INDEPENDENT ANTI-CORRUPTION AGENCIES:

Basic Trends and Implementation in International Practice

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I. INTRODUCTION

The present paper is aimed at analyzing the challenges facing the attempts to establish the model of an independent anti-corruption agency in Central and Eastern Europe. The work highlights a few models of an independent anti-corruption agency, particularly, one of Hong Kong, Tanzania and Australia. The conclusions drawn subsequently will serve as a framework to formulate the core principles that will assist the above-mentioned countries in implementing the respective programs.

Nowadays many countries throughout the world have similar model of an anti-corruption agency. The anti-corruption agencies implemented in discussing countries share certain similarities if we put aside the peculiarities of the legal status arising out of the specifics of the political structure. Therefore, it is increasingly interesting to study and analyze the preconditions that triggered the implementation of the anti-corruption agency, the circumstances that accompanied this process, and finally the reasons that contributed to the success or failure of the anti-corruption agency.

Various experts interested in the issue do point to the positive model of the Asian countries (Hong Kong, Singapore, Malaysia).[1] However, despite the experience existing in these countries, similar efforts in certain African states often end up with failure.[2] Certain difficulties did crop up in the work of the New South Wales Independent Anti-Corruption Commission of Australia.

When talking about the outcomes of the implementation of an independent anti-corruption agency, we should take into account the peculiarities of the political, economic and social relations characterized for a particular country. At the same time, high attention should be drawn on the adequacy of the functions, organization and powers, mechanisms of checks and balances of the agency.

Despite the foregoing, there is a prevalent trend that, regardless of the aforementioned differences, is common for practically all states. The results obtained from the analysis of the existing experience, sources of comparative law and various theoretical works or popular literature on the issue provide an eloquent testimony to the fact that the need for the establishment of an independent anti-corruption institution signals a dramatic inability of government institutions to effectively fight and curb corruption. This, in turn is reflected in the existence of systemic corruption and its widespread character that circles mostly around the state structures and public servants. The examples of Hong Kong, Singapore, and a number of African states undoubtedly indicate that under such circumstances, the government and its institutions committed to the rule of law and corruption prevention, with all approved methods targeted to this end, fail to be effective even if the ruling political team or forces actually intend to combat corruption.

It can be said without hesitation that the major problem arising from the intense corruption processes is related to the unreliability of the decision implementation mechanisms. Even within the existence of a rationally oriented anti-corruption program along with an adequate legislative framework, any effort of the government to address corruption is destined to failure.

With this in mind, setting up an independent anti-corruption agency comes as a viable alternative, which in light of the positive examples of the model implementation can become a turning point in the successful realization of the anti-corruption policy.

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[1] *See* Jeremy Pope, TRANSPARENCY INTERNATIONAL SOURCE BOOK, 1996; also Alan Doig and Stephen Riley, *Corruption and Anti-Corruption Strategies: Issues and Case Studies from Developing* Countries in CORRUPTION AND INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES 1998 (edited by UNDP).

[2] These are generally the anti-corruption agencies implemented in African region. *See* Jeremy Pope et al.

II. ESTABLISHMENT OF INDEPENDENT ANTI-CORRUPTION AGENCIES - HISTORICAL REVIEW

a) Preconditions

The examples considered in this work have not been accidentally chosen. Hong Kong and Tanzania represent the countries, which were pioneers to set the precedent in the implementation of an independent anti-corruption agency model. It should be particularly mentioned that this happened in the same time period and far earlier than in any other country that shared their experience later. The New South Wales is among the latter.

As already mentioned in the introduction, the independent anti-corruption agency was being set up when corruption assumed systemic character. The process took on increasingly tremendous dimensions in the state sector.

If we take the Hong Kong example, the scales of corruption reached unseen parameters in 1960-70s. During this period, corruption was a serious problem in Hong Kong: it was widely spread, deeply rooted, well organized and highly accepted by the public. The vice affected almost all sectors of the public service of the Colony. The incentives for spreading corruption attributed to rapid population and economic growth, the immigrants that had recently arrived in Hong Kong (especially from China where corruption was endemic) and the willingness of the administration to regulate and control the economic process. The problem of corruption became especially acute in the police force.[3]

According to professor Robert Klitgaard, at the beginning of 1960s and 1970s corruption swept across the whole police hierarchy.[4] To illustrate these words, Klitgaard provides interesting examples that expose main spheres of the corrupt links of the police – drug dealing and trafficking, gambling, prostitution, etc. Hong Kong's geographic location, and particularly, neighbouring the 'Golden Triangle' countries contributed to the strengthening of drug-dealing and traffic-related criminal syndicates in Hong Kong, which established contacts and acted in cahoots with the police to do a safe and trouble-free business. Drugs were big business and the police cooperation could be bought by paying them a certain share of the huge profit received from the business. The half dozen underworld syndicates who ran the narcotics empire made regular payments to various units within the police force to ensure that their operations would not be disrupted.[5] For instance, one small retail drug syndicate engaged in drug trafficking entered into corrupt relationships with police officers of the respective region, giving them a monthly payment of some 10 000 Hong Kong dollars in return for their silence or advance warnings of raids planned by higher echelons.[6]

The same source indicates that, bribing police officers by organized criminal organizations and subjects involved in black business was not the only way for corruption to infiltrate the police system. In addition to the criminal processes described above, the police itself was engaged in extortion.

