coordinates other bodies in questions related to corruption... the Agency promotes fight against corruption'? Perfect, let's use this as grounds to ask the government what they're doing, to ask the customs administration, to ask the tax inspectors... to hold them to account before the citizens" (S5).

The ACA did not exhibit an expansionary sort of strategy over the first two years, but different approaches among the ACA staff existed with regard to this. Not only did particular Board members believed that a more expansionary approach should be taken, some held that the first

¹¹⁸ For example, it was conspicuous that the ACA distanced itself from the investigations of privatisations that the Council launched and insisted on. Clearly, this was not an ACA's formal duty, but the ACA could have commented and taken part in some of these matters on ground of its importance for the anticorruption struggle. Yet, the ACA took a strategic stance not to engage in such cases (S4).

thing the ACA should insist on is to change the organisational model. President of the Board Čedomir Čupić stated:

„We should be insisting on a special police force and interrogation powers. We should be like the Honk Kong Agency (ICAC; prim. aut)”.¹¹⁹

While it is a question to what extent was the 'pro-expansionary' present in the ACA, the fact is that Director's decisions were not always agreed upon by the Board. This had been the case with the strategic question regarding the ACA's direction of work, but this also pertained to individual occurrences:

„Sometimes the only thing that remains is to say, on behalf of the Board, to the Director – well, you could have asked us before enforcing that decision... there are experts among us who may know better” (S3).

The central political event in the three analysed years had been the 2012 general and presidential elections which took place simultaneously¹²⁰. The elections put the ACA on a first serious test, with the regulation of officials' being performed in the most sensitive time for politicians – in an electoral campaign. These were one of the most uncertain elections in Serbia in the last decade and a half¹²¹, both Parliamentary and Presidential ones. The role of the ACA in these elections was multiple. First, the ACA was obliged to follow the activities of the parties and to intervene if a campaign breaching the legal standards is observed¹²². Second, as required by the Law on Party Financing, the ACA had to control the expenditure of the parties, so it sent out its activists in the field¹²³.

¹¹⁹ Čupić (2010).

¹²⁰ See *Election Guide*, Republic of Serbia. Available at: <http://www.electionguide.org/countries/id/242/> [Accessed: 19 October 2015].

¹²¹ EurActiv (14 March 2012).

¹²² In accordance with the provisions of LFPA (*Official Gazette RS* 43/11).

¹²³ Article 27 of LFPA 43/11 empowers ACA Director to adopt guidelines for control of the parties' expenditure; this, among others, include on-field inspections and keeping track of the party activities.

These were the first elections in which the new regulation of party financing was to be implemented. Regulation of funding of parties was seen as one of the crucial anticorruption mechanisms in Serbia (Trivunović *et al.* 2007: 16-17) The ACA's institutional predecessor Committee, for instance, bemoaned the lack of regulatory framework over this area, because most of the corrupt mechanisms were said to take place precisely between people benefiting from politicians' decisions and the party which gets funds in return (Trivunović *et al.* 2007: 16).

According to own acknowledgement, the ACA was late in its analysis and reaction to the party financing schemes in the election campaign¹²⁴ yet it published a report in 2013 and took some steps to sanction those 'benign' breaches that were eventually established¹²⁵. As stated in its *The First Report on Oversight Of Political Entities' 2012 Election Campaign Costs* (ACA 2012c), nearly all parties – particular the largest ones, had flaws in their financial reports. The ACA noticed a number of omissions, some of which were of technical but other of a more substantial nature, and it filed about 390, mostly misdemeanour charges¹²⁶. Yet, no criminal liability of those who breached the regulation was seen so far. The ACA, therefore, made first steps in regulation of party financing, however its reaction had been delayed and can be described as 'mild'.

During its work, the ACA encountered a number of cases involving officials from the lower part of the political ladder. Yet, from time to time big cases of 'big-fish' appeared. As these will be the subject of the analysis in the section on enforcement style, only a few points will be raised here. In addressing the big-fish cases, the ACA showed a diverse approach with a lack of consistency across the cases. Most of these cases drew public controversy and have been

¹²⁴ ACA's Annual Report (2012: 8-9).

¹²⁵ ACA's Conference: "Politics and Money: Financing Political Activities in 2012" from 9 December 2013. Available at: <http://www.jrga.org/news/politika-i-novac-finansiranje-politickih-aktivnosti-u-2012-godini/> [Accessed: 10 October 2015].

¹²⁶ *ibid.*

widely remembered as symbols of corruption. In some of these cases, as will be seen, the ACA failed to act zealously, whereas in other it demonstrated considerable zeal.

Following the 2012 election, a conflict occurred within the ACA. First a daily *Blic* revealed that Director Zorana Marković attempted to allocate a state-owned flat to herself (Jevtić 2012). As a public body, the ACA had been entitled to get one flat awarded by the state for its employees. The Director applied for the flat herself, but the public revelation led to a scandal, raising a question of the viability of her position as she acts as Director of an agency which is supposed to tackle precisely situations in which public officials extract personal gains thanks to their post. After a several-month period of internal struggles and public pressure, Director Marković was eventually sacked (RTS 9 November 2012). It later appeared that the Board held the Director responsible not only for the ‘flat affair’, but also for alleged mismanagement of the ACA, wrong enforcement approach, and poor prioritisation of tasks¹²⁷.

In retrospect, a gap existed since the early days between the Director and the Board. This gap may have not been visible in public until the scandal occurred, but underneath, according to an interviewee (S4), the Board and the Director acted as two separate entities. Even terminologically they referred to each other as two separate institutions. Those from the Board referred to „the Agency“ when pointing to the Director’s team (S4)¹²⁸.

In 2013, Tatjana Babić was appointed for a new Director¹²⁹. She had previously served on the Committee and worked in the ACA as Secretary from 2010 to 2013¹³⁰. Since the period of the

¹²⁷ Party funding was cited as a case in point. The ACA was late six months after the election with a report on the sources of party funding for the 2012 election. Other reasons were cited too, with a conclusion that it is the Director who is most responsible for an increasingly negative image of the ACA (ACA Annual Report 2012: 4-7).

¹²⁸ The Board was not always of the opinion that the Director makes good decisions, but it was powerless to prevent or alter such decisions. The Board acted only as the appellate body and its powers related neither to the decision-making nor to the executive aspects of the ACA’s work. The interviewed Board members agreed that some decisions that the ACA made ran against their preferences, but the ACA as a collective body could do nothing because the decision-making was in the hands of the Director (Interviewees S3, S5).

¹²⁹ Pantić and Milošević (2013).

Directorship of Babić is beyond the timeframe of the thesis, the thesis did not collect systemic empirical evidence for the time of her Directorship. Yet, a preliminary analysis of the major developments from 2012 to 2015 shows indications of an important change in the ACA's enforcement. The ACA took a more assertive approach and tackled some prominent cases with big-fish involved¹³¹. Also, its enforcement style turned predominantly zealous and more consistent across cases. Notably, these actions did not exhibit political selectivity; neither was opposition treated in a disproportionately harsher manner, nor were government officials dealt with in a lenient manner. A dismissal recommendation for the Minister of Justice¹³² and a proceeding against the Minister of Defence¹³³ were illustrative in this regard.

To summarise, the following have been the key contours of the ACA's enforcement. The emphasis had largely been on preventive activities, with a focus on conflict of interest regulation and development of an anticorruption strategy. The official statements by the ACA, and its Director alike centred on question on prevention. Lacking assertive rhetoric, the ACA differed from the Council and also from the SCPC (analysed in the next chapter) when it comes to public appearance. The ACA's enforcement involved a wide group of officials, a large portion of whom came from the local level. High-ranking politicians were dealt with too, still not as a result of an ACA's prioritisation of this group but rather due to a dynamics that brought those cases to the fore¹³⁴.

¹³⁰ *ibid.*

¹³¹ For example, they recommended the dismissal of the Minister of Justice Nikola Selaković (*B92*, 17 October 2014). Also, they launched a proceeding against Bratislav Gašić, Minister of Defense, and ruled that he was in conflict of interest when he awarded contracts to his family members (wife, sons) as the Mayor of a city of Kruševac (*Blic* 28 September 2015).

¹³² *B92* (17 October 2014).

¹³³ *Blic* (28 September 2015).

¹³⁴ Their cases occurred as a result of media reporting or whistle-blowers' discoveries of alleged corruption which was released to the public.

The next chapter considers the other two components of the enforcement pattern – enforcement style and political selectivity. It reviews how the ACA treated ‘big fish’ cases, by analysing them through the lenses of the conceptual framework introduced in Chapter 3.

‘Big-fish’ scandals

What was the ACA’s approach in dealing with big-fish officials? Figure 4.8 displays the ACA’s enforcement style in cases involving ‘big-fish’:

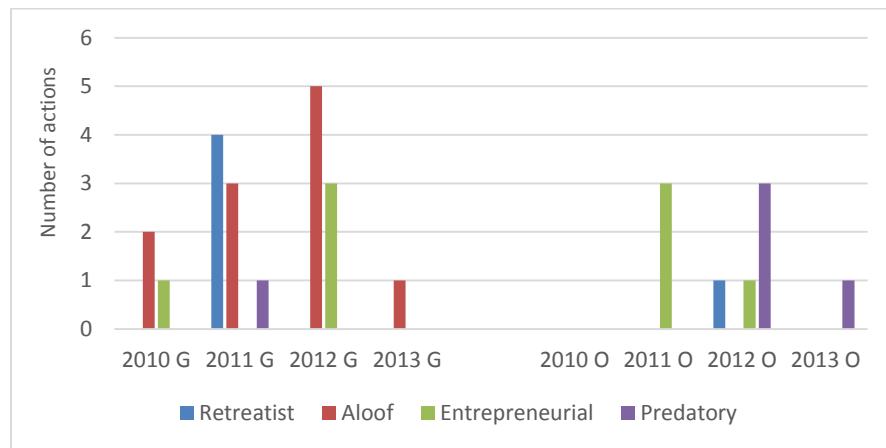


FIGURE 4.8 How ACA addressed ‘big-fish’ cases (G-government member; O-opposition member).
Source: Author’s compilation (see Appendix for full details).

Two things are striking in the graph. First, a mixture of enforcement styles permeated the ACA’s enforcement, consisting of all four sorts of actions (retreatist, aloof, entrepreneurial, predatory). As the diversity of bars (colours) in the graph illustrates, some actions were treated in a zealous (predatory, entrepreneurial) and others in a non-zealous manner (retreatist, aloof).

Secondly, the graph indicates that there seems to be an imbalance between how government members and opposition members, as two distinct groups, were treated. Clearly,

the ACA treated government officials in a more favourable manner, which is visible in the predominance of the 'aloof' bar (red coloured) in the left part of the graph. Aloof actions are those where an agency acts in a non-zealous manner, in a situation in which the 'looming' sanction is severe. The ACA acted with this sort of valuable 'discount' on about 10 occasions in the three years, in situations in which incumbents faced the threat of criminal liability. At the same time, the ACA took only one predatory action against a government member, in 2011. Entrepreneurial actions occurred too but primarily in 2012. These actions were not as pernicious as would have been predatory ones because their sanctions include 'naming and shaming' rather than coercive fines. Yet, it is noticeable that in some years the ACA did not take even entrepreneurial actions. This is surprising, since the ACA regulates conflict of interest of ruling officials, whereby, by mere probability – the chances that someone who advertently or inadvertently violates the regulation are pretty high.

While government officials received a favourable treatment, a different picture emerges for opposition. As can be seen in the right half of the graph, most of the actions against opposition were zealous, except for the singular non-zealous from 2012; four of these zealous actions are predatory. Since the overall number of actions against opposition was nine, four predatory actions represent a high number. When we look at the portion of zealous actions compared to the overall pool, as well as the portion of zealous actions (particularly predatory ones) compared to the ones undertaken against government, this makes for a conspicuously harsh treatment of opposition, both in relative and absolute terms.

The time-span may be short for firmer conclusions, but the trend of a mixed approach and notable political selectivity seems obvious from the review. This conclusion is further confirmed when we look at the context the specific cases took place in and the way the ACA reacted to them. Although there is no space for all actions to be reviewed here, the several examples below will illustrate the broader trend in the ACA's enforcement style. Some of the examples

include dealing with a government 'big-fish' official, other concern targeting of an opposition 'big-fish' official.

The table below summarises these illustrative cases:

TABLE 4.8 Some prominent big-fish cases taken up by ACA (2010-2013).

Date	Target/scandal	Who raised	How ACA reacted	How it ended
Jun 2010	Minister Dulić, Dg Comp	Whistle-blower portal	Opened a proceeding and swiftly closed, acquitting the Minister	Acquittal, no fine.
May 2012	Vučić's 'guest' - Rudi Guliani	Media, opposition	Swiftly opened the case, framing its rhetoric in an accusatory style	No epilogue.
July 2012	Minister Šutanovac, flat ('Pasture' affair)	Whistle-blower portal	Opened an investigation, in a protracted manner, by pointing to the less harsh breach that may have been committed.	Trial in progress (at the time of writing).

Minister Oliver Dulić in Conflict of Interest (Dg Comp)

In 2010, a whistle-blower portal *Pištaljka* („Whistle“) revealed that the Minister of Environmental Protection and Spatial Planning Oliver Dulić owns a company for computer trading, *Dg Comp Računari*, which has realised dozens of contracts with public bodies over the previous years (Ninić 2010). According to the portal, the Minister did not transfer his controlling rights to a third person and has remained the 100% owner since his ministerial appointment in 2008 (Ninić 2010). It emerged later that more than 70 public bodies (Ninić 2010) purchased computer equipment from the Dulić's company, most of them from his birth-city of Subotica, where he previously served as mayor. Among the buyers were schools, hospitals and other public bodies. According to a document from the State Treasury, more than 1100 transactions were made from public bodies onto the Dulić's company accounts, with the overall turnover exceeding €250.000 in value (Ninić 2010).

In reactions to the revelation, the ACA was demanded to open a proceeding against Minister Dulić for the alleged conflict of interest, which was said to violate the Law on Anticorruption Agency (in Milivojević 2011). In response, Dulić claimed that he had transferred his rights much before, but due to an error in the database of the Agency for Business Registers he is still recorded as the company's owner (*ibid*).

The ACA opened a proceeding, asking Dulić for further explanations. Minister Dulić responded by sending a copy of a document which was said to confirm that he timely transformed the controlling rights to a third person. The ACA ruled that the case can be closed and that there is no ground for Dulić's liability as he „it turns out, has not been the owner of the stipulated company during the period of his ministerial service“ (*Tanjug* 16 December 2010). However, as the Centre for Investigative Journalism in Serbia stated, the Dulić's document clearly indicates that the launched process of transferring the managing rights dates to November 2010 (Milivojević 2011), after the scandal broke out, which supposedly confirms that he had been the owner of the company throughout the previous period (2008-2010).

This case is an instance of the retreatist *enforcement style*. By swiftly closing the case, even though the evidence suggested that the Minister's defence may have not denied the charge, the ACA exhibited a lack of zealotry. To remind, according to the framework of ACA *enforcement style*, developed in Chapter 3, low degrees of zealotry occur when an ACA opts for the more favourable treatment/option for the charged official, in a situation in which the ACA is able to take a less favourable option too. In the given case, not only was the ACA accused of overlooking an obvious fact, it also failed to consult the Agency for Business Registers, the institution that was mentioned as having erred, or the police – to check the authenticity of the papers.

Vučić's 'guest' Giuliani

In May 2012, main opposition contender in the election for Mayor of Belgrade, Aleksandar Vučić from Serbian Progressive Party (SNS), brought to Belgrade Rudolf Giuliani, former Mayor of New York, as support for the candidacy (*Danas* 19 April 2012). Giuliani stayed in Belgrade for a few days, realising several media events with Vučić and discussing Vučić's manifesto (*Beta* 20 April 2012). The events attracted considerable attention; the bringing of Giuliani was obviously meant as the key Vučić's trump in the finish of the campaign.

Soon after, the question was raised about the cost of Giuliani's engagement (Jevtić and Vukelić 2012). The media reported that Giuliani has a lobbying and marketing agency, charging a fee of about \$100.000 for one visiting speech/lecture (Spaić and Latković 2012). Since all contenders in elections are obliged to report the cost of their campaigns as well as the sources of funding¹³⁵, the opposition asked Vučić to provide the details of Giuliani's engagement and, moreover, they urged the ACA to open an investigation to establish whether Vučić concealed his genuine campaign investment¹³⁶.

Though several days only remained until the election, the ACA swiftly reacted and asked Vučić to provide the details within the three days (ACA 2012d). The ACA's reaction hit the headlines and had particularly been framed in an accusatory tone toward Vučić. The way the ACA posed the question was interpreted as a sign that Vučić is likely in breach of law and that he violated the anticorruption standards¹³⁷. This, needless to say, resonated strongly as the election was fast approaching¹³⁸. Vučić, on the other hand, claimed that he brought Giuliani as a friend to

¹³⁵ LFPA 2011 (Article 3-15)

¹³⁶ See, for example, the reaction of the ruling Democratic Party (DS) (*Tanjug* 30 April 2012).

¹³⁷ The ACA said in a statement that "it is not clear whether Giuliani's arrival is a donation in the form of a service, or it represents a commercial activity which cannot fit the Law of Financing Political Parties" (ACA 2012d).

¹³⁸ A simple search of the phrase 'the arrival of Giuliani' from the period April and May 2012 yields more than 30 media articles which followed the ACA's reaction.

Belgrade. Giuliani confirmed this, adding that he took „no single dollar for the arrival“ (*Beta* 20 April 2012). During the scandal, no evidence appeared that Giuliani was engaged on a commercial basis.

This action is an example of the *entrepreneurial enforcement style*. Although the legislation does not oblige the ACA to take immediate steps, it nevertheless exhibited a high degree of zealotry through its swift reaction. The unwritten convention would require the decision to be postponed for the election aftermath, to avoid implications for the electoral process, but the ACA did not do so, thereby demonstrating 'over-zealotry'.

After the election, the cases never closed and the issue disappeared from the media. More recently, the ACA declined multiple times to provide its documents about this case, which were needed for an analysis of the ACA's enforcement for the thesis' purposes. Since the epilogue – whether acquitting or condemning – in this scandal is missing, despite the fact that the ACA launched it expediently back in 2012, the demonstrated zealotry has elements of political selectivity. The ACA's zealous reaction can be assessed as detrimental to Vučić's electoral prospects, violating the good practice of postponing politically sensitive matters in order to ensure pre-election neutrality.

'Pasture' affair

In 2012, shortly after the election, the whistle-blower portal *Pištaljka* revealed another case that turned into a major scandal. *Pištaljka* discovered that former Minister of Defence Dragan Šutanovac, who had been in power from 2008 to 2012, bought a pasture in 2011 at an exclusive location in Belgrade (municipality of *Vračar*) (Ninić 2012). According to the findings, together with around 10 other persons, Šutanovac intended to turn this „pasture of the first class“ (as classified by the city of Belgrade) for constructing a building, in which the group invested about

a €1.500.000 (Ninić 2012). Šutanovac confirmed his ownership over 1/15 of the pasture and the future property that was planned for building (*Tanjug* 29 June 2012).

Accusations arose that Minister Šutanovac should be held liable because he did not declare the ownership over the pasture as his asset (*Tanjug* 29 June 2012). Some media reported that if the ACA opens an investigation and submits a criminal charge, he may end up in prison because, according to the Law, a failure to declare an asset is subject to a criminal sentence between six months and five years (Dekić 2012). The ACA reacted by asking Šutanovac to provide an explanation and Šutanovac delivered the contract and accompanying documentation to the ACA. The crucial question regarding the ACA's decision had been what charge will officially be levelled against Šutanovac. As mentioned earlier, the most severe sanction is set out for hiding assets, for which the liability is criminal. All other breaches such as conflict of interest imply milder fines such as warnings or dismissal recommendations. It was therefore crucial how the ACA will frame the Šutanovac's case when filing a charge. The initial ACA's reaction was swift, but as the process unfolded the ACA conspicuously declined to publicly comment the accusation about hidden assets; instead, the ACA framed the case in terms of conflict of interest, directing the investigation toward a non-criminal course¹³⁹. Ultimately, the ACA filed a charge for conflict of interest and so passed the case to the police and judiciary (the process is still in progress at the time of writing).

This action is coded as *aloof enforcement style*. It is aloof because, by failing to opt for the harshest available charge, the ACA failed to demonstrate zealotry, whereas the stringency is high because the sanction the maximum possible fine is harsh. The combination of those two values on the two dimensions of enforcement style (low zealotry, high stringency) indicates an aloof enforcement action, according to the framework suggested in Chapter 3.

¹³⁹ B92 (29 June 2012)

Summary of enforcement pattern

This section explored the enforcement pattern of the ACA, for the period 2010-2012. The evidence suggests that the enforcement, in terms of the 'values' of its three constitutive elements, has shown little variation over time. The three elements that comprise the ACA enforcement pattern are as follows.

ACA's enforcement strategy focused on the preventive role, placing an emphasis on integrity policies such as those pertaining to conflict of interest. Over time, the ACA received another competence – control of party financing, so it devoted significant resources to this sort of activity, too. The ACA has stayed away from investigative roles, failing to espouse assertiveness in conquering adjacent turfs as some other preventive ACAs, like the Council and SCPC, did. In that sense, the ACA behaved in a more or less "confined" way, by focusing on own strict competencies. Rather than prioritising certain groups or sorts of regulatees, the ACA oriented its work towards public officials as a general group regardless of their place in the hierarchy. ACA relied primarily on the formally delegated tools and sparingly used its rhetorical action in trying to push other actors to take their part in the fight against corruption.

ACA's enforcement style had been varied and selective. There were all sorts of actions undertaken during the three years of enforcement, zealous as well as non-zealous. It is striking that zealous targeting of government 'big-fish' took place to a lesser extent, whereas opposition big-fish was targeted to a greater extent by zealous actions. In many cases, in which a government official faced the possibility of ending up with criminal liability, the ACA applied a non-zealous action, whereby it was far less non-zealous when targeting opposition big-fish.

Overall, the enforcement pattern of the ACA could stand opposite to the harsh enforcement pattern. It neither featured an assertive nor expansionary strategy, if lacked a predominantly zealous enforcement style, and it also showed signs of political selectivity.

Discussion

What theoretical account explains the ACA's enforcement? Are the organisational factors such as de-jure independence and resources, temporal factors such as age and political-cycle, or leadership, as a factor, able to explain the choice of the ACA's enforcement?

ACA is an example of a highly independent agency which falls under the preventive model. During the first two years, the ACA failed to espouse a harsh enforcement pattern. Contrary to the Committee, whose high formal independence was accompanied by a zealous and non-selective style, the ACA exhibited a 'milder' style and a different sort of approach in targeting ruling as opposed to opposition 'big-fish'.

This example indicates that high formal independence does not necessarily guarantee a harsh enforcement pattern. This is true not only to a harsh strategy, but also for a predominantly zealous and non-selective enforcement. The ACA practiced a sort of *politics* of integrity enforcement, with differential treatments being given to key government and opposition actors respectively. Clearly, strong guarantees of an agency's, and its Director's formal independence, do not suffice for a harsh non-selective enforcement pattern.

Furthermore, the role of resources played out in the opposite direction than predicted by the 'resources matter' account. ACA has commanded a remarkably high amount of resources, yet it failed to utilise them toward achieving a harsh enforcement pattern. True, some of the ACA's tasks were resource intensive, which may have caused a drain to the resources, leaving less capacity to perform the other tasks. However, the Committee performed similar resource-demanding in a harsher manner, with drastically lesser resources. The ACA showed little initiative in expanding its enforcement to the turf of the police and prosecutor, a sort of enterprise which would not be resource-depleting.

It is the short history of the ACA that makes it impossible to examine whether the aging has had an impact on the enforcement. The observed period includes three years only, whereby several months in the first year (2010) went into the formation of the ACA and several months were 'eaten up' in 2013 for the resolution of a dispute between the first Director and the Board, which resulted in the Director's dismissal. For this short period, it can be said that time as a factor did not play a significant role as the ACA's enforcement pattern did not notably evolve from 2010 to 2013. Yet, for firmer conclusions, we need at least several more years of empirical evidence.

There are signs that political-cycle, on the other hand, has had implications for the ACA's enforcement. Figure 4.9 presents the ACA's enforcement style against government and against opposition in the 'regular non-electoral' times, compared to the pre-election time (2012):

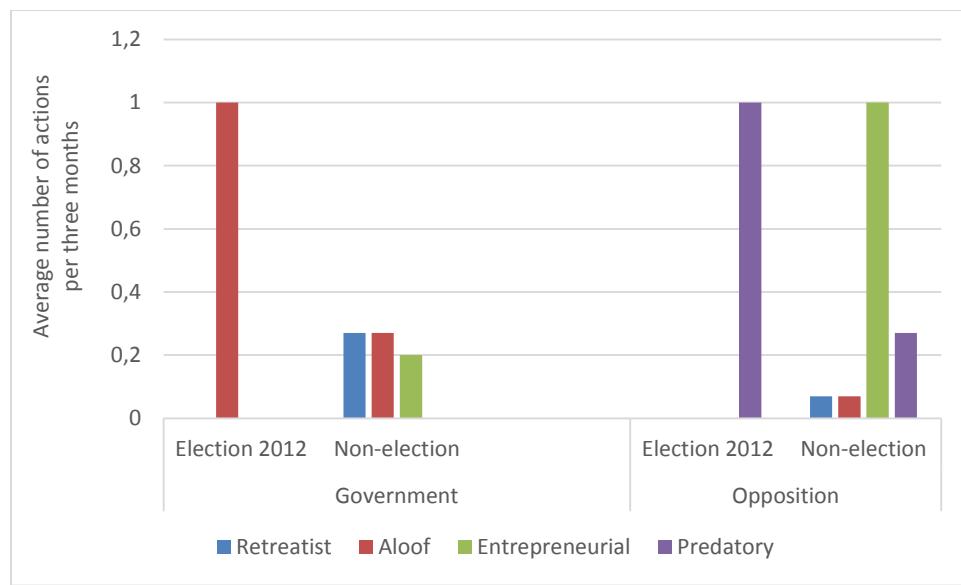


FIGURE 4.9 Comparison of enforcement action of ACA during 'non-election time' versus pre-election periods (bars represent number of actions per quarter).

Source: Author's compilation (based on enforcement cases provided in Appendix D).

Each half of the graph contains two parts. The left part shows the number of the ACA's 'big-fish' actions in the three months preceding the 2012 election. The right part in the given half of the graph shows the average figures for the ACA's 'big-fish' actions that were performed in the period outside the electoral campaign. Through a three-month average, the graph shows how many actions were undertaken for one quarter-period (on average).

This graph illustrates the imbalance in addressing government 'big-fish' compared to opposition 'big-fish'. Though the number of one – aloof action in the case of government, and - predatory action - in the case of opposition, is not large enough for firmer conclusions, it indicates enough the different sorts of ACA's treatment of the two opposing sides in the political process (government vs. opposition). Prior to the 2012 election, the ACA shied away from taking a zealous action when a government official faced a severe sanctioning possibility, but it opted for a zealous action against an opposition leader in that same campaign. Again, though the figures are not high, they illustrate various approaches when dealing with two different camps of politicians in an election process, a matter sensitive enough to require identical treatments regardless of the concrete style undertaken.

The political-cycle, therefore, as a driver of ACA enforcement, just amplified the dis-balance in the enforcement style demonstrated throughout the whole of the ACA's enforcement. It, in fact, served as a "magnifying lenses" to expose these differences in the enforcement style.

Finally, similarly to aging, the role of leadership is hard to explore either. One Director had led the ACA for most time of the observed period, so there is material is scarce to compare the ACA's enforcement patterns under the direction of different leaders. Yet, two points can be made in support of the "leadership matters" claim here. First, the ACA features a General Director model where all decisions made on behalf of the ACA (apart from rulings on regulatees' appeals) takes its Director. This sort of arrangement makes the role of leader more prominent and further attributes the outcome of the ACA's work to the leader's performance. In that sense, the likelihood that the leader's attitude crucially shapes the enforcement pattern

is higher than it would be the case in ACAs with collective decision-making (i.e. Board voting). Second, though the observed period ends with 2013, thus not providing enough material to consider how the ACA performed under another leader's direction, a cursory glance at the 2014 and 2015 ACA's enforcement reveals a major change in the enforcement pattern. This change included some limited escalation in strategy, substantial escalation in the style, and decrease in selectivity. Based on this preliminary evidence, the ACA seems to have changed the course of action following the appointment of a new leader, Tatjana Babić. Therefore, some signs exist that the observed enforcement pattern can be to a significant extent attributed to the role of leader.

Conclusion

The ACA is a case of a preventive ACA, with a relatively standard set of competencies that characterises this model. The ACA has also commanded standard powers for this model, which include mild sanctioning possibilities and only in exceptional cases regulatees' criminal liability, which is established but not ruled by the ACA. As such, the ACA stands as probably the 'purest' representative of the preventive model in the thesis. So what its enforcement pattern look like and which of the theoretical accounts explain it?

ACA's enforcement pattern consisted of a 'confined' strategy, it was focused on preventive tasks only, lacking assertive and expanding activities which would aim at aiding suppression of corruption efforts. ACA's enforcement style has varied, with all sorts of actions undertaken during the first four years of its existence. The ACA, however, took these actions in a different manner against different targets, more specifically with varying levels of zealotry against government as opposed to opposition members. ACA's enforcement in period 2010-2013 had, therefore, been characterised by political selectivity.

The organisational factors are unable to explain the given patterns of enforcement. Neither the high degree of de-jure independence nor a high amount of resources directed the ACA into harsher forms of enforcement. Political-cycle, on the other hand, was a factor in further amplifying the different approaches the ACA took against government as opposed to opposition.

The role of leader, on the other hand, seemed more pivotal in shaping the ACA's enforcement. Director, as a person exercising all executive powers on behalf of the ACA, is the central person in shaping its enforcement pattern. The observed period does not provide enough material to compare how the ACA behaves under two different leaders, but the subsequent enforcement – from 2014 and part of 2015, gives some clue that the ACA's enforcement pattern, in the first place its style and selectivity, drastically changes toward a more consistent zealous enforcement which targeted government members to a large extent, at the same time preserving the zealous manner when opposition members were under suspicion.

That said, the ACA makes for an example where leader as a determinant of the enforcement overrides the other – structural and temporal factors. This time, the 'overriding' happened in the opposite direction that was the case with the Council or, as will be seen, with the Macedonian SCPC. Despite commanding high independence as well as resources, the ACA went down the path opposite than the organisational accounts predict. While the Council's and SCPC's leaders demonstrated the ability to pursue a harsh enforcement pattern, in spite of constraining organisational factors, the ACA did the opposite – it went down a path of 'mild' enforcement pattern, even though it possessed 'encouraging' and 'facilitating'. This is an important thing to note, which the last two chapters will discuss in more detail.

Chapter 5 Macedonia

CASE 4. State Commission for Prevention of Corruption (2002-2012)

Origins

In the late 1990s, a group of professionals from the Ministry of Interior suggested that the Macedonian Government create an independent agency which would be responsible solely for cases of corruption (M1). Embracing the idea and drafted, the Government draft in 1999 the suggested law. After a three-year stall (M1), the Parliament eventually adopted the law in 2002, establishing an ACA called State Commission for Prevention of Corruption (SCPC)¹⁴⁰. To avoid the forthcoming election's rush (September 2002)¹⁴¹, the SCPC's work started with a six-month lag.

The legislator endowed the SCPC with the preventive ACA model. Lacking prosecutorial powers, the organisational emphasis was given to preventive tasks. However, the professionals who participated in the drafting of the law opposed the model. Most of the staff who were appointed to the first Board (in November 2002) preferred the suppressive ACA model instead:

“From the outset, we thought the Honk Kong ICAC model, with a strong repressive role and prosecutorial powers, is more suitable for the context the country had been in. Some members of the task force which was considering the institutional model described the government’s choice of the preventive model as putting a ‘fig’s leave’ to the agonising problem of corruption. Nonetheless, upon Parliament’s appointments, most of them consented to sit on SCPC’s Board, probably believing that it will be possible over time to advance the institutional position and to render the SCPC stronger” (M1).

In reality, the SCPC has retained the preventive model of ACA throughout the whole of its existence. It has seen modifications of the legislative framework, however these did not

¹⁴⁰ Law on Prevention of Corruption, *Official Gazette RM* 28/02.

¹⁴¹ For more details about the election, see International Republican Institute’s report (2012).

crucially alter the SCPC's position in terms of mission and powers. The following is a review of the legislative framework pertinent for the SCPC:

TABLE 5.1 Legislation relevant for SCPC' work.

Law	Adoption (amendments)	Why is the law relevant
Law on Prevention of Corruption (LPC)	2002 ¹⁴² (2004 ¹⁴³ , 2006 ¹⁴⁴ 2008 ¹⁴⁵)	Sets out the institutional position of the SCPC, its competencies and powers; defines the rights and responsibilities of regulatees.
Law on Prevention of Conflict of Interest (LPCI)	2007 ¹⁴⁶ (2009 ¹⁴⁷ , 2012 ¹⁴⁸)	Defines conflict of interest, = its breaches, and spells SCPC's role and duties in this regard.
Law on Lobbying (LL)	2008 ¹⁴⁹	Introduces lobbying as a new competence under the SCPC's remit; defines what lobbying activities are, what is (not) allowed in lobbying, and what the SCPC's role is.

Source: Official website of SCPC (www.dksk.org.mk/en).

As the core piece of legislation regulating SCPC's work, the Law on Prevention of Corruption (LPC) set out the SCPC's functions, responsibilities, powers, and the duties of regulatees. Another relevant law, which was passed in 2007, is the Law on Prevention of Conflict of Interest (LPCI). This law laid definitions of conflict of interest and what the SCPC and regulatees need

¹⁴² Official Gazette RM 28/02.

¹⁴³ Official Gazette RM 46/04

¹⁴⁴ Official Gazette RM 126/06

¹⁴⁵ Official Gazette RM 12/06

¹⁴⁶ Official Gazette RM 70/07

¹⁴⁷ Official Gazette RM 114/09

¹⁴⁸ Official Gazette RM 06/12

¹⁴⁹ Official Gazette RM 106/08

and can do in regulating conflict of interest (previously, the matter of conflict of interest had not been regulated). Furthermore, with the adoption of the Law on Lobbying (LL) in 2008, foundations were laid for regulation of lobbying in Macedonia. The key provisions of these laws will be elaborated in more detail in the section considering the institutional design.

The creation of the SCPC can be explained by electoral politics as well as international impetus. As in the rest of the region of South-East Europe (SEE), corruption had long been a pressing issue in Macedonia too. Corruption featured prominently in the 1998 election (International Crisis Group 1998) and it was again among the central topics in the 2002 election (International Crisis Group report 2002). Establishing an ACA was therefore likely to be perceived as a sign of commitment to take on corruption. In the reading of the draft in Parliament, the Government portrayed this step as proof of political will to fight corruption (Vojnovska 2002). The largest opposition party SDSM (Social Democratic Union of Macedonia) criticised some provisions, but supported the idea and voted for the Law¹⁵⁰.

Before the SCPC was preceded, Macedonia joined major international anticorruption initiatives. In 2000, Macedonia became a member of GRECO (GRECO 2010), a body of the Council of Europe that promotes anticorruption institutions and monitors the implementation of anticorruption policies. In 2001, Macedonia signed a Stabilisation and Association Agreement (SAA) with the EU (Council of the European Union 2001). The rule of law, and support to anticorruption struggle as one of its pillars, were highlighted as key priorities by those international initiatives. Since the SAA formally mentioned stepping up fight against corruption - Macedonia committed itself to collaborate with the EU in advancing anticorruption policies.

The SCPC underwent several electoral cycles and has operated under regimes led by each of the two major parties. In 2002, a VMRO-DPNE¹⁵¹ led coalition instituted the SCPC. They, however,

¹⁵⁰ Later on, SDSM won power in the 2002 election so the SCPC became operational under SDSM reign.

¹⁵¹ VMRO-DPNE stands for Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity; it is a right-wing Macedonian party.

lost the forthcoming election so the SCPC became operational under a SDSM-led government (2002-2006). VMRO-DPNE came back to power in 2006 and won the next two elections thereafter (early elections in 2008 and the other in 2011¹⁵²).

The chapter now proceeds to an analysis of the organisational settings of the SCPC. First will be the institutional design reviewed. The next section analyses the formal independence and the part thereafter describes the SCPC's competencies and powers. This will be followed by a review of the SCPC's enforcement from 2002 to 2012, which will lead into a discussion about the explanatory power of the thesis' theoretical accounts.

De-jure Independence

As a non-majoritarian institution, the SCPC operates outside the governmental and ministerial hierarchy. Yet, institutional design retained certain links to the political principals in terms of accountability. While some provisions such as those regulating the SCPC's relationship with the government and parliament secure strong safeguards from outside interference into the SCPC's work, other provisions such as the appointment and sacking procedures (to an extent) and the questions of financial and organisational autonomy (to a greater extent) detract from the formal independence. Overall, the provisions affecting the SCPC's de-jure independence add up to a medium degree of de-jure independence, as evidenced by 0.37 Girardi's points (see Appendix A).

¹⁵² See *European Elections Database*. Available at: http://www.nsd.uib.no/european_election_database/country/macedonia/ [Accessed: 07 September 2015].

According to LCP 2002 (Article 47), the SCPC is composed of seven members¹⁵³. They are elected in Parliament, for a non-renewable four-year term (Article 48). SCPC Chairman has the role of the agenda setter and represents the SCPC in public¹⁵⁴. She is selected among the seven members, to serve for a non-renewable one year term (Article 48). The Chairmanship is therefore rotational in nature. No preconditions are envisaged for dismissal of SCPC Directors (i.e. no provisions regulate the sacking procedure). Likewise, the Parliament can sack the Director without preconditions.

The SCPC „prepares annual statements for its work and the measures and activities and submits them to the Speaker of the Assembly, the Assembly, the Government, and the Supreme Court of the Republic of Macedonia, and announces them in the media“ (Article 49). No specific procedure regulates whether those institutions whom reports are submitted to must approve them, nor is it specified what happens in case of the rejection of a report.

Government provides the funding for the SCPC by allocating an annual budget which is adopted in Parliament¹⁵⁵. Concerning organisational matters, it follows from LCP 2002 that the Ministry of Justice and Government decide about personnel policy as well as logistic and administrative matters of the SCPC (Article 47).

Appendix A lists the elements that comprise the Girardi's index and explains how the SCPC scores on them. In total, the institutional design yields 0.37 Girardi's points¹⁵⁶. The SCPC can

¹⁵³ These seven members act as a Board, though the word Board is not explicitly mentioned in the Law.

¹⁵⁴ This follows from the overall legal setup, but the role of Chairman is not described in more detail in the Law. Furthermore, *Director* and *Chairman* will be used interchangeably here, just as the media did.

¹⁵⁵ No specific provision of the Law regulates this matter, which automatically means that the SCPC funding is subject to the typical procedure (through the state budget).

therefore be categorised into the group of agencies with a medium degree of formal independence. This is considerably lesser formal independence than the Serbian Committee's (0.67 Girardi's points) and the ACA's (0.77Girardi's points), but far greater than the Council's (0.23 Girardi's points).

In conclusion, if the institutionalist argument about the key impact of de-jure independence is followed, it can be predicted that the SCPC pursued a milder or more selective enforcement pattern than the Committee, ACA, and the USKOK (which is reviewed in the next chapter), while probably espousing a harsher and/or less selective enforcement action than the Serbian Council. Before testing whether this prediction held true in practice, the following part will first review the other components of the SCPC's institutional design - its powers and competencies.

Institutional design

Competencies

As an ACA of the preventive model, the SCPC has, naturally, been in charge of preventive policies. The legislation delegates a wide range of tasks to the SCPC. They can be categorised into four functions: (i) developing of anticorruption policy; (ii) implementing anticorruption policy; (iii) education; and (iv) informing (Mangova 2013: 78-79). The table below provides an overview of the tasks comprising each of the four functions.

Some of these are common to preventive ACAs and can be found in nearly all agencies of this model. Development and/or monitoring of a National Anticorruption Strategy, analysis of drafts of legislation pertinent to (anti)corruption, control of party funding, control of asset declarations or gifts that officials receive, education of wider public and stakeholders, are some of the common tasks preventive ACAs perform worldwide (Klemenčić and Stusek 2008: 32-33). Some tasks are cyclical in nature: ACAs control asset declarations on an annual basis as well as after elections, their reports about funding of party campaigns are associated with electoral

cycles, and so forth. Other tasks are ‘demand-driven’ and occur in irregular periods, through the everyday work. Control of officials’ gifts or analysis of anticorruption legislation are some of these tasks.

TABLE 5.2 Functions and tasks of SCPC.

Function and task
Policy development
Adopts a National Programme for corruption prevention and repression (Article 49)
Gives opinion of corruption related legislation (Article 49)
Policy implementation
Controls financing of parties, trade unions, and associations of citizens (Article 49)
Raises initiatives before competent bodies for prosecution of officials (Article 49)
Considers cases of conflict of interest (Article 49)
Cooperates with other state bodies in the suppression of corruption (Article 49)
Regulates “electoral corruption” (Article 11)
Considers activities involving conflict of interest (Article 37-39)
Controls spending of foreign aid and donations (Article 26)
Supervises procurements (Article 32)
Tracks property status of officials’ and keeps record of asset declarations (Article 33)
Summons persons when investigating potential cases of corruption (Article 52)
Conducts inquiries into accounts of public entities (Article 54)
Launches initiatives before courts to prosecute potentially corrupt cases (Article 49)
Controls funding of political parties, trade unions, and citizen associations (Article 8)
Tracks officials’ profitable activities and post-office business activities (Article 28-29)
Monitoring of lobbying ¹⁵⁷
Education
Educes public institutions authorised to detect prosecute corruption (Article 49)
Informing
Informs Parliament about key problems through annual reports (Article 72)
Informs the public about corruption related activities and issues (Article 49)

Source: Law on Prevention of Corruption (2002).

¹⁵⁷ This competence was introduced with the Law on Lobbying (2007).

Alongside the tasks that are relatively common across the preventive ACAs, the SCPC performed some unorthodox tasks as well. The quasi-investigative roles accorded to the SCPC are a case in point. The SCPC is entitled to summon officials while establishing the facts about a suspected case of corruption (LPC 2002, Article 52), irrespective of whether the alleged offense falls within the SCPC's core competencies or is broadly related to corruption. Furthermore, the SCPC can control how state authorities spend foreign aid and donations. If asked, state bodies and enterprises must provide to the SCPC the details about the expenditure of a programme of foreign aid (LPC 2002, Article 26). When dubious transactions are detected, the SCPC notifies the Parliament and media (LPC 2002, Article 26), and, of course, it may file a charge for prosecution¹⁵⁸. Most preventive ACAs are unlikely to have such competence. Finally, the SCPC can supervise how public bodies carry out procurements. It can ask any public entity to present a tender contract(s) to the SCPC (LPC 2002, Article 15). All these competencies make for an untypical sort of quasi-investigative role, which departs from the classic investigative function in that the SCPC has no sanctioning powers. Yet, by conducting these competencies the SCPC can at least gather those sorts of data that the 'average' preventive ACA cannot.

Controlling 'electoral corruption' is another untypical competence the SCPC commands. According to LPC 2002 (Article 11-12), the SCPC reports to the Parliament abuse of any infrastructural project and programme that was launched during an election campaign. The rationale lies in preventing 'subtle' bribery of voters. By tackling incumbents' abuse of projects for electoral purposes, the SCPC aims to contribute to election fairness.

The several amendments of LPC that took place over the years (2004, 2006, 2008, and 2010) had little implications for the SCPC's competencies. The same goes for the other laws that were adopted and amended in the meantime. One of the rare novel competencies the SCPC acquired over time is supervision of lobbying activities. According to a Law on Lobbying (LL), adopted in 2007, the SCPC shall monitor the lobbying activities which are reported in a Lobbying Register.

¹⁵⁸ This is not a formal provision, but remains a possibility for the SCPC.

The Register contains information about the lobbying companies, actors, and the lobbying activities they report (Article 10-11). The details and control mechanisms of lobbying are so scarce that the SCPC's role is minimal in this realm¹⁵⁹. This lobbying-related tasks of the SCPC entailed very little effort in practice. For example, by the end of 2010 only one lobbyist registered (SCPC 2010: 32).

In summary, the wide range of competencies the SCPC commands feature the traditional preventive tasks, but they also include certain quasi-investigative roles. Yet, as the next section elaborates, for the execution of these quasi-investigative tasks, the SCPC could rely on weak powers.