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[3] Alan Doig and Stephen Riley, Corruption *and Anti-Corruption Strategies: Issues and Case Studies from Developing* Countries, CORRUPTION AND INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES, 52 (1998).

[4] ROBERT KLITGAARD, CONTROLLING CORRUPTION, University of California Press, Ltd. London, England, 98 (1988).

[5] *See id*., at 99.

[6] *Id.*

Corruption in the police force mostly carried a syndicated and systemic character.[7] The police had their own criminal syndicates as well. In the Western district of Kowloon one such syndicate collected money from drug dens and gambling dens through middle-ranking police officers. Higher-ranking officers received a sizeable sum for keeping their eyes closed. The parties worked out an elaborate scheme of distribution of 'black' money, including hired accountants, payments to six banks, and foreign remission of funds.[8]

The situation was no better in other public services. Cases such as ambulance attendance demanding 'tea money' before picking up a sick person, firemen on the very scene of a fire soliciting 'water money' before they would turn on the hoses, hospital amahs asking for 'tips' before giving patients a bedpan or a glass of water were common. Getting a driver's license required bribing the driving examiner and backhanders to the right official were often necessary to make any progress in getting public housing, schooling, and so on throughout most public services.[9]

Soon the existing condition became a way of life and was harming the Hong Kong's reputation on the international scale. Various surveys noticeably proved that 70 % of the reports and articles published in the British press about the Hong Kong were related to corruption.[10]

The situation was much the same in Tanzania. Beginning from the 1960s, corruption growth and the scope of the areas it affected reached alarming dimensions and intensity in the country that was related to a number of circumstances. The conclusions of the Anti-Corruption Commission (otherwise referred to as Warioba Commission) set up by the President of Tanzania Benjamin William Mkapa on January 17, 1996 identify the existence of the following circumstances:

- This, on the one hand, can be attributed to the economic crisis that resulted in the scaledown of wage rate, product and service deficit, inflation, growth in the black economy, etc;
- Weakness of the mechanisms of supervision, accountability and implementation of the legislation regulating the public service;
- Disrespect of law by the law-enforcement bodies;
- Shortcomings in the public procurement procedure;
- Weakness and corruptness of law-enforcement and other state bodies charged with corruption prevention;
- Lack of political will on the part of political and public leaders to fight corruption;
- Criminal alliance between political and public leaders and representatives of the black business;
- Lack of transparency in the decision-making process;
- Decrease of integrity and weakness of the ethical standards among political and public leaders;
- Acquired social status and subsequent material condition have become a value and an object of competition among political and public leaders, businessmen, civil servants and particular members of the public.

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[7] *Fighting Corruption – The Mission Continues*,The ICAC's 25th Anniversary Commemorative Publication, 12, 1999.

[8] KLITGAARD, *supra* note 4, at 98.

[9] The ICAC's 25th Anniversary Commemorative Publication, *supra*, note 7.

[10] KLITGAARD, *supra* note 4, at 98.

The spread of corruption has also left its mark on the mentality of the population, which regarded corruption as the only means to attain the desired purpose. Petty corruption permeated virtually all sectors of public service, including rural areas. Most of all, it engulfed law-enforcement and administrative structures. Bribe was used everywhere –from issuing license permits to influencing court decisions by the administrative bodies. Bribing a teacher to pass an exam and get enrolled in the high educational institutions has become common occurrence in the education sector. Even the teachers were offering bribes in order to get a promotion. Corruption and bribe-giving was widely spread in the land management structures to secure a desired apportionment and evaluation of land plots, and obtaining licenses to use the land areas, etc. The similar situation was encountered in the health care system, local administration, tax and a number of other sectors. Money has become an effective tool to influence public servants.

The ruling elite was swept by grand corruption, which dominated the highest administration bodies' decision-making, public procurement, tax exemptions and privileges, licensing in building industry. Corruption affected many other spheres of activity of high-ranking officials.[11]

As the President of Tanzania Julius Nyerera once noted, corruption was spreading like a cancer across the whole country.[12]

As already mentioned above, unlike Hong Kong and Tanzania, Australia came only to later appreciate the establishment of an independent anti-corruption agency. In Australia's case, the initiative to set up the service was dictated not only by the necessity to introduce additional anti-corruption mechanisms, but also by the shape of existing political process. It is not accidential that one of the pledges in the newly elected government's policy statement in 1988 was the creation of an independent anti-corruption agency – a proposal highly supported by the opposition. In other words, the necessity to implement the model of an anti-corruption service represented one of the outcomes of the existing political battle that was viewed within the context of strengthening the general anti-corruption policy. It was also associated to the examples of successful anti-corruption movements in Asia (Hong Kong, for instance). Evidently, it cannot be concluded that this situation points to non-existence of corruption-related problems in Australia, but their intensity surely could not come close to the examples mentioned above.

b) Establishment

Owing to the initial examples on the operation of this model, the establishment of an independent anti-corruption service can not be considered from across the ordinary (approved) anti-corruption policy existing at that time in various counties of the world. This step was dictated in consideration of all the prehistory of anti-corruption policy implementation. This is particularly true to Hong Kong and Tanzania as in the given time period practically no country in the world had an experience in establishing and implementing similar institutional formation.

In Hong Kong, majority of the public believed for sure that corruption was so deeply ingrained in the entire system of public relations and population's mentality that combating this evil would be an impossible challenge. With this respect, they cited many examples of various unsuccessful anti-corruption campaigns. Notwithstanding the legal reforms and scandals that broke out from time to time, the scales of corruption were still on the rise.

Hong Kong has had a long history of implementing anti-corruption measures. As far back as 1897 there existed anti-corruption and bribery laws in Hong Kong, which found their basis

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[11] *See* Transparency International Tanzania National Chapter, *An Overview of the Findings and Recommendations of the Presidential Commission on Corruption*, Second Arusha Integrity Workshop, at http://www.transparency.de/organisation/chapters/tanzania/arusha2.html.

[12] *See* UMA LELE, TANZANIA: PHOENIX OR ICARUS? *World Economic Growth*, (Arnold C. Harberger ed., San Francisco: ICS Press, 1984), 478n, cited in KLITGAARD, *see supra* note 4, at 65.

upon the investigation of the case of the police-protected syndicate engaged in the gambling business. In 1947 Executive Councilor of the Colony Sir Man-Kam Lo led four unofficial members of the Executive Council to look for ways to reduce corruption. The work of this team resulted in the adoption of 1948 Corruption Prevention Ordinance, which allowed the authorities to investigate a suspect's bank account, share account or purchase account. Four years later, the Police Force's Anti-Corruption Branch was set up. In 1959, the Tribunal was empowered to examine a government official's 'standard of living' and 'control of pecuniary resources', and if these were deemed beyond his or her 'official involvements', the official could be dismissed. This regulation had no precedent or equivalent in the commonwealth and the British dependencies[13]

Despite the measures taken, the situation remained unchanged that in turn found its reflection in the population's expressed dissatisfaction with the government. 1970s have become a period of rapid economic growth for Hong Kong. The favorable geopolitical location and ample labour resources turned Hong Kong into Asia's largest industrial and trade center that in turn promoted new mentality and values in the population. The economic development influenced the development of a so-called 'new class' in Hong Kong public the core of which was young educated professionals. Hong Kong's population took on an essentially new face. It brought together, on the one hand, the Chinese element whose education level and social activity continued to rise on a par with the economic progress and, on the other hand, foreigners with their own economic and other interests. Together, these groups represented a new force that openly criticized the government by large demonstrations and the means of mass media.

It is particularly important to mention British pressure that, it can be said for sure, substantially contributed to the success of anti-corruption campaign in Hong Kong. The enclave closely intertwined the interests of British businessmen who were actively represented in one of Asia's most favorable and important economic center and were profoundly interested in reliable guarantees for doing trouble-free business. British business circles that wielded substantial leverage to influence the central authority in its course of political formation come as one of the determining factors to explain Great Britain's increased appearance on Hong Kong's political scene. On the other hand, the political considerations of Hong Kong's geopolitical location also come into play. The coincidence between these interests ultimately prompted Great Britain to take a more active stand on the issue. True to the abovementioned statement came the appointment of Sir Murray Mac Lehouse as a Chief Executive of Hong Kong at the beginning of the 1970s, who breathed a new life into the anti-corruption policy.