Powers

The SCPC's competencies are wide, but its powers are limited. Out of the three sorts of powers – monitoring, sanctioning, and steering (Geeraert and Drieskens 2015), solely is the former substantial in the SCPC's case. As touched upon in the section on competencies, the SCPC's monitoring possibilities are abundant. Across numerous domains, while dealing with a variety of actors, the SCPC has authorised access to the pertinent data relating to their work. Unlike these monitoring, the SCPC commands mild sanctioning abilities, with very limited fines as its disposal. The 'steering' powers – the capability to shape other actors' behaviour, are modest too. The SCPC's enforcement mechanisms to compel both regulatees and partner institutions to comply with a request are lacking. Overall, the SCPC therefore departs little from the 'average' preventive ACAs when it comes to institutional powers.

¹⁵⁹ Registered lobbyists submit annual reports to the SCPC (Article 21). In case of non-compliance of a lobbyist with the duties set out in the Law, the SCPC can proceed to several options from a warning to suggesting the deletion of the lobbyist from the Lobbying Register (Articles 24-26).

TABLE 5.3 SCPC's sanctioning abilities over regulatees.

Task	SCPC's powers
Analysis of legislation	Provides opinion on corruption related pieces of legislation (LPC 2002, Article 49). The legislator is not obliged to adopt SCPC's suggestions/amendments.
Regulation of conflict of interest	2000-2006: SCPC had no sanctioning powers (according to LCP); <i>from 2006 on:</i> SCPC imposes warnings, pecuniary fines (from €500 to €3000), and dismissal recommendations (LPCI 2007, Article 25-29; LPCI 2009, Article 31).
Control of (mis)use of foreign aid	SCPC is entitled to demand from any user the details about a foreign donation or aid programme's expenditure. However, the SCPC cannot punish a hypothetical wrongdoing; it can only inform Parliament and public (LPC 2002, Article 26);
Supervision of budget spending	SCPC may have an insight into the spending of the budget of a public entity or a juridical person managing state capital (LPC 2002, Article 54); no sanctioning power is envisaged in case of detection of embezzlement (SCPC can only report to Parliament).
Pre-electoral corruption	SCPC submits reports to Parliament about abuse of state budgets in election campaigns (LPC, Article 12). If an election contender uses illegal funding sources, SCPC "shall ask the competent authorities to check the influx/usage of the funds" (LPC, Article 13).
Control of procurement contracts	SCPC is allowed to have an insight into all officials' and institutions' contracts, procurements, and profit-making deals executed one year following the election (LCP 2002, Article 15); for a spotted wrongdoing the SCPC can only report to Parliament.
Interrogation of officials	SCPC can summon a person to obtain information about a corrupt act. However, sanctioning of an official who fails to turn up is not possible (LPC 2002, Article 52).
Control of party funding	For unlawful funding of a party, from the state budget or a state enterprise, the SCPC shall inform Parliament (LPC 2002, Article 12); should a funding come from a foreign source, the SCPC can invite authorised authorities to check this transaction (LPC 2002, Article 14). Also, the SCPC raises initiatives at competent bodies for control of party funding (LPC 2002, Article 46);
Regulation of accumulation of posts	If an official is caught performing two or more public posts, SCPC can issue a warning. If the official does not resign from the 'redundant' posts (apart from one), SCPC shall issue a dismissal recommendation to the official's principal (LCI 2007, Article 25).
Control of officials' assets	If an official is found to have concealed or misreported her property, SCPC can request the launch of a proceeding, which is formally being undertaken by the Public Incomes Administration, who then decides whether to file a charge at a court (LPC, Article 36).
Control of gift receipt	SCPC imposes fines from 200,000 to 300,000 denars (equivalent to £2500-£3800) to parties, trade unions, and citizen associations for raising cash from unidentified sources. The responsible person within these entities shall be fined from 20,000 to 50,000 denars (£250 - £630), and the funds from shall be confiscated (LPC Article 60).
Lobbying supervision	<i>From 2008 on:</i> SCPC can order that a registered lobbyist be deleted from the Lobbying Register, should a grave misconduct be established in her lobbying (LL Article 25)

As can be seen in the Table 5.3¹⁶⁰, for most of the competencies the SCPC lacks enforcement tools. To analyse anticorruption legislation, the SCPC cannot institutionally compel the legislator to adopt, reject, or modify a piece of legislation that is on the agenda. In other jurisdictions, the SCPC lacks instruments to fully execute a process that had been launched. For example, although the SCPC is entitled to summon a suspect official, (s)he can decline to respond to the invite, making the effort futile. In such a scenario, the SCPC or another body (e.g. police) cannot order custody in order to complete the procedure. Similarly, the SCPC controls the expenditure of foreign donations and public budgets, but farthest it can go in reaction is to inform the Parliament and Prosecutor. In sum, tools to ensure regulatees' compliance are deficient.

The table demonstrates that in nearly all competencies, the SCPC lacks sanctioning powers. One of the rare examples where the SCPC can fine a regulatee is the domain of conflict of interest, and this has been the case from 2007 only¹⁶¹. But still, the sanctions that are delegated to the SCPC's, for this domain, are far from severe. They include issuing of warnings or public warnings, and recommendations for dismissal. In control of gift receipt, pecuniary fines are envisaged. Clearly, all sanctioning powers are mild.

SCPC stands best in monitoring powers. As mentioned, it enjoys a variety of possibilities to collect data. The SCPC makes an insight into how budgets (foreign donations, procurements, public sector) are spent. Another instance of SCPC' monitoring powers relates to the regulation of monitoring of lobbying activities. Based on the obtained data, the SCPC can alarm the public and prompt authorised bodies (e.g. police, prosecutor) to further investigate the case. In some tasks, however, the SCPC is not 'self-sufficient' in gathering data. To carry out the control of officials' assets, the Public Revenue Administration (PRA) needs to collaborate as its databases are crucial to check whether the declared and real income and property differ. Similarly, to

¹⁶⁰ The data for the table compiled from LCP (2002, 2004, 2006, 2008), LCI (2007, 2009), and LL (2007).

¹⁶¹ When LPCI was adopted.

monitor public procurements, the SCPC relies on the assistance of the Procurement Office. Thus, across a variety of fields the SCPC acts as the ‘information-collector’, but to fully utilise the received data - others’ collaboration is necessary too. Yet still, the SCPC commands greater monitoring powers than preventive ACAs usually do.

With the adoption of certain amendments, the SCPC’s powers increased over time. These increases were minor, however. One rare enforcement tool that the SCPC acquired after 2002 is the ability to annul employment contracts. With the LPC amendments from 2004 (Article 19), the SCPC became entitled to examine whether it is nepotism or abuse of political affiliation that afforded a person employment in the public sector. Thanks to another enforcement tool, acquired in 2007 (LL), the SCPC became empowered to remove a lobbyist from the Lobbying Register, shall the latter breach the law.

As mentioned earlier, LPCI (2008) authorised the SCPC to impose fines such as warnings, public warnings, and dismissal recommendations. These are all, as said, mild fines. The greatest, yet modest in nature, rise of powers concerned SCPC’s monitoring abilities. The LPC 2004 amendment extended the list of institutions which shall submit reports to the SCPC (e.g. the Procurement Office was assigned the duty to forward its reports about state institutions’ procurements to the SCPC every three months (LPC, Article 18). Furthermore, officials became obliged to notify the SCPC about each employment they establish up to three years after they leave the public post (LPC 2004, Article 29)¹⁶². The 2004 amendment of LPC also extended the list of those subjects who must report suspicious behaviour. The list comprises all major financial organisations (banks, saving banks, exchange offices, insurance companies, stock exchange, and so on) (Article 55).

¹⁶² Yet, SCPC has not power to (dis)approve the new employment, it only acknowledges the receipt of the information.

In summary, from the point of its establishment (2002) till the end of the observed period (2012), the SCPC commanded limited powers. Its enforcement tools and sanctioning powers have been minimal but the monitoring (data gathering) possibilities were considerable. Yet, the SCPC, in the given institutional arrangement, could hardly turn these powers into major enforcement action. Nor was the rise in powers that resulted from amendments substantial.

Resources

Domestic resources

In the development of the SCPC's resources, two distinct phases exist. The first phase lasted from late 2002 to late 2006. With a low budget, both in absolute and comparative terms, the SCPC operated as an under-resourced agency. Additionally, it suffered from shortage of staff. Over the course of these four years, the SCPC faced a number of technical and logistic problems such as the lack of adequate premises or problems in administration management. The second phase, which started in 2007, saw bigger annual budgets and staff increases. This led to most of the inherited technical and logistical problems being resolved.

As can be seen on Figure 5.1 below, the budget amounted to less than €200.000 during the first three and somewhat more than €200.000 in the fourth year (2006). The SCPC repeatedly complained in the annual reports (SCPC 2003; 2004; 2005; and 2006) that these budgets were insufficient for proper functioning. „We did not have funds to hire external experts, nor had we enough staff to examine all materials we needed; my colleagues from the Board and me used to bring papers from the office to our homes, reviewing them late into the night“ (M1). Over the first four years, several people were employed in the technical service of the SCPC (M1), however these numbers were far below what the SCPC needed. Compared to the ACAs from

Central and Eastern Europe (CEE), for example, the SCPC had been hugely under-resourced when it comes to both budgets as well as staff numbers¹⁶³.

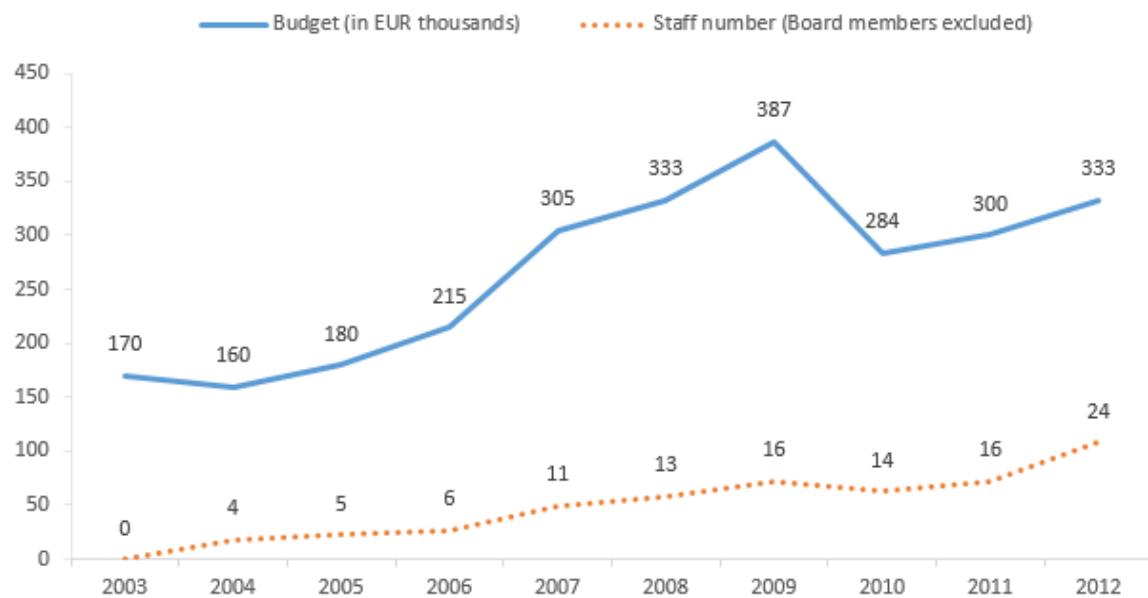


FIGURE 5.1 SCPC's material resources.

Source: Annual Reports of SCPC.

The lack of premises during this stage had also plagued the SCPC. Following the establishment, the Ministry of Justice first assigned a room to the SCPC (SCPC 2003: 7). Then, the SCPC moved

¹⁶³ For example, ACAs from three CEE countries of similar population (between two and three million people) relied on the following staff and budgets: Latvian KNAB – a staff of 132 and a budget of more than €700.000; Lithuanian STT – a staff of 231 and a budget of about €6.3 million; Slovenian Commission for Prevention of Corruption: a staff of 39 and budget of €2.3 million. Note that these data refer to various years, from 2012 to 2014, depending on what years are stored for each of the ACAs in the database of the *ACA Authorities* portal which serves as the reference in this case. Available at: <http://www.acauthorities.org> [Accessed: 20 October 2015].

to a rented room in a Skopje's shopping mall, which was considered as inadequate to provide discretion for work¹⁶⁴.

During the first two years, issues arose regarding the remuneration of the Board personnel. The LPC provisions stated that Board members' remuneration equals two average national salaries, but in practice the remuneration stalled because the Government as well as a relevant parliamentary committee (the Committee on Electoral Procedures) interpreted this provision in a different way (SCPC 2003: 8). In SCPC's view, this problem negatively affected their capacities. At one point, SCPC's member Slagjana Taseva even threatened legal action if the salaries do not go up from 25,000 (about €420) to 45.000 denars (about €750)¹⁶⁵. This issue lasted for a few years and seems to not have been resolved before 2006¹⁶⁶.

The second stage, on the other hand, saw an increase in resources in all major aspects – budget, staff, and technical conditions. The budget first rose to more than €300.000 in 2007, which was a 40% increase compared to 2006. With some fluctuations throughout the subsequent seven years, the budget remained at a considerably higher level compared to the first stage. Two sharpest declines in budget in the second stage were from €387.000 in 2009 to €284.000 in 2010, and from €333.000 in 2012 to €262.000 in 2013, but in the meantime - in 2009 - the budget reached a record of almost €390.000. As these changes in budget were not accompanied by major increases of workload, the SCPC enjoyed throughout the second stage substantively better resources than in the first stage.

Simultaneously, the staff numbers increased in a continuous manner. From 2006 to 2007, 5 new staff were employed, amounting to 11 people in 2007. This trend continued all the way to

¹⁶⁴ "A large office is being used by members of the State Commission and by staff members of its Secretariat, securing no discretion necessary in the communication with individuals who address and visit the State Commission in different capacities" (SCPC 2005:4).

¹⁶⁵ Taseva (2005).

¹⁶⁶ The *Annual Report* from 2006 was the first that does not mention the problem with SCPC's staff remuneration.

2012, when the SCPC counted 24 staff (excluding the Board members). Though the increase of staff persisted for several years, it did not lead to a substantial enhancement in human resources. In 2012 the SCPC enjoyed considerably better human resources than in 2003 or 2004, yet this was a low number of employees compared to other preventive ACAs (compare, for instance, with the three CEE ACAs mentioned above).

To resolve the problem of inadequate premises and basic technical equipment, the SCPC waited several years. The Government procured and refurbished a new office not earlier than 2007 (SCPC 2007: 10). Alongside budget and staff increases, this also contributed to the improvement in the SCPC's capacity, but, again, its scope shall not be exaggerated (M2).

In summary, the SCPC enjoyed greater, albeit not vast, resources in the second stage (from 2007 onwards) than under the first Board (2002-2006). If the claim that a harsh enforcement is not possible without abundant resources - is true, then the SCPC is unlikely to have enforced harsh enforcement patterns in the observed period. Furthermore, according to the same theory, the rise in resources that occurred in the second stage of the SCPC's life (2007-) may be predicted to have led to some sort of escalation of the SCPC's enforcement (since the same caseload and the identical tasks were addressed with bigger resources). The forthcoming empirical analysis will show whether these predictions played out in practice.

Before turning to the analysis of the SCPC's enforcement, the section will look into the international support the SCPC was receiving. This will complete the picture of how capacitated the SCPC has been.

International support

Over the course of the observed eleven years, the SCPC benefited from various programmes of international support (see Appendix B for details). Participation in conferences and in exchange

programmes that involved visits to foreign anticorruption agencies, training of local officials aiming to improve compliance in SCPC's jurisdictions (e.g. conflict of interest), were some of the activities in this regard. Appendix provides a detailed overview of all programmes of international support, on a year-by-year basis. What follows is a recap of the key developments from 2002 to 2012.

During the first three years, the SCPC organised and took part in numerous conferences (2002-2005). On average, they participated in more than 30 conferences per year, (a figure derived from the SCPC *Annual Report* 2003, 2004, 2005, and 2006). These events, among the others, focused on exchange of knowledge and experience between the SCPC's and foreign counterparts' staff. Various ACAs' representatives, scholars, experts, and international organisations contributed to these events too. From 2004, the SCPC paid an increasing number of visits to foreign ACAs such as the Latvian KNAB, Croatian USKOK, French COPC, Kazakh's AFECC, to mention just a few (Appendix B).

From 2006 on, the SCPC engaged in more comprehensive and complex anticorruption programmes, sponsored largely by international donors. A *PACO Impact Project 2006* of the Council of Europe was the first of such programmes. Alongside study visits such as those to Estonian and Italian anticorruption institutions' this programme involved work that includes training of local officials and journalists about conflict of interest and related anticorruption policies (SCPC 2006: 16-17). A *TAI/EX* programme, supported by European Commission (SCPC 2009: 50), enabled SCPC's study visits to foreign ACAs. The goal of partnering with local officials and journalists, realised through this project, was to enhance the understanding of key anticorruption issues. By 2013, the SCPC enrolled in several more similar programmes (Appendix B).

Being more comprehensive and lengthier than the 'one-off' conferences and study-visits that were held from 2002 to 2006 (which also continued afterwards, in parallel with the other programmes of international support), these projects brought the SCPC networking

opportunities with counterparts from other regions and countries. Yet, the effects of these programmes could not dramatically enhance the SCPC's capacities (M2). SCPC staff, for example, could not advance specialised skills as for instance the USKOK did in their training (see Chapter 6 for details). The organisational model of the SCPC represented the key limiting factor, because, due to its weak powers, there is no need for a preventive ACA to work on special prosecutorial and investigative techniques.

In summary, the international support has been continuous from the first year of the SCPC's existence, involving a number of programmes. „Thanks to the international programmes, we formed a better picture of what pitfalls and opportunities we can face, which helped us better plan our agenda and also anticipate key problems and the responses we can come up with“ (M1). The programmes have certainly been an asset, however the organisational model itself set limits as to how much they can 'transform' the agency for better.

Summary of resources

In summary, the present section showed that the SCPC enjoyed limited resources during its first term (2002-2006), whereas from the beginning of the second term (2007-) its resources increased to a modest extent. The domestically provided resources were an essential component. International programmes of support did contribute to the SCPC's capacity building, yet their effect could not be drastic.

Now that both the institutional design and resources are reviewed, the thesis turns to the question of how the SCPC enforced its mandate in practice. Once the enforcement is reviewed, a discussion will proceed about the determinants of the SCPC's enforcement and the explanatory power of the competing theoretical approaches that were set out in Chapter 3.

Enforcement

This part reviews the enforcement that the SCPC exhibited in the period 2002-2012. The enforcement will be examined through the lenses of the concept of enforcement pattern, which, to remind, encompasses three key elements: (i) enforcement strategy; (ii) enforcement style, and (iii) political selectivity displayed in ‘big-fish’ cases.

Enforcement Strategy

In September 2002, a newly formed coalition led by the Social Democrats (SDSM) appointed the first SCPC Board (*Vest* 11 December 2002). The Board members had expertise in the field of criminal law, prosecution and internal affairs, legal and economic matters, and extensive professional experience (Mangova 2013: 82). Slagjana Taseva, Professor of Law and a former professional in the Ministry of Interior in the 1990s, was elected for the first President in 2002 (SCPC 2003: 8). Due to the rule of compulsory one-year rotation of chairmanship¹⁶⁷, other members were elected for SCPC Presidents over the years¹⁶⁸. Since the institutional arrangement gave equal executive and voting powers to all seven members of the Board, the role of President, apart from public exposure, was not crucial for directing the SCPC’s enforcement.

In words of one of the members from the time:

„What was crucial was our consensus and unity on the Board about how to enforce the mandate; this was a kind of collective leadership which gave a strong impetus to the whole Commission“ (M1).

¹⁶⁷ LPC, *Official Gazette* RM 28/02, Article 48.

¹⁶⁸ These Presidents were: Jovan Trpenovski (2003-2004), Dragan Malinovski (2004-2005), Mihajlo Manevski (2005-2006), and Slagjana Taseva was an acting President in 2006-2007 (Mangova 2013: 98-99).

Asserting presence and formatting the course of action which the SCPC will be implementing in the future were the key challenges at the beginning. Over the course of the first couple of years, the SCPC was regularly carrying out preventive tasks such as control of officials' assets, control of officials' gift receipts, or control of how state budgets are spent (SCPC 2003; 2004; 2005; 2006), all being tasks the SCPC was explicitly mandated with. In doing so, the SCPC scrutinised a wide variety of officials, from the local to the top-level (SCPC 2003; 2004; 2005; 2006).

In addition to these compulsory activities, the SCPC made a choice to take up a whole range of cases that did not comprise the set of the delegated tasks. These included in the first place suspect privatisations, but other sorts of scandals were taken up too. These practices were driven by the following considerations:

„We were aware at the outset that the way we behave during the first year will be crucial to signal what the stakeholders can expect of us in the future, which will in return shape their conduct toward us. All of us on the Board agreed that the Commission (SCPC, prim. aut) needs to start its work vigorously, in an assertive manner. We thought the substance should prevail over the form, so we decided not only to focus strictly on the delegated preventive tasks but rather to play role in addressing corruption as a key societal problem. And, as everyone was aware, to achieve that, you have, one way or another, to push for prosecutions. Preventive tasks are the basis, but we can't remain silent on huge scandals in which enormous amounts of money are said to be embezzled“ (M2).

Thus the SCPC gave priority to an investigative perspective over the preventive role. In its standard pattern of action, the SCPC first investigates a case and then makes pressure on the police, prosecutor and other involved actors to bring the investigation to a legal epilogue. The powers that the SCPC commanded, as described, were limited, but the SCPC was utilising those sorts of tools that were broadly available to other institutions and citizens. The data from whistle-blowers' reports, from public sources, the reports of formal institutions, are some of the sources the SCPC based its work on (M2). The monitoring possibilities over a variety of areas, which were delegated through the formal design, further added to the SCPC's 'toolbox'.

The SCPC addressed three sorts of causes through its investigative endeavour. Privatisations in which the evidence points to potentially corrupt engagement of public officials were the prime items on the enforcement agenda. The SCPC ‘jumped’ on tens of such cases during the first term (see Appendix D). These involved privatisations from the 1990s, which were carried out by both the opposition VMRO-DPNE as well as the ruling SDSM¹⁶⁹. Suspicions about some of the given privatisations were raised by media, others resulted from ongoing political developments, while third cases featured as long-standing issues previously known in the public but not addressed by the institutions. Some of these supposedly corrupt privatisations appeared directly as a result of SCPC’s initiative.

In dealing with the above cases, the SCPC tended to obtain details that can be investigated further with those powers it commanded. Sometimes the SCPC sought to summon officials¹⁷⁰, whereas at other times the SCPC searched for data that was available from public sources or from state bodies such as for instance the State Audit Office¹⁷¹.

The second sort of cases in which the SCPC acted in an investigative capacity were ongoing scandals from the Macedonian politics. Again, the SCPC had no legal duty to respond to most of them; it is the police and prosecutor who did have. Yet, seeking to take the initiative, the SCPC addressed such cases. Examples include various scandals, from forged invoices for cattle killed in an ethnic conflict¹⁷², to state loans from Taiwan (Mangova 2013: 83), a ministry’s rigged voting in a TV show (*Dnevnik* 22 September 2004), and so forth. Often involved in these cases

¹⁶⁹ To mention just a few of them, the printing and publishing giant *Nova Makedonija* was privatised under the reign of SDSM in the second half of the 1990s (Zikov 2013), the privatisation of a freight company *Feršped* occurred in 1995 (ECIKS 20 March 2006) - also under SDSM, whereas the privatisation of an oil refining company *Okta* took place in 1999 under Prime Minister Ljupčo Georgieski from VMRO-DPNE (A1 25 September 2003).

¹⁷⁰ According to Article 24 of LPC 2002, the SCPC is allowed to summon suspects for interrogation.

¹⁷¹ For example, the *Bačilo* scandal, which will be described in more detail in the ‘big-fish’ section, was launched after the SCPC examined a State Audit Office report (A1 17 January 2006).

¹⁷² Again, see the *Bačilo* case below.

were 'big-fish' politicians (some of the cases are described in detail in the following section which deals with enforcement style). As in the cases of suspected privatisations, the SCPC advanced the same sort of strategy in the political scandals: it first uses a mixture of tools to obtain initial findings and then pressures suppressive bodies (police, prosecutor) to react. Harsh public rhetoric was an integral part of these SCPC's actions, too¹⁷³.

Thirdly, there were more unique issues, most of whom involved petty as well as 'typical' patterns of corruption. For instance, the SCPC inquired into cases of local construction permits¹⁷⁴, university corruption (*Vest* 09 July 2003), and even procurements for a deration in dormitories (*Utrinski Vesnik* 13 February 2004). The SCPC also filed charges for an allegedly corrupt procurement of medical supplies (*Večer* 27 September 2005) and for a tender for English textbooks (*Vreme* 15 June 2005). These examples of investigation do not point to privatisations nor they include major political scandals, yet the SCPC made them part of its agenda. As stated, the SCPC acted in a non-selective manner in terms of the scope of caused damage.

Overall, during the first mandate, the SCPC engaged in more than 40 initiatives for criminal investigation¹⁷⁵. Most of these initiatives aimed at big businesses or high-ranking politicians, and, among them, allegedly corrupt privatisations were most present.

From 2001 to 2007, the SCPC also advocated for legislative enhancements. One of the most debated topics was the need for a better institutional framework for tackling money-laundering

¹⁷³ Some of the numerous examples include a harsh reaction against the Government's attempt to sell a parcel of city land in a historical part of Skopje to the American Embassy (*Dnevnik* 12 October 2004), the privatisation of the *Electricity Company* (*Vreme* 23 March 2005), the reaction to a government's concession for the construction of a hydroelectric plant (*Vreme* 24 June 2005), or the critique of a government's auction for prime city land across the National Bank in Skopje (*Utrinski Vesnik* 05 July 2005).

¹⁷⁴ For example, the construction of residential buildings in the City Park (*Utrinski Vesnik* 09 July 2005).

¹⁷⁵ See Appendix D; most of these cases included SCPC' pointed, directly or indirectly, to possible criminal liability of the involved.

(*Dnevnik* 03 November 2003; *Dnevnik* 02 January 2006). The SCPC recognised big corruption potential in this field, as a large number of corrupt transactions were made from and to abroad, fearing possible money-laundering schemes¹⁷⁶. Furthermore, the SCPC urged better control of how state funds are spent¹⁷⁷, and it pledged for reduction of the discretionary powers that the administration holds¹⁷⁸.

In summary of the first stage, the SCPC pursued an assertive and expansionary enforcement strategy, which included opening of high-level corruption cases and relying on a wide range of tools and assertive public rhetoric. Rather than emphasising the preventive tasks that comprised the core competencies, the SCPC stressed the need for prosecutions.

The 2006 election saw a turnover in the government. The opposition party VMRO-DPNE came to power and formed a ruling coalition with an Albanian minority party¹⁷⁹. Soon after, the coalition appointed in Parliament the second SCPC Board (in early 2007¹⁸⁰). The members of the new Board had expertise in the fields of economy and law, but most of them were lacking professional experience of dealing with the matters from the SCPC's jurisdictions (Tomić and Taleski 2010: 4). Mirjana Dimovska, a journalist and editor in the national Macedonian Radio TV

¹⁷⁶ The largest scandal that the SCPC marked as potentially involving money-laundering was the discovery of allegedly secret accounts of President Crvenkovski and former Prime Minister Hari Kostov in Swiss banks (*Dnevnik* 21 January 2006).

¹⁷⁷ For example, in 2003 the SCPC was suspicious about the draining of public funds through financing political parties (*A1* 13 November 2003), in 2005 about abuse of public funds from state owned enterprises for financing parties (*A1* 01 February 2005) or the Auditors' findings that many programmes involved mismanagement of the budget (*Dnevnik* 21 November 2005).

¹⁷⁸ See, for instance, Stojan Taseva's critique of a Government's failure to lessen its discretionary powers (*Večer* 29 December 2005).

¹⁷⁹ See the *Election Guide* for Macedonia: <http://www.electionguide.org/elections/id/1452/> [Accessed: 20 October 2015].

¹⁸⁰ The new members, appointed in January 2007, were: Mirjana Dimovska, Zoran Dodevski, Ilmi Selami, Cvetko Mojsoski, Ljubinka Muratovska Markova, Arif Musa, and Mane Kolev (Mangova 2013: 100).

station (MTV), was appointed for the new SCPC President (SCPC 2007). As noted earlier in the chapter, this is a period where the SCPC's resources (budget, staffing, and technical conditions) started growing.

The arrival of the second Board marked the beginning of a new stage in the SCPC's life. In the enforcement strategy, a fundamental shift occurred. As throughout the second term, the SCPC made a 'de-escalation' in its priorities, in several respects. The SCPC ceased the investigative mode of work established by the first Board. Instead, it focused largely on the preventive tasks that constitute the core of the delegated duties. This was also accompanied by de-escalation in targets the SCPC aims at. Instead of highly-positioned politicians, often targeted by the first Board, the second Board turned toward lower-level officials, mostly local ones¹⁸¹. Furthermore, the SCPC diminished pressure on the suppressive bodies. The Prosecution Office and the police have disappeared from SCPC's statements and so did the inter-institutional animosities¹⁸². More 'voluntary' forms of collaboration were established between the SCPC and partnering bodies. For example, in 2007 the SCPC signed a Protocol of Cooperation with 12 other institutions and bodies (SCPC 2008: 39); in 2010 this number of partners rose to 17 institutions (SCPC 2010: 27).

This shift in the enforcement strategy, in other words, led to a shrinking of the turf the SCPC was covering from 2002 to 2007. The SCPC renounced the use of those tools that are available in general forms of political and civic engagement, such as rhetorical pressure, filing of initiatives before other bodies that may spur an investigation, dismissal initiatives to Parliament, and so forth. Whether this was a result of the intention to preserve the authority

¹⁸¹ "According to SCPC, between 2007 and 2010, 52 separate initiatives to start criminal investigation were sent to the public prosecutor. Among them, there is *not a single* case where corruption was detected among *high level national politicians*." (Mangova 2013: 44).

¹⁸² The following describes this difference concerning how the SCPC acts upon the findings of other institutions: "The SCPC does not always react to reports from the State Audit Office. For example, the auditors' reports in 2009 showed concerns about procurements in several line ministries (i.e. Ministry of Transport and Telecommunication, Ministry of Justice, Ministry of Foreign Affairs), but none were examined by the SCPC" (Tomić and Taleski 2010: 7).

within the core turf and to give up actions that could deflect the attention, is hard to say. A former member of the SCPC, who criticised the work of the second Board in the public, holds that a different view of the SCPC about what it needs to led to this sort of development, but it also, arguably, stemmed “from a mutual understanding with the authorities that top-level corruption should not touched” (M1).

What is certain is that within the newly shrank turf the SCPC pursued a mixed enforcement style when it comes to the government versus opposition divide. Particularly, the second stage saw an increasing number of non-zealous enforcement actions characterised by one of the following types of reactions: (1) the absence of reaction when information indicating a corrupt act is publicly provided; (2) protracted reaction which may leave additional time to the suspect(s) to come up with a response, or (3) the pledge for a lighter fine, more favourable to the suspect(s) (e.g. urging a pecuniary fine when there is a basis for criminal investigation).¹⁸³

The SCPC faced a leadership crisis in 2008 and 2009. The first President in the second term, Mirjana Dimovska, renewed her mandate two times. This was criticised as an outright violation of the Law, which contravenes the compulsory rotation of Presidents that is set out in LPC¹⁸⁴. An internal strife in the SCPC was simmering as well¹⁸⁵. However, she remained at the helm of the agency until 2010. Then, a new President, Ilmi Selami, was elected to lead to the SCPC¹⁸⁶.

¹⁸³ These will be the subject of the ‘big-fish’ section and the overall summary can be found in Appendix D.

¹⁸⁴ The first renewal was greeted with vigorous criticism – former President of the SCPC Slagjana Taseva stated that the fact that one President is elected two times in a row “opens space for corruption” (*Dnevnik* 14 February 2008).

¹⁸⁵ The tension culminated in 2010, when the SCPC needed to elect a new President. The outgoing President Dimovska refused to turn up to the Commission, not allowing the other members to enter the SCPC either. This provoked severe criticisms of the rest of the SCPC staff (Sotirovska 2010).

¹⁸⁶ Upon election (by four votes out of the seven members), the new President Ilmi Selami stated that he is aware of the widespread criticism of the SCPC and added that he will be making an effort in the future to improve the work and image of the SCPC (Dogova 2010a).

The staff composition of the SCPC did not change under the chairmanship of Selami, but the SCPC changed its rhetorical action. More public engagement, more commentary on scandals, and a greater responsiveness to others' pledges, were some of the novelties in his time of chairmanship. Yet, this was a shift in the realm of rhetoric, but the enforcement action remained the same¹⁸⁷.

The limited change, in rhetoric solely, can be explained by the fact that the personal composition of the Board remained the same. As a result, the decision-making process could not change. But, the rhetoric could be changed because the Board does not represent a constraining factor to its President when giving public statements.

With the departure of Selami from the position of President in 2011¹⁸⁸, the SCPC reversed the rhetorical changes and fully resumed to the approach that had been in place from 2007 to 2010. Thereafter, further de-escalations of the enforcement pattern took place in 2011 and 2012. The SCPC diminished its public presence and cut down its enforcement activity¹⁸⁹.

¹⁸⁷ As to the harsher rhetoric, Selami (2010) started off his term by blaming the courts for not completing cases of corruption. Later on, the SCPC accused the government's main party VMRO-DPNE of making pressure on the SCPC, through, for instance, holding a press-conference on their doors (Dogova 2010b). Then, Selami stated that the administration is too politicised and under the party influence (*Makfaks* 01 June 2010). In October 2010, Selami said that there is no political will for fight against corruption (*Utrinski Vesnik* 13 October 2010). These are but few examples of the overall stepping up of rhetorical harshness of the SCPC under Selami's chairmanship. Yet, based on the enforcement cases recapped in the *Annual Report* 2010 (SCPC 2010) and press-clipping, it can be concluded that the enforcement strategy did not substantively change in terms of priorities, tools, and tasks the SCPC was pursuing.

¹⁸⁸ Selami was re-elected to the third SCPC' Board (Večer 06 April 2011), but several months later he resigned and moved to a positon of advisor in the Ministry of Defence (*Dnevnik* 22 September 2011).

¹⁸⁹ For example, in 2011 the SCPC appeared in the media 36 times only, compared to 81 appearances in 2010. This gap appears even bigger given that 2011 was an election year, which automatically steps up the interest for the work of the SCPC.

A number of actors criticised the work of the SCPC in the second term. The EU¹⁹⁰, civil society organisations and anticorruption experts¹⁹¹, and scholars alike¹⁹², raised suspicions of poor politicised leadership, and also highlighted the lack of proper approach of the SCPC in its enforcement. The allegedly poor anticorruption results were attributed to the lack of vigour of the SCPC, among the other factors (e.g. the European Commission Progress Reports 2008b and 2009b note a growing caseload in the domain of cases of conflict of interest).

In 2011, the Parliament appointed a new Board¹⁹³. Four out of the overall seven members that were sitting on the previous Board (i.e. the second SCPC term) comprised this new, third Board. This provided for partial continuity in the 'human factor'. The same coalition that appointed the previous Board (led by VMRO-DPNE) appointed this one too. Previously, a possibility for Board members' re-election was introduced and the term of SCPC Board duration was changed from five to four years¹⁹⁴.

¹⁹⁰ For example, the *EU Progress Report for Macedonia for 2009* mentioned: "The SCPC should make efforts to be more pro-active in pursuing anti-corruption policy" adding that "public trust in the independence and impartiality of the SCPC remains low" (European Commission 2009b: 15). *EU Progress report for Macedonia for 2010*, in a similar vein, said: "The SCPC's strategic plan for public relations has not had a visible impact" and "Public trust in the independence and impartiality of the SCPC is still rather low. The SCPC remains reactive rather than proactive. Following the 2010 state budget rebalance the SCPC faces severe financial difficulties" (2010: 14).

¹⁹¹ An expert panel survey highlighted a more assertive and expansionary approach of the first, characterising the subsequent Board as less specialised and unwilling to tackle corruption (Mangova 2013: 84-91).

¹⁹² In a policy paper about corruption and EU intergration, Tomić and Taleski ascertained: "The integrity of the president of the SCPC is seen as a crucial point. The previous president was seen as trying to tone down the fight against corruption", said one of the reports analysing the anticorruption policies and bodies in Macedonia in the second half of the 2000s [...] (2010: 7).

¹⁹³ The members were: Ilmi Selami, Zoran Dodevski, Ljubinska Muratvska Markova, and Mirjana Dimovska – all from the previous mandate, plus three new members - Voislav Zafirovski, Ljubinka Karabovska i Seidi Halili (*Večer* 06 April 2011).

¹⁹⁴ The ruling coalition also introduced a rule that the SCPC's term can be shortened over the course of the last year of its duration, which is subject to a discretionary decision of the Parliament. This move was interpreted by President Selami as unacceptable and as undermining of the SCPC's independence because it allows government to prematurely sack a Board should it find it opportunistic (*Netpres* 24 September 2010).

The third Board did not make notable changes to the enforcement strategy. The SCPC, namely, continued the trend of a de-escalated strategy inherited from the previous Board and it further cut down the level of activity against high-ranking officials. The SCPC also diminished its public presence (Mangova 2013: 91). An empirical analysis of the enforced 'big-fish' cases suggests that the enforcement in this period has fallen to the lowest level since the adoption of the SCPC. In those two years no single major case which would draw public attention was launched. In that sense, the key development during the third Board is that it further de-escalated the enforcement strategy.

The first stage, which coincided with the work of the first Board, was characterised by an assertive and also an expansionary enforcement. The SCPC placed an emphasis on investigative tasks that did not constitute its core duties. Throughout this stage, the SCPC was using a wide array of tools, aiming at 'hefty' targets which involved high-ranking politicians and complex schemes involving vast amounts of money. The second stage, on the other hand, brought a 'de-escalation' in the enforcement strategy in all major aspects – in the priorities, tools, and targets. From 2007 till the end of the observed period (2012), the SCPC 'shrank' its territory of action largely to the preventive tasks. The assertive role, particularly in launching investigations and pressuring suppressive bodies, had been abandoned. The number of targeted non-'big-fish' cases rose, while the addressed high-level corruption fell. This shift in the enforcement strategy was accompanied by an enhancement of structural and organisational prerequisites, on the one hand, and personal changes in the SCPC's Board, on the other. The better structural conditions did not lead to a perseverance of the previous harsh enforcement strategy. The personal changes in SCPC's staff appeared as the key factor driving the shift in the enforcement strategy.

What follows is a review of SCPC' enforcement against high-ranking officials. The next part focuses on the enforcement style as well as political selectivity displayed in dealings with big-fish.

'Big-fish' cases

The SCPC is the agency that launched most big-fish cases among the five analysed ACAs in this thesis. The following graph displays the enforcement actions targeting 'big-fish' from 2003 to 2012. As many as tens of 'big-fish' cases happened from the establishment of SCPC to the end of the observed period:

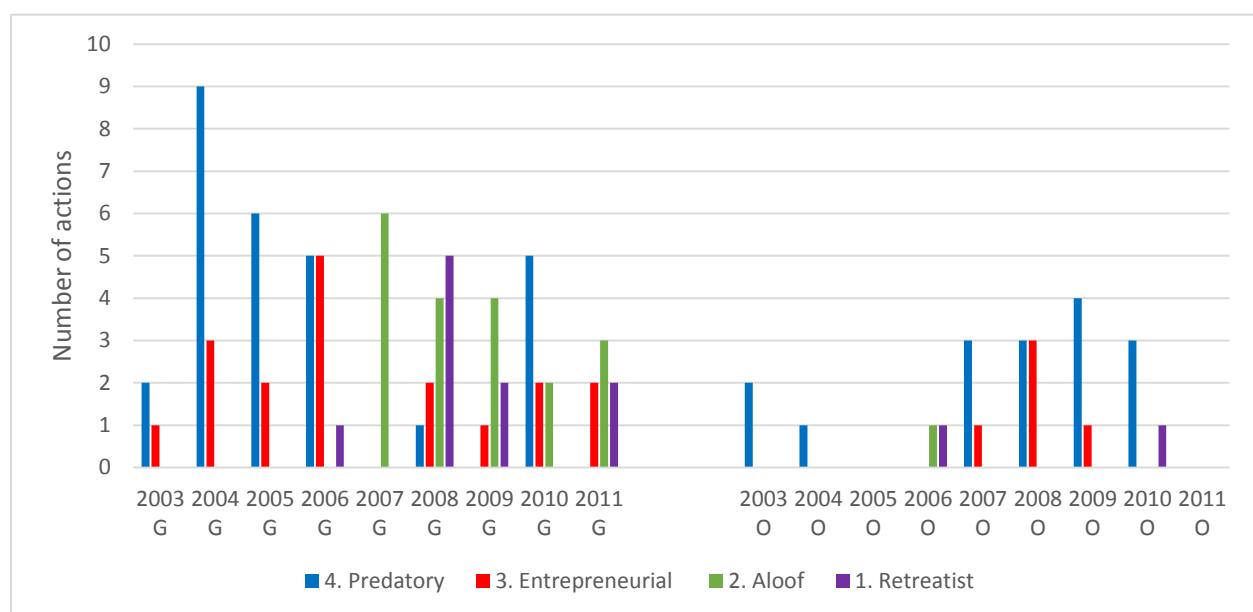


FIGURE 5.2 How the SCPC addressed 'big-fish' cases (G-government member; O-opposition member).

Source: Author's compilation based on press-clipping, Annual Reports of SCPC, interviews and secondary sources.

It is striking that in the enforcement style, just as was the case with the enforcement strategy, two distinct phases in SCPC's work can be discerned. As the graph reveals, there is a major difference in the degree of zealotry and selectivity between the 2002-2006 period and the stage encompassing 2007-2011. The former stage saw a nearly 100% of zealous enforcement, comprised of both predatory and entrepreneurial actions (depending on the sanctions involved). With over 30 actions being taken against government and fewer than 10 against

opposition, it is clear that opposition had been less targeted throughout this period. While the incumbent is disproportionately more likely to be subject to enforcement actions, especially if the agency deals with competencies that by default regulate officials' work (which was the case of SCPC which checked their asset declarations and the likes), the striking fact just one government-targeting case was non-zealous suggests the SCPC's lack of political selectivity. As can be seen, in all cases against opposition members, SCPC undertook predatory actions, threatening several (criminal) sanctions. This may be an indicator of a lack of political selectivity.

In the second stage, on the other hand, the SCPC showed signs of political selectivity. As can be seen in the left half of the graph – focusing on government, an increasing number of non-zealous cases appeared from 2007 onwards (cases which are not in blue or red colour). Several of these were 'retreatist' actions, meaning that the SCPC did not act zealously in a situation in which the potential fine is symbolic rather than severe. However, a high number of 'aloof' cases was seen too, for example six such actions in 2007 and four in 2008 and 2009 each. In these cases, the SCPC acted leniently toward government's high-level officials facing potential severe sanctions. At the same time, the zealous enforcement style against opposition persisted. As evidenced by the predominant presence of blue and red-coloured bars in the graph (in the right half, covering 2007-2011), only one non-zealous enforcement had been implemented against opposition members (late, in 2010, and this was 'retreatist').

Year 2008 clearly illustrates this turn in the enforcement style. The SCPC enforced then 'aloof' actions for the first time, and these 'aloof' actions constituted the whole sample of enforcement involving government 'big-fish' in the given year. In six out of six cases, when high-ranking ruling officials faced severe penalties, the SCPC acted in a non-zealous manner. This stands in sharp contrast to the previous record of a predominantly zealous style, whose large portion of actions were 'predatory'.

From 2008 onwards, the SCPC continued with non-zealous enforcement against government, in an increasing number of cases. Such cases included affairs related to suspicious infrastructural

projects, with reportedly fixed tenders, various equipment procurements (for example, a large procurement of t-shirts for the Ministry of Interior in 2009), or accusations that a Minister (Mihajlo Manevski, Minister of Justice) was taking fake pensions and salaries (see Appendix D for more details about these cases). Although it is not always easy to assess when the SCPC acted zealously – because the nature of a case and the evidence presented may not have drawn closer attention and hence there is less relevant information – it is noticeable that in all these cases (green and purple lines in the graph) the SCPC either denied interest and responsibility for the given domain, or protracted the response by offering interpretations which were clearly in the best of interest of the suspect.