In 1971 Prevention of Bribery Ordinance was passed which widened the context of the corrupt conduct, imposing for offering and accepting bribes and simplifying investigation and criminal prosecution. Under the ordinance, the suspects whose personal wealth exceeded their official incomes, the burden of proof shifted: they would have to demonstrate their innocence. 'Unexplained Enrichment' was a criminal offence inviting both dismissal and punishment. In the same year, the Anti-Corruption Branch was expanded and retitled Anti-Corruption Office that echoed its boosted autonomy. Personnel reshuffling went along with the above.[14]

These measures did produce certain positive results. Just within a year after the Ordinance was passed, the total of 295 police officers found themselves dismissed from their jobs, quite a few fled from Hong Kong to hide away from the investigation against them.[15]

In this respect, it is worth to mention the Godber Case that had far-reaching effects. Peter Godber, Senior Hong Kong Police Superintendent, against whom the Anti-Corruption Police Office filed a criminal prosecution and who was given one week to provide explanation, fled from the country. The fact that Godber was given such time period to give answers and his

[13] KLITGAARD, *supra* note 4, at 103.
[14] The ICAC's 25th Anniversary Commemorative Publication, *supra*, note 7, at 13.

[15] KLITGAARD, *supra* note 4, at 105.

trouble-free disappearance provoked much discontent both within and outside Hong Kong, giving rise to many questions. The case brought the role of the police in the affair under serious challenge. At the same time, the public discontent grew into spontaneous demonstrations and organized movements. Hong Kong Student Federation and the Students' Union of Hong Kong University launched series of joint rallies, calling for Godber's bringing to justice and investigation of the case materials.

The government was forced to take action. On June 8, 1973, five days after Godber's disappearance, the Chief Executive of Hong Kong set up a Commission of Inquiry headed by High Court Judge Sir Alastier Bler-Ker to investigate the situation and prepare relevant recommendations.

Sir Alastier Bler-Ker presented two reports on the analysis of circumstances related to Godber's fleeing, assessment of the anti-corruption legislation, anti-corruption policy implementation perspectives and its institutional implementation. One of the major aspects of the recommendation highlighted as to which body should be commissioned to fight corruption – the police or a newly established organization. In his second report, Sir Alastier Bler-Ker has pointed to the way of solving this dilemma – the public will never be sure that the government really wants to combat corruption until the anti-corruption service is separated from the police.[16]

This viewpoint has a real basis. The experience amassed in the course the anti-corruption campaign implementation had proved one certainty -- the weakest point in this campaign was inadequate institutional implementation procedure. Like other state institutions, the police swept by systemic corruption failed dramatically to handle the challenge of preventing and curbing corruption. Back in 1961, the Anti-Corruption Report prepared by the Advisory Committee on Corruption identified the reasons that rendered the activity of the Anti-Corruption Bureau ineffective:[17]

1. The public's fear of, lack of sufficient respect for, and reluctance to complain to, an anti-corruption unit attached to a Police Force which is itself thought to be corrupt;
2. The danger that the staff of the Anti-Corruption Bureau will, on transfer to other sections of the Force, put to use techniques (blackmail, extortion, etc.) learned while investigating corrupt practices; and
3. The danger that an officer of the Anti-Corruption Bureau might be called upon to investigate a former colleague and, out of 'brotherliness', bury the case.[18]

Despite the conclusions provided in the report, no organized reforms followed its consideration. It seemed a daunting challenge for the government to delegate the function of fighting corruption to a body independent from the police.

In October 1973 Sir Murray Mac Lehouse, Chief Executive of Hong Kong, informed the Legislative Council of the decision of the government members to establish a new anti-corruption organization. This decision was based on the public support to the recommendations that Sir Alastier Bler-Ker had put forward in his second report. The Chief Executive-presented report made it clear that the public would demonstrate far more confidence in a wholly independent organization set apart from other state institutions, including the police. Therefore, Independent Commission Against Corruption of Hong Kong was established in February 1974.

The efforts to set up an anti-corruption commission in Tanzania were characterized by certain specifics related to the peculiarities of the political structure of this country. For the given time period, there was a one-party government system in the state. The country was ruled by Chama Cha Mapinduzi (CCM), a party of socialist orientation. In this case, the characteristics

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[16] The ICAC's 25th Anniversary Commemorative Publication, *supra*, note 7, at 21.

[17] KLITGAARD, *supra* note 4, at 104.

[18] Sixth Report, Advisory Committee on Corruption, Hong Kong, December 29, 1961, 46.

typical for a socialist public such as an administrative-legislative system, strong nomenclature and subjection of state structures to party control came to be closely intertwined with African country-specific problems such as clientalistic links, favouritism, clan interests and so forth. Thus, the establishment of an independent anti-corruption commission should be considered within the context of highlighted setting in Tanzania. The establishment of an anti-corruption service was a decision of the party elite and carried two objectives: on the one hand, it was aimed at publicly demonstrating the reaction of the government to the prevalence of corruption that ultimately would influence public opinion and ensure the legitimacy of the ruling class. On the other hand, it is obvious that this step was targeted to maintain the status quo (we will see this below when we analyze the functions and powers of the Anti-Corruption Service). The corruption-infected part of the ruling class tried to insure that their interests were safeguarded.