One ‘reversal’ of the non-zealous enforcement, in the post-2007 trajectory, occurred though. During 2010, the SCPC undertook five ‘predatory’ actions against government, showing signs of increasing zealotry when ruling officials are the targets. True, two cases of ‘aloof enforcement’ took place too, yet these made up a minor part of the overall pool of enforcement actions that year. This shift to zealous actions was short-lived however, since from the next year the SCPC ‘resumed’ to the primarily non-zealous treatment of government officials. It is important to note that a different Director led the SCPC in 2010 (Ilmi Selami) and that, despite his limited powers in decision-making which result from the collective Board model, he apparently played a major role in shaping the SCPC’s enforcement style in this period.

The graph therefore clearly demonstrates the shift that the SCPC’s staff changes in 2007 ushered in. This shift involved a ‘diversification’ of the enforcement style. This diversification applied solely to the pool of government-targeting cases, whereas the opposition-targeting cases continued to be treated by a zealous enforcement style, which reveals a rising degree of political selectivity.

In the first stage, the SCPC was undertaking a proactive approach in collecting data regarding suspicious cases, most of whom involved previous privatisations. Once the evidence is collected, the SCPC used to call on the police and prosecutor to continue the investigation all

the way until a trial. Based on tip-offs and occasionally on media reports, the SCPC practiced engaging in thorough investigations and thus placed the issue of high-level corruption on the agenda as one of the priorities in anticorruption policies. Most of the big-fish cases in this period pertained to the government, but the ones which targeted opposition saw the same approach nonetheless. In that sense, the SCPC demonstrated a certain sort of rigour and zeal in dealing both with government and opposition, which leads to the conclusion that the level of political selectivity was low.

In the second stage, however, the SCPC started treating certain cases with lesser zealotry. This is clear from the rising presence of 'retreatist' and 'aloof' cases from 2007 onwards (purple and green bars on the graph), particularly in the left side of the graph, which concerns government-targeting actions. The non-zealous actions were those where the SCPC protracted its reaction, 'diluting' the process and eventually yielding an outcome favourable for the suspect.

Several points summarise the analysis about the SCPC's enforcement pattern. First, the SCPC's enforcement action evolved over time, from a predominantly zealous and non-selective one, which characterised the first mandate of the SCPC, to an enforcement style featuring a combination of zealous and non-zealous treatment, with a conspicuously selective approach (from 2007 onwards).

During the first mandate (2003-2007), a zealous enforcement style - consisting of 'predatory' as well as 'entrepreneurial' actions - predominated. SCPC exhibited assertive and proactive attitude, insisting on inter-institutional cooperation and corruption curbing activities rather than meeting targets related to the integrity policies, which are set out as its primary concern in the law. No selective targeting of opposition was observed in this period. The second phase, on the other hand, saw an increasing number of non-zealous cases, first 'retreatist' and thereafter 'aloof' ones. While the rise in non-zealous actions (retreatist and aloof) altered the structure and the ratio between the different enforcement actions of the SCPC, this by no means

excludes a rise in zealous actions during some periods within the second and third SCPC's mandate (as evidenced by the 2010 'spike', for instance).

Second, these changes in the overall enforcement action were followed by similar changes in the enforcement style against 'big-fish'. From 2003 to 2007 the zealous style, devoid of selectivity, predominated the big-fish enforcement, however from 2007 onwards the enforcement trajectory took on a more diverse structure, with an increasing number of non-zealous actions and also with increased selectivity against opposition. This trend was not homogenous due to an exceptional pattern in 2010, when the SCPC tackled government 'big-fish' largely in a zealous manner, with a far lesser portion of launched opposition 'big-fish' cases. In other words, following a novel trend – of less zealous and more selective enforcement action - gained momentum, some fluctuations, or reversals, appeared in the 'big-fish' enforcement thereafter.

To illustrate the pursued enforcement style, the following part provides three examples of SCPC's enforcement cases. Selected are two cases from the first term (2002-2007) and one case that was closed by the second SCPC Board (2007-2011). While the former two are instances of predatory enforcement style, the latter indicates a non-zealous action, that is 'aloof' enforcement style. The differences in the enforcement style between the first two cases, on the one hand, and the third, on the other hand – are paradigmatic for the overall differences in the enforcement between the two Boards.

Before turning to the examples, the following table will provide a brief summary of their developments:

TABLE 5.4 Examples of 'big-fish' cases taken up by the SCPC (2002--2012).

Date	Target/scandal	Who raised	How SCPC reacted	How it ended
2006	Bačilo	SCPC	Pursued own investigation; forced the Court to open own process.	Criminal sentences for several persons involved in the rigging scheme.
2004	Crvenkovski's Swiss Banks Accounts	Media	Zealously, declaring its readiness to investigate the case. Rhetorically, acted in a critical manner toward Crvenkovski.	No formal investigation opened, as SCPC could not obtain the date from Switzerland to check the veracity of the claims.
2007	Gruevski's flat	Media	Hesitated to file a charge for concealed property.	No process.

Source: Author's compilation based on press-clipping (see Appendix D for full list of cases).

Bačilo case

The 2005 Report of the State Audit Office noted in one place technical and procedural irregularities concerning the allocation of some €600.000 by the Ministry of Defence to a citizen Xhemaili Isnifar (SCPC 2006: 33-35). The payment comprised a compensation scheme that aimed to reimburse the damage from a 2001 ethnic conflict between the Macedonian army and Albanian insurgents in western Macedonia. It was alleged that following a helicopter attack the army killed in a village *Bačilo* about 700 sheep in a sheepfold, causing enormous material damage. Hence, to compensate for this damage, the Ministry of Defence agreed later to reimburse the owner of the ranch, Xhemaili Isnifar¹⁹⁵.

In general, this Auditor's remark about the irregularities was among the 'minor points' in the report and did not cause public debate. However, one of the SCPC staff spotted the detail,

¹⁹⁵ Further relevant details about the case can be found in the Annual Report 2006 (SCPC 2006: 33-39), which is a reference for the forthcoming paragraphs and details presented thereof.

further investigated the case, and discovered evidence that the claim that 700 sheep were killed is rigged. Following a further examination of the case, the SCPC found evidence of officials' misconduct and filed a criminal charge in order to fully illuminate the facts. The case then grew into a big scandal that attracted the interest of media and politicians alike.

The SCPC's criminal charge led to several processes¹⁹⁶ in which a number of witnesses, judicial experts, the Ombudsman, court experts who were allegedly helping rig the scheme, were all part of the investigation. The Court ruled that the scheme was rigged and sentenced several persons, from the claimant of the rigged damage to those who assisted the scheme in the judiciary¹⁹⁷. The SCPC also pointed to Vladimir Bučkovski, the Minister of Defence as the time of the conflict who became the Prime Minister later in 2006, as a key person whose advisors and associates enabled the fabrication of evidence (Jordanovska 2006). However, the Court did not accuse Bučkovski as a suspect, nor made him part of the process (he was later, in 2013, sentenced to three years of prison for another corrupt act from 2001¹⁹⁸). Nevertheless, a number of the participants in the trial eventually received prison sentences, which is why the SCPC itself ranked the '*Baćilo*' case into the group of those few rare cases that can be considered successful in terms of judicial epilogue (A1 26 January 2007).

This case is a typical instance of *predatory enforcement style*. The SCPC demonstrated both high degree of zealotry and stringency, playing a role as the initiator of the whole process and later as a facilitator and expert body that contributed to the trial and, moreover, alerted the public to sustain the interest until the case is finished.

¹⁹⁶ See, for example: <http://www.vmacedonianews.com/2007/03/trial-on-bacilo-and-denationalization.html>
[Accessed: 20 October 2015].

¹⁹⁷ Macedonian Supreme Court issued a three-year sentence to Deputy Public Defender Miodrag Stevanović for abuse of office. The notary Nicolas Stojmenović received fourteen years of prison for fabricating the case. Isnifar Ismaili, the shepherd who received the initial damage for the 'killed 700 sheep', was sentenced to four years and six months of prison (*Dnevnik* 06 February 2010).

¹⁹⁸ Bučkovski was sentenced for misusing state funds in a programme of the purchase of spare parts for military tanks (Marušić 2013).

Crvenkovski's Swiss account

In December 2005, a weekly '*Focus*' ran a story that President Branko Crvenkovski possesses a concealed, undeclared bank account in Switzerland containing about \$200,000 (*Dnevnik* 05 December 2005)¹⁹⁹. Crvenkovski denied the allegations, adding that he will insist on a full clarification of the case because it incurs a serious damage to his image (*Dnevnik* 05 December 2005). The SCPC, however, insisted the facts be checked and invited the Directorate for Prevention of Money Laundering, Administration of Public Revenue, and Prosecutor to join the SCPC in solving the case (Mladenovska 2005).

In the months to come, the SCPC asked the American Express Bank, based in Switzerland, to provide the details about the account Crvenkovski allegedly possessed over there²⁰⁰. The SCPC additionally sent an explicit question whether the President holds about \$200,000 on this account, as claimed by *Focus* (who provided invoices that were said to confirm the suspicion). The bank, however, denied giving the details, whereas Crvenkovski himself showed no interest to agree to have the bank account publicly disclosed. The SCPC could not conclude the process because it lacked institutional mechanisms to force the 'other side' to reveal the data of interest. Additionally, the SCPC got a response that they are not recognised internationally as an authority within anticorruption networks that investigate such issues; the argument was that only official state prosecutors can do so. Resultantly, the SCPC could not conclude the investigation and the whole process ended there (M2).

¹⁹⁹ According to the regulation, failure to declare an asset, including bank accounts in the country and abroad, constitutes a breach of the Law (LPC 2002, Article 34). The official may be prohibited by the Court to dispose with such property (LPC 2002, Article 36) and if it is proven that the given asset was not obtained through the regular income, it shall be heavily taxed (LPC 2002, Article 36). Of course, demanding an investigation into the origins of the money and whether it constituted part of a tax evasion or money laundering scheme are further possibilities that the prosecutor and police can demand.

²⁰⁰ But they were waiting for a long period to receive the bank's answer (in Mladenovska 2005).

Again, the SCPC demonstrated *predatory* enforcement style. Regardless of the fierce reaction of the suspect, who as directly elected President of the state held the highest post in Macedonian politics, the SCPC decided to swiftly open a process which would establish the full facts and allow further steps to be taken. The SCPC also invited the President to testify, but he rejected. In spite of the lack of powers to bring the process to an end, the SCPC exhibited a high degree of zealotry and stringency nevertheless.

Gruevski's flats

Nikola Gruevski has been, at the time of writing, for almost ten years the Prime Minister of Macedonia. Gruevski came to power in 2006 and this coincided with the turnover in the SCPC, i.e. with the arrival of the second SCPC's Board. Back then, shortly before the turnover, it was discovered that Gruevski possesses two possibly undeclared flats²⁰¹. Likewise Crvenkovski's alleged Swiss accounts, Gruevski's flats, as undeclared assets, were said to indicate a breach of the legislation (LPC 2002, Article 34)²⁰².

At the time of the discovery of Gruevski's flats, the first Board was still in place. Launching an investigation into the case, the SCPC asked for details. Gruevski responded that the owner of the contentious flat is not him but his mother. He said that at the time when he declared the property, he did not live with his mother and therefore was not obliged to report the flat as it was his mother's property (*Utrinski Vesnik* 9 March 2006).

However, it was reported that the fact that Gruevski had moved out just several days before he declared his property is a contentious thing (*Vreme* 05 April 2006). Additionally, the question

²⁰¹ The Public Administration Revenue informed the SCPC about a potential case of undeclared flats of Nikola Gruevski (*Vreme* 24 February 2006).

²⁰² *Dnevnik* (25 May 2006).

was raised as to how to interpret the fact than an official's related person has an undeclared asset and whether the official himself shall be held liable for this. The Director of the Public Revenue Administration ascertained that, according to the law, Gruevski was obligated to report his parents' flats, regardless of whether he lived with them or not (*Dnevnik* 08 April 2006). Still, after a preliminary investigation, the SCPC concluded that Gruevski was not obligated to report the flat (*Vreme* 05 April 2006). Criticising this SCPC's decision, the Public Revenue Administration responded that they would file a criminal charge in order to inquire into how his mother obtained the three flats (*Dnevnik* 08 April 2006). However, following an inquiry, the court concluded the case by embracing Gruevski' argument.

This is an example that illustrates the application of the *aloof* enforcement style. Following the testimony of Gruevski's mother, which suggested that Gruevski had no rights over the property at the time of declaration, the SCPC ruled that the legal framework gives no grounds for further investigation. Despite dissenting voices coming from the Public Revenue Administration, and repeated calls for thorough investigation (*Večer* 18 September 2007), the SCPC closed the case by not calling for the harshest fine.

Discussion

Based on the empirical material reviewed in the sections above, what can we conclude about the determinants of the SCPC' enforcement? Has it been driven by the organisational, temporal, or leadership factors?

The institutional design allowed for certain safeguards of the SCPC's independence, but it also left the SCPC vulnerable to government's interference through certain channels. The appointment and sacking procedures, for instance, did not constrain the possibilities for government's pushback against the SCPC in case a harsh enforcement action is taken against the incumbent. Yet, in spite of the fact that it did not boast high formal independence, the SCPC

established and persisted in a harsh enforcement pattern during the whole of the first four-year term. The assertive and expansionary enforcement strategy, the zealous enforcement style and the absence of political selectivity, were the characteristics of the SCPC's enforcement all the way from 2002 to 2007. A large majority of the targeted officials came from the ruling camp. When the formal independence is lower, allowing for certain 'intervening' mechanisms to be deployed by the principal, such agency enforcement usually raises the prospects of government's pushback. However, in the SCPC's case, in the first stage, a scenario of political pushback through the use of principal's instruments did not play out. Thus contrary to the 'de jure independence matters' school, an ACA that does not enjoy high formal independence managed to sustain the harshest form of enforcement pattern. The first factor, from the 'organisational account, therefore finds no support in the SCPC's case.

The second hypothesised determinant of ACA enforcement from the 'organisational camp' is – organisational resources. The empirical evidence, however, suggests that poor resources did not preclude the SCPC from pursuing the harshest form of enforcement. During the first stage, the SCPC suffered severe resources shortages, yet it managed to advance the harshest enforcement pattern. Neither the poor funding, nor lack of staff, nor inadequate technical conditions sufficed to preclude a SCPC's harsh enforcement. Moreover, the rise in resources that started with the arrival of the second Board, from 2007 on, did not preserve/escalate the previous harsh enforcement pattern, as the organisational argument would predict. Quite the contrary, as the resource increases progresses over the second term - the SCPC's enforcement 'declined'. Thus, low resources did not prove a sufficient factor for precluding harsh enforcement, nor were increases in the ACA's resources accompanied by a harsher enforcement pattern. The empirical evidence therefore does not corroborate the 'resources matter' hypothesis.

Over time, the SCPC displayed significant variations in the enforcement. It was through abrupt shifts rather than gradual changes that these variations occurred. In the first stage (2002-2006),

a predominantly zealous style characterised the SCPC's enforcement action, in which complex and 'big-fish' cases were the central targets. Selectivity, directed at opposition parties, was not observed. With the arrival of the second stage, however, significant changes in all three elements of the enforcement pattern occurred. The strategy has shifted and focused on a 'shrank' terrain of the preventive tasks the legislation delegates to. The enforcement style became more diversified as an increasing number of non-zealous cases emerged. The level of political selectivity went up. The classical life-cycle argument (Bernstein 1955) stipulates that with aging, an agency will 'decline' its enforcement. The trajectory of the SCPC's enforcement was a downward one, indeed, however its 'downward' direction was not a result of sheer passage of time. The observed changes, of 'de-escalated' enforcement, in fact concurred with other processes that unfolded over time. The enforcement trajectory 'plummeted' in particular with the change in the personal structural of the Board. This suggests that it is the 'human factor' rather than timing as such that had implications for the SCPC's enforcement. The 'human factor' will be returned to somewhat later in the section; for the time being it can be concluded that the Macedonian case does not lend substantial support to the 'life-cycle' logic.

Turning to the second temporal factor, what was the role of political cycle in shaping the SCPC's enforcement? The SCPC saw several electoral cycles, whereby both chief parties (SDSM vs. VMRO-DPNE) alternated in power. The following graph displays how the SCPC dealt with 'big-fish' from government as well as opposition. Compared are the pre-election quarter periods (the three months dedicated to the campaign) with the 'regular' quarters (beyond the election campaigns):

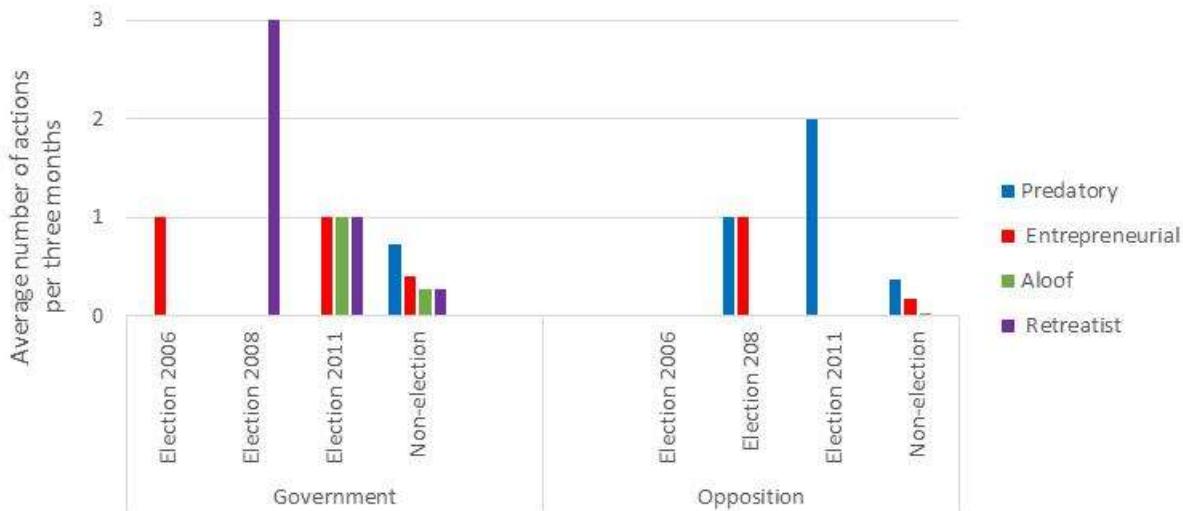


FIGURE 5.3 Comparison of SCPC enforcement actions in pre-election vs. non-election times (bars represent number of actions per quarter).

Source: Author's compilation, based on cases provided in the Appendix D.

The graph indicates two important things. First, from the second half of the graph, it is visible that the opposition was targeted more in the pre-election campaigns in 2008 and 2011 than during the 'regular' times. These actions were all undertaken in a zealous manner (the blue and red bars indicate the two variants of the zealous action, namely the 'predatory' and 'entrepreneurial' style). In the first, 2006 election, a different level of selectivity took place however. Rather than target the opposition, the SCPC seems to have exercised the 'pre-election silence' logic, as the 2006 campaign saw no single case launched against opposition.

The graph also reveals a more lenient treatment of the incumbent in the run-up to the 2008 and 2011 election. In both cases, non-zealous actions (the purple and green bars) were conspicuously present, and these were more frequent in the pre-electoral times than in the non-electoral times (2006: 3 'retreatist' actions; 2008: 1 'retreatist' action and 1 'aloof'; in 'normal times': 0.25 'retreatist' actions and 0.24 'aloof' actions on average), which also outstrips the number of 'zealous' actions that were directed at ruling officials. In other words,

in the election campaigns the SCPC's decreased zealotry and increased leniency toward government officials. Again, the 2006 election paints a different picture, albeit with only one case. In this single case, the approach had been zealous – when one high-ranking government official was chased for criminal liability²⁰³.

The following conclusions arise about the impact of political cycle. First, increasing selectivity did not appear in pre-election times under the first Board, but it did appear in pre-election times during the work of the second Board. Second, the two Boards displayed two different logics prior to elections. The 'pre-election' silence logic seems to have characterised the first Board, whereas the second Board espoused the 'help the government, hit the opposition' approach. Overall, the evidence suggests that the political-cycle has had implications for the SCPC's enforcement, but in two distinct logics across the two Boards. This further suggests that political-cycle does not stand as a factor operating 'in vacuum', but rather how it unfolds may have been a function of another - 'human factor'.

The final account seeking to explain ACA enforcement is the 'leadership-based' one. Up to now it has become clear that the role of the SCPC' leaders, the staff who were running the SCPC as members of the Board, has been crucial in shaping the SCPC' enforcement. The greatest shift in the enforcement pattern in the SCPC's history coincided with the personal changes in the Board. This shift brought about fundamental changes not only in all three elements of the enforcement pattern - the enforcement strategy, enforcement style, and political selectivity, but also in SCPC's behaviour in pre-election times. As the process-tracing illuminated, depending on who is running the SCPC – the agency behaved in different ways during the election campaigns.

²⁰³ Against Vlado Bučkovski, then Prime Minister and former Minister of Defense, for his alleged involvement in the affair 'Bačilo'.

The role of leadership is also relevant for the second thesis' research question – under what conditions is harsh enforcement possible? It could be seen in the SCPC's case that the underlying logic of enforcement during the first term was a reputation-seeking one. As the interviews and the public statements indicate, since the first days of its enforcement the SCPC sought to 'occupy' the turf that is crucial for the fate of big corruption scandals. This turf, of course, belongs to the police, prosecutor, and judiciary, in terms of legal design, but the SCPC's staff held that is not *exclusively* in the hands of these bodies in terms of policy implementation. The SCPC understood that it can exploit its anticorruption role for the purpose of stepping up the focus on those pressing issues that are the most important ones for curbing corruption. The SCPC was enforcing the delegated tasks, but at the same time it sought to assume the leadership in the broader anticorruption struggle in which it would coordinate, 'remind' and press the other anticorruption institutions, mainly from the area of prosecution.

The institutional design was conducive for this sort of strategy. The SCPC's staff, on the one hand, understood that the burden of proof for all anticorruption actions was on the classic anticorruption bodies, but it also sought to do 'its part' in investigations with as firmer evidence as possible. Since a large majority of cases, with only a few exceptions, did not reach an epilogue, they can be considered policy failures from the perspective of policy outcome. But, precisely this sort of development was beneficial for the SCPC as it proceeded to further advance own reputation through critique of the prosecutorial bodies. This, after all, earned the SCPC a solid reputation. A panel of 12 Macedonian anticorruption experts marked the first SCPC Board as by far the „most competent“ and most „reputable“, bringing it in sharp contrast to the second and third Board (Mangova 2013: 45). If the launched policies were taken over by the prosecutorial bodies and ended as successes, the SCPC would have no doubt had reason to claim credit, thus again gaining its terms of reputation - to the same or even a bigger extent compared to the policy failure scenario. Crucial for this 'politics of reputation' was the awareness of the widespread citizen cynicism toward officials and the vast discontent with corruption. It was clear that, more than the formal roles in the turf of prosecution, the

reputation among the key of all audiences – the electorate, may be a greater safeguard, on the one hand, and a lever for further investigations, on the other hand.

The hypothesis that preventive ACAs will find it easier to espouse a harsh enforcement because the preventive organisational model itself provides for a better constellation of reputational gains and losses therefore finds support in the example of the SCPC. It was precisely the organisational model that allowed the SCPC during the first stage to exercise the ‘politics of reputation’. Of course, for the harshest enforcement to take place, the ‘personal factor’ needed to be an ‘adequate’ one, but the point remains that the preventive organisational model itself provides, not prevents, reputation-seeking strategies.

Conclusion

In summary, the SCPC is another instance of the preventive ACA model that has been analysed in the thesis. The SCPC has commanded a wider set of competencies than the standard preventive ACA does, yet all of them pertained to the preventive role. The SCPC lacked coercive tools and commanded weak powers, more limited than standard preventive ACAs have.

In practice, SCPC demonstrated two opposite patterns of enforcement. In a first stage of its life, SCPC espoused a harsher form of enforcement pattern, featuring an assertive and expansionary strategy, zealous style with a number of “predatory” actions, and non-selective approach to ‘big-fish’. Following this four-year long stage, SCPC turned its enforcement ‘upside-down’ by shifting to an enforcement pattern characterised by a ‘shrinking’ strategy that focused primarily on the tasks set out in the legislation, diverse enforcement style which included an increasing number of non-zealous actions, and a notable rise in selectivity when dealing with ‘big-fish’.

Accounts emphasising importance of de-jure independence as a crucial determinant of agency enforcement are unable to explain the SCPC’s enforcement in the first stage of its life. In spite of a medium level of de-jure independence, SCPC managed to establish an assertive role, with

intense targeting of 'big-fish cases' and complex schemes of alleged corruption. SCPC did not need a high de-jure independence to espouse a harsh enforcement.

Nor did resources play a role in the way the 'capacity accounts' predict. With a low amount of resources, SCPC managed to sustain the harsh enforcement pattern throughout the first stage, whereas a subsequent rise in resources was accompanied by a steep decline in enforcement. Hence, resources played out in the opposite direction than predicted, demonstrating that greater resources can go with declining rather than escalating enforcement. (At least when it comes to the preventive ACA model). This suggests that giving additional resources to an agency may serve as a means of exchange between the principal and the agency in which the agency gets more for itself, but it may have been obliged, either explicitly or implicitly, to pay back for this sort of reward by 'bending' its enforcement. Alternatively, or complementary, granting more resources to an agency may also be a symbolic action that aims to demonstrate to external actors the government's commitment to a certain cause, i.e. curbing corruption, but which does not necessarily coincide with a genuine intent to enhance the policy itself. Translated into the context of new European democracies, those undergoing EU driven transition, this would mean than capacitating an ACA may be an attempt of the government to convince the EU in its intention to implement anticorruption principles. It is hardly surprising therefore that rises in resources might not be followed by the sort of change predicted by the 'capacity matters' theory.

Age as a factor did not show an effect, at least not in the way the classical regulation and agency scholars put forward. The phases SCPC went through were not conditioned by how old SCPC is, but rather by the factor of leadership.

The enforcement had largely been a function of SCPC's leadership. The main changes in the enforcement pattern resulted from personal changes in the SCPC's Board. While coinciding with personal changes, those fully-fledged shifts in the enforcement pattern, notably, took place

under the same or even more favourable organisational circumstances (e.g. with growing resources).

Election proximity played a role, too. SCPC used to modify its enforcement action in the run-up to elections, in two different ways across the two stages. In the first, SCPC's enforcement showed signs of the 'silence before elections' model, with almost no actions taking place (2006). In the second stage, however, elections tended to bring more of the 'politics of prosecution', through permanently zealous targeting of opposition and more favourable treatment of government. Political-cycle thus played a role as factor, yet in what direction it will direct the enforcement into - depended on leadership as a factor.

Overall, the decade of SCPC's work has shown that for achieving a harsh enforcement pattern most of the hypothesised determinants need not be present in the form that is predicted as necessary by the prominent theoretical accounts. However, one factor - leadership, has been able to override supposed constraints arising from 'unfavourable' values of the organisational factors, producing harsher forms of enforcement. Also, with an enhancement in some of the organisational factors, the enforcement pattern is not necessarily preordained to rise but it can also decline. In sum, SCPC is another instance of a preventive ACA where the role of most of the determinants has not proved to be in line with the starting claims derived from prominent theories.

Chapter 6 Croatia

CASE 5. Bureau for Suppression of Corruption and Organised Crime (USKOK)

The USKOK, the Croatian ACA, is the only suppressive ACA analysed in the thesis. This chapter will follow the standard chapter structure, beginning with the agency's origins, then moving to the organisational settings (de-jure independence; competencies and powers; organisational resources), before turning to the agency's enforcement. This will then be followed by a discussion and conclusion. However, due to the specific organisational model of the USKOK (suppressive model), the chapter needs to dwell on certain elements more than the previous chapters did. In particular, it will devote more attention to the analysis of how the agency's powers and competencies evolved, especially regarding the relationship between the USKOK and other anticorruption bodies. This flow is essential for the later analysis of the enforcement logic. With preventive ACAs, analysis of the constellation of powers and competencies does not entail thorough examination for the simple reason that, by the definition of the model itself, preventive ACAs do not share the competencies nor powers with the 'orthodox' anticorruption bodies (police, prosecutor, judiciary). When it comes to suppressive ACAs, however, the key to exploring their enforcement choices lies in understanding the constellation of roles and powers among these 'orthodox' anticorruption institutions.

Origins

After the fall of the authoritarian regime of Franjo Tuđman in 2000, a coalition led by the Social Democratic Party (SDP) came to power²⁰⁴. One of the declared priorities of the new government was tackling the widespread corruption. Besides being the cornerstone of the electoral manifest of SDP (Gazde 2000), the fight against corruption also featured as an

²⁰⁴ For more details about the elections for Croatian Parliament in 2000 see Mašić (2011:74-76).

imperative in the upcoming EU accession process²⁰⁵. Additionally, growing media reports²⁰⁶ about the widespread misappropriations of public funds that allegedly occurred in the 1990s further prioritised the question of corruption on the public agenda.

In response, the government established, in 2001, a law enforcement agency called the Bureau for Suppression of Corruption and Organised Crime (USKOK)²⁰⁷. This was the first Croatian specialised agency to deal with corruption²⁰⁸. Inspired by the famed Independent Commission against Corruption (ICAC) from Hong Kong, the USKOK followed the model of multifunctional suppressive agency, on paper (Kuris 2013: 4-5). However, in reality, the USKOK was intended to act more as the Lithuanian Special Investigation Service (STT), which focused on the suppressive function while not performing the preventive one (Kuris 2013: 4-5).

The role and position of the USKOK are defined by several pieces of legislation. The Law on Bureau for Suppression of Corruption and Organised Crime²⁰⁹ (LBSCOC) is the fundamental piece of legislation that established the USKOK as a law enforcement agency within the State Attorney Office. This law first came into force in late 2001²¹⁰ and has since undergone several amendments. The Criminal Procedure Act²¹¹ (CPA), which sets out the investigation procedure

²⁰⁵ In this period the government and opposition reached a consensus about European orientation of the country (Kuris 2013: 4).

²⁰⁶ Josip Kregar, the Dean of the Faculty of Law of the University of Zagreb said: “When Tuđman died, there was the first indication that corruption existed. Mainly because of the media.” [...] “There were hundreds of new scandals regarding corruption” (Kuris 2013: 3).

²⁰⁷ For more details see USKOK’s official website: <http://www.dorh.hr/Default.aspx?sec=607> [Accessed: 18 October 2015].

²⁰⁸ *ibid.*

²⁰⁹ *Official Gazette*, 88/01.

²¹⁰ See USKOK’s official website. Available at: <http://www.dorh.hr/Default.aspx?sec=607> [Accessed: 18 October 2015].

²¹¹ *Official Gazette* ZKP/97, 27/98, 58/99, 112/99, 58/02, 143/02, 115/06, 63/03, 152/08, 76/09, 80/11, 121/11, 143/12, 56/13, 145/13.

in the Croatian legal system, defines the role of the police, court and prosecutors in criminal proceedings, the elements that determine the possibilities and boundaries to the USKOK's control over the shared turf of prosecution. The Criminal Code²¹² (CC) is another particularly relevant piece of legislation, defining what constitutes particular offences, some of which are delegated to the USKOK's authority by LBSCOC.

As an organisational unit of the State Attorney Office, the USKOK is also subject to the regulation of the Law on State Attorney²¹³ (LSA). Three years into the USKOK's existence, with the incorporation of money-laundering into the set of criminal acts that the USKOK is responsible for, a Law on Prevention of Money Laundering and Financing of Terrorism²¹⁴ (LPMFT) became relevant too. The table below summarises the key dates in the development of the crucial laws that shape the mission, work, and position of the USKOK:

The work of the USKOK, as underlined in the table note, has been subjected to numerous legislative changes that took place over the course of the analysed period. These changes have profoundly transformed the organisational architecture of the USKOK. None of the other four ACAs analysed within the thesis experienced as much transformative structural changes as the USKOK did. While not altering the organisational model of the USKOK, these changes broadened the scope of the USKOK's competencies and also drastically extended its powers. The USKOK has therefore undergone a process of ever-increasing competencies and powers within the given suppressive model.

²¹² *Official Gazette* 29/2000, 51/2001, 111/2003, 105/2004, 125/11, 144/12, 56/15, 61/15.

²¹³ *Official Gazette* 76/09, 153/09, 116/10, 145/10, 57/11, 130/11, 72/13, 148/13.

²¹⁴ *Official Gazette* 75/08, 54/13.

TABLE 6.1 Legislation relevant for USKOK's work.

Law	Adoption (amendments)	Why is the law relevant
Law on Bureau for Suppression of Corruption and Organised Crime (LBSCOC)	2001 (2005, 2007, 2009, 2011)	Defines the institutional position of USKOK - its organisational model, competencies, powers, autonomy.
Criminal Code (CC)	2002 (2007, 2009)	Defines the offenses USKOK needs to deal with; it details what sorts of conduct constitute these offences and what sanctions they imply.
Law on State Attorney (LSA)	2001 (2008, 2009, 2010, 2011, 2013)	Defines the position of the hierarchically superior State Attorney and State Attorney Office. The law sets out under what conditions the State Attorney has precedence over the USKOK to take the lead in anticorruption actions and additionally what the nature of mutual cooperation is.
Law on Money Laundering (LML)	2005	Defines the criminal offenses that make up money laundering, the role of USKOK in their prosecution, and more generally the relevant criminal policy.

Note: Official Gazette codes for the amendments cited in brackets can be found in Bibliography.

Before describing the evolution of the USKOK's competencies and powers, its de-jure independence will be reviewed. The following part analyses what sort of formal independence the USKOK relied on.

De-jure independence

The USKOK operates as an independent law enforcement agency which is not subsumed under the governmental hierarchy. It is positioned under the umbrella of the State Attorney Office

and has a detached and asymmetrical status compared to the other prosecutorial offices²¹⁵. The USKOK commands a high degree of formal independence when it comes to personal, financial and organisational aspects.

The USKOK is characterised by the ‘Director General’ decision-making model, in which the powers rest with a Director rather than a Board as a collective decision-making body (LBSCOC 2001, Article 3). USKOK’s director is appointed by the State Attorney for a term of four years (LBSCOC 2001, Article 3 and 4). His/her tenure is renewable, with no limitations in regards to the number of reappointments (LBSCOC, Article 4). Based on the prior opinion of the State Attorney Board, the State Attorney nominates a Director, subject to a subsequent assessment of the Minister in charge (LBSCOC, Article 3), i.e. Minister of Justice. A USKOK Director can be dismissed for the same reasons as a State Attorney (LBSCOC, Article 4)²¹⁶. Having no formal duties toward the government or parliament, the USKOK is accountable for its work to the State Attorney.²¹⁷

Deputy Directors, who may head respective departments, assist the work of USKOK Directors²¹⁸. Deputy Directors have the status of Deputy State Attorneys²¹⁹. Their number is set

²¹⁵ This status derives from the overall setup provided by LBSCOC and LSA.

²¹⁶ This occurs in cases of (1) unlawful, unfaithful, or insufficiently professional performing of the tasks; (2) failure to attain satisfactory results; (3) performing tasks by way of breaching the acts that regulate the matter; (4) failure to file requests for criminal investigation requests, as prescribed by the legal provisions; (5) perpetration of the crime - abuse of office; (6) conviction of a criminal act, loss of legal capacity, or two consecutive assessments that she has performed the m in an unsatisfactory manner (LSA 2001, Article 100).

²¹⁷ Which follows from the provision that the status of the USKOK’s prosecutors, its Director included, is regulated in the same manner as the status of the other prosecutors under the director of State Attorney (LBSCOC 2001, Article 4).

²¹⁸ Whose number grew from the initial two in 2002 to the current five (department for research and documentation; department for prevention of corruption and public relations; department for lawyers and prosecutors; department for investigation of assets acquired through crime; department for international cooperation and joint investigations).

See USKOK’s website: <http://www.dorh.hr/Default.aspx?sec=606> [Accessed: 18 October 2015].

by the competent Ministry, on State Attorney's proposal²²⁰. USKOK Director may consult Deputies but they are not formal decision-makers (unless they are substituting the Director) (LBSCOC 2001, Articles 5-7).

Since it is one of the constituent prosecutorial offices, USKOK's budget is set by the State Attorney²²¹, whose budget is previously allocated in a conventional way - through the state budget, drafted by the government and adopted by the National Parliament on an annual basis.

The given design yields an extremely high degree of de-jure independence – 0.87 Girardi's points (see Appendix A for full calculation). This index is significantly bigger than the levels of independence of the other four agencies' analysed in the thesis, including the most independent ones such as the Committee (0.67) and the Agency (0.77). More broadly, it would not be surprising if the de-jure independence of the USKOK is among the highest in the world.

Thanks to the high de-jure independence, the USKOK has enjoyed strong institutional safeguards - ex-ante as well as ex-post - against politicians' interference. According to the organisational theory, this sort of design is expected to pave the way for autonomous pursuit of policy. If this argument bears merit, the observable implication would be that the USKOK pursued the harshest form of enforcement throughout the whole of its lifespan.

²¹⁹ LBSCOC 2001, Article 5

²²⁰ LBSCOC 2001, Article 5.

²²¹ LSA 2001, Article 132-134..

Institutional Design

Competencies

This part discusses the competencies that the USKOK has been entrusted with. The initial tasks that were under the USKOK's jurisdiction, from 2001 to 2005, will be described first. Then, it will be explained how legislative amendments broadened the scope of the USKOK's competencies over time. Some of these developments made important changes to the USKOK's mission and led to the establishment of different priorities in its enforcement over the years.

The Law on Bureau for Suppression of Corruption and Organised Crime (LBSCOC) regulates the work of the USKOK as a specific agency within the State Attorney Office. It enumerates the offenses the USKOK prosecutes. The Criminal Code (CC), on the other hand, defines precisely what sorts of behaviour and violations constitute the respective offenses enumerated in the LBSCOC. If the two laws receive legislative changes, these need to be harmonised. For example, if the LBSCOC incorporates novel offenses into the catalogue of the USKOK's duties, the CC needs to contain definitions of these offenses.

The initial arrangement accorded to the USKOK the role of suppression of both corruption and organised crime²²². Essentially, the USKOK performs the classic prosecutorial role, whereas the preventive role that is mentioned as part of its mission features as optional²²³. Tripalo (2005: 601-604) categorised the criminal offenses that the USKOK prosecutes (according to the initial design²²⁴) in the following way:

²²² The suppressive role is obvious from the very name – Bureau for *Suppression* of Corruption and Organised Crime – which is confirmed by the overall legal setup permeated by suppressive tasks that were assigned to the USKOK.

²²³ See, for example, the explanation that was passed to the Parliament for a reading of a LBSCOC 2002 draft in which it is stated that the USKOK will maintain the preventive role as part of its institutional mission: www.sabor.hr/fgs.axd?id=5051 [Accessed: 17 September 2015].

²²⁴ LBSCOC 2001 (*Official Gazette*, 88/01).

- *corruption* (abuse of bankruptcy²²⁵; abuse of office²²⁶, unlawful mediation²²⁷, giving and receiving of bribes²²⁸);
- *organised crime* (various acts that can be subsumed under the “association for perpetuation of criminal acts”²²⁹);
- *international crime* (any of the previous acts, whose place of perpetuation, preparation, planning, giving of guidelines or control, has an international dimension; for example, disloyal competition in international affairs, human trafficking, money-laundering, custom smuggling, and so on²³⁰).
- *individually enumerated offenses*, which are put under the USKOK’s jurisdiction and are in connection with some of the above crimes, but which do not include all forms of these crimes as defined by the CC (abuse in bankruptcy²³¹; disloyal competition in international trade²³²; abuse of office²³³; illegal intermediation²³⁴; all sorts of giving and taking of ²³⁵bribe).

All of these criminal offenses (abuse of bankruptcy, unlawful mediation, and bribery) can be committed by any subject - by business people, ‘ordinary’ citizens, politicians, and so forth. However, it is important to mention that the constellation of the CC and LBSCOC was so peculiar that those crimes that involved the abuse of office by the holder of a political function could not be prosecuted by the USKOK (for reasons explained later). For instance, if a politician

²²⁵ Criminal Code 51/01, Article 283.

²²⁶ *ibid.*, Article 338.

²²⁷ *ibid.*, Article 343.

²²⁸ *ibid.*, Articles 347 and 348.

²²⁹ *ibid.*, Article 333.

²³⁰ These include a number of offences with an international dimension that are contained in the Criminal Code.

²³¹ Criminal Code 51/01, Article 293.

²³² *ibid.*, 51/01, Article 289.

²³³ *ibid.*, Article 338.

²³⁴ *ibid.*, Article 343.

²³⁵ *ibid.*, Articles 347 and 348.

offers or takes a bribe, say as a member of a company's Board, he or she may be prosecuted by the USKOK just as any other citizen accused of the same offense. But, the USKOK's jurisdictions did not involve those offenses that are committed through the utilisation of the political position, for instance, by organising corruption networks from a government or ministerial position. The consequence of this is that, from 2001-2007, the USKOK could not prosecute politicians for the most prominent sorts of crime that politicians tended to commit, whether for abuse of power or abuse of office.

The second group of offenses that the USKOK was responsible for prosecuting consists of classic wrongdoings which may involve, but are not restricted to, corruption. These include organised endeavours and associations, normally enacted by a group of three or more people²³⁶. Possession of illegal arms or trade in narcotics are some of the most typical crimes in this group. A preliminary review of the structure of the crimes the USKOK addressed over the course of the first four years operation (2001-2005), reveals that these crimes constituted the largest portion of enforcement.

The third group of offenses are those with an international dimension. Their key characteristic is that the act of planning or perpetuation is carried out on an international territory, whereas the rest of the activity was undertaken on the territory of Croatia. A large portion of these crimes involve smuggling – of people, goods, drugs and arms. Others are more 'white-collar' in nature; money laundering or 'disloyal business competition' are some examples of these 'white-collar' crimes.

The crimes from the fourth group include a diverse mix of offenses from the first three groups, whose length of sentence is no higher than five years of imprisonment. Municipal courts are typically in charge of the crimes that imply up to five years of imprisonment. However, because

²³⁶ The Criminal Code defines a "criminal association" as a group involving three members at least. For example, one of recent versions of the Criminal Code (114/12) has this definition in Article 328.

the given crimes were seen as particularly pernicious for a society (regardless of the amount of 'guilt' of the suspect, whether he or she was the least important link in the group or the major perpetrator), they were placed under the USKOK's responsibility (Tripalo 2005: 605).

Geographically, the USKOK is competent for the whole territory of Republic of Croatia and it is not constrained by the jurisdictions of local courts or prosecutors (Tripalo 2005: 13). Four special regional courts - in the cities of Zagreb, Rijeka, Split, and Osijek - were established to match the USKOK's purposes²³⁷. When they deal with USKOK-related trials, these four courts' judicial councils take on a specific structure composed of professional judges only (three of them sit on the council). No lay-judges are allowed to participate in the processes prosecuted by the USKOK. These crimes are considered so important that the highest degree of secrecy is needed and, moreover, professional expertise is expected to lead to better quality of trials than the 'citizen wisdom' of the lay-judges would do (Tripalo 2005).

Aiming to dispel the ambiguities within some provisions caused by linguistic 'imprecisions', the first amendment to the LBSCOC was passed in 2002²³⁸. Yet, the scope of jurisdictions remained unchanged. The next amendment, from 2005²³⁹, harmonised the USKOK's competencies listed in the LBSCOC with novel definitions of certain crimes that the CC adopted. Resultantly, the LBSCOC introduced two new competencies to the USKOK – prosecution of bribe-taking in business and prosecution of bribe-giving in business (LBSCOC 2005, Article 7).

By 2007, the USKOK could not yet prosecute political corruption. As explained in the Annals of the Croatian Parliament (2007: 13), the LBSCOC's catalogue of crimes²⁴⁰ does not contain this sort of offense because it would stretch the purpose and mission of the USKOK beyond its

²³⁷ See USKOK-s official website: <http://www.dorh.hr/Default.aspx?sec=606> [Accessed: 20 October 2015].

²³⁸ *Official Gazette*, 12/02.

²³⁹ *Official Gazette*, 33/05.

²⁴⁰ Article 21.

definition. The USKOK's mission centred on suppression of organised crime and corruption, whereas the 'abuse of office' or 'abuse of power' did exist as a criminal act in the Croatian legal system. However, this does not necessarily involve 'organised crime and corruption', so the article from the CC that defines abuse of office or power as a criminal act (Article 337) was not incorporated into the USKOK's competencies which are defined by Article 21 of LBSCOC (Croatian Parliament 2007: 13).

In the period from 2004 to 2007, the EU encouraged Croatia to pass amendments of the CC and LBSCOC which would enable the USKOK to prosecute high-level political corruption (C2, C3; Kuris 2013: 5-6). In 2007, the Croatian government changed the legislation in the direction that the EU pledged for. The amended law, from 2007, mandated the prosecution of abuse of office or power to the USKOK²⁴¹. This was the key event which paved the way for tackling high-level political corruption, perpetrated through networks of political functionaries and by so called official persons.