Act of Parliament No. 16 of 1971 served as basis for the establishment of the Anti-Corruption Bureau of Tanzania that came to be known as 'Squad'. Nevertheless, the Bureau could only become operational in 1975.

As for Australia, the establishment of Independent Commission Against Corruption of New South Wales, as mentioned above, was an immediate result of fierce political battle. The government set up after the 1988 Parliamentary Elections succeeded in carrying through one of their pre-election pledges to implement an anti-corruption program. The draft-law proposed by government went through extensive debates in the Legislative Assembly whereafter it was referred to the Legislative Council. The Parliament rejected the proposed bill but later approved the second bill, incorporating various changes resulting from Parliamentary debate. Having been passed by both Houses of Parliament, this Bill was assented to by the Governor On 6 July 1988. Certain amendments were made to the legislation and on 6 August 1988 the then Premier, Mr. Nick Greiner, introduced the Independent Commission Against Corruption (Amendment) Bill 1988. It had a swift passage through both Houses of Parliament and received royal assent on 9 August 1988.

On 13 September 19888 the Premier announced in Parliament the appointment of Mr. Ian Temby QC as Commissioner for the ICAC. He acted as a consultant to take such action as was necessary until the legislation commenced. The ICAC began operation with the commencement of the Independent Commission Against Corruption Act 1988 on 13 March 1989, the day Mr. Ian Temby QC was appointed to a five year term as Commissioner.[19]

III. LEGAL STATUS, FUNCTIONS, ORGANIZATIONAL STRUCTURE AND POWERS OF INDEPENDENT ANTI-CORRUPTION AGENCIES

One of the main reasons that necessitated the implementation of an independent anti-corruption agency was a markedly low efficiency of the existing state institutions, especially supervisory, law-enforcement and court structures, and lack of public trust in them. Nothing undermines democracy as much as the situation in which people put no trust in the rulers who occupy positions entrusted to them by the people. Development of a democratic society goes smoothly with the restoration and protection of the reputation of public institutions and preservation of public confidence in them.[20] This is invariably true to every country and Hong Kong, Tanzania and Australia's New South Wales faced similar challenges. The examples

[19] *See About the ICAC: History* at http://www.icac.nsw.gov.au/

[20] Hansard, Legislative Assembly of New South Wales, 26 May 1988.

discussed above clearly illustrate that the new independent agency became the objective necessity, which had no other alternative.[21]

a) Legal Status

The examples of all three states discussed in this thesis bring us to the conclusion that the new independent anti-corruption agency was seen apart from the existing structures of the government. With regard to Australia and Hong Kong, this point is emphasized even in the name of the organizations. This condition can be explained by the influence of several factors. One of them constituted corruptness of the existing state institutions and low effectiveness reached in the government's anti-corruption efforts. At the same time, increase of the level of corruption and existence of systemic corruption that was encountered in Hong Kong and Tanzania, undermines public trust in the government and its representatives. People lack confidence in the government, which is reflected in the fact that they become socially passive.

According to An Overview of the Findings and Recommendations of the Presidential Commission on Corruption by the Tanzania National Branch of Transparency International, for the last forty years Tanzania has witnessed an alarming increase of bribery and corruption in public sector. Bribery has been and is being practiced by those who believe that it is impossible to achieve anything unless you bribe public servants. Unfortunately, for the same reasons, the law-enforcement structures charged with the obligation to prevent and fight these evils are incapable and ineffective to achieve this task and an ordinary citizen does not know whom to report when he has been solicited a bribe.[22] All of this finds a striking resemblance to the conclusion presented by Hong Kong Advisory Committee on Corruption and Sir Alasteir Bler-Ker, regarding the existing situation in Hong Kong highlighted above.

Notwithstanding the foregoing, the major principle applies the same way everywhere – the anti-corruption agency is separate and operates independently from the state structures. Naturally, its status, its interdependence relationship with other state structures is specific and varies in each country.

The model of the independent anti-corruption agency that was implemented in Hong Kong offers a maximum degree of agency's independence. The Independent Commission Against Corruption of Hong Kong is based on Independent Commission Against Corruption Ordinance. According to this legislative act, the independence of the Commission stems from the status of the Commissioner who represents a primary source of the Commission's powers and is directly accountable and responsible before Hong Kong SAR Chief Executive. The Commission functions as an independent body of the public service.[23] Moreover, under Section 5(1) of the Independent Commission Against Corruption Ordinance, the Commissioner is subject to the Chief Executive's orders and control and is responsible before him for the supervision and work of the Commission. Under Subsection 2 of the same Section, the Commissioner is not subject to any other supervision except that of the Chief Executive.

The independence of the Commission is reflected not only by the accountability and responsibility mechanism but also the procedure for appointment and dismissal of Commission's personnel. Under Sections 5 and 6 of the Independent Commission Against Corruption Ordinance of Hong Kong, the Commissioner and the Assistant Commissioners are appointed by the Chief Executive. Under Section 8 of the ICAC Ordinance, the Chief Executive determines the organizational structure and the terms and conditions of employment of officers of the

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[21] *See supra* note 16.

[22] See an overview of the Findings and Recommendations of the Presidential Commission on Corruption, supra note 11.

[23] *See* 1997 Annual Report by the Commissioner of the ICAC Hong Kong SAR, at 6.

Commission and the Commissioner holds the power to appoint personnel. The Commissioner may appoint the persons who, at the Chief Executive's discretion, are necessary to assist the Commissioner in the performance of his functions under the ICAC Ordinance.[24]

As we see, Independent Commission Against Corruption of Hong Kong constitutes an integral part of the executive authority. In light of the existing model, political responsibility for the Commission's activity rests upon the Hong Kong Special Administrative Region Chief Executive.[25] Head of the executive authority represents a designer and guarantor of the main policy of the Commission's activity. This arrangement, in case of necessity, affords opportunities to bring into operation the existing instruments of political responsibility.

The Prevention of Corruption Bureau of Tanzania constitutes a part of the President's Apparatus. The President designates the Director General of the Bureau. The heads of Bureau's departments are appointed by the President.

In this respect, the Independent Commission Against Corruption of New South Wales of Australia significantly differs in essence from its Hong Kong analogy. Australia's case vividly shows the influence of the existing system of checks and balances among various branches of government. This is also reflected in the appointment procedure for the Commissioner. Proceeding from Australia's Independent Commission Against Corruption Act of New South Wales, the Commissioner is appointed by the Governor but the appointment must be approved by the Parliamentary Joint Committee. We will talk about the Parliamentary Joint Committee in the next chapter; however, we would like to note that the Committee holds a veto power the decision making on the nominee for the Commissioner. What concerns to the dismissal of the Commissioner, the Governor's discretionary powers are limited here to the extensive list of conditions set forth in Independent Commission Against Corruption Act, which stipulates a variety of foundations for dismissal of the Commissioner and the Assistant Commissioners. These may be the following:[26]

- Death;
- Expiry of the term of office;[27]
- Resignation from the office by instrument in writing addressed to the Governor;
- Becoming a holder of a judicial office;
- Nomination for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth;
- Declaring bankrupt;
- Temporary or permanent mental disorder;
- Sentencing to penal servitude or imprisonment for 12 months or more in New South Wales or committing an offence elsewhere than New South Wales, which would be an offence similarly punishable in New South Wales.

What concerns the issue of accountability, the Independent Commission Against Corruption Act of New South Wales provides mechanisms for the Commissioner's

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[24] *See* Independent Commission Against Corruption Ordinance of Hong Kong, Chapter 204, Section 8.

[25] For instance, under section 17 of the ICAC Ordinance, an annual report of the Commissioner is submitted to the Chief Executive, who shall present the report to the Legislative Council.

[26] *See* 1988 Independent Commission Against Corruption Act of New South Wales, *Provisions relating to Commissioner and Assistant Commissioners,* Schedule 1, Section 103, clause 6.

[27] The ICAC Commissioner is appointed for a term of five years. According to the ICAC Act, the Commissioner, after expiration of the term of office, may be re-appointed.

accountability before the Parliament. The Commissioner submits annual reports to the Chairman of the both Houses of Parliament. Besides, the Parliament may at any time apply the Commission to conduct particular inquiry or perform other actions within the scope of its jurisdiction. In such cases, the Commission is obliged to fulfill the Parliament's request and submit a comprehensive report to it on the measures taken.[28]

These examples provide sufficient evidence to conclude that the Parliament possesses quite strong leverage to put pressure on the work of the independent anti-corruption commission. Despite the seemingly strong outward resemblance, the anti-corruption services of Australia and Hong Kong differ substantially in this respect. It seems that the desire to provide mechanisms for balancing discretionary powers of the executive branch and the anti-corruption commission is a matter of dispute, which we will touch below.

b) *Functions, Structure and Powers*

The history of establishment of an independent anti-corruption service is tightly linked with the concept of so-called *three-pronged attack*, which underlies the functions of the service. The primary objective of the service encompassed the fight against corruption in public and private sectors that entailed to assign the agency with repressive powers of prosecution of the corrupt offences. However, at the same time, the available experience clearly underlied that equal efforts should be taken to implement preventive measures, and above all, to change population's mentality and establish new moral values for public.

As an essential precondition for ensuring the effectiveness of an anti-corruption campaign, the concept of three-pronged attack found its due reflection in the organizational structure of the independent anti-corruption service. Investigation, prevention and anti-corruption education and propaganda are components of the three-pronged attack upon which the activities of the service rely.