The amendment was a milestone in USKOK's life:

"That (the 2007 amendment of the LBSCOC, prim.aut) was the turning point... Just look at the record of actions after 2007, compare it to the 2002-2007 period, and you'll see the difference. Had the amendment not been adopted, no ministers could have been convicted ever" (C3);

"The year 2007 brought a new era because we finally got the opportunity to chase politicians. Up to that point, we could prosecute them, but only on grounds we could use for other citizens too.... however, the major crime the politicians benefit from is the abuse of office was and up; unfortunately, until 2007 it was beyond our reach" (C1).

This extension of jurisdictions, coupled with parallel enhancements of powers, not only broadened the basis for prosecution, but also drastically increased the USKOK's control during

²⁴¹ A procedurally proper way to include the given offense under USKOK's jurisdiction was found by amending the LBSCOC by incorporating Article 337 of the CC (Croatian Parliament 2007: 13).

the process of prosecution. Resultantly, the USKOK's position among the surrounding anticorruption partners significantly strengthened. From 2007, the USKOK became the crucial anticorruption actor to deal with political cases of corruption.

To summarise, the USKOK started off as a suppressive law-enforcement ACA, which was mandated with the prosecution of classic forms of organised crime and corruption. Up until 2007, lacking jurisdiction over major forms of political corruption, the USKOK could not prosecute the key offenses - the abuse of office and power. A 2007 amendment permitted this, the result of which was the ability of the USKOK to address the most salient forms of political corruption.

Powers

The suppressive model of ACA is characterised by prosecutorial powers. In prosecutorial matters, the question of institutional powers is, to a large extent, a relational thing. How strong the powers of one body are, is determined by how strong the powers of the other anticorruption bodies that participate in the prosecution are. In other words, the involved authorities through concerted actions affect the respective powers of the anticorruption partners. Depending on this sort of relationship – between the police and the prosecutor, between the prosecutor and the court, between the prosecutor and witnesses, among others – a variety of constellations of power is possible. Hence, to understand the USKOK's powers, we need to consider its relationship with the prominent anticorruption bodies it collaborates with.

This section will therefore review the role of three major institutions in the criminal procedure in Croatia – the police, the USKOK, and the judiciary. The position of suspects, witnesses, and other parties such as state institutions (e.g. the Tax Office, the Ministry of Finance) or private companies (e.g. banks), will be considered as well. The analysis will start with general characteristics of the Croatian criminal procedure, explaining those relations between the key

anticorruption bodies that have remained the same from the first days of USKOK's life. Thereafter, the legislative changes from 2002 to 2012, which significantly altered the balance of power of the USKOK vis-à-vis the other bodies in the criminal procedure will be reviewed, in a chronological order.

According to the Criminal Procedure Act (CPA)²⁴², the criminal procedure consists of three stages: (i) preliminary proceedings, (ii) trial, and the (iii) appeal (following the trial) (Čačković 2010: 80). The preliminary proceedings are crucial for the forthcoming course of a trial, because the way that the indictment is corroborated by evidence directly impacts on the prospects of the suspect(s)' conviction. The stage of preliminary proceedings includes three key sorts of activities (Krbec 2002: 242)²⁴³:

- (a) pre-investigative proceedings;
- (b) investigation;
- (c) indictment.

Pre-investigative proceedings result in a collection of data which will be used to open an investigation. This data will not comprise the indictment in the later stages (rare exceptions exist, see Annals of the Croatian Parliament 2013: 8-10). In the next phase, that of the investigation, the prosecutor seeks to bring an indictment by gathering evidence that proves the suspect(s)' crime. If the court evaluates the evidence as conclusive, a trial starts²⁴⁴.

The USKOK, the police and the judiciary have specific roles within each of the stages of the preliminary proceedings, whereas these individual roles have real implications for their powers. As is generally the case with prosecutorial bodies in other states, two options are possible in

²⁴² All versions of the law, regardless of the amendments that have taken place in the meantime.

²⁴³ Again, these are the three stages that are defined by all versions of the CPC.

²⁴⁴ See, for instance, *Official Gazette*, 80/11 (CPC, Articles 216 to 238).

pre-investigative proceedings (Čačković 2010: 82-84; Novosel and Dundović 2006: 604): (i) the police will inform the USKOK about a criminal act they established; (ii) the USKOK will acquire information about a committed offense from other sources.

In case of the former, the police will act on spot, *ex officio*, and will inform the USKOK about the criminal act within the 24 hours (Čačković 2010: 82)²⁴⁵. For example, if the police discovered a criminal group smuggling arms, a process of arrest and seizure will follow. After this, the evidence will be submitted to the USKOK. Then, based on judgment of how strong the evidence is, the USKOK might either demand the police to collect more evidence or it can go straight to the next stage – the investigation. The second possibility is that the USKOK acquires information about a crime through non-police channels (e.g. from whistle-blowers, accomplices in the crime, the media). The next step would involve a USKOK's order to the police to collect further evidence in order to decide whether grounds for an investigation exist (Čačković 2010: 84).

During the pre-investigation stage, the police might perform independently, by acting 'on the spot', but - according to the arrangement from the time of the USKOK's creation - the police could not act on its own accord during a formal process of investigation; instead it needs a court order for particular measures to be undertaken (Čačković 2010: 88). In the stage of investigation, the police are a tool in USKOK's hands. However, to deploy the police forces, the USKOK needs a court's approval²⁴⁶. For example, to use special investigative methods such as wire-tapping or sitting-operations, the USKOK must justify the choice of these methods to the court²⁴⁷. Given this, it can be regarded that the key role in the investigation stage was on paper entrusted to the USKOK, but in practice its powers are constrained by court's decisions.

²⁴⁵ LSBCOC (*Official Gazette* 76/09, Article 24).

²⁴⁶ CPA 2002 (62/03, Article 193).

²⁴⁷ *Ibid.*

Čačković explained that:

“all [...] measures are determined by the judge (investigative, prim. aut), by an elaborated written court warrant, whereby the police carry out the measures and they are obliged to produce daily reports and a documentation of the technical record which they shall submit to the prosecutor, if demanded, and to the investigative judge; upon completion of the measures (the overall data collection process, prim. aut) a separate report should be submitted with the compiled documentation comprising photo, video, audio, or electronic data” (2010: 90).

The USKOK had a tool for data collection in investigations, but whether this tool will be used in practice was not a matter of USKOK’s independent decision. This sort of dependence on others (the court in the first place) was frustrating for the USKOK’s staff:

“Sometimes a few hours can make a key difference for a case and with each day of anticipation of the court’s approval of our request to deploy the police force - our chances to capture the evidence may diminish drastically. Criminals tend to change plans, unintentionally or because of leaks, or they may have done something faster than they initially expected... Anyway, the waiting times from the court were an incredible impediment to our work” (C1).

In the last stage of preliminary proceedings, upon completion of the investigation, the USKOK decides about filing an indictment. The court then assesses whether the submitted evidence meets the criteria set out in the CPA and whether it is conclusive enough for a trial to be launched²⁴⁸. The police and the prosecutor play no role in this stage, as the utmost discretion and power lie with the court.

To summarise the initial constellation among the three key anticorruption bodies – the USKOK (prosecutor), the police, and the court - in the different stages of the criminal procedure different bodies held crucial power. In pre-investigative proceedings, the police played a central role. In the investigate stage, the key actor was the USKOK. However, the supervisory role of the court reduced the USKOK’s power. In the indictment stage, the judiciary was the key actor.

²⁴⁸ CPA 2002 (62/03, Articles 341 to 367).

This does not suggest that the USKOK was irrelevant during the pre-investigative proceedings, or that the police and court played marginal roles in investigations. It instead highlights which players were central across the stages.

The constellation of powers explained above was in place from 2001 to 2007. From 2001 to 2012 there were a number of legislative amendments, across all relevant laws (LBSCOC, CC, CPA, and the likes). All changes within these amendments that shaped the powers of the key actors in the prosecution process worked in one direction: they were, to a lesser or greater extent, adding to the USKOK's powers. The USKOK was thus gaining ever-increasing powers over time vis-à-vis the police and court. Its position was also strengthening toward suspects and other parties such as other state bodies, private entities and international partners. The table below summarises the key developments in the legislation that shaped the power of the USKOK in the criminal procedure:

TABLE 6.2 Overview of evolution of USKOK's powers (2002-2013).

Year, Amendment	Change in powers over police	Change in powers over court	Change in powers over suspects and third parties
2005, LBSCOC	USKOK oversees and coordinates police investigations (which is not typical of traditional prosecutors).	A Judge Executor post introduced (a person who tracks convicts' behaviour in detention and informs USKOK about her contacts, habits etc.)	<p>Banks must provide data on USKOK's request (subsequently annulled by derogations in a Law on Banks).</p> <p>USKOK becomes authorised to seize assets during an investigation.</p> <p>Joint investigations with foreign bodies introduced (concerted actions and swift exchange of data).</p> <p>Data request powers introduced over the Ministry of Finance.</p> <p>All state bodies and private subjects became obliged to inform the USKOK if they spot a suspicious behaviour that may indicate a crime.</p> <p>Use of special techniques introduced: undercover and sitting operations, phone tapping (all subject to judicial review).</p>
2007, CC			Introduced '48 hour' custody.
2009, CC, CPA	<p>Police specialises in matters under USKOK's jurisdictions; a special force PNUSKOK formed to match USKOK's needs and structure.</p> <p>Accord on data exchange between USKOK and Police (during the investigation stage) signed.</p>	<p>Judicial investigation abolished > Prosecutor investigation introduced.</p> <p>USKOK court teams introduced (specialised judges, with higher pay and special powers).</p>	<p>Asset forfeiture: 'guilty until proven innocent' principle introduced.</p> <p>The institute of 'plea bargain' introduced.</p>

Note: Official Gazette codes for the amendments cited mentioned in the left column can be found in Bibliography.

The 2005 amendment of the LBSCOC included changes in the USKOK's powers over the police, over the court and over other parties. The major change that resulted from this amendment was that of USKOK's increase of powers over 'third' subjects.

The amendment introduced the possibility for the USKOK to coordinate and oversee the police during investigations. To facilitate mutual coordination, two police officers were foreseen to be physically located in the USKOK²⁴⁹. However, this neither materialised in practice nor was accompanied by provisions which would oblige the officers to comply with USKOK's orders (C2). Thus, although the USKOK's power over the police increased to an extent, the main problem of poor coordination in their relationship persisted. Among the key resultant problems were the possibility of the continuation of police's under-enforcement of orders, leaking of details from the investigations and the collusion with suspects (C4). It is known that the police forces generally come from a politicised environment, where the possibilities for influences 'from the above' are abundant despite the notion that the police should be insulated from political influences. Resultantly, the potential for the obstruction of USKOK's work, or for its inability to control the process of prosecution, especially when the USKOK targets highly-placed officials, remained significant after the 2005 amendments. In that sense, the amendment made in 2005 did not bring the much-needed power to the USKOK to utilise the police in a way that would address those challenges that were previously observed during the enforcement practice.

The key enhancement of the USKOK's powers was over 'third parties'. The 2005 amendment introduced a host of measures in that regard. One of the major problems in the previous period concerned data collection. According to the prior legislation, in the period from 2001 to 2005, the USKOK was not authorised to order state bodies or private entities to provide data that may be vital for an investigation. Such data included information regarding property, bank accounts, or previous patterns of behaviour of a suspect in financial transactions, to name a few. With the 2005 amendment, the USKOK obtained powers to overcome these challenges. The LBSCOC

²⁴⁹ Article 21.

namely introduced compulsory provision for banks of the data about clients' accounts, on USKOK's request (subject to judicial review) (Novosel 2004: 21). Furthermore, the Ministry of Finance became obliged to provide data that was regarded as potential traces of evidence in investigations (Novosel 2004: 24). The next novelty concerned asset forfeiture. The USKOK became authorised to demand seizing of assets during an investigation (Novosel 2004: 22). Next, joint investigations with foreign bodies were introduced as well (Novosel 2004: 7-10). This was intended to aid the fight against cross-border crimes such as money-laundering. Another important change in USKOK's powers came from the introduction of the obligation for state and private entities to notify ex-ante the USKOK of any sort of suspicious conduct they spot.

The possibility to apply special investigative measures such as undercover operations, sitting operations and special surveillance techniques were introduced as well (Kuris 2013: 6). Later on, Danko Cvitan, a Director of the USKOK, recalled that the "special measures enabled USKOK to capture targeted evidence about two thirds of the time" (Kuris 2013: 8). Not only did they help collect sound evidence, they were resource-saving too. Yet, the application of special investigative measures remained subject to judicial review (Kuris 2013b: 6): approval up to 30 days following a USKOK's request remained a necessary measure. Additionally, since the police carry out its implementation in practice, it crucially directs the operation.

In summary of the 2005 amendment, the USKOK's powers were significantly enhanced. Most importantly, USKOK's evidence gathering potentials greatly improved. However, the constellation of powers among the police, the court and the USKOK did not substantively transform. While the USKOK's toolbox expanded, the way the new tools were activated and applied remained the same - still largely dependent on the police's and court's action.

In 2008, an amendment of the CPA provided power to the USKOK in witness interrogation. Previously, it had been the police who interrogated witnesses (the latter could be held up to 24 hours in detention). With the 2008 CPA amendment, the USKOK gained the possibility to order

a 48-hour custody²⁵⁰. In addition, the investigative judge can extend the custody for up to 30 days, for all sorts of crime, and an additional period of up to 12 months is possible for grave offenses such as war crimes, corruption, or organised crime (the latter two are under the USKOK's competencies)²⁵¹. This was an important development, which brought the USKOK considerable leverage in evidence collection. The benefits included swifter acquisition of information, avoidance of delays in the USKOK-witness communication (which had previously been mediated by the Court) and greater manoeuvring space to persuade witnesses to act against the suspect:

“Before 2008, we had been quite frustrated by defendants’ lawyers because they were in position to get to key witnesses before us, to make up a story in advance, to dissuade them from providing information, sometimes to threaten them, to temper with the evidence, to figure out explanations for critical details, and so on. And when you deal with corruption, especially with high-ranking officials, it is almost impossible to make a sound indictment if the suspect takes advantage of this possibility, influencing the key witnesses through his attorney. The status quo had been that one month should elapse before we become authorised to speak to witnesses; do you know how many things you can one do for one month?

So we demanded changes to the Criminal Code and finally in 2007 we were given the power to hold witnesses for 48 hours. Two full days of interrogating, in our premises (!), is a good starting point. And if the custody is extended to a month or more, our possibilities over the witness are far more extensive... What turned out soon after the adoption of the amended Criminal Code is that it drastically complicated the other side’s position and stripped it of an important mechanism that served to obstruct indictments” (C1).

This novel power reduced USKOK’s dependence on the police to some extent. From 2008 on (more precisely, from 2009, when the amendment came into force), the police could not interfere with the investigation at this part of the criminal procedure. The nature of the direct

²⁵⁰ CPA, *Official Gazette* 152/08, Article 90.

²⁵¹ CPA, *Official Gazette* 152/08, Article 132.

USKOK-police relationship, however, remained unchanged. In that sense, it can be said that the USKOK's power increasingly grew, yet its control over the police remained limited.

The last major legislative change concerning USKOK's powers took place in 2009. It included changes to two pieces of legislation - CC and CPA. Unlike the previous amendments, these ones led to a substantial transformation of the relationship among the USKOK, court and police. The major novelties that were introduced were:

- (a) a special police force, named PNUSKOK, was formed to accommodate the USKOK's needs and structure (Vukadin *et al.* 2013: 44);
- (b) *judicial investigation* was abandoned and *prosecutorial investigation* was adopted (Đurđević 2014: 65, 67-68);
- (c) *plea bargain* was introduced (Kuris 2013: 13);
- (d) forfeiture of assets under the principle '*guilty until proven innocent*' was introduced²⁵².

The above innovations resulted in an unprecedented rise in USKOK's powers in prosecutorial matters. The USKOK became a sort of 'superior' to the police and court, since it gained the possibility to set the dynamics of investigations, the one element which has the largest impact on the trial in terms of prospects of conviction. The USKOK's dependence on the court in the pre-trial processes greatly lessened and, moreover, the police were, in a way, subsumed under the USKOK's control (specifically, the special police force PNUSKOK). Overall, the USKOK emerged from the 2009 amendments as the prime actor in the police-USKOK-court triangle. Rather than being 'inhibited' by the other two institutions, it gained abundant possibilities to deploy them for the sake of stronger indictments. The following elaborates each of these changes from 2009 in more detail.

²⁵² "[...] it is assumed that all of a defendant's property was acquired through criminal offences unless the defendant can prove the legal origin of the assets in question" (U.S. Department of State. Bureau of Economic and Business Affairs 2014).

The detachment of the police from the USKOK, that is the inability of the USKOK to shape the way the police will behave in an investigation, had been one of the key factors behind the lack of USKOK's powers. This led to problems in coordination, in which the police can be both a detractor as well as a 'good partner' in carrying out investigative activities (C1). To address this deficiency, the legislator formed, in 2009, a new special police unit named PNUSKOK, to accommodate the USKOK's needs in structural and even cultural terms. PNUSKOK is meant to work in close cooperation with the USKOK, to specialise in matters under the USKOK's jurisdictions (from legal to operational), to organisationally replicate the USKOK's structure and to undertake training which would make it better understand the need and principles that drive the USKOK's work (Kuris 2013: 9). The PNUSKOK replicated the USKOK's geography, with four offices set up in the four cities (the USKOK has had branches in Zagreb, Rijeka, Split, Osijek). Due to this tight collaboration and proximity between the USKOK and PNUSKOK, they communicated directly since 2009 and their concerted work has been more efficient (C1, C2)²⁵³. This also allowed a greater degree of secrecy in the work and drastically reduced the prospect of external interference, primarily from the political level, into the investigations. Resultantly, the risk of information leaks reduced.

The abolition of the judicial and the introduction of the *prosecutorial investigation* was another milestone in the USKOK's enhancement of power. The institute of prosecutorial investigation comes from the Anglo-Saxon legal tradition (Cryer *et al.* 2014: 426), where the court's focus and powers are in the process of trial, whereas the authority over the investigation rests fully with the prosecutor. The prosecutor, in other words, decides about investigative measures, the dynamics, and the steps that need to be undertaken before an indictment is filed. In doing so, the prosecutor is not restricted by the 'veto power' of the judge. The introduction of the prosecutorial investigation in 2009 therefore represented a fundamental change in the criminal procedure - it transferred one of the key powers to the USKOK. With the prosecutorial

²⁵³ *ibid.*

investigation, Croatia received a legal institute that is generally recognised as leading to quicker, cheaper, and more efficient investigations (C4), whereas the USKOK acquired the leading role in prosecutions.

The adoption of the legal institute of *plea bargain* constituted a third key change that occurred in 2009. Under a plea bargain, witness collaborators can receive a lower sentence in exchange for provision of evidence that would help prove the main defendant(s)' guilt. In the Croatian case, the introduction of plea bargain into the USKOK's toolbox brought the possibility to obtain major pieces of evidence by offering the key accomplices a 'discount' in the final verdict. Besides allowing the acquisition of evidence, this change also spared enormous resources that would have been invested should the evidence not appear at a relatively early stage of the investigation:

"Of course, with the plea bargain we got the possibility to strengthen our cases for trials. If there was no 'favour' to be offered in exchange for their help, those suspects would have rarely spoken out. In political corruption it is often the case that strong evidence can hardly be provided without the consent or help of some participants in the corrupt scheme; so someone's admission is the main sort of evidence that can back up the accusation.

The plea bargain spared us many resources. Who knows how many years, how many *krunas* (Croatian currency, prim. aut), and other capacities would we have spent had these 'protected witnesses' not been part of the prosecutions in the last three years. Consider their cases only: instead of labouring to build indictments against them, which entails people, time, attention, and money, by striking a deal with them we simply avert the whole process and trial. They get somewhat lower sentences, and we get firmer evidence against the organisers of the scheme who were seen as masterminds that are needed to be convicted following the trial. And our staff can easily move on to another big case" (C1).

A final major change regarding USKOK's powers that occurred in 2009 was the adoption of the 'guilty until proven innocent' rule for forfeiture of assets. From 2005 to 2009, the USKOK could initiate a case against a suspect for asset seizure, but it was the court who appraised grounds for the proposed forfeiture. It was resource-consuming for the USKOK to engage in a process which would prove that the origins of someone's assets were illicit (C1, C4). In practice, the cost

of this sort of endeavour was almost prohibitive for the USKOK, so many indictments were built without asset forfeiture. However, with the 2009 ‘guilty until proven innocent’ amendment, asset forfeiture became an important mechanism of the USKOK’s investigation: a suspect would be stripped of precious resources that could be used in their defence with a strong deterring message sent to their accomplices, that the main suspect no longer retains power with no rewards offered to potential ‘defence’ collaborators.

Given the scale and significance of the above changes, the 2009 amendments no doubt were ground-breaking from the perspective of USKOK’s power in the anticorruption processes, primarily prosecutions and the investigation stage as a key part of prosecution. The 2009 amendments continued and accelerated the trend of increases in USKOK’s powers, yielding implications for the future prosecutions.

In summary, the USKOK has undergone a process of ever-increasing organisational powers. It has retained the same ACA model over time (suppressive), but the organisational architecture from 2001 provided for substantively different powers than the one in 2010 or later. Over the years, the USKOK was acquiring more and more powers vis-à-vis the other bodies within prosecution and particularly in the investigation process. The largest change in this regard occurred in 2009 when a special police force was created to operate as an ‘extended arm’ of the USKOK and when the prosecutorial investigation, as a mode of inquiry, replaced the judicial investigation. Then the USKOK became drastically better equipped in institutional terms to deal with the crimes from its jurisdiction, particularly with high-level political corruption, which was highlighted as the priority after the broadening of the USKOK’s competencies in 2007.

Now that the institutional design of the USKOK is reviewed, the chapter turns to an analysis of its organisational resources. The following part discusses the domestically and internationally provided resources that the USKOK has enjoyed from its establishment (2001) to the end of the observed period (late 2012).

Resources

Domestic resources

The trajectory of the USKOK's annual budgets resembles a J-shaped curve. Originally, the USKOK was allocated 'moderate' financial resources but very scarce human and technical resources. Thereafter, the financial resources diminished through a series of continuous cuts. Figure 17 displays the budgets that the USKOK was awarded from 2001 to 2012:

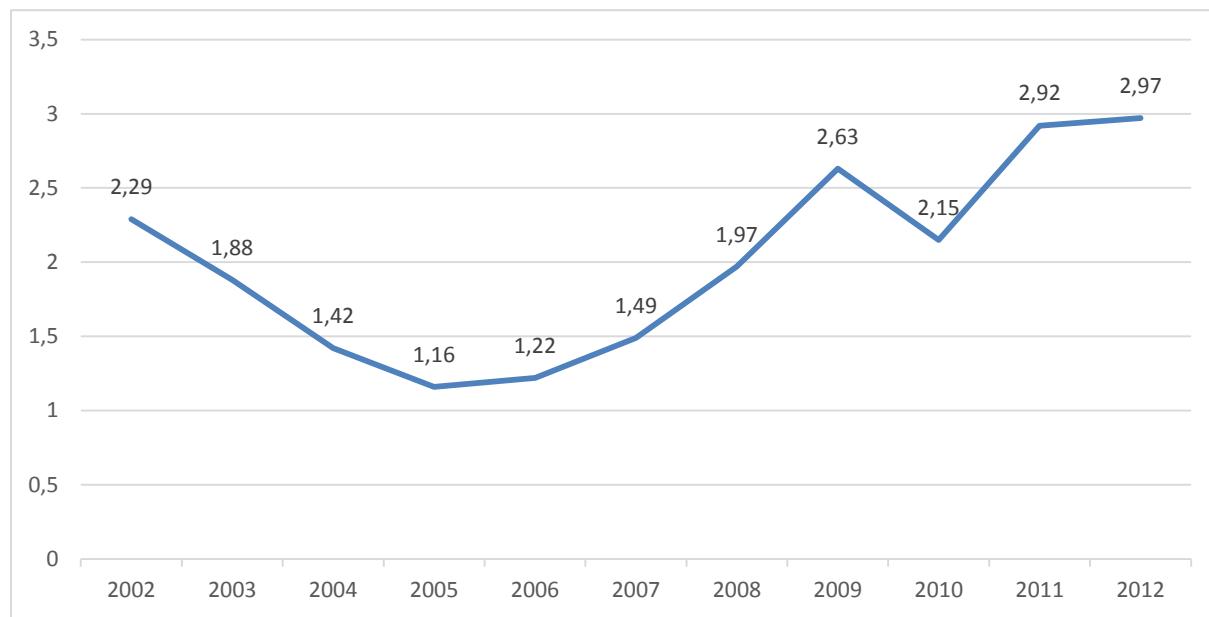


FIGURE 6.1 USKOK resources, in € millions (2001-2012).

Source: Ministry of Finance of the Republic of Croatia, annual budgets (2002-2012).

The first USKOK's budget was around €2.3 million. Compared to the budgets of the other ACAs in the region (at any time point in time), this is about a tenfold amount. Yet, this sort of comparison may be misleading because the USKOK' tasks of suppressing organised crime and corruption are more resource demanding. While it is difficult to estimate whether the initial

USKOK's budget was big or small in absolute terms, one of the interviewees argued that the first budget was "pretty large" because the USKOK was not expected to do much in its first year of operation (C4). However, it did not take long for the financial resources to halve. In the second year of USKOK's life, the budget went down to €1.88 million. With several further successive cuts, under the SDP-led (2000-2003) and the HDZ-led government (2003 -2007), the budget was reduced to a minimum of € 1.16 million in a four-year' time (in 2005).

Alongside the deterioration of financial resources, the human and technical resources 'stagnated', remaining at a very low level from 2001 to 2005. The USKOK struggled with the non-material resources from the very beginning. They had fewer than 20 employees from 2001 to 2005²⁵⁴ and they were said to be underpaid²⁵⁵. Proper premises were lacking and technical capacities such as IT networks, vehicles and other sorts of equipment necessary for the exercise of everyday tasks were deficient too²⁵⁶. The prosecutors needed further education about the practicalities of the USKOK's implementation of law²⁵⁷. Perhaps the best illustration of the state of resources is a statement of Josip Kregar, one of the authors of the law (LBSCOC): "At the beginning, USKOK had only a principal, a secretary, and a ficus plant" (Kuris 2013: 5).

The period 2002-2005 can therefore be characterised as a period of scarce financial and non-financial resources. An EU Progress Report of Croatia mentioned:

"[...] the degree to which the USKOK will now become fully operational remains to be seen. In any case, administrative capacity in the fight and against corruption needs to be considerably further improved [...]" "It comes as no surprise then that the USKOK "[...]"

²⁵⁴ Precise data as to how many people were employed in the USKOK in the 2001-2005 period cannot be found, however it is known that in 2005 not more than 20 people comprised the USKOK staff (Kuris 2013: 6).

²⁵⁵ SAO (2004: 61-62).

²⁵⁶ SAO (2004: 62).

²⁵⁷ SAO (2004: 70-72).

failed to prosecute a number of highly publicised cases [...]” (European Commission 2005c: 16).

This overall downward trend, however, ceased in 2005 and started ‘reversing’ in the years to follow. A turning point occurred after the EU pressured Croatia to capacitate the USKOK in order to create better conditions for the fight against corruption. This was one of the key conditions that Croatia had to fulfil to demonstrate the political will to tackle corruption²⁵⁸. Alongside a series of legislative amendments, which, as explained, enhanced the USKOK’s powers, an enhancement in resources followed as well. Thus, the HDZ-led government and its Prime Minister Ivo Sanader (2003-2009), laid the foundations for USKOK’s rise as one of the best equipped anticorruption actors in Croatia and probably in the region of Western Balkans.

From 2005, the USKOK’s resources greatly increased in financial, human, infrastructural and technical terms over the course of several years. The year of 2006 marked the point of reversal in USKOK’s budget, leading to successive resource enhancements all the way to 2013. In four years, the USKOK’s budget rose more than twofold – from the €1.2 mil in 2005 to € 2.6 mil in 2009. The average annual increase in this period totalled to €350.000. Owing to the better finances, the USKOK recruited new staff, increased the salaries and invested in the equipment and infrastructure (C2).

From 2005, the human capacities were also enhanced. Danko Cvitan (USKOK’s Director during this period), prioritised staff recruitment and development of expertise. A number of staff were recruited from local prosecutorial offices from various parts of the country (Kuris 2013: 7) and new training programs were established. The USKOK also set out to improve the skills of public communication. An interviewee from the USKOK recalls:

²⁵⁸ This could be seen from the EU progress reports (2004, 2005, 2006). It has also been confirmed by an EU official who had been engaged in assisting and monitoring of the ongoing anticorruption reforms (C3) and by some of the actors who participated in the drafting of legislative amendments, for example by Josip Kregar (in Kuris, 2013:5).

“Expertise and IT stuff were of course important, but back in 2005 the feeling was that the USKOK is somehow lost when it comes to public communication. Our success is, to some extent, dependent on how we present ourselves publicly. As a prosecutor, you’re not entitled to a single mistake in public appearances... and we remember the legacy the USKOK faced precisely because of some reckless appearances²⁵⁹” (C1).

International support

From 2005 on, the international support was on the rise, too. International trainings aimed at skill improvement became the major enhancers of USKOK’s capacity. The USKOK staff underwent two perennial and several other capacity building programmes of smaller scale, all of which were funded or assisted by EU or American partners. The following mentions the most prominent programmes, which are also detailed in Appendix B.

In 2005, a Twinning programme, CARDS 2002 started²⁶⁰. Under the direction of the Spanish Anticorruption Prosecutor Office, the USKOK underwent training that focused on: (i) human resource development strategy of training and educating the USKOK staff; (ii) fostering smooth management of internal procedures; (iii) building cooperation between the USKOK and other bodies, data exchange mechanisms, joint team initiatives, document system for handling of complex cases²⁶¹. Better intra-institutional coordination of the USKOK’s prosecutors and the other expert staff, an improved ability to plan investigations and a better appreciation of inter-institutional linkages, were some of the benefits the CARDS 2002 brought to the USKOK²⁶².

²⁵⁹ The interviewee apparently referred to blunders such as those in the Granić affair from 2004 (see the case explained in the ‘big-fish’ section below).

²⁶⁰ See European Commission (2007d; 2007e) reports reviewing the programmes of support to the USKOK, including the programmes that are mentioned in the forthcoming paragraphs in this section.

See also a European Court of Auditors’ assessment of the provided programmes of support to the USKOK (2011).

²⁶¹ European Commission (2007d: 11).

²⁶² *ibid.*

The USKOK also extended its international contacts, gaining a possibility to consult renowned foreign experts. Most of these experts were working on a permanent basis for the prosecutorial services in the Western world (C1). Additionally, the CARDS 2002 programme took first steps to build a modern IT network for the judiciary. The software that was produced allowed liaising of courts and institutions such as the Tax Office or the Ministry of Finance²⁶³. This was an important development because facilitation of data exchange among the anticorruption partners was seen as a precondition for efficient anticorruption struggle (C1).

The IPA 2007 was another major international project that the USKOK participated in²⁶⁴. The project sought to build on the previous CARDS training and to further the capacities of the USKOK and other Croatian institutions from the judicial system. IPA 2007 focused on inter-agency cooperation by way of building cross-institutional teams and conducting joint enforcement actions. The programme brought together professionals from a variety of institutions such as the Tax Office, Procurement Office and a range of other police and supervisory bodies. The other part of the programme focused upon public relations. The goal of this training was to advance the importance of public communication and to enhance the understanding among the USKOK's staff of how to convey messages that may help build institutional credibility.

Two smaller CARDS 2003 programmes were implemented as well. One was focused on an enhancement of the overall anticorruption processes within the legal system of Croatia. Its major theme was money laundering, a highly complex area that, previously, those Croatian professionals from the Ministry of Finance and the Ministry of Interior had not specialised in.

²⁶³ European Commission (2007e).

²⁶⁴ European Commission (2007d: 12).

The twinning partner was the Austrian Ministry of Interior, an institution with extensive knowledge and experience related to money-laundering²⁶⁵.

The other stage of CARDS 2003 relied on smaller resources (€250.000). Its goal was to raise awareness among professionals from the police, judiciary and prosecutorial of the common obstacles in investigations as well as how some of the most successful authorities worldwide were coping with such issues. The focus in this programme had been on the pre-trial processes, whose quality crucially impacts on the subsequent trial, and the outcome²⁶⁶.

Alongside the EU-funded projects aforementioned, the USKOK benefited from bilateral forms of cooperation too. Training by the FBI (the Federal Bureau of Investigation) in special investigative methods represented another major programme in this regard. During a visit to the USA in 2008, the USKOK staff got trained about how to carry out tapping, undercover, and sitting operations. According to a USKOK interviewee (C1), these techniques helped them immensely in improving the collection of valuable pieces of evidence for court trials.

Kuris cites the words of a former Director of the USKOK who summarised how valuable the internationally assisted programmes were:

“In addition, Cvitan (the Director of USKOK at the time, prim. aut) called foreign assistance an “important component” of USKOK’s development. EU assistance included twinning programs with Spain (2004–06) and Germany (2010–12). US assistance coordinated across several agencies included stateside study tours and advanced training seminars. Kregar said an experienced American prosecutor whom he called a “very good role model” helped train USKOK on how to “follow the money” in corruption investigations. With outside support, USKOK prosecutors gained competency in modern methods of financial investigation,

²⁶⁵ It is worth noting that only a few years later, the main partner to USKOK in their investigation of two huge scandals – involving a former Prime Minister (Ivo Sanader) and a minister (Polančec) from Croatia - was precisely the Austrian Ministry of Interior which targeted domestic banks in the investigation. The contacts between the USKOK and Austrian authorities established during the given IPA 2007 apparently proved helpful in facilitating later joint investigations of Croatian ‘big-fish’. (C5)

²⁶⁶ <https://pravosudje.gov.hr/pristup-informacijama-6341/ostale-informacije/projekti/eu-projekti/dovrseni-projekti/6211> [Accessed: 15 September 2016].

including freezing assets and securing sufficient evidence to support court-ordered asset seizures" (2013: 8).

Summary of USKOK's resources

We could observe considerable variation in USKOK's resources over time. Two major phases that stand out are the phase of resource scarcity (2001-2005) and the phase of steady and gradual resource-enhancement (2005-2012). The former was characterised by a lack of both material and non-material resources, whereas the later saw a continual increase in the budget and the non-financial capacities.

The continuous resource enhancement, as will be seen later, paved the way for the USKOK to take on complex cases of corruption. A Croatian NGO representative, specialised in corruption, summarised: "USKOK had been a feeble and insecure new-born, lacking the basic preconditions for work in the first few years; they are now a beast who devoured even the person who was feeding them to grow – former Prime Minister Sanader himself" (C5). This best reflects the wide-scale transformation the USKOK has undergone over time. A significant portion of this transformation is linked to the resource enhancement from 2005 onwards.

The next part analyses the USKOK's enforcement in the period between 2001 and 2012. The enforcement strategy is considered first, and then the analysis will focus on the 'big-fish' cases that the USKOK addressed. This will be followed by a discussion about the power of the thesis' theoretical accounts in explaining the USKOK's case.

Enforcement

Enforcement Strategy

USKOK's history can be divided into two stages. The first lasted from 2001 to 2005, and the second from 2005 on. In the first stage, the USKOK acted as an under-capacitated institution which prioritised organised crime over corruption. Few cases of corruption of high-profile politicians appeared. The second stage started with the arrival of a new Director in 2005²⁶⁷. Over the coming years, the USKOK saw a gradual increase in its resources, a major increase in the competencies and a rapid increase in the powers. This was accompanied by a change in the enforcement strategy. A greater emphasis on high-level corruption and a more assertive enforcement were the key elements of this change in the enforcement strategy.

From the outset, the USKOK focused on repressive tasks and 'sidelined' the preventive role. As acknowledged by those who participated in the drafting of the legislation that set up the USKOK (e.g. lawyer Josip Kregar, see Kuris 2013: 4-5), and as reported by an interviewee (C2), it is the suppression of corruption that was seen in the USKOK as the key priority; preventive tasks were left to other institutions to deal with.

From 2001 to 2005, the USKOK directed its suppressive actions against organised crime²⁶⁸. Counterweighting, fraud, illegal transfer of people across border, illegal import, smuggling of drugs and the smuggling of arms, were some of the most frequent crimes the USKOK addressed²⁶⁹. In those cases in which corruption was prosecuted, bribe taking and bribe giving

²⁶⁷ Who in fact formally took charge of the USKOK (in operational terms) in 2006.

²⁶⁸ A calculation is that actions targeting organised crime comprised about a 55% of the total number of USKOK's actions, as opposed to somewhat less than a 40% of cases of corruption, in the period 2003-2005.

The figure are calculated from USKOK's *Annual Reports* 2003, 2004, and 2005.

²⁶⁹ These crimes are the most prominent in the annual reports of the State Attorney Office from 2001 to 2005.

were the most common offenses²⁷⁰. Yet, given the needs and expectations from the prosecutor at the time, the number of enforced cases, according to the State Attorney Office's and USKOK's acknowledgment, was „insufficient“ (State Attorney Office 2004: 66).

The State Attorney and the USKOK cited that the cooperation with the criminal police was diverse (SAO 2004: 59), however it was repeated several times that the police and the USKOK need to further enhance the cooperation and coordination (SAO 2004: 61, 64, 65, 66). This was particularly evident in practice, in those investigations of corruption in which the gathering of evidence was under overarching control of the police. This enabled the police an informal power to determine the agenda of what sorts of cases will be pursued in practice. The focus on organised crime is not surprising, because the police were less equipped and specialised for the subtleties of high-level corruption (C3).

Yet, it would be incorrect to say that the USKOK, in a way, did not try to prosecute 'big-fish' from 2001 to 2005. In 2002, under the lead of the State Attorney, the USKOK investigated the main opposition party HDZ in a case of 'secret banks accounts' (Miljuš and Perica 2002). The Croatian Government, led by HDZ, raised funds in the 1990s from the diaspora to fund the war for independence from the former Yugoslavia (1991-1995). Years later, after HDZ lost power (in the 2000 election), it was leaked in the media that a large portion of these funds remained unspent in bank accounts in Switzerland and Austria (Miljuš 2002a). The HDZ leaders were accused of transferring the money from the 'secret accounts' to Croatian ones which they used for personal purposes (Disopra 2012). In response to the raised details in the press and to the accusations, the State Attorney and the USKOK conducted an investigation, but the attempts to trace the evidence and obtain witnesses failed, so no indictment could be formed²⁷¹.

²⁷⁰ These offenses made up almost a 90% of the total number of corruption targeted actions (the calculation based on USKOK's Annual *Reports* 2003, 2004, and 2005).

²⁷¹ Inex (26 February 2003).

In October 2002, the USKOK launched an investigation against Nevenka Tuđman, the daughter of late President Franjo Tuđman who ruled in the 1990s²⁷². Nevenka Tuđman was accused of abusing her social status in striking direct corrupt deals with state institutions in which she allegedly took bribes of a 15% of the total contract value (Miljuš 2002b). The USKOK brought an indictment, according to which Nevenka Tuđman fixed the award of tens of contracts for installing switchboards in the Ministry of Science and Technology to her business partner Igor Knežević, between 1996 and 2000 (Miljuš 2002b). The subsequent trial lasted until 2005: Nevenka Tuđman was convicted until the Supreme Court annulled the decision, restarting the process. After another unsuccessful trial, she was acquitted in 2008 (*Jutarnji list* 16 December 2008).

Probably the best known USKOK's action targeting high-level political corruption, in the first stage of its life, was the investigation against former Minister of Foreign Affairs Mate Granić. Granić was suspected in 2004 by a whistle-blower who revealed a scheme of selling the managing rights of a state owned electro plant *Končar*. As an influential member of the Board, Granić allegedly agreed the selling of a control package far below the market price. In exchange, he was said to have intended to get cash paid to his consultancy through fictitious contracts (Miljuš *et al.* 2004).

The USKOK launched an investigation, tapping Granić in a fixed conversation, as part of a sting operation that led to his arrest. However, the case failed within days. After five days of detention, Granić was released as the Court cited a lack of sound evidence (*Index* 15 May 2004). On the day of the arrest, USKOK's Director Željko Žganjer he declared a 'victory' on live TV. Žganjer assertively stated that: "Mate Granić and Darinko Bago (the two suspects, *prim. aut*) will have to spill a lot of sweat in order to escape liability" (Blažević 2004). However, Žganjer was denied this 'victory' only a few days later, upon Granić's release from detention. The failure was so severe that it hugely damaged USKOK's reputation; according to widespread belief, this

²⁷² Miljuš (2002b).

was the reason behind Žganjer's resignation that came soon after the scandal (see for example *Večernji List* 4 November 2005; Đuričić 2004).

These USKOK's actions did not target the top of the political ladder, but they involved politically affiliated persons who were widely known to the public. The USKOK, hence, attempted several prosecutions of high level corruption, although the general impression arising from these cases was that the USKOK emerged defeated (C4). One common problem that was identified in the USKOK's prosecutions was the 'unfavourable' institutional relationship between the police, court and the USKOK, which had been highlighted as a source of the USKOK's inability to carry out comprehensive investigations (C2). According to other experts that were interviewed (C4, C5), the 'sour experience' from those several attempts in which the USKOK lacked proper powers over the investigation process put the USKOK off from further prosecuting high-ranking politicians. The priorities in the USKOK's enforcement remained directed at organised crime, until a change in USKOK's leadership occurred in 2005.

The year of 2005 represented a turning point for the USKOK. Its Director Žganjer resigned and a new Director, Danko Cvitan, took over²⁷³. Danko Cvitan is lawyer by training, with years of experience in prosecution²⁷⁴. From 2003, Cvitan served as Deputy Director of the USKOK, so his new appointment came as a promotion.

With Cvitan heading the USKOK, the enforcement strategy started to gradually change. In addition to retaining the focus on suppression of corruption, he recognised the importance of prevention (Kuris 2013: 7). To engage a wider community in anticorruption activities and to build credibility among the citizens and media, the USKOK invested into its public

²⁷³ Previously, Cvitan worked in the USKOK from 2003. Following Žganjer's resignation, Cvitan was first appointed in 2005 for an interim Director (Đuričić 2005). Eventually, Cvitan was appointed by the State Attorney in 2006 to serve as Director (*Jutarnji List* 16 March 2006).

²⁷⁴ Cvitan's biography can be found at State Attorney Office's website. Available at: <http://www.dorh.hr/Default.aspx?sec=651> [Accessed: 19 October 2015].

communication. The creation of a separate PR department and an intense training in public communication were some of the steps in that direction (Kuris 2013: 8; C1). The preventive side was recognised as crucial for addressing corruption, and more generally, the USKOK placed an emphasis on building an infrastructure that will enable greater focus on corruption as opposed to organised crime (C1, C4).

In the years to come, corruption overtook organised crime as the major priority in regards of USKOK's activities. In 2007, for example, 59% of the overall cases the USKOK dealt with concerned corruption²⁷⁵, whereas in 2009 as much as 75.3% of the cases the USKOK took part in focused upon corruption²⁷⁶.

As the structure of the enforcement changed, so too did the tools the USKOK was using. Following the legislative changes in 2005, 2008 and 2009, which granted a host of new powers to the USKOK, as well as one major competence (to tackle 'abuse of power and office'), the USKOK became increasingly reliant on its own forces and tools. The police, for instance, became further linked to the USKOK; the former's facilities were becoming a USKOK's tool rather than a detached mechanism that operates outside of the USKOK's agenda. Simultaneously, the court's role in the pre-investigation activities started diminishing, whereby the powers shifted into USKOK's hands as the result of the previously described series of legislative changes.

The USKOK's information gathering opportunities were rising from 2005 to 2007 and this trend continued after the 2009 amendments. To remind, USKOK's powers that related to the investigation phase expanded over time, through the possibilities of gathering of data to directing the work of the police (i.e. the newly formed unit PNUSKOK). In its prosecutorial practice, from 2009 on, the USKOK increasingly relied on the institute of 'plea bargain', which allowed for a more efficient handling of resources and 'wiser' application of tools (C1).

²⁷⁵ SAO (2007: 43).

²⁷⁶ SAO (2009: 37).

The USKOK also exhibited vibrant activity in international cooperation from 2006 onwards. Regional forums of cooperation, with the police, judiciaries and other anticorruption bodies in the Western Balkans, were one sort of activity that helped the USKOK manage the international criminal networks that were operating in Croatia. The USKOK also established cooperation with anticorruption actors from countries outside the region such as the Austrian Ministry of Justice²⁷⁷. Later on, the USKOK deepened its collaboration with international actors such as the Eurojust and Interpol, who provided precious data to the USKOK in some of its future cases²⁷⁸. In 2009, for instance, the USKOK needed to investigate the foreign bank accounts of certain politicians. The authorities of countries were helpful here and proved to be reliable USKOK's partners²⁷⁹.