Independent Commission Against Corruption of Hong Kong is divided into three major departments:

- *Operations Department* performs criminal prosecution of corruption offences;
- *Corruption Prevention Department* studies and analyzes the activity of public and private sectors identify incentives of corruption and prepares relevant recommendations. Private organizations and individuals may also apply to the Department for advice;
- *Community Relations Department* is responsible for anti-corruption education and propaganda, moulding public opinion and securing community support.

1988 Independent Commission Against Corruption Act No. 35 of New South Wales outlines the scope of activity of the Independent Commission Against Corruption. The principal functions of the Commission are as follows:

- to investigate corruption offences as well as those which encourage or cause the occurrence of corrupt conduct;
- to examine the practices and procedures of the legislation, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work and procedures which, in the opinion of the Commission, may be conducive to corrupt conduct;

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[28] *See* Independent Commission Against Corruption Act of New South Wales, *References by and reports to Parliament*, Part 8.

- to make recommendations, advice and assistance to public authorities, public officials and any other person in order to reduce and prevent the likelyhood of the occurrence of corrupt conduct;
- to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct; to disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration;
- to develop anti-corruption strategy and to enlist and foster public support in combating corrupt conduct.

Pursuant to the above, Independent Commission Against Corruption of New South Wales encompasses respective sectoral departments.

The structure of Corruption Prevention Bureau of Tanzania consists of three divisions:

- *Department of Investigations* which comprises public and private sector, legal and prosecution services;
- *Department of Research, Control and Statistics;*
- *Department of Community Education.*

As we see, all three agencies are virtually identical in terms of their functions and structure, which cannot be said about their powers. This fact may be quite surprising if considering that the powers of any agency stems ultimately from its functions. However, we take into account that this issue is rather political than theoretical. Shaping the powers of the anti-corruption service in certain way reflects the aims of the political team initiating the establishment of the service.

Judging from the examples of Hong Kong and New South Wales, we arrive at the conclusion that the independent anti-corruption agencies possess full scope of powers necessary to implement their functions. This has primarily to do with the power to investigate corruption offences.

Pursuant to the Independent Commission Against Corruption Ordinance of Hong Kong, the principal source of the Commission is the Commissioner who, acting on behalf of the Chief Executive, investigates any alleged or suspected offence under the Prevention of Bribery Ordinance, Corruption and Illegal Practices Ordinance and ICAC Ordinance, as well as 'any conduct of a crown servant which, in the opinion of the Commissioner, is connected with or conducive to corrupt practices'.[29]

Independent Commission Against Corruption is authorized to enter any government premises and require any Crown servant to answer questions concerning the duties of any Crown or public servant and require the production of any standing orders, directions, office manuals or instructions related thereto.[30] Besides, the Commissioner or any officer authorized in writing by the Commissioner may:

- have access to all records, books and other documents relating to the work of any government department in the possession or under the control of any Crown servant;
- have access to such records, books and other documents in the possession or under control of a public body as the Commissioner or such officer reasonably considers will reveal the practices and procedures of that public body;

[29] See ICAC Ordinance, Chapter 204, Section 12.

[30] *Id.*, Section 13.

- as regards any such records, books and other documents, to photograph or make copies of them.[31]

According to the Ordinance, the officer authorized by the Commissioner in writing is vested with the powers to arrest, detain or grant bail to suspects committing the corrupt offense, search the respective premises, collect and obtain evidence, take finger-prints and photographs, retain identifying particulars of the person. Under the Ordinance, any arrested person must be brought before a magisrate as soon as practicable and in any event within 48 hours after his arrest. The officer authorized by the Commissioner may arrest any person who has been released from custody, or admitted to bail:[32]

(a) if the officer has reasonable grounds for believing that any condition on or subject to which such person was released or otherwise addmitted to bail has been or is likely to be broken; or

(b) on being notified in writing by any surety for that person that the surety believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the surely wishes to be relieved of his obligation as surety.[33]

Any person arrested on these grounds must be brought within the period of 24 hours after his arrest or as soon as practicable after expiry of that period before a magistrate.

Practically the same powers are vested in Independent Commission Against Corruption of New South Wales. According to the 1988 Independent Commission Against Corruption Act No. 35, the Commission may, on its own initiative or on the basis of a complaint, launch investigation with regard to any corruption offense provided under the Act. In the course of investigation, the Commission may request information from any public servant or documents from any individual, if the Commission believes that such materials may assist the investigation. The Commission is authorized to conduct search. The search may be conducted by writ issued by the Commissioner as well as the court. For the purposes of investigation, the Commissioner or the person authorized by the Commissioner in writing may at any time enter and search any premise occupied by the public servant, seize any document or other object and make copies of the documents.[34] In order to examine witnesses, the Commission may hold open or closed hearings. By a writ issued by the judge or magistrate, the Commissioner may summon any person to give evidence or submit any document or other object. The Commission is also authorized to arrest any witness who fails to attend in answer to the summons of the Commission on proof by statutory declaration of the service of the summons.[35]

Although the initial model of the Corruption Prevention Bureau of Tanzania incorporated the similar powers possessed by its counterparts, it later lost the rights to search and seizure and arrest.[36] Evidently, such lack in powers influenced significantly the Commission's ability with regard to prevention and prosecution of corruption offenses. Narrowing the powers of the

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[31] *Id.*

[32] *See* ICAC Ordinance, Sections 10, 10A, 10 AA.