The nature of the population that the USKOK targets changed from 2005 onwards. The USKOK was driven by the opportunity principle, meaning that those cases that are 'worth' more should be tackled first, in order to optimise the resources and also to maximise the societal benefit. Due to this, the USKOK made a decision to delegate cases of lower priority – in terms of their value, complexity, and importance for the political life - to regional and lower prosecutors (SAO 2006, 2007, 2008, 2009). The 'hefty' cases of corruption, on the other hand, started getting increasingly more onto the USKOK's agenda, particularly from 2007 onwards (see the graph in the 'big fish' section below). With the introduction of the 'abuse of office or power' into the corpus of USKOK's competencies, first 'hefty' cases were prosecuted. In 2007, the USKOK investigated the privatisation of the *National Fund* and somewhat later the case of *Maestro*

²⁷⁷ See Appendix B.

²⁷⁸ One of the details from the cooperation between Eurojust and USKOK, for example, was the sending of an officer for liaison by the USKOK to a four-year mandate in Eurojust. See USKOK's website (2009). Available at: <http://www.dorh.hr/ZamjenikGlavnogDrzavnog> [Accessed: 19 October 2015].

Strengthening of the collaboration with the Eurojust and Interpol was one of the objectives set in an Anticorruption Strategy that was adopted in Croatian Parliament (2008).

²⁷⁹ See below, in the 'big-fish' section, the *Spice* and *Sanader* affair, in which the USKOK exchanged data with Austrian and Hungarian authorities.

(*Dnevnik* 26 June 2007). Compared to the previous period, these cases represented a major shift in enforcement. They did not involve high-level politicians, but they saw the arrest of tens of officials (Kuris 2013: 10-11), some of whom were delegated by high-level politicians.

From 2009, the USKOK further escalated its enforcement. Over the course of 2009 and 2010, several current and former ministers were investigated or arrested. They were arrested because of allegedly corrupt schemes such as fixed tenders²⁸⁰, overblown prices for unnecessary services which were run by the Minister's associates²⁸¹, and attempts of privatisations of large companies well under the market price²⁸². This series of prosecutions of high-ranking politicians culminated in 2010, when the USKOK arrested and detained a former Prime Minister Ivo Sander. This represented by far the largest case that the USKOK ever launched and it also made for the largest scandal in Croatian politics probably in the last couple of decades (more details about the case are provided in the 'big-fish' section). The rapid escalation of the enforcement strategy, which was reflected in the first place in an escalation of the targets it was picking on, earned the USKOK recognition domestically as well as internationally²⁸³.

In conclusion, the USKOK's enforcement strategy has undergone an evolution from 2001 to 2012. It had first been focused on suppression, whereby suppression of organised crime took up the bigger portion of the enforcement compared to the suppression of corruption in 2002-2005 period. Within the suppression of corruption, the USKOK mostly targeted administrative

²⁸⁰ See the *Army Trucks* affair below, in the 'big-fish' section.

²⁸¹ As was the case in the *FIMI Media* affair, for instance. For more details see *Jutarnji List*'s compilation of the articles about this case. Available at: http://www.jutarnji.hr/sve_teme/Fimi-Media [Accessed: 08 August 2015].

²⁸² Such as the attempt of the privatisation of the oil refinery *INA*. For more details, see Mišević (2010).

²⁸³ Domestically, the USKOK built a reputation of a harsh anticorruption warrior (Kuris 2013).

Based on the success from this period, one of the USKOK's prosecutors Tamara Laptos (who was appointed the USKOK's Director later in 2014) won in 2012 the International Prosecutor Association's Awards of the Year (2012).

corruption, usually for bribe taking and receiving, whereas political corruption had only exceptionally appeared on its agenda. Due to limited powers that were at its disposal in this period, the USKOK relied more on 'external' tools in its enforcement rather than own 'forces'. Though it commanded powers that direct evidence gathering, the USKOK had been hugely reliant on the police's and court's tools, whose application was, in practice, considerably beyond USKOK's control. From 2005 on, the emphasis began to shift to corruption, and within the corruption targeting population – from administrative to political corruption. Over time, in a gradually escalating process, the USKOK addressed increasingly complex cases of corruption, utilising an expanding set of tools it was endowed with. At the same time, the USKOK could deploy the police and gained more freedom from the court's interference in the pre-trial processes.

What follows is an overview of USKOK's enforcement actions involving high-ranking politicians. The section first reviews the overall enforcement record. Then it discusses individual scandals, contributing to an appraisal of the political selectivity in regard to the government vs. opposition divide.

'Big-fish' prosecutions

'Big-fish' refers to prominent politicians, both within the opposition and the government. Since prosecution of 'big-fish' cases has considerable reputational consequences, affecting the political and electoral fortunes, dealing with 'big-fish' is usually more important than how cases that involve low-ranking officials are pursued.

The graph below presents the structure and dynamics of the USKOK's actions against 'big-fish'. It shows all enforcement actions the USKOK undertook against incumbents as well as opposition:

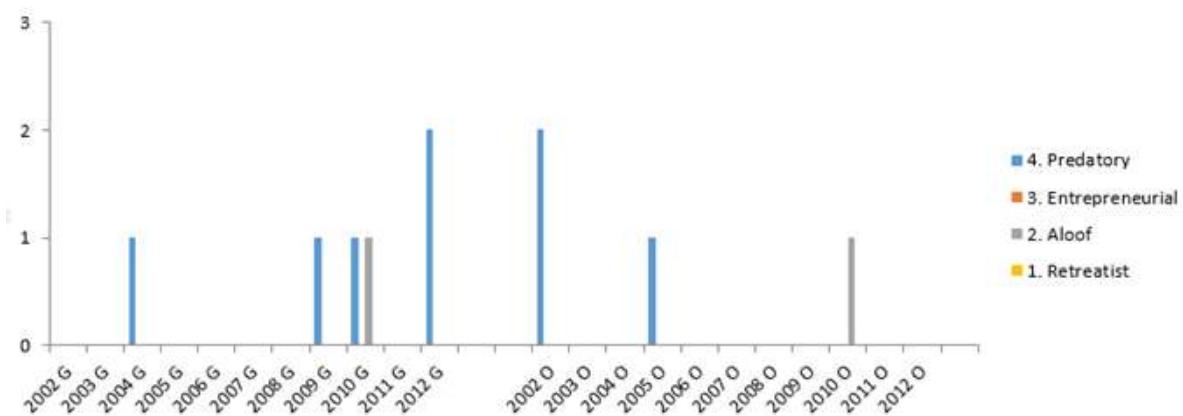


FIGURE 6.2 Enforcement action against big-fish (G-Government; O-Opposition)

Source: Press-clipping, analysis of USKOK's decisions.

Several conclusions arise from the graph. First, the number of big-fish cases taken up by the USKOK has been relatively low, particularly when compared to the ACAs from Serbia and Macedonia. Second, three periods can be distinguished as regards the density of enforcement: (i) one period, with rare yet some 'big-fish' cases launched (2003-2005); (ii) another period, characterised by the absence of 'big-fish' prosecutions (2006-2008), and (iii) the final – a period of increasing activity against 'big-fish' (2009-2012). Third, the 'big-fish' were pursued in a predominantly *predatory* manner; seven 'predatory', two 'aloof', and no 'entrepreneurial' nor 'retreatist' actions took place. Considerable consistency in the enforcement style has therefore characterised USKOK's work with 'big-fish' cases. Third, two phases can be distinguished regarding political selectivity: opposition had been predominantly investigated between 2002 and 2005, whereas during the 2008-2012 period almost all investigations took on incumbents (with one untypical case, of a former Prime Minister who belonged to the ruling party, but was retired at the time of the investigation). All these targets came from one party - HDZ, which had been ruling the country from 2003 to 2011.

The following table summarises three paradigmatic cases of ‘big-fish’ enforcement of the USKOK:

TABLE 6.3 Examples of big-fish cases taken up by USKOK (2002-20013).

Date	Target/scandal	Who raised	How USKOK reacted	How it ended
2009	‘Army trucks’ affair	President Mesic	- Took over the investigation from the police. - Engaged witnesses, pushing for a plea bargain; - Filed an indictment.	Rončević: sentenced to four years, verdict later overturned. Banić: acquitted.
2009	‘Spice affair’	Daily <i>Jutarnji List</i>	- Launched an investigation; - Active in evidence collection; - Filed an indictment.	Convicted (to one year and 3 months)
2010	Sanader affair	USKOK	- Launched an investigation; - organised a wide-scale investigation and extended the case to other scandals; - merged several cases under one indictment, while pursuing other cases that involve Sanader, in a separate indictment.	Convicted (to 10 years), for the first indictment so far (consisting of two major corrupt scandals) Other trials: pending.

Source: Press-clipping.

What follows is a description of the three cases contained in the table. They will serve to illustrate the enforcement style of the USKOK and what issues they were taking up within the prosecutorial agenda.

Army trucks affair

In 2009, the USKOK indicted Berislav Rončević, former Minister of Defence (2003-2008) and Minister of Police (January 2008-December 2008) and his deputy Ivo Bačić (*E-novine* 28 October

2009). Rončević and Bačić were accused of fixing the purchase of 39 army trucks in 2004, while serving in the Ministry of Defence. Back then, the Ministry originally called for a tender to buy 76 army trucks, which were required for a NATO programme²⁸⁴. The truck producer *MAN* submitted a bid €650.000 million cheaper than an offer by another company – *Eurokamioni* – which offered trucks of the Italian manufacturer *Iveco*. However, the Ministry cancelled the competition and then made a direct deal with *Eurokamioni* (trading *Iveco* trucks) which was pricier than the bid with *MAN* would be²⁸⁵.

The former President of Croatia, Stipe Mesić, was the first to raise doubts about the deal (*Index* 16 April 2009). During the 2004 presidential campaign, he said that it had come to his attention that the Ministry of Defence had struck a suspicious deal, in which “some details do not look like as they should” (*Index* 16 April 2009). On two later occasions, in 2005 and 2007, President Mesić restated the concerns, calling for an investigation²⁸⁶. Numerous attempts to open an investigation occurred, including the very formation of a Parliamentary Committee²⁸⁷, followed. However, all the attempts turned out unsuccessful²⁸⁸.

In April 2009 the police finally provided the USKOK with firmer evidence, which they acquired after a long period of re-investigation. Taking over the process, the USKOK opened an investigation and ordered the arrest of Rončević and Bacić. According to the USKOK’s charge, the state budget had been damaged in 2004 for the price difference between the initial offer by

²⁸⁴ Later on, in the second tender, the Ministry reduced the number of needed trucks to 39 as it was estimated that the purchase of 76 trucks would be too expensive. For more information about the case, see USKOK’s statement about the indictment against Rončević and Bačić (2009).

²⁸⁵ Rončević, and the Ministry of Defence, claimed later during an investigation that the key reason for resorting to a direct deal was the fact that the *MAN*’s trucks could bear only 4.5 tons of weight, but the Ministry needed trucks of 5 tones capacity (*Index* 12 February 2010). In other words, the *MAN*’s bid was disqualified because failing to meet the technical criteria.

²⁸⁶ Jakelić (2009).

²⁸⁷ *Index* (05 March 2009).

²⁸⁸ Lovrić (2009).

MAN and the final (direct) deal with a company *Eurokamioni*. As mentioned above, the defendants responded that the initial price was undeniably lower, but it had to be rejected because it did not meet the technical criteria.

The charges against Babić were later dropped, as he struck a plea bargain and testified against Rončević. The court sentenced Rončević to a four-year prison sentence (Jakelić 2013). However, the Supreme Court overturned the verdict in April 2013²⁸⁹, arguing that the expert evidence in the trial did not prove that the real market price was higher than the ultimately agreed one. At the same time, the defence put forward the argument that direct deals were legal within the army in 2004 and that any such decision cannot be subject to criminal prosecution, regardless of whether a previous tender was called. After a repeated trial, the court acquitted Rončević in 2014.²⁹⁰ The USKOK harshly criticised the court's decision²⁹¹.

This affair is an instance of USKOK's *predatory action*. By tackling 'big-fish' at the ministerial level, and by using a wide variety of tool in the process including the plea bargain, the USKOK made a key contribution to the proceeding. In short, the degree of zealotry as well as stringency was high.

'Spice' affair

In March 2010, the USKOK arrested Damir Polančec, a recently resigned Vice Prime Minister and Minister of Economy, Labour and Entrepreneurship (Barbir-Mladinović 2010). He was charged with trading shares of a state-controlled food processing company *Podravka* under an allegedly corrupt scheme (Barbir-Mladinović 2010). The case became known as a 'Spice affair'.

²⁸⁹ See Jakelić (2013).

²⁹⁰ Jakelić (2014).

²⁹¹ *Jutarnji list* (31 January 2014).

By the time it occurred, the 'Spice affair' had probably been the biggest scandal in Croatian politics. According to the charge, Polančec led a group of politically appointed Board members of *Podravka* who tried to buy out *Podravka's* bonds with the *Podravka's* money (Barbir-Mladinović 2010). The plan consisted of transferring *Podravka's* money to the accounts of select private companies, from which the money would, through fictitious contracts, be returned to *Podravka* as 'investment funds'.

It all began when a daily *Večernji List* ('The Evening Paper') ran a story that revealed allegedly corrupt practices of the *Podravka* Board, occurring in 2008²⁹². In response, the USKOK took investigating steps and started gathering evidence. The preliminary investigation concluded that Mr Polančec organised a group that intended to acquire the ownership of *Podravka* through illegal trading²⁹³. To buy out *Podravka's* shares with the *Podravka's* money, the Board first circulated *Podravka's* funds to a series of local companies, which would then, at one point, return the money back through a company who would appear as the buyer of a 10.65% of the *Podravka's* shares (*Jutarnji list* 26 September 2009). Obtaining a 26% of the *Podravka's* ownership represented a first step toward taking over the majority rights. Arguably, the Board agreed in advance to allow the takeover of *Podravka* under the pretext that they will thus prevent a 'hostile takeover' in the near future (*HINA* 8 June 2011).

Thwarting the plan, the USKOK arrested several Board members in 2009. During the forthcoming investigation and trial, Polančec got charged on several counts, including several related schemes with a Hungarian oil company *Mol* and *OTP Bank* (*HINA* 14 March 2012). As the media widely reported, for one of the corrupt acts he committed within this wider scheme he was sentenced eventually to one year and three months; the trials for the rest of the allegedly corrupt acts were still in process at the time of writing. It took little time for the 'Spice

²⁹² Knežević (2011).

²⁹³ Šlabek *et al.* (2010).

affair' to snowball into a greater scandal. Less than nine months later, a former Prime Minister Ivo Sanader was arrested based on new findings obtained in the investigation into the 'Spice affair'.

The Spice affair represents a prime example of *predatory enforcement style*. The USKOK aimed at the most complex sort of target, pursuing a high degree of zealotry and stringency. In prosecuting the case, it deployed a wide range of enforcement tools, and also engaged many actors in order to gather the evidence. This had been the most spectacular USKOK's action by that time²⁹⁴.

'The process of the century' – the Sanader affair

In December 2010, the USKOK arrested former Prime Minister Ivo Sanader on suspicion of war-profiteering²⁹⁵. Over the course of the investigation, the USKOK found evidence of other corrupt acts and issued several novel indictments against Sanader. The series of indictments that resulted represented a ground-breaking event in Croatian politics, leading some to name it 'the process of the century'²⁹⁶.

The initial charges pointed to war-profiteering in 1994 and 1995. Sanader, who was at the time Minister of Foreign Affairs, was accused of arranging a corrupt deal with the Austrian Hypo Bank. He was said to have taken €500,000 as part of the commission of a loan that the Croatian government, with Sanader's mediation, took from the bank.²⁹⁷

²⁹⁴ During the investigation, the USKOK applied various measures such as freezing of assets of Polančec (totalling more than £1.2 mil), interrogating witnesses in their premises but also offering concessions to those who offer valuable information and evidence which would further contribute to strengthening the indictment (C4).

²⁹⁵ Sanader was accused of fixing an entry of the Austrian Hypo Bank into the Croatian market back in 1994 and 1995.

²⁹⁶ See for example *Index* (12 May 2010).

²⁹⁷ See Zebić (2011a) and Kandare Šoljaga (2011).

The next stage of the investigation which unfolded during Sanader's stay in detention focused on Sanader's plan to privatise Croatian gas and oil company *INA*, by Hungarian *MOL* (in late 2000s) (Alborghetti 2011). According to the charge, Sanader took a bribe of €10 million from the President of the Hungarian oil company, Zsolt Hernadi, in exchange for granting him the management rights in *INA*, even though he was not the majority owner (Zebić 2011b).

The deal, the later indictment claimed, would have damaged the state budget for €500 million. One part of the deal was to buy out *Podravka* (the food-processing company the former minister Polančec was indicted for in the 'Spice affair'). To remind, Hungarian OTP Bank gave a loan to *Podravka* and the Croatian Government used *INA*'s shares as a guarantee for the loan, whereby the shares were under-priced; this allowed the OTP to benefit from becoming *Podravka*'s co-owner for an undervalued price.

Later on into the process, the USKOK merged the war profiteering and the *INA* privatisation charges into one indictment (*Dnevnik* 20 November 2012). As the investigation advanced, evidence came up about other schemes with Sandader's involvement, so the USKOK opened further investigations. A *FIMI Media* affair (2012) (*Index* 09 December 2011), a *Planinska* affair (2012)²⁹⁸, and a *HEP* affair (2013) (Pavelić 2013) were some of the scandals that the USKOK opened (Holjevac 2015). Sanader featured as the central figure behind all these schemes.

In a first, consolidated judgment, in 2014, Sanader was sentenced to 10 years of prison (BBC 20 November 2012). After an appeal, the sentence was reduced to 8.5 years²⁹⁹. The court found that Sanader drained state resources in order to gain profit for his personal and party (HDZ)

²⁹⁸ For details about the chronology and development of this affair:
<http://www.index.hr/tag/264736/afera-planinska.aspx> [Accessed: 20 September 2015].

²⁹⁹ The court found that Sanader and the other accomplices realised a set of corrupt schemes featuring the following elements: (i) a detailed plan; (ii) the use of personal intelligence for the realisation of the plan; (iii) insider knowledge of how the events will unfold in the future (*Index* 13 March 2014).

purposes. Sanader was also ordered to return the amount of money he earned from the corrupt *FIMI Media* contracts (€2 million).

This is, of course, another example of USKOK' *predatory enforcement style*. Not only was the degree of both zealotry and stringency high, it may be called 'super-high'. The USKOK prosecuted the biggest of the 'big-fish', extending the indictment to a series of schemes of hefty corruption. The Sanader affair demonstrated not only the harshest enforcement style of the USKOK, it moreover represented an escalation compared to the previous actions characterised by the predatory enforcement style.

Discussion

As a suppressive ACA, the USKOK has commanded prosecutorial competencies and powers. The only strong organisational element of the USKOK, from the outset, has been its high de-jure independence. In the first stage (2001-2005), USKOK's resources, material and non-material, were poor. The powers over the turf of prosecution were limited. With the arrival of the second stage (2005), however, the USKOK's organisational settings enhanced. Its financial, technical and human capacities gradually and continually grew. USKOK's powers over the police, court and witnesses were growing too, shifting the control over the investigation process into the USKOK's hands. This was particularly the case after 2009. In 2007, the USKOK's competencies broadened to include high-level political corruption, committed through both abuse of office and abuse of power.

Against this backdrop of organisational settings, having undergone a transformation from weak to strong, what sort of enforcement action did the USKOK take? In brief, it took a 'confined' and non-assertive action from 2001 to 2005, and an escalating enforcement action from 2005 onwards. The USKOK escalated its enforcement so dramatically that, from 2009, it started prosecuting (from 2009) not only 'big-fish' but the 'biggest' of the 'big-fish'. These prosecutions

were carried out with a predatory enforcement style and without political selectivity (against opposition). Which of the thesis' explanatory accounts explains this development?

The first factor, from the organisational account, is de-jure independence. This factor seems little helpful for explaining the USKOK's enforcement choices. Despite the high degree of de-jure independence in both the first and second stage, the enforcement action took the harshest form only as the second stage progressed. Clearly, high de-jure independence, as a distinct factor, did not suffice to make the USKOK pursue the harshest enforcement pattern. In fact, we could see from the empirical analysis that the USKOK did not orient its accountability concerns toward those who may hierarchically be in one way or another 'above' the USKOK, namely the State Attorney, Government and Parliament. Instead, the key USKOK's concern was the accountability before the public. How will an action end up in the court - will it be another policy failure or a policy success, was the major concern behind the enforcement choice. The USKOK enjoyed institutional safeguards of independence, but the accountability that was at the heart of their enforcement choices was not based on the exercise of sacking, appointment, organisational and other ex-ante or ex-post 'retaliatory' measures. It was based on less official forms of appraisal of the merit of the USKOK's actions, their success in terms of policy outcomes in the anticorruption domain.

High formal independence is not, however, to be dismissed as irrelevant. As seen, the USKOK targeted mostly incumbents, risking political pushback. Once the harshest enforcement action took place, the high de-jure independence no doubt served as shield against political clout. From the interviews with the USKOK staff, it is clear that the fact that they cannot be easily 'subverted' through formal institutional channels, represented an encouraging factor in their decisions to take on high-level political corruption. In that sense, high formal independence featured as a necessary but definitely not a sufficient factor for the harshest form of enforcement.

The next organisational factor is USKOK's resources. The rise in resources, from the beginning of the second stage onwards, played an important role for the further escalations of the enforcement. Clearly, the higher budgets and the improved expertise were factors that made the harshest form of enforcement possible. The empirical analysis shows that better capacities were a necessary factor for the USKOK to escalate its enforcement. Without considerable resources, their actions were almost certainly destined to fail. Lack of expertise on how to gather evidence, poor command of the legal matters that were key for indictments or the absence of physical resources, were all the factors that could easily blight the investigation and the forthcoming indictment. Yet, while additional resources were indeed necessary for the USKOK to escalate its enforcement, the empirical analysis shows that they were not sufficient as an isolated factor. The events demonstrated that higher resources meant better 'tools', but what the USKOK missed in one period is the full control over the use of these tools. The resources, in other words, were a positive factor but how they will affect the policy prospects – and hence the USKOK's decision whether to engage in a harsh enforcement – was subject to the powers the key anticorruption actors had over their deployment 'in the field'. Hence a sort of 'lag' between the first major enhancements in resources (2006, 2007, 2008) and the enforcement of the harshest sort of action (from 2010 on).

Turning to the temporal account, the role of aging did not materialise in the direction of 'declining' enforcement'. Quite the contrary, the USKOK escalated its enforcement as time progressed. Naturally, this did not occur in a steady gradual manner – the first stage (2001-2005) saw a considerable degree of 'stagnation' in the enforcement, whereas the second stage witnessed a continually rising harshness of enforcement.

Time (i.e. aging) in fact played a role as a resource rather than a 'detractor' from harsh enforcement. This was particularly true for the second stage. We could see that the USKOK could reach a position from which to launch attacks against top officials only after the process of enhancement of organisational resources, accrual of power and reputational building among

the wider audiences, gained traction. In that sense, for one part of the USKOK's history, which saw gradual increases in the organisational capacities, time mattered. Yet, it made a difference to the enforcement in the opposite direction than the 'life-cycle' hypothesis predicted.

The next factor in the 'temporal account' is political-cycle. Did the USKOK adjust its enforcement to the realities of electoral campaigns? Figure 6.3 compares the 'big-fish' cases the USKOK dealt with in non-election and election periods.

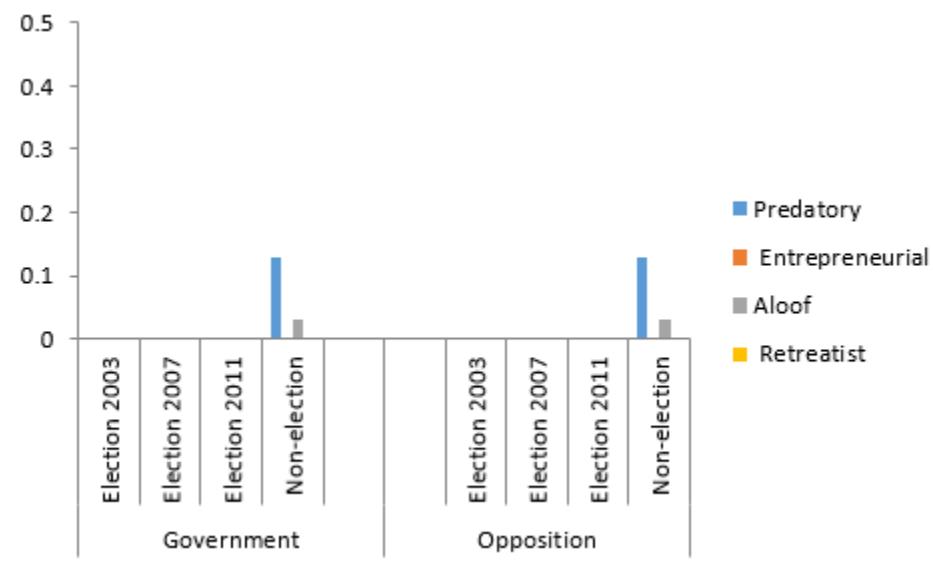


FIGURE 6.3 USKOK's enforcement against government and opposition big-fish (per quarter).
Source: Author's compilation of big-fish cases, based in press-clipping and Annual Reports of USKOK.

Prior to the 2003 election, two cases against oppositional 'big-fish' occurred. These cases, though damaging for the then major opposition party HDZ in reputational terms, did not target particular politicians but rather involved affiliated persons or the party as a subject. At the time of the prosecution of these parties, it was not known that the next general election will be held

within a year only³⁰⁰. Given this, there is little reason to believe that the two USKOK's actions against opposition were part of the pre-electoral struggle.

The 2008 general election campaign was marked by USKOK's 'silence' when it comes to big-fish cases. This silence was not a sudden occurrence, however. It was a continuation of a previous trend from 2006, 2007, and 2008, of the 'big-fish scarcity' in the enforcement. The political-business cycle logic therefore does not seem to have played a role in the 2008 election.

The 2011 election campaign was peculiar. The 'process of the century', against former Prime Minister Ivo Sanader (HDZ), overwhelmed the whole campaign. His arrest in December 2010, it turned out later, severely afflicted HDZ³⁰¹. Arguing that the USKOK was simply waiting for a moment when adequate evidence will appear in the pre-investigation process (Kuris 2013: 11), Director Danko Cvitan ascertained that the arrest was not driven by the electoral calculations. The earlier signs that Sanader is 'on the radar' may lend credence to this view, in sense that the USKOK opened the case in a time when the previous election (2008) was temporarily closer than the upcoming one (2013). Little evidence therefore exists for the link between the arrest of Sanader and the intention to affect the upcoming election.

Overall, the political-cycle logic has not been a prominent factor in driving the USKOK's enforcement. Neither did it materialise in the 'hit the opposition' form, nor did it contribute to the 'increased silence' (compared to the regular, non-election enforcement).

The final explanatory factor is the leadership-based one. Clearly, during the first stage the USKOK was facing a leadership crisis. There were objective limitations to the USKOK's work, but the perception was, especially during the third and fourth year (2004-2005), that part of the

³⁰⁰ The 2004 election was namely an early one.

³⁰¹ Their reputation plummeted with the fall of Sanader; HDZ won eventually a 15% of seats in the 2011 election. See: <http://www.izbori.hr/2011Sabor/rezultati/rezultati.html> [Accessed: 20 October 2015].

USKOK's' presumed failure should be attributed to the poor leadership. Failed prosecution of high profile politicians and reckless public appearances of the USKOK's Director, such as those in the 'Granić affair', were factors that contributed to this perception. The things however started to change with the appointment of a new Director. Danko Cvitan, who headed the USKOK from 2005 till 2014³⁰², pushed the USKOK in a different enforcement direction. Over time, he managed to turn the USKOK into an agency that is recognised as a 'harsh' enforcer, which aimed for top officials and for 'hefty' cases of corruption. An immensely helpful factor in this endeavour was the organisational strengthening of the USKOK. Cvitan was, in that sense, fortunate to enjoy the rising institutional abilities during his term, but the crucial impact of his leadership cannot be denied (C4).

It is difficult to distinguish where precisely the impact of the leader stops, and where the contribution of the organisational enhancements starts. Yet, what is for certain is that the resulting escalation of enforcement that took place from 2005 onwards was partly due to a strategy and mission the Director instilled. With a hindsight, from the interviews of various actors, from the words of those familiar with the situation, from the written records of the USKOK's statements and from the programmes the USKOK took part in, it is clear that the USKOK's shift toward the harshest form of enforcement was a result of a deliberate strategy developed by its leader.

Given the above, leadership emerges as a key driver of the USKOK's striving toward the harshest enforcement pattern. Still, as noted, it was not the sole factor affecting what the enforcement will look like in practice. The precondition for those who headed the USKOK to dare to engage in the harshest form of enforcement were organisational enhancements, both in resources and in powers. The leadership-based account, therefore, provides a part of the explanation of the USKOK's enforcement choice. However, it is not a sufficient, or in other words - *the only explanatory factor*.

³⁰² In 2014 he was appointed for State Attorney (HINA 07 March 2014).

To sum up thus far, the high de-jure independence, the enhancement of resources, the role of the new leader and the rise of USKOK's powers, had all been factors that interacted and led to the harshest form of USKOK's enforcement. The crucial insight is that a combination of factors, rather than particular determinants, were needed for a harsh enforcement pattern. In the USKOK's case, the sheer expansion of powers meant little unless it was 'fortified' by strong capacities which are essential to utilise the institutional powers during the policy implementation. The fact that the USKOK's prosecutor had the possibility to check bank accounts, to exchange data with foreign authorities, to investigate into complex financial transfers, meant little unless the staff were skilled to utilise these possibilities for the purpose of effective investigations. Strong powers and high resources therefore operated as mutually reinforcing factors.

A statement by Nataša Đurović, former Deputy Director of the USKOK, best summarises this. Asked to highlight the key factors that led to the prosecution of high ranking officials, she pointed to:

“...staffers’ improved investigative skills such as asset-tracing and special surveillance methods, the specialized institutional framework between USKOK and its related special police and court operations, and criminal procedural reforms passed in July 2009 that shifted investigative responsibilities from judges to prosecutors and made the trial process more efficient” (Kuris 2013: 10).

The finding that, for a harsh enforcement pattern, a combination of strong organisational and ‘human’ factors is needed, stands in sharp contrast to the findings from the analyses of the four preventive ACAs in Serbia and Macedonia. Most of the preventive ACAs, to remind, were able to pursue the harshest forms of enforcement even if the organisational factors were ‘feeble’. Why this was not the case in the USKOK’s example?

The analysis shows that one of the key factors in the USKOK’s choice of enforcement action concerned how its credibility will be affected by the steps they take. This is nothing new, as

perhaps each institution tends to preserve reputation. What is specific in this example is that the prospects for being successful are drastically lesser because of the nature of the USKOK's mission. As confirmed by the interviewees from the USKOK, they were well aware of that fact that, as a prosecutorial body, their institutional and career fortunes are tied to the fate of the investigations they launch. For the USKOK, the battle for accountability was a battle to prevent failures of their investigations all the way until a verdict is delivered. The challenge, however, has been that for successful policies (evidenced by convictions in trials), strong organisational factors are not merely a facilitating factor, but first and foremost a precondition for any thought about the idea of policy success in prosecutions.

Challenges abounded, though. On one side, as a prosecutor, the USKOK was held responsible for the turf of prosecution. On the other side, though being perceived by the wider audience as the anticorruption warrior 'number one', the USKOK's powers were in reality limited by the institutional design. The USKOK, according to a setup that was in place over the first stage of its life, shared the turf with the other anticorruption partners. This profoundly affected its enforcement logic as it left the USKOK less powerful in achieving successful prosecutions. The result was that the USKOK largely stayed away from the harshest forms of enforcement, because with such action, the reputational stakes and hence the reputational risks, rise. Of course, the USKOK could not fully 'disappear' from the agenda of prosecution of prominent cases, since wider public expectations did exist as regards the prosecution of 'big-fish'. Pressed, from one side by the lack of adequate powers, and, from the other side, by the expectations to tackle 'big-fish' corruption, the USKOK made a few attempts over the first four years to prosecute high-ranking officials. But, as could be seen, these badly failed, tarnishing the USKOK's reputation. The lesson therefore was that in order to sustain a harsh form of enforcement the appropriate organisational factors need to be in place. Only thus could the USKOK produce those sorts of policy outcomes it was widely held accountable for.

As changes in the organisational factors occurred, so did the USKOK's control over the turf. The effect has been a more favourable constellation of reputational risks and gains. The interviewees and indirect indicators based on the press-clipping reveal that the crucial concern behind the USKOK's consideration of when to exert the harshest form of enforcement was about how this will play out in reputational terms. If the conditions are not fully met yet, the thinking went, the enforcement may be escalated to a certain extent. But, in order to avert reputational losses, the harshest actions will be delayed as long as the organisational factors are not so strong that they guarantee the USKOK considerable control over the investigation stage, which will then raise the prospects of successful policy outcome after the court trial.

The 'sour' experience of mistakes from the first stage which badly affected its reputation, and the awareness that as a suppressive prosecutorial body every single mistake "may be pernicious" for the long-term prospects of the USKOK (C1), were the crucial factors behind the USKOK's calculations. These calculations were not only seen through the lenses of 'risks' that the USKOK may face, they were seen as potential investments too. One harsh enforcement action, if successful, is regarded as an asset for the future actions in which an enhanced reputation may have implications for how the prosecuted actors will behave. This, in turn, in a sort of 'positive feedback' loop will affect the prospects of the next USKOK's actions.

The case of the USKOK therefore shows that the organisational model itself formats the enforcement logic. The suppressive ACA model, in particular, brings a different set of reputational risks and gains that the preventive model did. In essence, risks for reputational losses are significantly higher, because the policy outcomes directly shape the reputational losses. The situation with the preventive ACA model, as demonstrated in the previous chapters, is substantively different. The harsh enforcement patterns did not entail strong organisational factors precisely because the ACAs could benefit regardless of the policy outcome. Failed outcomes were even more 'lucrative' for them to build further reputation by blaming those responsible for the turf of prosecution. It is for this reason that the organisational factors,

which include not only de-jure independence and resources but also organisational powers (with the *relational* component between police-prosecutor-judiciary), play such a central role in the suppressive ACA model. Of course, as with preventive ACAs, the leadership factor features as another important factor, too.

Conclusion

The key messages to be picked up from the USKOK case are as follows. First, the empirical evidence paints a more ‘pessimistic’ picture when it comes to the effect of individual determinants on ACA enforcement. It is shown that the possibility of the respective determinants to direct into the forms of enforcement that are predicted by the theoretical accounts set out in Chapter 3, is limited. Neither the organisational, nor the temporal, nor, after all, the ‘leadership factor’ appear to be correlated with the predicted types of the USKOK’s enforcement, as *isolated* determinants.

Second, it is the organisational ACA model that has turned out be the key ‘mediator’ of how the respective determinants work. In particular, the suppressive model, made strong organisational factors a precondition for the harshest forms of enforcement. The model itself shaped the reputational strategy, by way of determining the level of reputational risk and the reputational gain alike. As the organisational settings of the USKOK were strengthening, the initial strong ‘pro-risk’ bias that the suppressive model set was reduced to a point from which it was possible for the USKOK to undertake harsh enforcement actions that are not destined to fail. These organisational changes within the model, coupled with changes in leadership, rendered the harshest forms of enforcement possible and, as observed, a reality.

The case of the USKOK therefore, while denying the power of the individual theoretical accounts to explain ACA enforcement, lends support to the ‘reputational hypothesis’. This

hypothesis argued at the outset of the thesis that it is the ACA model that mediates how the respective determinants will impact on ACA enforcement.

Chapter 7 Comparative Analysis

The previous three chapters analysed five ACAs, from Serbia, Macedonia and Croatia. These chapters reviewed their enforcement patterns from 2001 to 2012 and analysed the power of the thesis' competing theoretical approaches to explain the observed enforcement. The present chapter proceeds to a comparative analysis of the empirical findings.

The thesis put forward three sorts of accounts as candidates for explaining the ACAs' enforcement. The first group includes organisational accounts, centred on factors such as de-jure independence and agency resources. Second, the temporal accounts include agency age (i.e. its life-cycle) and political-cycle as determinants of ACA enforcement. Third, the leadership-based account rests on the assumption that human agency, that is the role of the leader(s), takes precedence over the structural and temporal determinants.

The thesis has focused on two key concerns. First, do the respective explanatory factors lead to the hypothesised effects on ACA enforcement, as presented in Table 3.1 in Chapter 3? Are, for instance, ACAs with high de-jure independence or ACAs with abundant resources, destined to pursue harsher forms of enforcement? Or alternatively, to take the temporal factors, do ACAs – either as they age or they approach an election – tend to de-escalate their enforcement? If the latter two approaches are not plausible, did, perhaps, the role of leaders who headed the analysed ACAs feature as central in shaping their enforcement?

The second concern was about the causal path to a particular sub-type of the outcome: under what conditions the ACAs achieved a harsh enforcement pattern? What factors needed to be in place in order to have an ACA pursuing a harsh enforcement pattern and, relatedly, do the two ACA models – suppressive and preventive – differ in this regard?

This chapter seeks to provide answers to these two central concerns, through a comparative analysis of the findings obtained in the three empirical chapters. The ordering of the explanatory factors will be followed, starting with reflections on the organisational accounts, then moving on to the temporal accounts, and finishing with a review of the leadership (human agency) account. Depending on the constellation of a respective case, some factors will be examined through cross-agency comparisons and others through cross-time (within-agency) comparisons.

As a starting point for a comparative analysis, Table 7.1 provides a review of the explanatory accounts, the expectations they produce, and the key findings about whether these expectations materialised over the course of the observed period of enforcement. The forthcoming discussion draws upon the points summarised in this table.

TABLE 7.1. Summary of the determinants' plausibility among the five ACAs.

Factor	Expectation	Council (SRB)	Committee (SRB)	ACA (SRB)	SCPC (MKD)	USKOK (HRV)
ENFORCEMENT PATTERN		<i>Strategy:</i> Expansionary, Assertive <i>Style:</i> Predatory <i>Selectivity:</i> No	<i>Strategy:</i> Confined <i>Style:</i> Entrepreneurial <i>Selectivity:</i> No	<i>Strategy:</i> Confined <i>Style:</i> Mixed, not necessarily zealous <i>Selectivity:</i> Yes, occasional.	<i>Strategy:</i> Expansionary, Assertive ('02-'07) Confined ('07-'12) <i>Style:</i> Predatory and entrepreneurial ('02 – '07) <i>Selectivity:</i> Mixed, not always zealous ('07-'12) <i>Selectivity:</i> No ('02-'07) Yes, occasional ('07-'12).	<i>Strategy:</i> Confined ('01-'07) Expansionary, 'big-fish' ('07-'12) <i>Style:</i> Predatory <i>Selectivity</i> No
DE-JURE INDEPENDENCE	Higher degrees of de-jure independence direct into harsher enforcement patterns.	<i>Featured:</i> <i>Low independence.</i> Confirmed? NO	<i>Featured:</i> <i>High independence.</i> Confirmed? YES	<i>Featured:</i> <i>High independence.</i> Confirmed? NO	<i>Featured:</i> <i>Medium independence.</i> Expectations confirmed : NO <i>(during the first phase)</i>	<i>Featured:</i> <i>High independence.</i> Confirmed? YES <i>(though only to some extent in the first stage (2002-2005), and then to a larger extent as time passed).</i>
RESOURCES	The more resources, the harsher the enforcement.	Confirmed? NO.	Confirmed? NO.	Confirmed? NO.	Confirmed? NO.	Confirmed? YES.
AGE	With aging, the enforcement declines.	Confirmed? NO <i>(instead, the opposite effect)</i>	Confirmed? NO.	Confirmed? NO	Confirmed? NO <i>(abrupt, not gradual decline)</i>	Confirmed? NO <i>(rather, the opposite effect)</i>
POLITICAL-CYCLE	Prior to an election, the enforcement either declines or targets opposition.	Confirmed? MIXED <i>(in some elections – yes, in others no)</i>	Confirmed? YES <i>(pre-election silence)</i>	Confirmed? YES <i>(Rising politicisation)</i>	Confirmed? MIXED <i>(In the first term – no; later yes, as increasingly selective)</i>	Confirmed? NO.
LEADERSHIP	Changes in leadership lead to changes in the enforcement.	Confirmed? YES.	Confirmed? - <i>(Limited evidence)</i>	Confirmed? - <i>(Limited evidence, but some signs of "Yes" appeared)</i>	Confirmed? YES.	Confirmed? YES.

The explanatory power of organisational accounts

Does formal (de-jure) independence matter?

It was introduced in Chapter 2 that agencies with higher degrees of de-jure independence are expected to exhibit harsher enforcement. The thesis drew from suggestions that formal independence might be instrumental for how agencies enforce their mandates and hence the policy outcomes (e.g. Cukierman *et al.* 1992; Verhoest 2005). Thus, a hypothetical claim has been put forward that ACAs' enforcement is a function of their formal independence.

Two variants of this argument have been derived. One, that a high degree of formal independence is a sufficient condition for harsh enforcement. This implies that those agencies that are highly independent (in formal terms) will be pursuing harsher forms of enforcement. The other variant is that a harsh enforcement is not possible under a lower degree of formal independence. In other words, a high degree of formal independence is viewed as a necessary factor for harsh enforcement.

The comparative analysis of the ACAs does not lend substantial support for either of the two hypotheses and hence casts doubt on the 'de-jure independence matters' claim. As can be seen in the table above, there were two ACAs who did not command high formal independence yet still managed to pursue harsh enforcement. Serbian Council, the least independent (in formal terms) out of the five ACAs, exhibited a harsh enforcement pattern for most of its lifetime (particularly from 2003 onwards), espousing an assertive enforcement strategy, a predominantly predatory enforcement style, and a low degree of political selectivity. In addition, Macedonian SCPC, who has featured a medium degree of formal independence, pursued a harsh enforcement pattern over the course of the first stage of its existence (2002-2007). A high-degree of formal independence, therefore, has not necessarily been a precondition for harsh enforcement patterns.

On the other hand, some of the ACAs failed to pursue harsh enforcement even though they had high formal independence. Serbian ACA is a case in point. Despite having a high degree of formal independence, the enforcement pattern of this agency failed to be harsh in all three elements – its enforcement strategy was neither assertive or expansionary, its enforcement style was not predominantly zealous, nor can be said that political selectivity was absent in the ACA's actions. The example of the ACA suggests that a high degree of independence is not a sufficient condition for harsh enforcement.

Certainly, two out of the five ACAs have been highly independent in formal terms and they did pursue harsher forms of enforcement. The examples are Serbian Committee and Croatian USKOK. Yet, they constitute a portion of the analysed sample and do not suffice to support the overall argument. Moreover, they did display harsher forms of enforcement but not all of the elements of the enforcement pattern took the 'harshest' form. Serbian Committee, for instance, enforced a zealous enforcement style but in the 'entrepreneurial' rather than 'predatory' variant. Additionally, its enforcement strategy had been 'confined'. USKOK, on the other hand, aimed for low-ranking political targets throughout the first stage of its life (2001-2007), so the enforcement strategy had been far from the harshest possible. These two agencies, in other words, did pursue harsh but not harshest patterns of enforcement.

Overall, the thesis' evidence offers little support for the claim that de-jure independence crucially determines ACA enforcement. The first of the organisational explanations therefore appears little plausible for explaining ACA enforcement.

Do resources matter?

It has been a widespread belief across professional as well as scholarly communities that another organisational factor – that of resources - is a determinant of ACA behaviour (Doig 1995: 161; Johnston 1999; Borwornsak 2001: 177-203; Meagher 2004; Quah 2015; De Sousa

2010: 18-20). A hypothesis was therefore formulated that the better resourced an agency is, the more likely it is to pursue a harsh enforcement pattern. Again, two logics can be derived. The first variant is that resource-rich ACAs are directed toward harsher forms of enforcement, i.e. abundant resources constitute a sufficient condition for harsh enforcement. The second variant – high resources as a necessary factor for harsh enforcement - stipulates that resource-depleted agencies are unable to espouse harsh enforcement patterns.

While the argument of organisational resources is intuitively appealing, the thesis' empirical evidence does not corroborate it. The fact that the poorly resourced agencies - the Council, the SCPC, and the Committee - all espoused harsh enforcement patterns, suggests that resource shortages by no means prevent an ACA from pursuing harsh enforcement. At the same time, some of the well-resourced agencies, in particular the ACA, failed to demonstrate a harsh enforcement pattern. The thesis' evidence therefore offers examples that run contrary to both variants of the 'resources matter' school.

Cross-time variations in resources within certain ACAs offer additional insights that cast doubt on this line of argument. The rises in resources in the SCPC, which were taking place from 2007 onwards, were not accompanied by continuity or escalation of the previous harsh enforcement pattern; quite the contrary, this resource enhancement went parallel with a de-escalation in the SCPC's enforcement in each of the three elements (strategy, style, selectivity). The Committee and the ACA are considered as two separate agencies in this thesis, yet they can be seen as part of one process in which the termination of the older agency (Committee) led to the creation of the newer one (ACA). If this is interpreted as a sort of organisational continuity (despite the fact that the two agencies formally constitute two separate entities), then their lifetimes can be characterised as two distinct stages. The first stage saw a modest amount of resources (at the Committee's disposal) and the second stage had considerably higher

resources (at the ACA's disposal)³⁰³. The turn from the Committee to the ACA was, in other words, accompanied by a major rise in resources. However, this rise was followed by a decline, not an escalation, in the enforcement pattern. Bigger resources, in other words, did not bring about the predicted direction of enforcement.

The only example that lends support to the 'more resources, harsher enforcement' claim is that of the USKOK. It could be seen in Chapter 5 that as the USKOK's resources grew over time, this agency started escalating its enforcement strategy by way of taking on highly complex cases of corruption, primarily through targeting of high-level officials. A rise in resources was one of the key preconditions for the USKOK to escalate its enforcement pattern. Yet, the USKOK is a sole example which is in accordance with the 'resources matter' claim, whereas the other four ACAs all yield evidence contrary to the prediction of this explanatory account.

There are two potential reasons why ACAs, and agencies in general, may not produce a harsher enforcement pattern following a rise in its resources. First, as Niskanen argued in his classic work (1974), agencies may act as 'budget-maximizing bureaus' who are not primarily interested in the policy but rather in 'selfish' gains that come through bigger budgets. An ACA who gets higher resources may take advantage of these resources by cutting the amount of work per employee, whereby the overall output 'stagnates' instead to grow. The agency can also lavish part of these resources on bonuses, honoraria, and other perks. Second, getting bigger resources may result from a tacit or agreed exchange between the government and the agency in which the government gets more favourable treatment, through a de-escalated enforcement, while the agency gains more resources. At the same time, a lack of resources may not be a prohibitive factor for harsh enforcement for those sorts of tasks that do not entail

³⁰³ It is important to remember that a rise in resources can be offset by expansion in tasks, which leads to an additional drain on the resources. This was indeed the case with the shift from the Committee to the ACA, where the ACA received a wider set of tasks than the Committee. Nevertheless, as shown in Chapter 4, the rise in resources was so drastic that even accounting for the increased task-burden, the ACA can be considered a much better capacitated agency than the Committee.

substantial financial investments. Such is a majority of actions that preventive ACAs undertake, including those investigations where the burden of proof, in legal sense, does not rest with an ACA but rather with the police, prosecutor, and judiciary.

It can be concluded that resources, as a factor that is said to drive agency enforcement, did not stand up to the theoretical expectation articulated in Chapter 3. The comparative evidence indicates that high ACA resources are neither a necessary nor a sufficient precondition for harsh enforcement.

The explanatory power of temporal accounts

Does age matter?

The starting assumption of the 'age matters' hypothesis was that agencies tend to change their enforcement as they get older. As introduced in Chapter 3, the literature is not unanimous in whether aging brings about harsher or milder enforcement (for the 'decay over time' logic, see Bernstein 1955; for the opposite claim, see Downs 1967). This thesis embraced as hypothetical the view that with aging agencies tend to 'tone down' their enforcement (Bernstein 1995). Yet, what does the empirical evidence say?

The findings from the previous three chapters point to two sorts of conclusions, both of whom run against the logic of declining enforcement over time. Almost all ACAs, apart from the SCPC, either retained or escalated the enforcement pattern as they aged. The Committee's pattern had been relatively constant all the way from its start of operation in 2005 till the termination in late 2009. The Council underwent a process of escalation of the enforcement, from 2003 onwards. The USKOK, similarly, escalated its enforcement in a gradual manner from 2005 onwards. For the short period of observation (2010-2012), the ACA exercised a relatively low

degree of enforcement harshness. Common to all these ACAs therefore is that none of them declined its enforcement with aging.

The only ACA that diminished enforcement over time is the SCPC. Still, its change in the enforcement pattern, which started with the appointment of the second Board, was rather abrupt and had unlikely been a result of the sheer passage of time. As was concluded in Chapter 5, it was prompted by another factor – personal changes in the leadership of the SCPC.

Can it be said then that age turns out not be a plausible determinant of ACA enforcement? At first sight, the evidence does not confirm the hypothesis indeed. However, certain caution is needed before fully dismissing aging as a factor. The analysed ACAs were observed in an early phase of their life, so they did not go through any of the later stages that Bernstein (1955) highlighted as prone to capture and diminishing staff motivation. The SCPC, Council, and USKOK were only about ten years old in 2012, the Committee lived for about five years (from 2005 to late 2009), and the empirical evidence about the ACA's enforcement encompasses three years only (2010-2012). Bernstein never specified how each of the stages of agency life lasts. Consequently, the theory is hardly falsifiable because the stage of youth can be argued to have lasted shorter or longer than usually (Meier and Plumlee 1978: 83). However, what is important for the present purpose is that it seems safe to say that hardly any of the analysed ACAs entered the stage of 'maturity', let alone 'old age'. Longer horizons – probably several more terms of office - are therefore needed for the 'aging hypothesis' to be additionally tested, in a setting with an improved possibility for falsification.

While assessment of whether the hypothesis 'aging leads to declined enforcement' is dependent on how long the intervals of agency life-cycle are that we focus on, the thesis does provide some evidence about the underlying mechanisms spurred by aging. As mentioned earlier in the thesis, agency aging - as a determinant of institutional enforcement - can be associated with several interrelated yet distinct mechanisms: (i) aging as a resource for credibility building; (ii) aging as a learning process; (iii) aging as a process that provides greater

material for an agency's reflection on optimal strategies for compliance. The thesis elucidated through a process-tracing that some of these mechanisms were triggered as a result of aging and that these mechanisms shaped the enforcement of some of the ACAs. The Council's case, for instance, shows that passage of time can be an important factor for learning (the second mechanism mentioned above), but it can also matter for building credibility (the first mechanism). Similarly, as confirmed by a high-ranking official of the USKOK (Chapter 6), their self-reflection on the prior experience, primarily the failures to take on high-level corruption in the period 2002-2005, informed the thinking about the future strategies of enforcement (from 2005 on). Here aging played part as a learning facilitator (see (ii) above), in the development of a harsher enforcement pattern. Later on, from 2009 onwards, passage of time helped the USKOK solidify credibility through offering the wider audience a large enough set of cases which they could claim demonstrates the USKOK's impartiality and professionalism. To conclude, aging as a factor should be linked to the mechanisms that tend to be reinforced as a result of a growing experience, playing part in ACA enforcement.

In summary, the impact of life-cycle has not played out in the direction that the traditional argument of 'declining enforcement' assumes, though the question is whether the analysed time span is too short to allow appropriate testing of the hypothesis. Nevertheless, aging - the passage of time - turned out to be able to foster some mechanisms which play a role in changing ACA enforcement, for instance, by increasing prospects for credibility enhancement or contributing to an ACA's learning. Also, it should not be forgotten that the isolating of aging as a separate factor is not without difficulties, because the other determinants produce effects too as time passes (as evidenced by the change in SCPC's enforcement from 2007 on).

Does political cycle matter?

Another determinant of agency enforcement from the 'temporal camp' is that of political-cycle. This explanation first appeared in the study of macroeconomic policies and decisions (Tufte 1975; Frey 1978). The argument goes that institutions – and so applicable to ACAs – tend to align their conduct to a looming election. One possible direction of this adjustment is siding with the incumbents' interest. In the concrete case of anticorruption policies and ACAs, this would mean selective targeting of opposition (Mills 2012: 118-145) or lenient treatment of government officials. An opposite, more benign scenario, involves reducing activity during an electoral campaign. This sort of change reflects the intention to delay politically sensitive action for the election aftermath, to avoid affecting the political fortunes of the contenders.

How did the five ACAs behave in pre-election times? Did they display any of the two sorts of changes, as predicted by the political-cycle thesis? Or they kept conducting 'business as usual' despite a fast approaching election? The findings are mixed. Some ACAs were not altering their enforcement during electoral campaigns. The USKOK, for example, exhibited a relatively constant enforcement pattern in non-electoral as well as electoral times. Other ACAs, however, showed some signs of adjustments in pre-election times. The Council regularly hit at government in pre-election times, but the number of such actions was never large. Usually, the Council launched one or two actions against a high-ranking government official before an election. This sort of change – 'step up attack on the government' - is not anticipated by the two key hypothesised scenarios. The SCPC, on the other hand, displayed certain increases in political selectivity; these came in some, but not all elections (namely, they appeared in 2008 and 2011). It is critical to note that the SCPC exerted various approaches under different leaders. During the first Board (2002-2007), the SCPC did not follow the political-cycle dynamics. However, under the second Board it did begin to change the enforcement pattern in an election run-up, specifically by stepping up political selectivity (to the opposition's detriment). Serbian ACA, also, displayed a sort of increased politicisation prior to elections.

However, the ACA went only through one electoral cycle (in 2012), which is too small an empirical basis for firmer conclusions³⁰⁴.

To summarise, some of the ACAs adjusted their enforcement in line with the 'side with the government' logic during some of the elections. Yet, due to many exceptions that happened, this has been far from a wide trend. One ACA used pre-election times to deal a harder blow to the government rather than the opposition, while some other ACAs did not markedly change their enforcement during pre-election periods, which are instances running contrary to the above hypothesis.

To summarise, political-cycle seems to have been a factor in shaping the enforcement of some of the ACAs, to a limited extent and in various directions. When it played a role, the benign variant – 'pre-election silence' – was more frequent than the malign 'treat the government and mistreat the opposition' variant. Therefore, the impact of the political-cycle has proved unstructured, both when it comes to regularity of occurrence as well as the direction. Besides, even when happened, it seems to have been a function of other determinants, such as that of leadership.

Does leadership matter?

In contrast to the organisational and time-related accounts, the leadership argument says that it is the 'human factor' that crucially drives ACA enforcement. As introduced in Chapter 3, this human factor is relevant in at least two respects. First, organisations' behaviour tends to reflect

³⁰⁴ Yet, given that in an election that took place in 2014 (hence it is not part of the thesis' observations), the political-cycle logic did not have an impact on the ACA's enforcement by way of producing political bias. Instead, following a cursory preview of this period, there are indications that the ACA demonstrated the 'pre-electoral silence' logic. This sort of analysis may lead us to conclude that the ACA's behaviour in pre-electoral times was a function of its leadership, because in 2014 it was headed by a different Director than in 2012, when the previous elections were held.

the attitudes of those inhibiting them (Kaufman 1979:96-97), especially those holding power to run the organisation. Second, as Carpenter (2001) demonstrates, regardless of the structural constraints agency leaders may build autonomy which then provides for more discretion as to how to carry out the mission. Therefore, who runs an ACA is argued to be the most instrumental factor in forming the foundations for what the enforcement will look like, no matter what the structural circumstances are.

As noted in Chapter 3, measuring the leadership of ACA faces methodological difficulties. Yet, an alternative approach can be taken by looking into whether the ACAs' enforcement changed following turnovers of their leaders or following changes in the personal composition of the Board. What, then, can the five ACAs' histories tell us about the impact of leadership as a determinant of ACA enforcement?

The evidence offers considerable support for the leadership hypothesis. Most of the changes in leadership in the five ACAs were followed by significant changes in the enforcement pattern. The Council began to implement a harsh enforcement strategy from 2003, linked to the appointment of Verica Barać as its new leader alongside an appointment of several new Board members. Macedonian SCPC curtailed its enforcement following the departure of the first Board and the arrival of a new Board. Croatian USKOK also saw a major change in its enforcement strategy after a new Director, Danko Cvitan, came in in 2005. Only did not the Committee change its enforcement pattern after its Directors alternated on the Board. However, it is worth noting that the Committee's Board acted as a collective decision-making and enforcement body, whereby the role of Director was reduced to chairmanship. As long as the Board structure remains the same, there is no reason to believe that the enforcement can change. In that sense, it is not surprising that changes of Committee's Directors did not cause changes in the enforcement. Finally, the ACA did not see a change in leadership in the observed period, yet it appointed a new Director somewhat later, in 2013. A cursory look at its

subsequent enforcement indicates an escalation in the enforcement pattern³⁰⁵. Overall, the evidence suggests that changes of the ACAs' leaders, or personal composition of their Boards, had implications for their subsequent enforcement.

It follows from the above that the 'personal factor', i.e. human agency, trumped the other determinants of ACA enforcement. Because changes in leadership of the analysed ACAs mainly were not accompanied by major changes in the other determinants, these leadership changes provide for a suitable 'before-after' test of the effect of this variable (George and Bennett 2005: 82-83). Some of the observed changes in the enforcement were so grave that the role of agency (action) overrode the structural constraints. The Council, for instance, made a huge shift by starting to pursue an assertive and expansionary enforcement strategy from late 2003. Hence the argument that it is the low degree of independence or poor resources that crucially directed the Council toward a milder enforcement pattern from 2001 to 2003 - loses validity. A set of personal changes on the Board gave rise to the harshest possible enforcement pattern, even though the structural constraints remained the same. Conversely, in the case of the SCPC, the first Board demonstrated that the harshest form of enforcement is possible despite a medium degree of formal independence and low resources (compounded by major logistical problems). Any interpretation that the subsequent Boards espoused milder forms of enforcement because of these structural factors – would be implausible.

To summarise, leadership emerges from the comparative analysis as the most plausible explanatory factor of ACA enforcement. While it is nearly impossible to measure the continuous impact of leadership on the ongoing enforcement, the present research designs allow us to trace whether changes in leadership led to changes in the enforcement. The empirical evidence suggests that yes, they did. The process-tracing conducted in Chapters 4-6 shows in more detail the underlying mechanisms, how some of the ACAs advanced particular enforcement patterns as a result of a deliberate choice of their Board(s)/leader(s).

³⁰⁵ As noted earlier in the chapter.

Discussion

What does the comparative analysis tell us about the plausibility of organisational, temporal, and leadership factors in explaining ACA enforcement? The impact of the individual determinants has proved more varied than the initial expectations stated. The realities of ACA enforcement are far more complex than the ACA literature may have predicted in its discussions that focus on how to enhance performance by advancing certain factors.

It turns out that the organisational, regulation and agency literature provide a more sobering stance toward some of the long-standing orthodoxies in considerations of organisational performance³⁰⁶. The intuitive appeal that higher formal independence will inevitably translate into more engaged enforcement, or that its absence will prevent engaged enforcement, is not necessarily accurate. The examples of the five ACAs demonstrate that the organisational factors are not the key drivers of agency enforcement.

Likewise, other sorts of factors that have been widely discussed in regulation, agency, political science and in political-economy literature, have proved not as instrumental as the conventional hypotheses assume. Aging (life-cycle) and elections (political-cycle), prominent determinants from the temporal account, have only occasionally had an impact on the ACAs' enforcement. Yet, this impact has neither been structured nor predominant over the other determinants. It was secondary to other factors such as leadership. Elections in fact induced various sorts of enforcement changes, none of whom appeared as a regularity and some of whom unfolded under a logic contrary to the conventional political-cycle argument. Furthermore, most of the analysed ACAs proved able to resist the presumed 'destructive forces' of aging, by retaining the previous enforcement pattern or even by further escalating it. The temporal accounts, therefore, showed a certain extent of explanatory power compared to

³⁰⁶ See Chapter 3 for a discussion about the orthodoxies regarding the impact of organisational factors and dissenting voices in the three literatures.

the organisational accounts, but it is far from sufficient to have them regarded as key drivers of ACA enforcement.

In contrast to the organisational and temporal accounts, the leadership factor appears as the most instrumental in shaping ACA enforcement. The case studies presented in Chapter 4-6 show how, in certain ACAs, leaders managed to exploit discretion and advance autonomy in order to pursue an assertive and expansionary enforcement. The question of on-ground implementation is more than a mere following of the rules and procedures that are set out in the legislation. This question involves a whole range of choices regarding the way the agency will establish its presence within the interested audiences.

Carpenter (2001) showed that agencies are able to exploit opportunities and conquer new spaces of influence, by building coalitions of support, who will serve to underpin the agency's work and to protect it from external backlashes. In some of the analysed ACAs it could be seen that the leaders (or the group of officials who sit on a Board) managed to establish a harsher enforcement pattern by precisely following the same recipe. This, by rule, brought them in tension with the authorities (incumbent). However they managed to sustain the harsh enforcement pattern thanks to the reinforced autonomy and emerging coalitions of support. This was the case with the Council (2003-2012), the SCPC (2002-2007) and with the USKOK in its second stage of life (2007-2012).

The audiences that constituted the basis for coalitions of support included, in the sample of the thesis' ACAs, domestic electorate as well as international evaluators (EU, GRECO, foreign donors, and the likes). While an ACA's growing reputation among the domestic electorate renders the cost of a political pushback higher, international organisations can add further pressure on the government not to obstruct the ACA's efforts. International evaluators are important particularly when it comes to conditionality as well as sending messages to the domestic public about the degree of progress achieved by the domestic authorities. It is therefore critical for an ACA to assure foreign partners that it is making a positive contribution

to the fight against corruption. Should ACAs manage to do so, primarily through a persistently harsh enforcement, they can obtain international support that will help avert government's retaliation via formal institutional means that can undermine the ACA (e.g. sacking, reduction of competencies/powers, budget cuts, and so on).

The Council sought to build a reputation of a harsh integrity warrior among the electorate, by pursuing investigations of 'hefty' cases of alleged corruption and by escalating its rhetoric. At the same time, the Council sought to develop networks of support among an international audience consisting of foreign organisations, representatives of foreign countries' authorities (based in Serbia and abroad), and foreign anticorruption experts. Reliance on their pressure on the domestic government(s) was the key mechanism for the Council's leader to advance a harsh enforcement pattern.

Similarly, the SCPC's enforcement during the first term (2002-2006) mobilised domestic support. The SCPC also established close collaboration with a number of foreign partners, as evidenced by its programmes of capacity building as well as the interviewees' testimonies about frequent cooperation with organisations such as the EU or GRECO. While it is hard to establish to what extent the implicit or explicit support of the international actors has paved the way for the SCPC to pursue a harsh enforcement pattern, it is clear that the considerable support that was enjoyed by the domestic electorate encouraged the SCPC to target a high number of 'big-fish' cases in a harsh manner. True, the SCPC, unlike the Council, did not sustain the harsh pattern after its firm term (2007-), but this was the result of a specific institutional provision mandating a compulsory departure of all members of the Board; this led to the appointment of a new set of staff, whose leadership turned out to direct the enforcement in a different direction.

The USKOK counted on growing support of the electorate during its second stage, when the enforcement pattern took on the harshest possible form. Their reputation enhanced following the launch of big cases of corruption, which drastically reduced the possibility of strong

institutional obstruction by the government. As regards the support of international partners, it had been evident both when the Croatian governments were pressured to enhance the institutional possibilities of the USKOK as well as in subsequent acknowledgments of USKOK's actions that targeted complex schemes of corruption.

Thus, mobilising domestic and international support, that is the support of the two pertinent audiences – electorate and foreign evaluators, featured as a potential mechanism for the ACAs' leaders to sustain the harshest forms of enforcement. This has been a possibility that some leaders took advantage of, while others failed to. Depending on the intention and craft of ACA leaders to 'maneuver' in the two key audiences, different enforcement patterns resulted.

It should not be forgotten that the choice of enforcement strategy may be a matter of leadership skills, but it is also a matter of personal views on what one institution should be doing. As Kaufman noted (1971: 96-97), an influx of new people into an organisation may bring new views about the role of the organisation. Personal changes can crowd out some of the long-standing habits that have been solidified by the previous staff. An ACA's change in enforcement, which comes after a turnover in its leadership, can result from the new personnel ushering in different enforcement preferences. In that sense, a de-escalation in an ACA's strategy that follows a leadership change is not necessarily the result of the arguable inability of the new leader(s) to sustain the same enforcement pattern. It may also be a consequence of a deliberate decision that a different enforcement approach is more optimal.

It is hard to distinguish which of the two mechanisms prevail in individual cases that saw key changes in enforcement – was it the 'Carpentarian' or the 'Kaufmanian' one? In most cases, both elements are likely present, to a lesser or larger extent. They are interrelated with each other, constituting the underlying mechanism that leads to changes in the enforcement. Again, the cases of the SCPC and Council are most telling in this regard. From the conducted interviews, the public reactions and the enforced actions, it can be seen that both these ACAs were infused with particular understandings of their mission during the periods of harsh

enforcement. Their leaders, at the same time, demonstrated capability to achieve what they set out for.

The fact that the enforcement of most of the five ACAs were not comprised of recurring patterns but more comprised of a function of personal styles of leadership also indicates a low degree of their institutionalisation. Institutionalisation, as a concept, has been most analysed in the literature of legislative behaviour, which produced various, sometimes contradictory definitions (Patterson and Coppeland 1994: 53). Institutionalisation is here defined as a set of stable, recurring patterns of behaviour (Huntington 1968: 144-145). It implies a considerable degree of enforcement stability, a result of a shared understanding of what and how an institution is supposed to enforce. Institutionalisation, in other words, leads to little variation over time in one institution's enforcement. By this standard, we can see that the analysed ACAs were characterised by a low degree of institutionalisation.

This poses the question: is this lack of institutionalisation a result of the particular societal and political context, the specific nature of ACAs as a particular subset of (regulatory) agencies, or their young age? Or, maybe, the low degree of institutionalisation has a wider currency and can be generalised as a prominent feature of ACAs, regardless of their age and the institutional context? The most radical interpretation would go one step further by arguing that this sort of conclusion applies not only to ACAs and, in fact, may be arguably extended to other sorts of agencies. While this question is opened in this chapter, a detailed discussion and conclusions will be offered in the final chapter (Chapter 8).

The previous analysis in this chapter focused on the first key concern – whether the particular explanatory factors have power to explain the five ACAs' enforcement. The following part turns to the second research question: do the two ACAs models achieve a harsh enforcement pattern under differing sets of variables? It will be argued that ACA model (preventive vs. suppressive) is the key factor that mediates the interaction of the respective determinants and thus what sort of outcome they produce in the final instance.

Under what conditions does harsh enforcement occur in the two ACA models?

The conclusion about the prevalence of leadership-based explanation shall not be understood as suggesting that organisational factors are entirely irrelevant for ACA enforcement. The thesis found major differences when it comes to how the respective determinants work under one (preventive) compared to the other ACA model (suppressive). It is confirmed that, for a harsh enforcement pattern to be achieved, preventive ACAs do not necessarily need 'favourable constellations' of the organisational factors (i.e. high formal independence and vast resources). However, for the suppressive model, both the organisational and the human factor's 'favourable' values feature as necessary conditions. This suggests that ACA model represents the key variable that mediates the effect of the individual determinants on the output (i.e. ACA enforcement).

As shown in the cases of the Serbian and Macedonian ACAs, which are of the preventive model, a harsh enforcement is possible under a low level of formal independence and/or poor resources. The case of the suppressive ACA, Croatian USKOK, on the other hand, demonstrates that the harshest form of enforcement pattern was not possible as long as both the organisational and human factor(s) were substantively 'reinforced'.

As the thesis drew attention to in the theoretical chapter (Chapter 3), suppressive ACAs face a higher threshold for harsh enforcement because the distinct nature of the model is accompanied by different sorts of risks, pay-offs and challenges compared to the preventive ACA model. Suppressive ACAs are bound by the rigours of criminal procedures (Kuris 2015a: 128-130) with higher standards for evidence and multiple 'veto points' in criminal procedures, where a case can be undermined. Suppressive ACAs are also more dependant on anticorruption partners during investigations and they can hardly afford failures in trials. Each lack of conviction may drastically undermine the credibility of the ACA since the responsibility for the outcome rests with the ACA. Prosecution is, namely, their turf, and they are perceived as the

key actor. A further aggravating circumstance for suppressive ACAs is that they are usually legally restricted to disclose details from investigations or to comment publicly upon a case. These are important tools that may help them better manage citizen expectations; when it comes to prosecution, particularly political ones, unrealistically high expectations are among the key problems that may create pressure to rush with a case even though the evidence is not yet properly gathered (Kuris 2015a:128). Suppressive ACAs are also subject to tighter constitutional controls (Kuris 2015a:128). At the same time, since they command coercive powers and hence can endanger not only the reputation but the freedom of officials, the likelihood of political pushback is higher compared to preventive ACAs.

Due to these characteristics, the thesis set out to argue that suppressive ACAs face different reputational opportunities and risks. As a result, it was hypothesised that the harshest forms of enforcement will be more difficult to attain under the suppressive ACA model. In order to avert policy failure, a suppressive ACA needs to make sure that all organisational factors are fully in function of contributing to a successful outcome. High de-jure independence is needed as a shield against political pushback that can be easily realised through formal institutional means; Abundant resources, but also convenient arrangement in regards to the ACA's enforcement powers and powers over the partner institutions, are also expected to be necessary factors for efficient actions because they raise the prospect of a successful investigation. The absence of any of these factors significantly reduces the chances of successful investigations, which for suppressive ACAs have a more pernicious effect than in the case with preventive ACAs.

Preventive ACAs, on the other hand, neither legally nor formally bear the responsibility for the final outcomes of investigations. This fundamentally shapes the risks and challenges they face, which reduces the threshold for harsh enforcement actions. Preventive ACAs can initiate investigations and call on other institutions to do so, however should such attempts fail that is likely be perceived as someone else's fault, primarily the police's or prosecutor's. Preventive

ACAs, like other watchdogs, have the freedom of acquainting the public with all sorts of data that may indicate corruption, but without the burden of proof in formal legal sense.

This, understandably, drastically reduces the cost of harsh enforcement actions. Such actions are associated with pressure on the suppressive anticorruption bodies, but should a policy failure occur the preventive ACA will not be held accountable; quite the contrary, it may provide for further reputational gains through critique of the 'failing' suppressive institutions. Indeed, the empirical analysis shows that this scenario occurred many times in Serbia and Macedonia, for example, where the Council and the SCPC used to point at the prosecutor, police, or judiciary as the culprits for a lack of convictions in major scandals. If a preventive ACAs turns against the incumbent, political pushback is possible. However, it is much less urgent than pushback against suppressive ACAs, because the farthest a preventive ACA can go is to tarnish an official's reputation but cannot make him criminally sanctioned. Hence, a high degree of formal independence may not be critical because the incumbent 'tolerates' to some extent a harsh enforcement of the (preventive) ACA. Rather than through formal institutional intervention, the government may resort to more subtle ways of backfiring, for instance through ignorance of the ACA, its marginalisation in the media or discreditation of its members.

At the same time, the other organisational factor – resources - undoubtedly helps a preventive ACA in its tasks. Yet, the tasks that the preventive model is entrusted with entails far more modest resources, whose lack can be compensated for through a crafty use of the tools that are widely available to other citizens and legal subjects. For example, insight into information of public interest, publicly provided information, whistle-blowers' tip-offs, are some of such tools. Therefore, even with scarce resources harsh enforcement actions can be undertaken nevertheless.

So, what does the comparative analysis reveal concerning the role of organisational model? To remind, four out of the five ACAs analysed in the thesis are of the preventive model (Council, SCPC, Committee, ACA) and one is of the suppressive model (USKOK). Though cross-model

comparisons involve a sort of dis-balance as we have four preventive and 'only' one suppressive ACA, this constellation is suitable for a comparative analysis because it allows fruitful cross-time analysis within the suppressive ACA (USKOK). The USKOK underwent a process of strengthening of its institutional architecture which in a long and gradual process changed the 'terrain' of reputational gains and risks over time. This is a particularly beneficial circumstance from the perspective of the thesis' interest to investigate how ACA organisational model shapes enforcement in terms of its mediation of the organisational factors which means that it enables testing of the reputation-based argument across time.

From the empirical analysis, it follows that the empirical findings are consistent with the expectations derived from the reputation-based argument. A comparison of the five ACAs reveals that the preventive ones were able to espouse a harsh enforcement pattern without having 'suitable' or 'strong' values in the organisational factors. The mentioned cases of the Council (2003-) and the SCPC (2002-2007) illustrate this. In those cases, strong organisational factors did not represent necessary conditions for the harshest forms of enforcement. For the suppressive model, on the other hand, it turns out that the organisational factors did feature as necessary conditions for the harshest enforcement pattern (with the presence of other factors that further contributed to harsh enforcement, particularly a 'favourable' leadership). The USKOK had initially had weak powers and poor resources. As the process-tracing reveals, this 'weakness' of the organisational factors had prevented the USKOK from undertaking the harshest enforcement pattern; over time, as the organisational factors were enhancing, the enforcement pattern became harsher, too. Eventually, the USKOK started demonstrating harsher and harsher enforcement.

One crucial factor in this organisational strengthening was the rise of USKOK's capability to control the turf. As described, the USKOK was getting an increasing set of powers over those actors it shared the turf with – the police, the court, witnesses, and other subjects that hold certain powers that are important in investigations (various state bodies, private companies,

banks, and so on). It was shown that the reputational sort of consideration was the key driver behind the USKOK's choice of enforcement actions. As the powers of control over the turf were increasing, and as the other organisational factors were being strengthened (e.g. resources getting bigger), the USKOK started to escalate its enforcement. Eventually, the enforcement reached the harshest form, amounting to the prosecution of top-level officials in a series of actions taken from 2009 onwards.

It was set out at the beginning that the preventive ACA model provides for a setup featuring lower reputational risks and also greater prospects for reputational gains. Accountability for policy failure - high corruption levels and lack of/failed prosecution of corrupt cases - does not lie with a preventive ACA but rather rests with the police, prosecutor, and judiciary. This allows for harsh enforcement, despite the fact that preventive ACAs have no substantive control over the shared turf which means that harsh enforcement will not certainly translate into better policy outcomes. But, the key lies in the possibility that harsh enforcement leads to reputational gains – the constituency is very much in favour of seeing an ACA acting zealously, while at the same time it is protected from reputational losses because policy failure can be blamed on those commanding harsh powers (police, prosecutor, judiciary).

This had precisely been the case with the Council's and SCPC's enforcement. As illustrated in the empirical analysis, both the Council and the SCPC were making intense pressure on the prosecutor for investigation of high-profile scandals. The Council conducted even own investigations, reports of which were sent to the prosecutor, and thereafter the Council commented on the lack of response and cooperation by the prosecutor as evidence that the policy failure is his fault. The SCPC, as illustrated through interviews, sought from its early days an opportunity to build a reputation of a harsh integrity warrior. It strove to impose itself as a dominant actor dealing with corruption-related issues in which, again, it pressures others to react, yet not bearing any liability for the policy outcome. Similarly to the Council, the SCPC had a strategy of blaming the prosecutor, police, and judiciary for the lack of tangible results (at

least in those scandals). The intention to shift the blame was well documented through the press-clipping and the agencies' annual reports, while the interviews with their staff show how they considered it crucial to undertake a proactive approach in investigations and to follow it up with pressure on the other anticorruption bodies. The empirical analysis, thus, documents not only the external manifestations of such approach by the ACAs, it also clearly shows their thinking behind the enforcement choices. This thinking was underpinned by the reputation-based logic.

We can see that the lack of conducive organisational factors prevented neither the Council nor SCPC from pursuing the harshest form of enforcement. The Council was structurally plagued by its extremely low formal independence and by poor resources, but contrary to the 'design hypothesis', these did not direct into milder forms of enforcement. The same applies to the SCPC's enforcement between 2002 and 2007 – the lack of a high degree of formal independence did not make it 'think twice' before undertaking a harsh action, nor the poor resources prevented it from being harsh.

Since the institutional arrangement defining their de-jure independence allowed a larger or lesser degree of principal's meddling into the personnel or organisational affairs, the two ACAs risked government 'retaliation' through this sort of enforcement. However, as already noted in the discussion about the 'agency autonomy' theory, agencies can build coalitions of support (with two key audiences - domestic electorate and international evaluators) that serve as a shield against the principal's interference. This would override, or compensate for, the lack of high formal independence. This is one reason why agencies, contrary to the rational-choice logic, may opt for a harsh enforcement.

In addition, it is suggested here that the reputation argument may further be extended. Reputation is not only an *institutional* but also a *personal* asset. Servants, including ACA leaders, build and carry reputations, both during and after the post. This may be an important factor for the future nominations and career prospects. In that sense, pursuing a harsh enforcement

action which risks adversarial reactions, even if bringing some 'damage' to the ACA, can have long-term personal benefits, too. Whether this sort of 'adversarial' legacy will turn out gainful or harmful for an ACA leader will depend very much on the political constellation in the future – what party and how it decides about the nominations in the public sector, for example³⁰⁷. But, in a context of growing internationalisation, that sort of legacy can be much more of an asset than a 'curse'. The flourishing anticorruption industry (de Sousa *et al.* 2012: 2-3) is characterised by extensive cooperation with foreign anticorruption actors and international organisations (e.g. EU, OECD, Council of Europe, consultancies). ACA leaders' can continue their careers within the international anticorruption industry, as consultants or experts. Reputation of a harsh anticorruption warrior, proven in an ACA, may be a key recommendation for this kind of career engagement.

As can be seen, preventive ACAs were able to pursue harsh enforcement even under 'unfavourable' organisational factors. This was possible because the organisational model itself provides for bigger opportunities to gain than to lose in reputational terms. The fact that preventive ACAs are not held accountable for the ultimate outcomes of anticorruption policies allows them to 'venture into' the turf traditionally occupied by the prosecutor and police. By pleading for harsh actions, in a situation in which they are not constrained by the rigours of criminal investigation nor are responsible for the policy outcome (precisely because the organisational model does not assign to them corresponding powers), preventive ACAs may, paradoxically, open the door for win-win situations in reputational terms. Should an ACA's action be followed up by the 'traditional' anticorruption fighters, it will bring the ACA benefit; should the action not be followed, or if it fails to reach a conviction eventually, the ACA can again position itself as a corrector who criticises the other 'failing ACA bodies'.

³⁰⁷ The interviewed member of the first SCPC Board noted the difficulty to find a job in the country after the expiration of the SCPC tenure: "I think this was because of the engagement in the Commission. All doors were closed, not only in the public but also in the private sector. It's a small country; no company would risk employing a person who targeted high-level politicians".

How does this reputational interplay unfold with suppressive ACAs? The case of the USKOK illustrates that the suppressive ACA model poses a different set of reputational gains and risks, as was assumed in the introduction. The case study of USKOK shows how the suppressive model's constellation of powers and competencies places an ACA into a position of reputation-defending. Due to its prosecutorial nature, it is the USKOK who was held accountable for policy outcomes. The analysis shows that because of this, the USKOK was making strategic choices such as to avoid blame for potential policy failure. The result was the reluctance to target 'big-fish' for long time, because the high-profile of these cases will raise expectations as regards the ultimate outcome following a trial. As long as the USKOK had no powers to be in control of the turf it shared with the police and judiciary in conducting investigations, the USKOK to a large extent stayed away from complex and 'big-fish' cases. The public rhetoric and the interviews conducted with its staff clearly corroborate the thinking behind this sort of strategic choice. As the USKOK was getting bigger control over the turf, through ever increasing powers and increasing resources, it escalated the enforcement toward harsher forms. It first targeted several high-profile cases (2005-2007), which did not involve big-fish politicians, but were 'hefty' in financial terms. Thereafter, simultaneously with rises in powers and capacities, the USKOK started prosecuting high-level politicians, from the government. The culmination of this escalation was the prosecution of a top official, a former Prime Minister, Sanader, in 2011.

As Chapter 6 demonstrates, the USKOK did pursue a harsh enforcement throughout most of its existence, but this pattern was escalating over time and took on the harshest form only from 2009 onwards. This escalation in enforcement followed organisational changes, both in resources as well as institutional powers. As described in the empirical analysis, to pursue the harshest form of enforcement - consisting of a harsh strategy, predatory enforcement style, and lack of political selectivity - the USKOK needed a number of factors. First, its resources needed to grow, both in financial and in terms of expertise. Second, it needed more powers over the turf it shared with the police and court. This was done through the gradual transfer of powers from the latter to the USKOK, which allowed the USKOK greater control over the

process of investigation. These powers were further reinforced by powers over other parties, from witnesses to domestic and international partner institutions. Only after strengthening its capacities and gaining suitable powers, the USKOK decided to pursue 'big-fish' corruption. For the most complex and salient cases, they also needed a further boost from the European Union in order to secure support, through an alliance that would further reduce the chances of political pushback. The decision to prosecute former Prime Minister Sanader exemplifies how many factors had to be in place in order to proceed to such a 'capital' case. In sum, the USKOK needed a wide range of factors to be in place before its enforcement took the harshest pattern and these included strengthening of the organisational factors in the first place.

It can be seen from the case study of USKOK how its organisational model provided for a fundamentally different environment compared to the preventive ACAs, in terms of reputational gains and losses, and how this sort of environment made it more difficult for the USKOK to undertake the harshest pattern of enforcement. When it comes to investigations, the USKOK shared the turf with the same bodies the preventive ACAs did in their endeavour to push for prosecution of certain cases. However, while those preventive ACAs were not held responsible for how (and whether) the trial will unfold, the USKOK was seen as a key actor in this regard. Like other suppressive ACAs, the USKOK was the first institution to blame for policy failure, for the simple reason that its core competence is investigation and prosecution of corruption. At the same time, USKOK's possibilities of control over the turf were drastically reduced by the fact that it was highly dependant on the police and court, and that it also lacked powers over third parties in investigations. This put the USKOK in an uncomfortable position in which it may launch an investigation, however its power to contribute to and also to control the process had been very limited. This lack of power was further exacerbated by a lack of resources, which made the use of the existing power less efficient. At the same time, the threshold for having a successful outcome is considerably high. Criminal investigations impose checks on prosecutors, require strict standards of evidence, and provide for multiple 'veto-

points' for defendants to 'break the chain' of investigation (Kuris 2015a: 15-16). All this makes it more difficult for a suppressive ACA to complete a case in a successful manner.

Thus, what distinguished the USKOK from the preventive ACAs is that any sort of failure in investigations and trials would represent a reputation-losing situation. As stated by C2 in an interview „we had to thread lightly because even a minor failure would have grave consequences in the long run“. Similar occasions were, on the other hand, reputation-gaining opportunities for the preventive ACAs. For policy failure, they would blame those the turf is controlled by, while at the same time putting oneself 'above this situation' as an ethical subject who reputationally benefits from opening the case. The preventive ACAs did not face the problem of strict standards for evidence and, moreover, as stated by one interviewee (S4) „the fact that we didn't need to respect the rigour of criminal investigations definitely opened some space to be aggressive 'above' the reasonable level whereby we utilise political craft and accusatory style more than a legal process would allow us to do“.

As the USKOK started getting more powers, and also more resources which rendered the use of these powers more efficient, the space for reputational gains extended. These organisational changes gradually made the USKOK better equipped to control a significant portion of the turf, thus raising the chances of policy success. Concomitantly, this reduced the number of 'destructive veto-points' by taking away powers from those who can hamper the investigation (police, court, witnesses). While the substantive risk of reputational losses that is determined by the suppressive model itself was not changed, better opportunities arose for reputational gains. The result of this was a somewhat different position from which the risks of USKOK's actions became to some extent smaller. As the organisational enhancements took place, through amendments in 2005, 2007, and 2009, the USKOK escalated its enforcement. It first took on some high-ranking corruption which did not involve 'big-fish'. Thereafter it started targeting high-profile politicians. Besides the organisational possibilities that were growing, the USKOK needed an 'appropriate' leadership, enough time to learn and to prepare the future

cases, but it also needed some other factors such as the support of external actors in the most prominent cases. All these factors together added to the prospects of successful outcomes being more realistic, which encouraged the USKOK to undertake the harshest enforcement pattern.

It can be seen that the organisational changes that took place in the direction of strengthening of the USKOK's powers and resources, coupled with other factors such as strong leadership, in fact changed the ratio between the possible reputational gains and losses. One consequence of this was an escalation in enforcement. The harshest pattern of enforcement could not take place before these organisational changes led to the control over the turf being fuller, a development which crucially shaped the possibilities for successful policy outcomes and thus prospects for reputational gains.

The cross-model analysis, between the preventive ACAs and the suppressive one (USKOK), illustrates how these two types of agencies are grounded in different constellations for reputational gains and losses. It is confirmed through the empirical analysis that the ACA organisational model indeed directs into two different logics of enforcement. The cross-time analysis of the USKOK's enforcement shows how the key organisational elements can alter these reputational pay-offs if they change over time and how they entail a wide range of factors to be in place before the harshest pattern of enforcement is undertaken. The suppressive model hence needs not only a crafty leadership, but also suitable organisational preconditions, as well as other factors such as passage of time or external support, in order to carry out a harsh enforcement pattern.

The analysis therefore confirms the hypothesis that ACA model mediates the way the individual determinants of ACA enforcement play out. The answer to the second research question then is as follows: strong organisational factors are not necessary conditions for preventive ACAs to pursue a harsh enforcement, whereas they are necessary for suppressive ACAs to pursue a harsh enforcement.

Conclusion

The comparative analysis of the findings about the five ACAs' enforcement indicates two major conclusions, one concerning the impact of individual factors on ACA enforcement style and the other regards different logics of operation of the two models of ACA.

As to the first, the empirical analysis demonstrates that the principal determinants of ACA enforcement exert more varied patterns of influence on ACA enforcement than broadly assumed in the ACA literature. De-jure independence does not seem to be correlated with specific patterns of ACA enforcement. Resources, as another factor, can play out in various directions, so abundant resources for instance can be accompanied by non-harsh patterns of enforcement, and low resources, alike, can lead to harsh forms of enforcement. Aging and political-cycle in general play a much lesser role than assumed by theoretical accounts. Aging may go with both escalating and declining enforcement patterns, whereas election campaigns may bring both silenced enforcement and more politically selective enforcement. The majority of cases feature no major deviations from the standard enforcement pattern.

It is clear that leadership has emerged as a key variable in shaping ACA enforcement. Thus, in contrast to the organisational and temporal factors, the 'personal' factor seems to have exerted the overriding impact on the ACAs' enforcement. Nearly all changes in leadership across the analysed ACAs led to changes in the enforcement pattern.

The second major conclusion is that how the above factors will affect an ACA's enforcement crucially depends on the model of the agency. The scope and direction of impact of the respective determinants is not the same in the preventive and suppressive model. A harsh enforcement pattern is attainable in the preventive model without having the 'favourable' values of the individual determinants (e.g. high de-jure independence, abundant resources). But for a suppressive agency, the model that is exemplified by USKOK in this thesis, a series of

'favourable' factors need to be in place in order to achieve a harsh enforcement pattern. High de-jure independence, abundant resources, adequate powers within the given agency model, all serve as preconditions for an ACA to espouse a harsh enforcement pattern.

The two models, in other words, feature different logics of operation, and the factors that have been raised in the ACA literature as the most salient determinants of ACA performance turn out to be part of different stories across the different models. Assuming a uniform sort of effect, therefore, may not only be misleading for particular factors, but also misleading for the different models.

Chapter 8 Conclusion

This thesis set out to explore the enforcement patterns of five anticorruption agencies from the Western Balkans. It asked to what extent that competing theoretical accounts - organisational, temporal, and leadership-based accounts - are able to explain the enforcement of five ACAs from Serbia, Macedonia, and Croatia. Do organisational factors such as de-jure independence and resources, temporal factors which include life-cycle and political-cycle, or the 'human factor', that is leadership, lead to those outcomes predicted by the respective schools? It was also asked whether organisational ACA model, which can take one of two forms - preventive or suppressive - has an impact on ACA enforcement and whether it mediates the way the presumed determinants work.

The region of the Western Balkans is one of the regions where ACAs emerged and proliferated since the late 1990s. It is a non-OECD region, with a record of widespread corruption and an underdeveloped rule of law (Doig 2012: 73-74), which were some of the pressing concerns that needed to be addressed during the reforms the three countries embraced in early 2000s. These reforms lie at the heart of the countries' transition process toward developed liberal democracies. When it comes to the institutional and social legacy, this region resembles³⁰⁸ the other transitional and developing regions in which a large number of ACAs found place in the wake of the fall of the Berlin wall. By studying Serbian, Macedonian and Croatian ACAs, one can therefore expect to arrive at conclusions that may be indicative of the broader population of ACAs when it comes to their logic of enforcement.

The thesis argued that the extant ACA literature suffers from a lack of conceptual apparatus that would enable capturing ACA enforcement. Furthermore, the ACA literature has recognised

³⁰⁸ Which is not to say that the fact that these regions display a variety of mutual differences will be overlooked; this will be discussed later.

and debated a wide range of individual determinants of ACA performance but it does not include theories that tend to explain ACA enforcement. The thesis therefore drew on the regulation literature in order to develop a concept for measuring ACA enforcement (a '3s concept of enforcement pattern' - strategy, style, selectivity). In addition, it also drew on the organisational and agency literature to put forward competing theories which would be deployed as potential explanatory accounts of ACA enforcement.

The findings indicate the supremacy of the leadership-based over the organisational and temporal accounts in explaining the five ACAs' enforcement. Contrary to the key tenets of the organisational and design theory, which point to resources and de-jure independence as key drivers of institutional behaviour and contrary to the temporal accounts which are premised on the role of aging and political-cycle, the analysis demonstrates that the ACAs' enforcement had primarily been a function of their leadership. The organisational and temporal accounts of institutional behaviour have featured as established approaches in several adjacent disciplines, including political science, public administration, public policy, agency and regulation scholarship. The ACA literature has been unanimous in assuming that organisational factors do have an impact on the way ACAs behave. This literature rarely doubted the direction of impact of organisational factors, namely that higher de-jure independence or bigger resources would induce harsher enforcement. The thesis' findings therefore come as surprising from the perspective of these approaches.

Yet, the argument about the key role of leadership is not novel in the study of agencies. Recently, this argument has been articulated by the 'agency autonomy' school (from the 2000s). Carpenter argued that „legislation cannot hard-wire administrative practices“ (2001: 11). He demonstrated in a study of three American agencies from the early 20th century that agency leaders can direct the enforcement of their agencies in various directions, in spite of the presence of particular structural settings. Agency leaders are able to overcome the structural

constraints and expand autonomy through building of coalitions of support (Carpenter 2001: 354-360), which pave the way for harsher forms of enforcement.

The thesis found two key audiences to have been critical for building those coalitions of support that constitute the key mechanism for agency leaders to sustain harsh enforcement patterns. First, the domestic electorate turned out to be the key bearer of reputation-based accountability of the ACAs. Due to the widespread cynicism toward politicians, harsh actions by an ACA are likely to be met with the approval of the electorate; this further enables the ACA head(s) to preserve the harsh enforcement in the future, even if the government is able to resort to institutional means of 'retribution' against the ACA. International evaluators of the domestic anticorruption policies, such as the EU, GRECO, and various donors, represented the second key audience. ACA leaders could rely on their support in pressuring the domestic government to advance the anticorruption struggle, since the domestic authorities tend to pay a great deal of attention to what the external evaluators will say in the ongoing conditionality process. This again links to the role of the electorate, as foreign evaluators' remarks constitute a major benchmark for the domestic voters to judge the government's success. In sum, the thesis identifies domestic electorate and foreign partners/evaluators as two audiences for building coalitions of support, which can be exploited by ACA leaders to pursue harsh enforcement.

The second research question has been whether organisational model of ACA holds implications for how enforcement unfolds. Organisational model is defined by the powers and competencies an ACA commands. Depending on the powers and competencies, the ACA model can be preventive or suppressive. The thesis started with the expectation that preventive ACAs will be able to pursue harsher forms of enforcement more 'easily' than suppressive ACAs because their constellation of powers and competencies provides better chances for reputational gains and lesser risk of reputational losses. It was hypothesised that preventive ACAs can pursue expansionary enforcement by trying to address those tasks that are under the

jurisdiction of traditional anticorruption bodies such as prosecutor, police, and judiciary. Those are mainly investigative and prosecutorial tasks. By doing so, preventive ACAs can little contribute to the ultimate policy outcome because they have no institutional control over the shared turf, but whatever the policy outcome – preventive ACAs can reinforce the image of a 'societal consciousness' by portraying themselves either as the agenda setter who opened a case (if the outcome is successful) or as a critique which blames the traditional anticorruption bodies for a potential policy failure. On the other hand, suppressive ACAs are, by the design of their model, more in a reputation-defending rather than reputation-seeking position. They are responsible for investigative and prosecutorial tasks, meaning that their reputation is directly affected by a policy success or failure. As a consequence, suppressive ACAs will 'dare' to undertake harsh enforcement only if their organisational conditions allow for considerable control over the turf; strong powers vis-à-vis the police, court, other partners in investigation, suspects and witnesses, as well as sufficient resources, are thus a precondition for choosing harsher forms of enforcement. Without these conditions being fulfilled, any harsh action, particularly those involving high-profile scandals, would risk severe reputational losses.

The empirical findings confirmed the above expectations. The analysed preventive ACAs did indeed face a lower threshold, where some of them managed to sustain harsh enforcement even if the organisational factors were 'unfavourable' (low/medium de-jure independence or poor resources). The analysis reveals that such ACAs (e.g. the Council, the SCPC) deployed reputation-building strategies which were possible precisely because their organisational models yield more reputational gains than losses. For all their inability to complete prosecutions and thus contribute to curbing corruption, preventive ACAs have a wide scope for harsh enforcement even if the organisational settings are 'feeble'. The suppressive ACA which was analysed, the Croatian USKOK, confirmed that for the harshest forms of enforcement, a number of factors needed to be in place. It could be seen that the USKOK was not able to pursue the harshest pattern of enforcement until all relevant factors reached their 'maximum values'. The formal independence had been high from the outset but the resources needed to

grow and the powers over the turf had to be expanded, such as to allow for prevailing influence of the USKOK over the other actors in prosecutions. Only when all these organisational preconditions were achieved, alongside the presence of a leadership oriented toward assertive enforcement, could the USKOK escalate its enforcement to the highest level.

The thesis demonstrates that ACAs are driven by reputation-based motivations (Carpenter 2001, 2014), which is the basis for the reputational understanding of accountability (Busoic and Lodge 2015). This school maintains that the principal-agent theory of accountability is premised on the wrong assumption that the key channel of accountability lies in formal hierarchical modes of control in which the agency is crucially motivated, by seeking to give account to its superior. Instead, the reputation-based school holds that agencies are primarily interested in building reputation as a key asset in exercising accountability. This sort of accountability is directed toward audiences that do not necessarily hold formal means of control over the agency, but do represent the source of agency legitimacy and power.

To sum up this part, the thesis finds that the leadership-based explanation is the most plausible for explaining the five ACAs' enforcement. Little support has been found in the analysis for the organisational and temporal accounts. The thesis also demonstrates that the ACA model determines which sorts of constellations of the individual determinants are needed to see a harsh enforcement pattern. It shows that the preventive ACAs did pursue harshest forms of enforcement even if their organisational factors, de-jure independence and resources, were 'unfavourable'. Whereas the suppressive ACA that was analysed could undertake the harshest form of enforcement only after all individual factors, including the two organisational powers, had reached their 'maximum values'.

What are the wider implications?

Theoretically, the thesis lends support to the 'agency reputation' school, as opposed to the organisational and temporal theories. But it also discovers that the organisational model, which has previously been little discussed as a determinant of agency enforcement, plays a role by mediating the impact of the other factors. A question arises as to how generalizable the findings are. As George and Bennett put: „To what range of institutional settings, cultural contexts, time periods, geographic settings, and situational context do the findings apply?“ (2005: 119). Do the findings from the three countries in the Western Balkans have wider implications? If so, how far do these implications extend?

The study is an analysis of a specific sort of agencies - ACAs - in their young age. These ACAs were born in a region which was facing a legacy of widespread corruption, underdeveloped rule of law and deeply rooted informal practices that obstruct formal institutional rules (Pešić 2012). The three countries all embarked on comprehensive reforms around the year of 2000; these reforms were largely driven by an EU accession process, under a set of already formulated standards and oversight mechanisms promoted by the EU.

The most restrictive approach would be to consider the thesis' findings as relevant for those cases involving an ACA which: (i) is still in an age of infancy (around ten years old or less); (ii) operates within an of an underdeveloped rule of law and rife corruption; (iii) operates in a country that is subjected environment to external conditionality. These are the key contextual features that the five analysed ACAs share. If these features have been relevant for how the ACAs' enforcement unfolded, then it can be argued that other ACAs in the world which share similar contextual characteristics, can also be expected to be largely driven by the 'human factor' (that of leadership), rather than the organizational and temporal factors in their enforcement.

In reality, a number of countries - at least a dozen - meet these criteria. Most of the ACAs (approximately 90% of them) are today undergoing their first decade of existence, or at most an early phase of their second, which renders them relatively young agencies. Most of them have been set up in transitional and developing contexts, with a weak rule of law and a set of inherited problems which include rampant corruption and prevalence of informal networks over institutional rules. Finally, a significant portion of these ACAs, which are located in the non-OECD world, are subject to some sort of conditionality. Admit tingly, those beyond the EU neighbourhood are probably not subject to as comprehensive demands as EU aspirers are, but the strength of conditionality may be strong nevertheless. For example, it could be often heard that some cash-strapped countries from Africa are so dependent on foreign donors that the level of the donors' interference into the domestic reforms makes them virtually part of the domestic system, rather than an external partner. Given this, the thesis' findings can be said to have wider implications for most of the non-OECD world, including the non-European world, from the region of Latin America all the way to the region of Asia and Oceania. This also includes the area of Central and Eastern Europe (CEE), which as part of the EU, still shares some of the typical problems the transitional countries face, particularly those related to the implementation of policies (Falkner *et al.* 2009).

However, even at the highest level of abstraction, it can be said that the non-OECD is hardly characterised by substantive similarities in the social and institutional settings across its 'members'. It includes more than 130 countries and several geographical regions³⁰⁹, with big cross-regional and within-regional differences regarding the level of social and institutional development. For instance, one index of stability of political institutions gives Serbia 7.3 points, Macedonia 7.3 points, and Croatia 8.8 points (all countries scored lower in the 2000s,

³⁰⁹ One possible classification of the non-OECD regions, as defined by BTI Transformation Index, is on: (i) Eastern Europe (which includes for CEE and SEE; 17 states in total); (ii) Latin America & Caribbean (21 countries); (iii) West and Central Africa, (18 countries); (iv) Middle East & North Africa (19 countries); (v) South and East Africa (20 countries); (vi) Post-Soviet Eurasia (13 countries); (vii) Asia and Oceania (21 countries) (Transformation Index BTI, 2014).

particularly Croatia, before it joined EU); but, countries such as Morocco, Azerbaijan, or Cambodia, have as few as 2.0 points (a 0-10 scale)³¹⁰. Another index - of quality of rule of law - indicates that the most developed country from the Sub-Saharan Africa, Botswana, scores higher (0.64 points) than Serbia (0.55), Macedonia (0.50), and even Croatia (0.59), whereas the region of Sub-Saharan Africa itself features lower quality of the rule of law than the region of South-East Europe or Central and Eastern Europe³¹¹. Some of the non-OECD 'high achievers' in the rule of law are Uruguay (0.71) and Chile (0.68), whereas among the poorest performers are Venezuela (0.32), Zimbabwe (0.37) and Pakistan (0.38). Given these differences and, leaving the measurement issues aside (whether the rule of law, stability of institutions, stateness, or another attribute should be taken into account), the question arises as to whether the findings from the Western Balkans can indeed be considered generalisable to the whole of the non-OECD world?

Obviously, specifying the exact parameters which would determine where and how far the findings can 'travel' is not without difficulties (Gerring 2004: 346). One way to address the above concern is to further narrow down the list, for example, by excluding the outliers or those countries that exert considerable differences compared to the three analysed states (however, 'considerable differences', are defined in quantitative terms). This would lead to a somewhat general observation that the thesis' findings are likely to have most resonance in those countries within the non-OECD world that relatively resemble the region of Western Balkans in terms of the level of institutional development. For instance, according to the BTI 2014 index, this would include – but is not solely confined to - countries such as South American - Brazil, Panama, Argentina, El Salvador, Colombia; South Asian - Nepal, Sri Lanka, India; East Asian & Pacific - Malaysia, Mongolia, Philippines, Indonesia, and Thailand.

³¹⁰ BTI Transformation Index 2014. Available at: <http://www.bti-project.org/index/status-index> [Accessed: 23 September 2015].

³¹¹ WJP Index (by World Justice Project): Available at: http://worldjusticeproject.org/sites/default/files/roli_2015_0.pdf [Accessed: 23 September 2015].

While the above point about macro-economic institutional development intuitively makes sense, the concern of how generalisable the thesis' findings are can be approached from another perspective. Rather than looking at the contextual factors (macro-institutional settings), we can focus on the mechanisms that are pertinent for the sort of argument advanced by the thesis. If it is found that the 'human factor' overrides organisational and temporal determinants, and that the way in which this 'human factor' achieves a key influence is through the creation of supportive coalitions, then the channels through which these coalitions are built may be essential. Despite all their craft and skills, agency leaders are unlikely to be in position to create supportive coalitions if they cannot convey messages to the audiences. For this to be possible, a certain minimum of media freedom is necessary. Likewise, if the lack of political freedoms makes government little concerned about whether its credibility diminishes (as a result of an agency's action) in the eyes of various social groups, then agency leaders can hardly deploy the mechanisms for building their reputation. This implies that the thesis' findings have wider implications for those societies that are at a certain level of democratic development where an agency can deploy public communication, as part of a deliberation process aiming to build coalitions of support. If this criterion is taken into account, then a significant portion of the non-OECD world³¹² shall be excluded from the list of the destinations where the thesis' findings can be generalised to.

One further concern that follows from the above is - why would developed democracies be ruled out as areas in which the role of leaders is likely to prevail over the organisational and temporal factors in driving ACA enforcement? Not only do the developed democracies meet the criteria of political and media freedoms, they constitute a more fertile ground for skilled agency leaders to build and exploit autonomy which then enables harsh enforcement. In that sense, developed countries may seem even 'more likely cases' for the leadership explanation of ACA enforcement than the three countries from the Western Balkans. Is there any

³¹² For example, the Media Freedom Index ranks about 65 non-OECD countries as failing to achieve a free media regime (index.rsf.org).

countervailing force that makes developed democracies less prone to the influence of leaders in driving agency enforcement than is the case within transitional regions? It can be argued that institutional rules, and therefore organisational factors, tend to have more weight within societies that feature a high degree of institutional development (e.g. developed rule of law). However, this by no means guarantees a high degree of institutionalisation of agencies. Empirical studies documented the lack of institutionalisation in the Western world too. If, for instance, fiscal institutions or legislatures are possible to operate under a low level of institutionalisation (Polsby 1968), why not believe that ACAs are able to do so too?

Rather than provide a definite answer to the question of how generalisable the thesis' findings are, the discussion will be left open-ended here. It is perhaps best to conclude that arguments can be made that the wider implications extend to the non-OECD countries that are at a similar level of institutional development to the Western Balkans. However, it cannot be excluded that the observed logic finds an even more fertile ground in the OECD world. Instead of a clear-cut answer, it is suggested here that future studies shall further investigate to what extent the 'agency autonomy' account holds up in the former and to what extent in the latter territories.

The next question is: how generalisable the findings about the role of ACA model are? There is reason to believe that this finding, one that reveals fundamental differences in the underlying logic of enforcement between the preventive and suppressive ACA model, can be generalised to the whole population of ACAs. The logic of operation of the two models, namely, should not be contingent upon contextual societal and institutional factors.

The difficulty for either a preventive or suppressive ACA to achieve harsh enforcement is primarily a function of the reputational gains and losses that the model provides for. It will unlikely be a function of exogenous factors. Preventive ACAs will be in little control over the turf covering investigative and prosecutorial tasks, regardless of whether the stability of institutions is high or low or whether the democracy has advanced or not. Likewise, suppressive ACAs will operate as the most responsible actors for anticorruption outcomes, irrespective of

the level of institutional development. Therefore, whether a society features a more advanced rule of law does not affect what sorts of reputational losses one ACA may face. This leads us to the conclusion that the findings about the role of ACA model are generalisable to the wider population of ACAs.

One implication of this finding concerns the definition of ACAs and their classification. So far, both sorts – preventive and suppressive – have been clustered into the 'species' of ACAs. Both models have proliferated across the world as part of one process, a process which gained traction in the 1990s and one spurred by international disseminators and the anticorruption industry. They have been hence considered as one 'family'³¹³. However, if the two models are shown to have operated under distinct logics, should this classification not be revisited? The preventive model primarily deals with integrity policies while the suppressive implements investigative and prosecutorial tasks. Both groups of tasks can be referred to as anticorruption policies. However they differ in that the former focuses more on ethical forms of behaviour, which are not necessarily related to criminal liability, whereas the latter is largely about criminal liability. Preventive ACAs resemble other 'integrity warriors' such as commissioners for public information, ombudsmen, procurement bureaus, state audit offices, and the likes, in that they pursue integrity policies and the watchdog function. In a way, preventive ACAs can be argued to be closer to those 'integrity warriors' than to the suppressive ACA model. It may therefore be more appropriate to re-classify preventive ACAs into the group of integrity warriors. The term anticorruption agencies would then be reserved for what is now called suppressive ACAs. This sort of revision would lead to the preventive ACA model being part of a group of institutions that operated under one logic in which 'strong' organisational factors are not necessary for a harsh enforcement pattern.

³¹³ For instance, GRECO evaluates the work of both suppressive and preventive ACAs in its Evaluation Rounds analysing developments in Central and Eastern Europe. OECD sees them as sub-types of a broader group of one institutional species – ACAs (Klemenčić and Stusek 2008; OECD 2013). Scholars generically refer to them as ACAs.

One practical lesson for anticorruption professionals and decision-makers would be that, if a harsh enforcement is intended, the two ACA models should be given different sorts of priorities. For preventive ACAs, the emphasis should be on staff recruitment standards rather than the organisational factors. Introduction of merit-based criteria – for instance through nomination procedures which would involve tighter standards (e.g. track record of ethical conduct in the past, professional experience in the field) and perhaps reliance on mechanisms ensuring reputational quality (e.g. recommendations by other integrity bodies), regular quality assessment of an ACA's staff work - would be some steps in this direction. Beside those aspects contributing to better leadership, suppressive ACAs could also entail provision of organisational factors that are 'strong' (for example, high formal independence, appropriate resources and control over the turf). From a policy perspective, therefore, two different strategies should be in place for the two ACA models.

Theoretical contribution

Having reviewed the wider implications of the key thesis' findings, the chapter proceeds to an analysis of the thesis' theoretical contribution. This refers to four literatures that were set out in Chapter 1. These are: (i) the agency literature; (ii) the ACA literature; (iii) the literature of public service reforms in the Western Balkans; (iv) the enforcement literature.

Contribution to agency literature

A large portion of the literature on semi-independent agencies focuses on the phenomenon of delegation. This includes theoretical debates about rationales behind delegation (Thatcher and Sweet 2002), questions of control (McCubbins *et al.* 1987), normative questions about legitimacy and accountability (Majone 1994; 1997; Christensen and Lægreid 2007), studies of determinants of delegation arrangements (Epstein and O'Halloran 1999; Huber and Shipan

2002; Elgie and McMenamin 2005; Bertelli 2006; Yesilkagit and Christensen 2010) and research on the effects of specific forms of delegation (Gilardi 2005b; Guidi 2015).

However, there has been far less investigation of agencies' enforcement. Some questions have been particularly underresearched: How do agencies enforce their mandate under specific institutional design? How is this enforcement affected by the key factors of competing theoretical approaches? This study elucidates the enforcement of one sort of agencies, operating in the anticorruption domain. By investigating which of the prominent theoretical schools offer(s) plausible explanations, the study advances the understanding of agency enforcement.

This study departs from the previous research in its comprehensive approach when it comes to competing theoretical explanations. It deploys a wide range of factors, articulated in three dominant theoretical positions – 'organisational factors matter', 'temporal factors matter', 'human factor (leadership) matters'. The thesis demonstrates that common organisational (de-jure independence; resources) and temporal factors (life-cycle; political-cycle) are unable to explain the analysed ACAs' enforcement. These two sorts of explanations have long been the sources of prominent theoretical arguments in the agency literature. However the thesis adds to the evidence by indicating that their applicability is far from universal. Some previous studies yielded similar conclusions about the lack of explanatory power of factors such as aging or organisational resources (for instance, Meier and Plumlee 1978; Meier 1989) and this thesis brings evidence from another policy domain alongside historical and geographical context.

The thesis also contributes to the debates about the impact of de-jure independence on institutional performance or de-facto independence. Some of the previous studies argued that de-jure independence does matter (Cukierman *et al.* 1992; Gilardi 2005; Hanretty and Koop 2013), but others arrived at a different conclusion (Maggetti 2007). The present findings lend support for the 'no' position, that is that the de-jure independence is not a key factor in driving agency behaviour, at least within the anticorruption domain.

Instead, the thesis lends support to the 'agency autonomy' argument as the most plausible one for describing enforcement choices of agencies. It adds further empirical evidence in support of the reputation-based theory, whose major contribution was achieved through a study of a different part of the world, from a different time. For American agencies from a late 19th and early 20th century (Carpenter 2001) and the Food and Drugs Administration from the 20th century (Carpenter 2014) these were the institutions whose examination yielded prominent evidence in support of the theory.

The present research analysed the field of anticorruption which has not yet been investigated in the agency literature. It therefore enriches the body of empirical evidence by highlighting the enforcement logic of a specific population of agencies. The thesis is also relevant for the study of how young agencies behave. So far, the distinction on 'younger' and 'older' agencies has rarely been used as critical in the empirical studies of agencies. Furthermore, the thesis analysed agencies from a particular context, involving transitional reforms and the existence of an under-developed rule of law. This sort of context has also been much less researched in the agency literature so far. Overall, the thesis offers an analysis of an under-researched domain, context, and stage of agency life, which adds to the extant body of knowledge about agencies.

Contribution to ACA Literature

Unlike the extant ACA literature, which focuses on the question of ACA performance and whether it leads to lower corruption, this study is novel in that it examines ACA enforcement as a process. The key thesis' contributions to the ACA literature include developing a concept for measuring ACA enforcement, testing of competing theoretical approaches which are developed in adjacent academic disciplines, and elucidating which of the factors play(s) a major role in shaping ACA enforcement.

First, the thesis suggests a '3s concept of enforcement pattern' which enables capturing ACA enforcement. Tools for measuring how ACAs enforce their mandate are currently lacking in the literature; instead, the focus is on descriptive accounts of trends, challenges, and achievements of particular ACAs. With the '3s enforcement pattern', it is possible to capture the key aspects of each ACA's enforcement, in a manner conducive to comparative analysis. The '3s' concept is able to accommodate a wide range of details, from description of strategic choices of ACAs, through the styles of individual enforcement actions, to levels of political selectivity. The framework offers an idea for future studies how to measure and compare ACAs' enforcement.

Second, as noted in Chapter 1, the ACA literature does raise a number of determinants of ACA performance, however it has failed to fit them into theories. The present thesis recognised that all determinants that are contained in the ACA literature had previously featured as key factors behind theoretical approaches in the organisational, agency, and regulation literature. It suggested drawing from these theoretical approaches in order to advance the study of ACAs. As a result, it was possible to conduct a systemic review of potentially crucial determinants of ACA enforcement.

Third, the thesis adds to the ACA literature by utilising a methodological approach that is different from the extant ACA studies. So far, the ACA literature has largely been based on approaches that review key events and challenges in ACAs' histories, but with little conceptually verified data. Some studies offer tangible indicators of ACAs' performance, however with a focus on quantitative indicators that leave crucial attributes of enforcement unaccounted for. This thesis offers a novel way of measuring and comparing data that describe ACAs' enforcement.

The fourth sort of contribution relates to the debate about different ACA models. As mentioned in the introduction, considerable attention in the ACA literature has been devoted to the question of ACA models. Some accounts take stock of the varieties of ACA models (Klemenčič and Stusek 2008; OECD 2013). Others highlight the peculiarities pertaining to the respective

models, mainly through discussion about the most optimal ACA model from the perspective of curbing corruption (Dionisie and Checchi 2008; Kuris 2015a). This thesis does not engage in normative debates on which model is 'better' or 'more optimal', but it does demonstrate that they are driven by two distinct enforcement logics.

The thesis shows that the two basic models (preventive and suppressive) achieved a harsh enforcement pattern under different constellations of the variables. It is suggested that the organisational model links to ways reputation building opportunities are created, thus highlighting a new sort of mechanism that underpins the organisational architecture of ACAs. The finding marks as important the analysis of reputational aspects which are shown to be critical for driving ACA enforcement, and particularly how the organisational model shapes these reputation-related details.

Contribution to the literature on public sector reforms in Western Balkans and transition countries

The thesis also speaks to the literature on public sector reforms in the Western Balkans and, more generally, public sector reforms in transitional regions. The three analysed countries (Serbia, Macedonia, and Croatia) launched comprehensive political reforms after 2000. These transitional reforms were driven by an EU accession process (which is still ongoing in Serbia and Macedonia, while Croatia joined the EU in 2013). As mentioned in Chapter 1, the public sector has been at the heart of the reform agenda and significant attention in this process has been devoted to the creation of semi-autonomous agencies.

From a policy perspective, the finding that leadership plays a key role in shaping ACA enforcement leads to important suggestions as regards how to advance the reforms. Enhanced recruitment procedures and scrutiny of agency leaders are some of the ways to contribute to more optimal enforcement of ACAs. Suggestions as to how these may be advanced are

mentioned in the previous section, which discusses the thesis' lessons for policy-makers and professionals.

The thesis is relevant for a wider set of countries that find themselves in a similar environment of transitional reforms. This includes the CEE region, too. The CEE countries joined the EU and formally completed their transitional reforms, but they still face many challenges from the pre-accession times whereby policy implementation is one of them (Falkner and Treib 2008). The findings about the key impact of leadership in shaping ACA enforcement, as well as the different logics that are behind the two ACA models, may be telling for how to advance the work of the ACAs in these countries too.

Contribution to enforcement literature

The thesis contributes to the enforcement literature, particularly to the study of regulators' enforcement. As noted, ACAs do not constitute typical regulatory agencies, but they can be considered a sub-type of regulators nonetheless. The study of regulatory enforcement, how regulators enforce policies in practice, has been one of the classic preoccupations of the regulatory literature, dating back to the 1980s (Kagan 1983; 1989). The thesis offers several contributions to this strand of scholarship.

The first sort of contribution regards conceptualisation of enforcement style of agencies, which, in this case, operate in a specific domain (anticorruption). This thesis applied and modified previous frameworks of regulators' enforcement style, but included more salient elements of enforcement which are all subsumed under one 'umbrella' concept - enforcement pattern. The thesis demonstrates that for ACAs a suitable concept needs to include three key elements, namely enforcement strategy, enforcement style, and political selectivity. The creation of a taxonomy of enforcement style for ACAs, which is suggested to comprise four sorts of enforcement actions (based on two dimensions: zealotry and stringency), represents a further

contribution in terms of conceptualisation. The empirical analysis demonstrates the concept's applicability in the study of ACAs.

Next, the thesis enhances the understanding of the causes of variations in enforcement styles. Previously, one set of studies of regulators' enforcement focused on capturing of, yet failed to explain what a regulator does in practice. Another body of studies of enforcement style seeks to pin down the determinants of enforcement style. But, it has largely focused on one sort of explanation behind a regulator's enforcement style (e.g. personal or organisational). An exception to this lack of utilisation of diverse explanatory factors is an early work by Kagan (1989). He summarised a volume of studies about regulators' enforcement style in a variety of sectors in order to consider in a systemic manner what the key factors that drive regulatory enforcement are. Kagan pointed out that enforcement style results from a variety of factors, and that organisational, legal, and personal (1989), factors all play a role. He called for research into the effect of those various determinants of enforcement style, the nature of their interaction, and what weight each of the factors carry. Unfortunately, this has not been followed up since, not least through a comprehensive approach as suggested by Kagan. The thesis, in a sense, addresses this call, as it offers a comprehensive account which encompasses more or less all the factors that Kagan pointed to (1989).

Finally, by providing evidence on regulators' enforcement (style) for a previously non-researched policy domain (anticorruption), the thesis contributes to a broadening of the basis for cross-sector comparisons. It also adds to the empirical evidence about the enforcement of agencies as units of analysis. The recent studies are characterised by a bigger emphasis on inspectors' enforcement style, whereas agencies – as units of analysis - have remained largely overlooked in the study of enforcement styles (but, see McAllister 2010).

Concluding remarks: where from here?

Several directions for the future research are possible. First, studies of ACAs from other regions would be particularly welcome. Such studies may help illuminate whether the role of individual determinants of ACA enforcement is similar in other countries or regions, from the non-OECD to the OECD world. Needless to say, this would advance the understanding of how contextual factors mediate the impact of the respective drivers of ACA enforcement.

Second, further studies of ACAs may focus more on agencies that had completed their 'youth' and were entering a state of so-called 'maturity'. Empirical evidence about the enforcement of somewhat older ACAs would help us better appreciate to what extent the findings about the primacy of the human over organisational factors are a result of the agency's age. In addition, empirical material about the enforcement of those rare ACAs that had been established before the 1990s would be of particularly value. Such ACAs, for instance, would be the ICAC from Hong Kong and the CBIP from Singapore, in addition to some ACAs from developing regions such as Tanzania (Heilman and Ndumbaro 2002) or Indonesia (Bolongaita 2010). Comparing their enforcement during the first decade of existence to the subsequent stages of agency life would be most informing within a theoretical framework.

Third, the literature may benefit from cross-sectoral comparisons of regulators' enforcement. We know little about how the nature of a policy sector impacts on its regulators' enforcement. Do anticorruption agencies exert peculiarities compared to regulators from the field of environment protection, market competition, or telecommunications? If so, what is it that makes regulation in one policy sector different than another sector's regulation: the level of technical complexity, the salience of a policy, the threats a regulator poses to officials, or something else?

Researching these themes would advance the study of agency, the study of ACAs, and regulators' enforcement in general. Not only would this contribute to a better understanding of how the given institutional species operate, it would bring about policy implications too.

APPENDIX A

De-jure independence of ACAs

(based on 'Gilardi's index')

COUNCIL

COMPONENT	ELEMENT	VALUE	POINTS	EXPLANATION
AGENCY HEAD STATUS	Term length	No fixed term	0.00	There is no specified term length for Council's President. Her tenure can be terminated at any point by a government's dismissal.
	Appointed by	Council	1.00	Director is appointed by the majority of votes of the Council's members.
	Dismissal	At the appointer's discretion	0.00	The dismissal procedure is not specified, so a Director can be dismissed by a majority of the Council's members. Grounds for dismissal are not set out.
	Holding multiple posts	No	1.00	The legislation does not explicitly prohibit Council's Director to perform other public posts so she could hold multiple offices. However, a law which regulates conflict of interest was enacted in 2004 (LPCIDPP) which made this sort of arrangement illegal for all civil servants, including Council's members
	Appointment renewable?	Yes, more than once	1.00	Not explicitly regulated – therefore possible an indefinite number of times.
	Is independence a formal requirement for appointment	No	0.00	Director's independence is not formally stated in the legislation.
MANAGEMENT BOARD MEMBERS' STATUS	Term length	No fixed term.	0.00	Tenure length for Council's members is not set out, hence they can serve as long as they are not dismissed.
	Appointed by	Government collectively	0.25	Board members are appointed by Government, with no prior nominations nor co-decision making by other bodies.
	Holding multiple posts	No	1.00	Holding of multiple posts by Board members is not regulated, so similarly to its Director Board members could have performed more public functions as long as the Law on Conflict of Interest did not come into force in 2004.
	Dismissal	At the appointer's discretion.	0.00	By Government.
	Appointment renewable?	Yes, more than once.	0.00	Not explicitly regulated, no prohibition of re-appointment (though there is no term which expires).
	is independence a formal requirement for appointment	No	0.00	Independence is not a formally stated feature of Council's personnel.

RELATIONSHIP WITH GOVERNMENT AND PARLIAMENT	Independence formally stated	No	0.00	The Council has not enjoyed the status of an independent institution.
	Formal obligation toward the government	Non-existent	1.00	No formal obligations toward parliament and government.
	Formal obligation toward the parliament	Non-existent	1.00	No reports like ex-ante notifications or annual reports needed to be submitted.
	Who can overturn SPC's decisions	Noone	1.00	Council's decisions cannot be overturned by another institution (this is hardly surprising given the lack of powers and binding decisions thereof).
FINANCIAL AND ORGANISATIONAL AUTONOMY	Source of budget	Government	0.00	The Council is funded by the Government, by direct allocation of resources through Annual State Budgets.
	How is the budget controlled	Agency and government	0.33	No specific provisions exist as regards who controls the budget.
	Which body decides on the agency's internal organisation	Shared – Council and Government	0.50	Internal organisation of the Council is subject to joint decisions of the Council and the Government.
	Which body is in charge of the agency's personnel policy	Government	0.00	The Council has full freedom in organising its technical staff, but the number (as well as appointment) of Council's members needs to be approved by the Government.
REGULATORY COMPETENCES	Who commands the regulatory competencies	Council has only consultative competencies	0.00	The Council does not command a single regulatory jurisdiction over which it has exclusive competences.
OVERALL INDEX	$(3/6)*0.2 + (1.25/6)*0.2 + (3/4)*0.2 + (0.88/4)*0.2 + (0/1)*0.2 = 0.23 \text{ Gilardi's points}$			

Source: The components of the Gilardi's index for the Council are calculated on the basis of the provisions of the Ordinance about Formation of Anti-Corruption Council (2001).

COMMITTEE

COMPONENT	ELEMENT	VALUE	POINTS	EXPLANATION
AGENCY HEAD STATUS	Term length	1 year (under 4 years, fixed term)	0.20	Committee's Board elects a President from among its members, for a term of one-year (Article 19)
	Appointed by	Board members	1.00	As said above, the Board elects a President (Article 19).
	Dismissal	Possible, not related to policy reasons	0.67	There is no specified procedure for President's removal, but from the general provisions about the Committee's decision making it follows that a President can be removed by a majority of votes, for reasons not strictly related to policy.
	Holding multiple posts	Not possible	1.00	As any other public official, Committee's President is not allowed to take multiple posts in the public administration.
	Re-appointable?	Yes	0.00	The appointment is renewable, since no opposite rule is set out (Article 19).
	Is independence a formal requirement for appointment	No	0.00	No such provision is contained in the Law.
MANAGEMENT BOARD MEMBERS' STATUS	Term length	5 years	0.60	Article 18 stipulates that Board members are elected for a period of five years.
	Appointed by	A complex mix of Parliament and Government	0.75	The Committee has nine members, three of whom shall be elected by the judges of the Supreme Court, one by the Bar Association of Serbia, and the remaining five by the Parliament, from a list of ten members recommended by the Serbian Academy of Arts and Sciences (Article 19).
	Dismissal	Possible, but not for policy related reasons	0.67	A Committee's member's function ceases in case she is convicted of a criminal act or if she caused damage to the Committee through negligent performance of office (Article 21).
	Holding multiple posts	Not possible	1.00	As public officials, Committee members are generally not allowed to hold multiple public posts.
	Re-appointable?	No	1.00	Article 19 is explicit in prohibiting Committee members to be re-elected.
	Is independence a formal requirement for appointment	No	0.00	Independence, as a necessary condition for the election of Board members, is not mentioned in the Law.
	Independence formally stated	No	0.00	Committee is not defined as an independent institution, by an explicit mentioning in the Law.

RELATIONSHIP WITH GOVERNMENT AND PARLIAMENT	Formal obligation toward the government	None	1.00	Government has no powers nor supervising roles over the Committee.
	Formal obligation toward the parliament	Submits annual report for information only	0.67	This obligation is set out by Article 31.
	Who can overturn Committee's decisions	Noone	0.00	Such possibility is not envisaged by the Law.
FINANCIAL AND ORGANISATIONAL AUTONOMY	Source of budget	Government	0.00	State budget, on government's proposal, which is being adopted in Parliament (the standard solution)
	How is the budget controlled	By the agency	1.00	Committee controls the budget (Article 22).
	Which body decides on the agency's internal organisation	The agency	1.00	Committee decides about internal organisation (Article 22).
	Which body is in charge of the agency's personnel policy	The agency	1.00	Committee is in charge of its personnel policy (Article 22).
REGULATORY COMPETENCES	Who has commands the regulatory competencies	The agency	1.00	The Committee is the sole body which has competencies over the matters it regulates (conflict of interest, control officials' property, and control of officials' gifts).
OVERALL INDEX	$(2.87/6)*0.2 + (4.02/6)*0.2 + (1.67/4)*0.2 + (3/4)*0.2 + (1/1)*0.2 = 0.67 \text{ Gilardi's points}$			

Source: The components of the Gilardi's index for the Committee are calculated on the basis of the provisions of the Law on Prevention of Conflict of Interest in Discharge of Public Post (2004).

ACA

Component	Element	Value	Points	Explanation
AGENCY HEAD STATUS	Term length	5 years	0.60	According to Article 18, the tenure of office of ACA's Director is five years.
	Appointed by	Board members	1.00	ACA Director is appointed by the ACA's Board, by a majority vote (Article 14).
	Dismissal	Possible, not policy related	0.66	Director shall be dismissed in case of negligent performance of duties, if she becomes a member of a political party, if she discredits the reputation or political impartiality of the ACA, or if convicted for a criminal offense (Article 20).
	Holding multiple posts	Not possible	1.00	No public official can perform two or more posts so ACA's Director cannot either.
	Appointment renewable?	Yes, once	0.50	Director can be re-elected once (Article 18).
	Is independence a formal requirement for appointment	No	0.00	Article 16 says that an ACA Director cannot be a member of a political party; but there is no explicit mention of independence as a formal requirement for appointment.
MANAGEMENT BOARD MEMBERS' STATUS	Term length	4 years	0.40	Board members of the ACA are appointed for a term of four years (Article 10).
	Appointed by	A complex mix of the government and parliament	0.75	The Board consists of nine members, nominated respectively to the Parliament by different institutions: (1) Administrative Committee of Parliament of Serbia; (2) President of Serbia; (3) Government; (4) Supreme Court; (5) State Audit Office; (6) Ombudsman and Commissioner for Information for Public Interest; (7) Socio-Economic Council; (8) Bar Association of Serbia; (9) Journalist associations of Serbia; (Article 9).
	Dismissal	Not policy related	0.67	A member of the Board can be dismissed for the same reasons as the Director, which basically means for reasons not related to policy. The Board carries out a dismissal procedure (Article 20).
	Holding multiple posts	No	1.00	Like other public officials, Board members are not allowed to hold multiple posts.
	Appointment renewable?	Yes, once	0.50	According to Article 10, a Board member can be re-elected not more than once (Article 10).
	Is independence a formal condition for appointment	No	0.00	Such provision is not contained in the Law.

RELATIONSHIP WITH GOVERNMENT AND PARLIAMENT	Independence formally stated	Yes	1.00	According to Article 3, the ACA is an “independent and autonomous state body”.
	Formal obligation toward the government	None	1.00	The ACA has no formal obligations toward government.
	Formal obligation toward the parliament	Submits annual report for information only	0.67	ACA submits an Annual Report to the National Parliament, but no further details are provided in regards to the procedure of dealing with these reports (Article 26).
	Who can overturn ACA's decisions	Noone	1.00	No other subject can overturn ACA's decisions. According to Article 7, the Board acts as the appellate authority for complaints about the decisions made by the Director.
FINANCIAL AND ORGANISATIONAL AUTONOMY	Source of budget	Government	0.00	The ACA gives proposals of its annual budgets, but these are ultimately determined by the government, through a standard procedure which holds for all publicly funded bodies ((Article 3).
	How is the budget controlled	By the agency	1.00	The ACA independently disposes with the budget (Article 3).
	Which body decides on the agency's internal organisation	The agency	1.00	Director decides on matters of internal organisation (Article 23).
	Which body is in charge of the agency's personnel policy	The agency	1.00	ACA Director (Article 23).
REGULATORY COMPETENCES	Who commands the regulatory competencies	The agency	1.00	Though lacking coercive powers which would help implement the standards in practice, the ACA has exclusivity over those competencies that are delegated by the Law. No other body or institution can deal with matters such as conflict of interest, asset declarations, control of gifts, and so forth.
OVERALL INDEX	$(3.76/6)*0.2 + (3.32/6)*0.2 + (3.67/4)*0.2 + (3/4)*0.2 + (1/1)*0.2 = \textbf{0.77 Gilardi points}$			

Source: The components of the Gilardi's index for the ACA are calculated from the provisions of the Law on Anticorruption Agency (2008).

SCPC

Component	Element	Value	Points	Explanation
AGENCY HEAD STATUS	Term length	1 year	0.20	SCPC's chairman (i.e. President) is elected for a term of one year only (Article 48).
	Appointed by	Management Board	1.00	SCPC's President is elected among the members of the Board (Article 48).
	Dismissal	No provisions for dismissal	0.33	There is no specific provision detailing why a President shall be dismissed, it follows from the overall framework that the Board is free to sack the Director without justifying this measure.
	Holding multiple posts?	Not possible	1.00	SCPC's members act in the capacity of an appointed person (Article 50). They are not explicitly prohibited from performing other public posts, but the conflict of interest regulation (from 2002 to 2007 - LCP, from 2007 onwards - LPCI) prohibits appointed persons from having two posts.
	Appointment renewable?	No	0.00	Appointment is non-renewable; instead, the SCPC featured a rotational chairmanship system.
	Is independence a formal requirement for appointment	No	0.00	There are no provisions mentioning independence.
MANAGEMENT BOARD MEMBERS' STATUS	Term length	4 years	0.40	(2002-2006): According to the initial setup, the Board's term was 4 years long (Article 48) [in 2006 an amendment was made to extend the term duration to 5 years (Article 16)]
	Appointed by	Parliament	0.50	According to Article 48 of the LCP, the National Parliament appoints the members of the SCPC.
	Dismissal	No provisions	0.33	Similarly to the status of its Director, no provisions regulate dismissal of SCPC's Board personnel.
	Holding multiple posts?		0.00	There was no prohibition for the SCPC members to hold other posts in the Government.
	Appointment renewable?	No	1.00	Article 48 is explicit in that Board members cannot be re-appointed (this changes later with amendments from 2006 and 2008).
	Is independence a formal requirement for appointment	No	0.00	Independence not stated in the Law as a required attribute.
RELATIONSHIP WITH GOVERNMENT AND PARLIAMENT	Independence formally stated	Yes	1.00	According to Article 47, the SCPC is "autonomous and independent in the performance of its jobs".
	Formal obligation toward the government	Annual report (for information only)	0.67	„Prepares annual statements for its work and the measures and activities taken and submits them to [...] the Government [...]“ (Article 49)
	Formal obligation toward	Submits annual report	0.67	The SCPC informs the Parliament, and hence the public, about the matters from its competence through annual reports (Article 49). No provisions are made as to whether these reports must be

	the parliament	for information only		approved nor whether a failure to adopt them implies a Parliament's call for accountability of the SCPC.
	Who can overturn SPC's decisions	No-one	1.00	No institution can overturn SCPC's decisions.
FINANCIAL AND ORGANISATIONAL AUTONOMY	Source of budget	Government	0.00	Budgeting is not mentioned in the Law, so standard procedure for state bodies applies.
	How is the budget controlled	By the agency	1.00	No specific details regulate this, so the budget can be regarded as being controlled by the SCPC.
	Which body decides on the agency's internal organisation	Government	0.00	According to Article 47 "administrative, expert and technical matters of the national Commission shall be carried out by the Ministry of Justice". This means that the government (i.e. the Ministry of Justice) decides about the internal organisation of the SCPC.
	Which body is in charge of the agency's personnel policy	Government	0.00	Following up from the above, it can be deduced that the government, again, decides about firing, hiring, allocation and composition (this changed later with amendments)
REGULATORY COMPETENCES	Who has commands the regulatory competencies	None	0.00	There is no clear answer to this question because the SCPC's framework fits none of the two offered options. In actuality, most of the SCPC's competencies can be dealt with by other bodies such as the police or prosecutor, or the Public Revenue Office or Procurement Office (e.g. when it comes to conflict of interest). Rarely does the SCPC have an exclusive competence over an issue, therefore this component will be assigned the lower of the two possible values (0.00).
OVERALL INDEX	$(2.55/6)*0.2 + (2.23/6)*0.2 + (3.34/4)*0.2 + (1/4)*0.2 + (0/1)*0.2 = \textbf{0.37} \text{ Gilardi's points}$			

Source: The components of the Gilardi's index for the SCPC are calculated from the provisions of the Law on Preventing Corruption (2002).

USKOK

Component	Element	Value	Points	Explanation
AGENCY HEAD STATUS	Term length	4 years	0.40	Director is appointed for a period of four years (LBSCOC Article 4).
	Appointed by	Board members	1.00	USKOK Director is appointed by the State Attorney (LBSCOC, Article 3), with a previous opinion of the State Attorney Board and subsequent approval of the Minister in charge (i.e. Minister of Justice).
	Dismissal	Only for reasons not related to policy	0.67	USKOK's Director can be dismissed for the same reasons as the State Attorney (LBSCOC, Article 4). This may occur in cases of (1) unlawful, unfaithful, or insufficiently professional performing of the tasks; (2) failure to attain satisfactory results; (3) performing tasks by way of breaching the acts that regulate the matter; (4) failure to file requests for criminal investigation requests, as prescribed by the legal provisions; (5) perpetration of the crime - abuse of office; (6) conviction of a criminal act, loss of legal capacity, or two consecutive assessments that she has performed the matter in an unsatisfactory manner (LSA, Article 100). State Attorney can be dismissed on government's initiative, which needs to be approved by the Judiciary Committee of the National Parliament and thereafter voted by an absolute parliamentary majority (LSAO Article 103). A USKOK Director can be dismissed for the same reasons as a State Attorney (LBSCOC, Article 4). Also, the LBSCOC stipulates that USKOK Director's work is subject to the State Attorney's assessment (Article 7).
	Holding multiple posts?	No	1.00	State Attorney's tenure ends automatically with an appointment to another government's office (LSA, Article 99) and the same conditions pertain to USKOK Director (LBCOC Article 4)
	Appointment renewable?	Yes	1.00	Director is reappointable, with no limitations for the number of terms (LBSCOC, Article 4)
	Is independence a formal requirement for appointment	Yes	1.00	Nowhere is it explicitly stated that a USKOK Director, nor state prosecutors, are independent. However, in defining the role of prosecutors, the Law does use the word 'independence' – to remind that the prosecutors are part of an independent body (see also LSAO, Article 140)
	Term length	-	-	Unlike traditional regulatory bodies, USKOK has no Board. Its Director is assisted in work by Deputy Directors, who may head respective departments. Deputy Directors have the status of Deputy State Attorneys (LBSCOC, Article 5.). Their number is set by the competent Ministry, on State Attorney's proposal (LBSCOC, Article 5). As there is no Board as a collective body and because the deputy directors do not constrain nor command the powers over the Director, this second component in the Gilardi's index ("management Board members' status") is excluded from the calculation of the USKOK's index of de-facto independence).
MANAGEMENT BOARD MEMBERS' STATUS	Appointed by	-	-	
	Dismissal	-	-	
	Appointment renewable?	-	-	
	Is independence a formal requirement for appointment	-	-	
RELATIONSHIP	Independence formally stated	Yes	1.00	USKOK is part of the State Attorney Office, sharing with it all features that are not explicitly set out in LBSCOC. Independence is stated as an attribute of the SAO (LSAO, Article 2).

WITH GOVERNMENT AND PARLIAMENT	Formal obligation toward the government	None	1.00	USKOK has no formal duties toward the government. It is not accountable to government, nor does it submit any reports (whether for approval or for the sake of information only).
	Formal obligation toward the parliament	None	1.00	Similarly to its relationship with government, USKOK has no formal obligations toward parliament either. USKOK, as an institution, just like its Director as an individual, are accountable to the State Attorney rather than external (political) institutions.
	Who can overturn SPC's decisions	Noone	1.00	No institution can overturn USKOK's decisions. None of the possibilities listed in the Gilardi's catalogue – (a) "a specialised body", (b) "the government, unconditionally", (c) "the government, with qualifications", hold true for USKOK.
FINANCIAL AND ORGANISATIONAL AUTONOMY	Source of budget	Government and external	0.50	USKOK's budget is defined directly by the State Attorney, but its original source is the state budget.
	How is the budget controlled	By the agency	1.00	Once allocated, the State Attorney Office cannot control how is the budget spent nor can redefine what programmes and expenditures the budget shall be dedicated for. This brings another full point.
	Which body decides on the agency's internal organisation	The agency	1.00	USKOK (i.e. its Director)
	Who is in charge of the agency's personnel policy	The agency	1.00	Government plays a role in deciding the number of USKOK Deputy Directors (LBSCOC, Article 15). However USKOK's Director sets personal policy and directs the Deputies' work (Article 124).
REGULATORY COMPETENCES	Who has commands the regulatory competencies	The agency only	1.00	Only the State Attorney (Office) co-participates in USKOK's decisions and can be said to have some jurisdictions over its tasks. Yet, the USKOK does not share its 'regulatory competences' with the Attorney in the traditional sense. Instead, they cooperate.
OVERALL INDEX	$(5.07/6)*0.25^{314} + (4/4)*0.25 + (3.5/4)*0.2 + (1/1)*0.2 = \mathbf{0.89} \text{ Gilardi's points}$			

Source: The components of the Gilardi's index for the USKOK are calculated from the provisions of the Law on Bureau for Suppression of Corruption and Organised Crime (LBSCOC, 2001) and Law on State Attorney Office (LSAO, 2001).

³¹⁴ Since one of the components of the Gilardi's index is omitted ("Management Board Status"), then the remaining four components are multiplied by 0.25 instead of the standard 0.20. They, namely, make up for a quarter rather than a fifth of the overall index.

Appendix B

International support

Council

Year	Partner or project	Details
2003		
2004	Cooperation with the OSCE mission in Serbia & Montenegro Council of Europe, the local office in Belgrade.	OSCE had held the status of an affiliated member of the Council; OSCE's experts did an analysis of the legislation that was pertinent for the ongoing privatisation. Anti-Corruption Strategy draft cooperation. Cooperation during the drafting of a Serbian National Anti-Corruption Strategy.
2005	UNDP PACO South-East Europe Swiss Embassy GRECO OSCE mission in Belgrade Swiss Embassy and Basel Institute for Governance	Agreed to work jointly on future anticorruption programmes in Serbia. Meetings, conferences, and seminars. A joint conference and memorandum on future cooperation. Implementation of a project "Application of integrity plans in judicial institutions in Serbia"
2006	Various partners, from OECD, to UNPD, OSCE mission, Swiss Embassy in Belgrade etc.	Meetings, conferences, seminars.
2007	Various domestic and international events, with different partners	Meetings and conferences, but no major programmes of capacity development.

2008	Commissioner for Human Rights of Council of Europe A representative of the US Embassy in Belgrade Macedonian SCPC OSCE	Meeting. Meeting. Conference in Ohrid, Macedonia Seminar: "Criteria for Evaluation of Prosecutors" Meeting with the delegation EU Commission – OSCE Mission in Serbia
2009	EU, Heads of Missions French Embassy in Belgrade OECD invitation World Bank	Meeting (in Czech Republic), the work of the Council presented and then the possibilities for the advancement of the fight against corruption in Serbia, as an EU aspirer, were discussed. Meeting – discussed what comparative experiences can Serbia apply in order to enhance the fight against corruption. A conference in Brussels (Belgium): "Building a cleaner world: tool and good practices for fostering a culture of integrity". Two meetings with their experts, one in Washington and another in Belgrade. The topic was – comparative experiences in anticorruption struggle.
2010	UNDP representatives UK Embassy Dutch Embassy in Belgrade	Exchange of reports from a previous research about corruption and the citizens' perception corruption in Serbia. Meeting Conference about anticorruption policies and transparency in Serbia
2011	Various international organisations	Introduction to foreign practices in anticorruption policies; research of corruption related phenomena.
2012	MEDEL (European association of judges and	Exchange of information about the ongoing judiciary reform in Serbia (which was seen by

	<p>prosecutors) OSCE/ODIHR</p> <p>Paul Stevenson, expert for whistle-blowers Finish Embassy in Belgrade</p> <p>NATO Delegation European Parliament Committee for Organised Crime, Corruption, and Money Laundering.</p>	<p>many as problematic and politicised) Meeting, discussion on the media reporting about the 2012 parliamentary and presidential elections in Serbia.</p> <p>Meeting on a topic of the protection of whistle-blowers in Serbia Meeting, with a particular reflect on the challenges of the ongoing judiciary reform in Serbia.</p> <p>Meeting, on a topic about the building of integrity systems in Serbia. Meeting, exchange of information about the state of corruption (and anticorruption) in Serbia.</p>
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Source: Annual Reports of the Council.

Committee

Year	Partner or Project	Details
2005	<p>Commission for the Prevention of Corruption, Slovenia;</p> <p>Parliamentarian Committee for Conflict of Interest, Croatia;</p> <p>House of Lords Appointments Commission, UK;</p> <p>Slovakian body for conflict of interest.</p> <p>PACO Impact SE Europe programme, run by the Council of Europe;</p> <p>GRECO</p>	<p>Bilateral cooperation.</p> <p>Active participation of the Committee in the programme</p> <p>Positively evaluated the work of the Committee</p>
2006	<p>Conferences</p> <p>OSCE Mission;</p> <p>High Commissioner for the fight against corruption in the state administration of the Republic of Italy.</p>	<p>The Committee participated in a number of conferences, in Serbia and abroad, with a number of foreign organisations and actors.</p> <p>Meetings, exchange of experience from the work on integrity policies.</p>

	<p>Slovakian body for conflict of interest</p> <p>Commission for Resolution of Conflict of Interest, Montenegro.</p>	<p>The Committee paid visit to Slovakia.</p> <p>Exchange of experience.</p>
2007	<p>OSCE Mission in Serbia</p> <p>OSCE and SPAI RSLO (Pact for Stability – Anticorruption Initiative)</p> <p>Commission for Resolution of Conflict of Interest, Montenegro.</p>	<p>Funded a publication about the regulation of conflict of interest in Serbia;</p> <p>Supported the holding of educational seminars for local functionaries across Serbian cities.</p> <p>Organised a conference in Tirana (Albania), in which the Committee took place. The key theme of the conference was the exchange of experiences in the prevention of corruption and implementation of the United Nation's Convention against Corruption.</p> <p>Held two instructional meeting for local functionaries in Montenegro.</p>
2008	<p>OSCE</p> <p>Commission for Resolution of Conflict of Interest, Montenegro.</p> <p>USAID;</p> <p>Konrad Adenauer Stiftung</p>	<p>The Committee took place in a conference held in Georgia; the main theme was the exchange of experiences in the prevention of corruption.</p> <p>Signed in Podgorica (Montenegro) a Memorandum of Cooperation. The Committee took part in seven educational meetings for local officials in Montenegro; a 'return visit' was paid by the Commission to the Committee.</p> <p>The Committee maintained communicated with these and several other international organisations.</p>

Source: Committee's Annual Reports.

ACA

Year	Project	Purpose
2010	<p>Commission for Corruption Prevention of the Republic of Slovenia</p> <p>Norway funded a project “"Support to the Anticorruption Agency in the Fight Against the Corruption”</p>	<p>The ACA paid visit, to establish collaboration with this body. The ACA President held a number of meetings with Slovenian politicians, anticorruption experts, NGO actors, and representatives of international organisations.</p> <p>Provided around €200,000 for a software that was essential for the ACA's main tasks – to keep record of officials' assets and also to enhance the intra-agency collaboration.</p>
2011	<p>EPAC (European Partners against Corruption) EPAC (s an independent, EU Delegation in Serbia, UNODC, UNDP, CoE and OSCE.</p> <p>The International Anti-corruption Academy (IACA).</p> <p>GRECO</p> <p>OSCE-funded - money-laundering expert Miroslava Milenović</p> <p>OSCE</p> <p>IPA 2008</p> <p>Judicial Reform and Government Accountability Project (funded by USAID)</p>	<p>The ACA became their member. It is a network of bodies which monitors the work of anticorruption institutions (e.g. police) in the EU and CoE world.</p> <p>Established regular contact and cooperation; mainly exchange of information and circulation of reports.</p> <p>The ACA established cooperation with the IACA, which is an international organisation focused on promotion of ACAs as anticorruption actors.</p> <p>The ACA took part in the four plenary sessions of GRECO.</p> <p>Held a training in the ACA about forensic accounting and flows of money in politics.</p> <p>Engaged consultants from Slovenia to assist the ACA in developing integrity plans.</p> <p>Capacity building of the ACA, aimed at enhancement of the anticorruption framework as well as raising awareness about the importance of prevention of corruption.</p> <p>The project's aim was to teach the participants how to control financing of political parties and election campaigns, how to regulate the issue of conflict of interest, and how to monitor officials' property.</p>

2012	IPA 2008 (by the European Commission)	"The Agency Staff Training Plan", aimed at addressing the most pressing needs of the ACA's staff for their enforcement.
	Independent Commission Against Corruption – New South Wales (Australia)	ACA's officials went to a five day study tour to the ICAC
	KNAB (Latvian ACA)	ACA's staff paid a visit to KNAB in order to gain an insight into their work and experience; exchange of good practices.
	Netherlands, integrity institutions	The OSCE Mission to Serbia funded a trip for ACA's officials to get trained in the Netherlands on how to pursue integrity policies.
	IPA 2008 Project	As part of the IPA 2008 Project, the ACA received €757,000.00 for the development of the IT system.

Source: Annual Reports of the ACA.

SCPC

Year	Project	Purpose
2003	Conferences and seminars	The SCPC attended almost 30 conferences in the country and abroad, in which a number of international experts and organisations gave their contribution in terms of training and knowledge exchange.
2004	Conferences and seminars. PACO-IMPACT Project for Macedonia (by Council of Europe) Working visits to regional anticorruption bodies GRECO+ SPAI Stability Pact	More than 50 conferences and seminars, related to anticorruption policies, attended. Together with the Ministry of Justice, Ministry of Internal Affairs and Prosecution Office, the SCPC acted as a coordinator of this project. The project aimed at enhancing the work on a State Anticorruption Programme and at fostering the role of the SCPC thereof. High Inspectorate on Declaration and Control of Property of the Republic of Albania; Anticorruption Council in Serbia; Directorate on Public Relations and Prevention of Crime and Corruption in the Ministry of Justice of the Republic of Romania; KNAB, Latvia; Central Service on Fight against Corruption of Franc The SCPC took part in GRECO's assessments and evaluations and requested to have permanent experts overthere.
2005	Conferences, regional round-table Visits to other agencies	Attended tens of such events – in order to learn about others' experiences and good practices, and to foster an international network for exchange of knowledge. Some of the countries whose anticorruption agencies the SCPC representatives visited were Kazakhstan, Honk Kong, Croatia, and Slovenia.
2006	PACO IMPACT Project of the Council of Europe	- study visits to Estonia and Italy; - conference participation in Hamburg, Germany;

	“Fight against Corruption for Better Governance”, UNDP	
2007	Memorandum of understanding with UNDP Memorandum of understanding with USAID Visits to foreign ACAs	Cooperation in a TV awareness raising campaign “If corruption did not exist ...” Support for the preparation of a new state anticorruption programme and strategy. KNAB (Latvia); Commission for Resolution of Conflict of Interest (Montenegro), Commission for Prevention of Corruption (Slovenia), USKOK (Croatia).
2008	“Corruption in the Education Sector”, by Norwegian Government UNDP Several other trainings and programmes, funded by the USAID, UNDP, and the likes	The SCPC, the Macedonia Government, and Macedonian universities took part in this programme. It consisted of numerous trainings about anticorruption and ethical standards in the public administration. Training on the procedures in the area of urbanism in local self-government.
2009	“Fight against Corruption for Better Management” project, by UNDP TAIEX programme (European Commission) A number of working meetings, with various domestic and international actors	Capacity building of local administration in urban planning. The project aimed at improving journalists’ awareness about this phenomenon. The project provided financial means to the SCPC to pay visits to the French and Latvian ACAs. The goal was to further the knowledge about how they deal with situations of conflict of interest. OSCE, OECD, UNDOC, NATO, and so forth.
2010	IPA 2010: “Support of the Efficient	In November 2010 the EU approved the project (worth: €1,420,000.00)

	<p>Prevention and Fight Against Corruption” Workshops, seminars, conferences</p>	<p>The SCPC attended tens of conferences abroad, on topics relating to prevention of and fight against corruption.,</p>
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Source: Annual Reports of the SCPC (2003-2012).

USKOK

Year	Project	Purpose
2005-2006	CARDS 2002 Value: € 1,000,000 EUR (Twinning €650,000 +350,000 for equipment)	<ul style="list-style-type: none"> - Human resource development strategy of training and educating USKOK staff' - Fostering smooth management of internal procedures; - Building cooperation between the USKOK and other bodies, construction of data exchange mechanisms, facilitation of joint team initiatives, creation of a document system for handling of complex cases. - Twinning partner: Spanish Anticorruption Public Prosecution Office
2006	CARDS 2003 "Preventing and Combating Money Laundering" Value: €840,000 EUR (Twinning)	<ul style="list-style-type: none"> - The programme aimed at training institutions most responsible for economic crimes (e.g. units in the Ministry of Finance and Ministry of Interior); it also focused on fostering inter-institutional coordination, where the USKOK has own place. The training included gaining knowledge about international cooperation in money-laundering prevention and suppression. - Twinning partner: Austrian Ministry of Interior.
2006	CARDS 2003 "Support to pre-trial proceedings in criminal matter" Value: €250,000 EUR	<ul style="list-style-type: none"> - A comparative study on pre-trial proceedings; - A follow up as to how to reform the Croatian institutional and legal setup; - A plan concerning pre-trial proceedings reforms.
2007-2012	IPA 2007 "Strengthening AntiCorruption Interagency Cooperation" Value: €1,270,000 EUR	<ul style="list-style-type: none"> - Strengthening of inter-agency coordination; - Strengthening of public officials' ethics; - Awareness raising. - Major stakeholder: USKOK's PR Department

Source: Compiled from the State Attorney's Annual Reports (2004-2013), from relevant EU briefs and from the EU Court of Auditors' summaries

APPENDIX C (INTERVIEWS)

List of interviewees

S1 – A member of the Council

S2 – A former member of the Council

S3 – A member of the ACA

S4 – A member of the ACA

S5 – A former member of the ACA

S6 – A former member of the Committee

S7 – An NGO expert in anticorruption

S8 – A Serbian journalist

M1 – A former member of the SCPC

M2 – A former member of the SCPC

M3 – A Macedonian journalist

M4 – A Macedonian political science scholar

C1 – A member of the USKOK

C2 – A member of the USKOK

C3 – A member of the Parliamentarian Committee for Conflict of Interest

C4 – An NGO anticorruption activist

C5 – A Croatian journalist

C6 – An official of the EU mission in Zagreb

C7 – A Croatian political science scholar

EXPLANATION

The interviewees were selected according to several criteria.

First, those who were involved in the decision-making of the analysed ACAs were asked to provide more details about the key events, particularly high-profile scandals. A large majority of the worked in the ACA, with two interviewees being former members of the ACA staff at the time of the interview.

Most of those invited agreed. Three people rejected the interview and some postponed it multiple times, to the point of cancellation. In one case, the Director of an ACA started an interview, but left the premises promising to come back in 15 minutes, which did not happen. In anticipation of the Director's return, an office assistant, familiar with the matter, continued the interview in an informal manner.

The second selection criteria involved those who were well informed about the drafting of the relevant legislation and other key events in the work of the ACAs. This group includes journalists, NGO representatives, researchers and anticorruption experts; all invited responded to the call. Politicians and those targeted by major ACAs' actions were not invited, for the following reasons. They already offered their view of the events to the public while their cases were ongoing. Further, the provisional attempts to reach several politicians that were made at the earliest stage of the research - failed, so directing the time and energy toward other stakeholders was seen as a strategy that is more likely to obtain interlocutors.

Most of the interviewees had no issue to disclose their names, but three interlocutors asked to stay anonymous. For the sake of uniformity, therefore, all interviews are anonymised. The interviews took place in Belgrade, Zagreb and Skopje, most of them between 2011 and 2014 – but the last two interviews were held in summer 2015. For some interviews, follow ups were done via email or phone conversation.

Surprisingly, the interviewees did not offer different views while commenting on the same subject. Even those few former members of staff of particular ACAs, who admittedly had been in a sort of conflict with each other, did agree on the facts (while disagreeing on matters such as the personal style of leadership or the optimal enforcement strategy of the ACA). This avoided the problem of conflicting interpretations; additionally, the gathered data reinforced the reliability of the process-tracing that was undertaken in the study.

APPENDIX D (Big-Fish Cases)

Council

Year	Case	Stringency	Zealotry	Enforcement style	Opp/Gov
2003	First report about the <i>Sugar affair</i> .	High	High	Predatory	Government
2004	Second report about the <i>Sugar affair</i> .	High	High	Predatory	Government
2004	A report about the alleged (corrupt) collusion between the politicians who were directing the privatisation process and those who privatised major companies.	High	High	Predatory	Opposition
2004	Initiative to investigate into how the trip of several ministers to the Olympic games (held in Athens) was funded.	High	High	Predatory	Government
2004	Investigation/report about the privatisation of <i>Jugoremedija</i> .	High	High	Predatory	Government
2004	Investigation/report about the privatisation of <i>Nacionalna štedionica</i> .	High	High	Predatory	Government
2005	'Ericsson-scholarship' affair of Vice-President Labus.	High	High	Predatory	Government
2005	Analysis of an allegedly corrupt government ordinance of provision of state aid.	High	High	Predatory	Government
2005	Protest to the Ministry of Justice because of an amendment of the National Anticorruption Strategy.	Low	High	Entrepreneurial	Government
2005	New action calling for the investigation and prosecution of those responsible for the 'Sugar affair'.	High	High	Predatory	Opposition
2006	Urged Prime Minister Košturnica to consider serious action against reportedly drastic corruption; demanded joint action with the Government.	Low	High	Entrepreneurial	Government
2006	Action against allegedly corruption privatisations of <i>Mobtel</i> and <i>Lukoil</i> , plus called the Commission for Securities and the Prime Minister to back the shareholders of <i>Jugoremedija</i> .	High	High	Predatory	Government
2006	Continuation of the investigation of the privatisation of <i>Nacionalna štedionica</i> , including the action aimed at launching a legal process.	High	High	Predatory	Government
2007	Initiative to the government to withdraw the Law on ACA.	Low	High	Entrepreneurial	Government
2007	Action against the Government regarding the privatisation of <i>C-Market</i> .	High	High	Predatory	Government
2007	An investigation/report about a government's concession for <i>Horgoš-Požega</i> highway.	High	High	Predatory	Government
2007	Action against the Minister of Finance Mlađan Dinkić because of the privatisation of <i>Jugoremedija</i> .	High	High	Predatory	Government
2008	Protest to the Ministry of Justice against the adoption of the Law on ACA.	Low	High	Entrepreneurial	Government

2008	Further analysis and critique of the Law on ACA.	Low	High	Entrepreneurial	Government
2008	Continuation of the action against the concession <i>Horgoš-Požega</i> ; demand for the publication of the full contract (including the Annex)	High	High	Predatory	Government
2009	Investigation into the loan that the state Fund for Development provided to <i>Zastava Elektro</i> .	High	High	Predatory	Government
2010	Initiative against the privatisation of <i>Port Belgrade</i> – alarmed the highest state institutions and the President of Serbia (Boris Tadić); called for the formation of a Parliamentary Committee to investigate the circumstances.	High	High	Predatory	Government
2010	Initiative to the Constitutional Court to establish the legality of the regulation of land acquisition.	Low	High	Entrepreneurial	Government
2010	Criticised the adoption of a Law on Electronic Communication on grounds of arguable violation of human rights.	Low	High	Entrepreneurial	Government
2010	Demanded the Government to delay the implementation of the Law on Electronic Communication and to reconsider the law.	Low	High	Entrepreneurial	Government
2010	Investigation/report about the privatisation of <i>Prosveta</i> .	High	High	Predatory	Government
2010	<i>Jugoremedija</i> case: urged the Government to stop the alleged abuse of police against the workers-shareholders and to protect the property of the factory.	High	High	Predatory	Government
2010	Action against alleged wrongdoing in the events preceding and following the intended privatisation of <i>Petrohemija</i> .	High	High	Predatory	Government
2010	Action against the privatisation of <i>Telekom</i> (“non-transparent”, “damage to the market”, “under the market price”); call for Government’s responsibility.	High	High	Predatory	Government
2010	Investigation into a contract for laying optical cables by <i>Nuba Invest</i> .	High	High	Predatory	Government
2010	Letter to the President of Serbia about condemning an alleged extortion of foreign investors.	High	High	Predatory	Government
2011	Investigation/report about the privatisation of <i>Novosti</i> .	High	High	Predatory	Opposition
2011	Report about ‘detrimental guarantees’ and ‘corrupt deals’ between <i>Azotara</i> and <i>Srbijagas</i> .	High	High	Predatory	Government
2011	Investigation/report about the ownership of the media.	High	High	Predatory	Government
2011	Action against the privatisation of <i>Maxi</i> .	High	High	Predatory	Government
2011	A follow up report to the <i>Nuba invest</i> case	High	High	Predatory	Government
2011	Action against an allegedly unconstitutional by-law and related legal acts regulating the acquisition of land in Belgrade.	Low	High	Entrepreneurial	Government
2011	Council’s action against alleged pressure on the <i>Jugoremedija</i> Board by the Ministry of Interior and Ministry of Economy.	High	High	Predatory	Government

2012	Investigation/report about the ongoing contentious judiciary reform.	High	High	Predatory	Government
2012	Submitted a report to the Government about alleged mistreatment of the investors in cases such as the privatisation of <i>Putnik</i> and <i>ATP Vojvodina</i> .	High	High	Predatory	Government
2012	Report about an allegedly corrupt purchase of agricultural land.	High	High	Predatory	Government
2012	Report about an allegedly corrupt business with <i>Azotara</i> 's fertilizer and the way the <i>Viktorija Group</i> gained from this business.	High	High	Predatory	Government
2012	A '24 Contentious Privatisations' report submitted to a special police force responsible for organised crime and corruption.	High	High	Predatory	Government, Opposition

Committee

Year	Case	Stringency	Zealotry	Enforcement style	Opp/Gov
2005	Purchase of a luxurious villa by Governor Radovan Jelašić.	Low	High	Entrepreneurial	Government
2007	(Non) declared managing rights of Božidar Đelić, the Vice-President of the Government, in the <i>Meridijan Bank</i> .	Low	High	Entrepreneurial	Government
2008	Double posts of Verko Stevanović and Dragan Marković, the Mayors of cities of Kragujevac and Jagodina.	Low	High	Entrepreneurial	Government
2009	Pressure on the judiciary by Nebojša Ćirić, a State Secretary of the Ministry of Economy.	Low	High	Entrepreneurial	Government
2009	Conflict of interest of Slavica Đukić Dejanović, the President of Parliament (honorary contracts with <i>Galenika</i> and <i>Clinical Centre of Kragujevac</i>).	Low	High	Entrepreneurial	Government
2006	Conflict of interest of Zoran Lončar, Minister for Public Administration (holding two public posts).	Low	High	Entrepreneurial	Government
2008	Construction of a private clinique of the Minister for Infrastructure, Velimir Ilić.	Low	High	Entrepreneurial	Government
2009	Pressure on the judiciary by Slobodan Homen, a State Secretary of the Ministry of Justice.	Low	High	Entrepreneurial	Government
2009	Conflict of Interest of Petar Škundrić, Minister of Mining and Energy.	Low	High	Entrepreneurial	Government

ACA

Year	Case	Stringency	Zealotry	Enforcement style	Opp/Gov
2010	Conflict of interest of Petar Škundrić, Minister of Mining and Energy (as a Minister, served as the President of the Assembly of Shareholders of the oil company NIS).	Low	High	Entrepreneurial	Government
2010	Undeclared ownership of the Minister for Environment Oliver Dulić of a company trading	High	Low	Aloof	Government

	with computer equipment.				
2010	Minister for Environment, Oliver Dulić, in alleged conflict of interest (alongside the ministerial post, had a honorary job in a state enterprise).	Low	High	Entrepreneurial	Government
2011	An opposition MP Dragan Todorović in a conflict of interest –did not transfer the managing rights in his <i>Todorović d.o.o</i> company.	Low	High	Entrepreneurial	Opposition
2011	Vice-President of Government Božidar Đelić accused to have failed to transfer his managing rights from a private company.	High	High	Predatory	Government
2011	An opposition leader Čedomir Jovanović allegedly discovered to have failed to declare the managing rights in a private company.	High	High	Predatory	Opposition
2011	Novica Tončev, a member of the ruling Socialist Party of Serbia, failed to declare the managing rights in a private company.	High	High	Predatory	Government
2011	Minister of Culture Predrag Marković discovered in a conflict of interest as he was the editor in a commercial publishing company.	Low	High	Entrepreneurial	Government
2011	A case of double post by the Minister of Agriculture Dušan Petrović, due to his membership in the Board of <i>NIS</i> (an oil company).	Low	Low	Retreatist	Government
2011	A publishing company, owned by the Minister of Culture Predrag Marković, received a state loan from the Fund for Development of the Government of Republic of Serbia, run by his party fellows.	Low	Low	Retreatist	Government
2012	Branko Ružić, from the ruling Socialist Party of Serbia, argued to have failed to declare a flat.	High	Low	Aloof	Government
2013	President of Serbia Tomislav Nikolić declared in the annual asset declaration that he received an Audi A6 as a gift, but declined to reveal who the donator is.	Low	High	Entrepreneurial	Government
2012	Former City Manager of the City of Belgrade discovered to have an undeclared Jeep.	High	High	Predatory	Opposition
2012	G17 party and the Liberal Democratic Party caught by the ACA to have violated the regulation on financing of political parties.	Low	High	Entrepreneurial	Opposition
2012	President of Serbia Boris Tadić asked to clarify his trip to Hannover in the election campaign, that is whether he acted in the capacity of the President of Serbia (which may have constituted an abuse of the state function for political marketing) or in a private capacity (for which he was asked to provide evidence of his funding of the trip)	Low	High	Entrepreneurial	Government
2012	The major opposition candidate for Mayor of Belgrade, Aleksandar Vučić, asked to explain whether his bringing of a former Mayor of New York Rudolf Giuliani was a form of (undeclared) donation.	Low	High	Entrepreneurial	Opposition
2012	Minister of Health Zoran Stanković accused of abusing his function during the 2012 campaign for the purpose of a trip to Denmark which was said to be used for sending	Low	High	Entrepreneurial	Government

	messages as part of the ongoing election campaign.				
2012	Outgoing Minister of Public Administration Milan Marković suspected to have possessed an undeclared yacht.	High	Low	Aloof	Government
2012	Outgoing Minister of Defence Dragan Šutanovac discovered to have been a co-investor in the construction of a building, whereby he did not declare the flat that will be built as his possession.	High	Low	Aloof	Government
2012	Spokesperson of a major opposition party (Democratic Party) suspected of having an undeclared flat.	High	High	Predatory	Opposition
2012	Conflict of interest of the Mayor of a city of Zaječar, Boško Ničić, who served as MP in National Parliament at the same time.	Low	High	Entrepreneurial	Government
2012	Branko Ružić, from the ruling Socialist Party of Serbia, suspected to have worn an undeclared watch who value is above the value that of assets that need to be reported to the ACA.	High	Low	Aloof	Government

USKOK

Year	Case	Stringency	Zealotry	Enforcement style	Opp/Gov
2002	Allegedly illicit funding of HDZ from 'secret accounts' funded by the diaspora during the war for independence (1990s).	High	High	Predatory	Opposition
2002	An alleged illegal intermediation by Nevenka Tuđman in arranging contracts for a telephony with the Ministry of Telecommunications.	High	High	Predatory	Opposition
2004	An alleged fixing of selling of shares of <i>Končar</i> company.	High	High	Predatory	Opposition
2005	Initial allegations of Mayor of Zagreb Milan Bandić's corrupt selling of city land.	High	High	Predatory	Opposition
2009	Trucks affair: prosecution of the 2004 purchase of trucks by former Minister of Defence Ivo Rončević and his associate Ivo Bacić.	High	High	Predatory	Government
2010	Arrest of Ivo Sanader, former Prime Minister.	High	High	Predatory	Government
2010	'Spice affair', a scheme of selling of <i>Podravka</i> 's shares.	High	High	Predatory	Government
2010	An allegedly forged war veteran pension of Minister Ivić.	Low	High	Entrepreneurial	Government
2010	Purchase of city buses for the city of Velika Gorica by its Mayor Tonino Picula.	Low	High	Entrepreneurial	Opposition
2012	<i>FIMI Media</i> affair, Minister of Police Kirin.	High	High	Predatory	Government

SCPC

Year	Case	Stringency	Zealotry	Enforcement style	Opp/Gov
2003	President Trajkoski: tapping affair, asked for hearing.	High	High	Predatory	Government
2003	Telecoms – asking for criminal liability.	High	High	Predatory	Opposition
2003	‘Feršped’ privatisation (1995).	High	High	Predatory	Government
2003	SCPC asked the Revenue to cancel 18 privatisations.	Low	High	Entrepreneurial	Government
2003	OKTA refinery privatisation, asking for criminal liability (former Minister of Finance from VMRO ; memorandum signed Prime Minsiter (Boris Stojmenov and Ljupco Georgievski).	High	High	Predatory	Opposition
2004	‘Nursery case’: Ministry of Transport and Finance allegedly abused their position (restitution of KO Mineral Water).	High	High	Predatory	Government
2004	The case of National Bank Governor.	High	High	Predatory	Government
2004	Target: Crvenkovski (“cannot run as Prime Minister and President”).	Low	High	Entrepreneurial	Government
2004	Microsoft affair: the software auction allegedly harmed the budget and citizens’ interests.	High	High	Predatory	Government
2004	Call for review of the Telecom contract and consultancy fees.	High	High	Predatory	Opposition
2004	About 90 proceedings against government officials for failed asset declarations.	Low	High	Entrepreneurial	Government
2004	Criminal liability for an unknown person fixing the poll in a TV Show “Why” from the Ministry of Defense.	Low	High	Entrepreneurial	Government
2004	US Embassy location purchase (Marketpol) allegedly sold under market price.	High	High	Predatory	Government
2004	Minister of Economy Yakimosvki exceeded authority when allowing a closed store, which was not issuing fiscal receipts, to keep its business going despite the penalty.	High	High	Predatory	Government
2004	Minister of Culture Stefanovski accused of breaching the prorement act when building the memorial centre ASNOM Pelince.	High	High	Predatory	Government
2004	“Four people hid assets and we’ll check, then political implications and criminal charged should be raised by parliament”	High	High	Predatory	Government
2004	A suspect deal for a cancer scanner involving a president Crvenkovski’ relative.	High	High	Predatory	Government
2004	Taiwanese loans: criminal case against Agency for Development and Investment.	High	High	Predatory	Government
2005	Affair ‘National Payment Card’.	High	High	Predatory	Government
2005	PM Bučkovski: swap of warehouse for defence.	High	High	Predatory	Government
2005	Charges against 40 mayors who failed to submit declarations.	Low	High	Entrepreneurial	Government
2005	‘National Bank affair’ – tender or loans?	High	High	Predatory	Government
2005	‘Stop striking direct deals, without regular tendering procedure’ action by SCPC.	Low	High	Entrepreneurial	Government

2005	Requested investigation of the 'secret contracts' with Shower and Lukoil.	High	High	Predatory	Government
2005	Kermeš case – blamed Ministry of Transport, Municipality Center, chief architect etc.	High	High	Predatory	Government
2005	President Crvenkovski and Skopje mayor Kostov – urged to disclose their Swiss bank accounts.	High	High	Predatory	Government
2006	New and ex-President, Ivanov and Crvenkovski, were not fined for a broken deadline for asset declaration.	Low	Low	Retreatist	Gov+Opp
2006	Bačilo case (Ministry of Defence, PM Bučkovski targeted).	High	High	Predatory	Government
2006	Launched inspection of contracts arranging state-allocated flats.	High	High	Predatory	Government
2006	Warning that the selling of MEPSO (ERM) is being monitored.	Low	High	Entrepreneurial	Government
2006	Prime Minister Bučkovski allegedly misused an official visit for campaign purposes.	Low	High	Entrepreneurial	Government
2006	Responding to a call by the Revenue Administration, decided that there are no grounds for liability of opposition leader Gruevski for owning three "undeclared" flats.	Low	High	Aloof	Opposition
2006	TEC Negotino - prohibited privatisation/sellout in the election campaign.	Low	High	Entrepreneurial	Government
2006	Privatisation of Ljupče Enterprise (UPA) – sought annulment and criminal liability.	High	High	Predatory	Government
2006	Criminal charge against the Ministry of Transport ("harmed state budget for EUR 1.1mil").	High	High	Predatory	Government
2006	Government accused of a reversal of the de-politicisation in the public sector and unlawful dismissal of public servants.	Lows	High	Entrepreneurial	Government
2006	VMRO-DPNE, and some other parties, allegedly spent more than allowed in the campaign (suspicious media discounts); urged relevant bodies to react.	High	High	Predatory	Government
2006	Minster of Education, Mr Rusiti, criticised to have undermined the rule of law and Constitution by firing staff of the Accreditation Commission and one university dean.	Low	High	Entrepreneurial	Government
2007	Misdemeanor charges against an ex-chief of the Intelligence service chief and several agency directors (failed to declare assets).	Low	High	Entrepreneurial	Opposition
2007	Seeking criminal prosecution of an ex-Director of the Revenue Administration (allegedly damaged the state budget).	High	High	Predatory	Opposition
2007	Ex-director of a power plant Lazarov deposited money in foreign banks.	High	High	Predatory	Opposition
2007	SCPC asked by SDSM to check nepotism of a middle-level servant freshly appointed by the government; SCPC kept silent for two months.	High	Low	Aloof	Government
2007	Two ministers repeatedly rejected, or failed, to declare assets; no swift action by SCPC.	High	Low	Aloof	Government
2007	Failed to follow up a Transparency's call to investigate Minister Tašković.	High	Low	Aloof	Government
2007	Asked the Prosecutor to react regarding the case of Sport Facilities PE.	High	High	Predatory	Opposition
2007	Declaring lack of authority over the case of PR Gruevski's allegedly undeclared flats.	High	Low	Aloof	Government
2007	Privatisation of the hotel 'Quiet Dream' – "no grounds for investigation, as Transparency suggested".	High	Low	Aloof	Government

2007	SCPC 'dragging foot' and denying the need to react against chief of the intelligence service for an "undeclared asset".	High	Low	Aloof	Government
2008	Ministry of Health – the expansion of discretionary powers claimed to be at odds with EU standards; other bodies also called to curtail discretion.	Low	High	Entrepreneurial	Government
2008	SCPC rejected to stop a campaign for family values, which was characterised by opponents as government's attempt at pre-election manipulation.	Low	Low	Retreatist	Government
2008	Electricity import case: "nothing contentious, in accordance with the Law"	High	Low	Aloof	Government
2008	Put off decisions about a number of cases that were claimed to have brought unfair advantage to the government for the election aftermath.	High	Low	Aloof	Government
2008	SCPC did not follow through experts' claims that serious amounts of money that are used in the campaign are "dodgy" and that they need a closer examination.	High	Low	Aloof	Government
2008	Criminal charge against Minister of Health (Mr Selmani, from the minor coalition partner New Democracy).	High	High	Predatory	Government
2008	SCPC asked for explanation of a "100 days of government" campaign, conducted by the previous government, in the run-up to the previous election.	Low	High	Entrepreneurial	Opposition
2008	SCPC: "Stop the scheme of poaching 5000 public would-be employees in the campaign"	Low	High	Entrepreneurial	Government
2008	SCPC called for criminal liability of director of the Postal Services for failing to secure proper entourage for the high number of robberies that happened in the past.	High	High	Predatory	Opposition
2008	SCPC: "All parties were over-spending in the campaign, but let the other institutions decide about the future steps with regard to this problem"	Low	Low	Retreatist	Government + Opposition
2008	Called for prosecution of mayor of Ohrid Mr Petrovski, citing suspicious procurements.	High	High	Predatory	Opposition
2008	SCPC held that a recent wave of public sector employment was not problematic, citing the fact that they were part of the annual plan.	Low	Low	Retreatist	Government
2008	President Crvenkovski blamed for politicising his function and violating the law, because he pardoned a mayor and declined a Lobbying Act.	Low	High	Entrepreneurial	Opposition
2008	Transparecy accused PM Gruevski of appointing his brother's son to a key position in the Ministry of Economy; SCPC declined to react.	Low	Low	Retreatist	Government
2008	Misdemeanor charges against five former ministers for not notifying about their assets.	Low	High	Entrepreneurial	Opposition
2008	SCPC declined reacting to a case of alleged misuse of public positions by VRMO-DPNE youth-cervants.	Low	Low	Retreatist	Government
2008	Chrges against ex-ministers of defence Manasijevski and Elenoski for allegedly illegal procurements (based on an audit report from 2006).	High	High	Predatory	Opposition
2008	SCPC declined a Transparency's call to investigate a case of government's engagement of celebrities for "campaign purposes".	High	Low	Aloof	Government

2009	Called for prosecution of a former director of the Agency for Sport (Mr Georgieski).	High	High	Predatory	Opposition
2009	Warned the presidential candidate Predrag Petrović not to take illegal campaign funds.	Low	High	Entrepreneurial	Opposition
2009	Called for prosecution of the mayor of Skopje, for "dodgy procurements".	High	High	Predatory	Opposition
2009	Urged the administration to stop employment procedures in the election campaign.	Low	High	Entrepreneurial	Government
2009	No action against ruling party VMRO-DPNE for an alleged abuse of state resources in the mayor/presidential campaign.	High	Low	Aloof	Government
2009	SCPC Director declined to act/comment a case of allegedly fixed procurements for the built state monuments in Skopje downtown.	Low	Low	Retreatist	Government
2009	Minister of Justice Manevski accused of taking fake pensions/salaries; SCPC's dragging reaction to calls for investigation.	High	Low	Aloof	Government
2009	SCPC characterises an allegedly illegal procurement of police apparel in the Ministry of Interior as "clean".	High	Low	Aloof	Government
2009	Criminal charge against a servant from the Ministry of Transport ("illegal permission for the Telecom to build a branch in a restitution location"; dating back to 2001)	High	High	Predatory	Opposition
2009	Charge against Mayor of Strumica (Mr Zaev).	High	High	Predatory	Opposition
2009	SCPC failed to react to calls for dismissal of a recent advisor in the city of Skopje, who was found to have held four public posts.	Low	Low	Retreatist	Government
2009	Audit revealed gaps in government procurements and MKTV (National TV); non-zealous reaction by SCPC.	High	Low	Aloof	Government
2010	New SCPC Head Selami launches a case against a Vice-President of Government for EU, for two public posts (Vice-President of Government+teaching in a public university)	Low	High	Entrepreneurial	Government
2010	Launched procedure against Mr Bajram for money (IRS) and property.	High	High	Predatory	Government
2010	Charge against Mr Cvetanov from the Money Laundering Agency.	High	High	Predatory	Government
2010	SCPC: "No abuse of Skopje Beach project" (tenders).	High	Low	Aloof	Government
2010	Called Mr Zdravev to resign his government post.	Low	High	Entrepreneurial	Government
2010	Mr Jakimovski, an opposition figure, blamed for money laundering and fixed contracts.	High	High	Predatory	Opposition
2010	Failed a charge against former President Crvenkovski for a PR contract ('Hope' affair).	High	High	Predatory	Opposition
2010	The owner of A1 TV 'confessed' about PM Gruevski paying an ad with budget funds; SCPC did not react to this 'testimony'.	High	Low	Aloof	Government
2010	Former Minister of Agriculture Spasenoski, charged for a Sileks metal excavation contract	High	High	Predatory	Government
2010	Minister of Culture Kančeska-Milevska, charged for an architectural arrangement.	High	High	Predatory	Government
2010	Minister of Environment Jakupi charged.	High	High	Predatory	Government
2011	SCPC: "Konjanoski not in breach, we checked"	Low	High	Entrepreneurial	Government

2011	Denied competence for the case of Telecom.	High	Low	Aloof	Government
2011	SCPC warned that they will scrutinise the government's conduct in the election run-up ("no jobs now, no procurements, no building").	Low	High	Entrepreneurial	Government
2011	Zealous action aimed at investigation of a house owned by the former President Crvenkovski's wife.	High	High	Predatory	Opposition
2011	SCPC urged the opposition SDSM to explain how their campaign spent above the limit.	High	High	Predatory	Opposition
2011	SCPC's mild reaction to the possibility of using state resources (e.g. cars) in the election campaign.	Low	Low	Retreatist	Government
2011	Misdemeanor charges for flawed campaign funding reports, but claimed that no party broke the limits.	Low	Low	Retreatist	Government + Opposition
2011	Claimed competence for a case when the opposition SDSM got an allegedly discounted rate for A1 TV ads.	High	High	Predatory	Opposition
2011	Failed to follow through a call to investigate a Commercial Bank loan to the ruling VMRO-DPNE.	High	Low	Aloof	Government
2011	SCPC declined to reconsider the suspected 'Skopje 2014' case, making justifications for an annex that was claimed to reveal irregularities.	High	Low	Aloof	Government

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