[33] *Id.*, 10AA.

[34] *See* Independent Commission Against Corruption Act of New South Wales, Division 2, Section 23; Division 4, Section 40.

[35] *See id.*, Divisions 2 and 3.

[36] Today, the issue of retaining these powers as well as increasing the Bureau's staff represent the key issues of Tanzania's anti-corruption program. *See* the Final Report, Country Presentation, *The Second Annual Africa Governance Forum (AGF II),* 25-26 June 1998, Accra, Ghana, at http://www.undp.org/rba/special/engagfii/final2e.htm

Commission may be directly related to the influence of the ruling elite and its corrupt allies who, in this way, tried to establish some guarantees for their security.

IV. INDEPENDENCE OF THE COMMISSION AND THE PROBLEMS OF BALANCING DISCRETIONARY POWERS

The issue of establishing an independent anti-corruption agency encompasses a big dilemma in itself. The necessity for the Commission's independence and guarantees for ensuring adequate powers for the exercise of its functions call for the existence of respective institutional and various other mechanisms that come into collision with the objective to balance the Commission's discretionary powers and establish control over the exercise of such powers.

Creating a new agency with broad range of powers itself cannot stand as a guarantee of positive outcomes. With regard to Hong Kong example, Robert Klitgaard correctly observed that increases in legal powers had not been enough to deter corruption. In the past the office in charge of fighting corruption turned out to be ineffective and corrupt.[37]

In this respect, it is accidential that practically in every country subject to discussion in this thesis, relevant legislative acts provide for a number of mechanisms designed to ensure the proper functioning of the Commission's activity. However, it is worth noting that the checks and balances system in any country is characterized by its own specifics that produce both advantages and disadvantages.

In this regard it should be mentioned that together with traditional elements of control and accountability, there exist principally new institutions which, on most occasions, provide for community participation and the guarantees of transparency and publicity of the activities of anti-corruption services.

One of the guiding principles in the establishment of Independent Commission Against Corruption of Hong Kong was the desire that public would feel confident in the ICAC's own integrity. This found its reflection in so-called 'Advisory Committees', which consist of leading members of Hong Kong government, commercial, trading and social services and 'grassroots' people.[38] In this regard, it is especially noteworthy that the functions of these Advisory Committees are not limited to only providing monitoring and ensuring publicity of the Commission's activities. In certain cases, we see that some important procedural powers relating to prosecution of corruption offences and other aspects are concentrated in the hands of these committees.

There are four Advisory Committees within the Independent Commission Against Corruption of Hong Kong:

1. *Advisory Committee on Corruption* is the principal advisory body of the ICAC and oversees all its activity. Its functions include:

    - to advice the Commissioner of the ICAC on any aspect of the problem of corruption in Hong Kong;

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[37] KLITGAARD, *supra* note 4, at 108.

[38] The heads of the most Advisory Committees are members of the community. In 1994 a thorough review of ICAC's powers and accountability was also conducted by an independent ICAC Review Committee. On its recommendation, all ICAC advisory committees are required to be chaired by non-official members.

- to keep the operational, staffing and administrative policies of the Commission under review;
- to advice the Commissioner of the termination the appointment of an ICAC officer;
- to receive reports by the Commissioner on disciplinary action taken;
- to consider the annual estimates of expenditure of the Commission;
- to scrutinize the annual report of the Commission before its submission to the Chief Executive;
- to submit an annual report to the Chief Executive on the work of the Committee;
- to draw to the Chief Executive's attention, as it considers necessary, any aspect of the work of the Commission or any problem encountered by it.

2. *Operations Review Committee* analyzes the ICAC's investigations, practices and procedures. Its main functions are as follows:

   - to receive from the Commissioner progress reports on all investigations lasting over a year or requiring substantial resources;
   - to receive from the Commissioner reports on the number of, and justifications for, search warrants authorized by the Commissioner, and explanations as to the need for urgency, as soon as afterwards as practical;
   - to receive from the Commissioner reports on all cases where suspects have been bailed by ICAC for more than six months;
   - to receive from the Commissioner reports on the investigations the Commission has completed and to advice how those cases that on legal advice are not being subject to prosecution or caution, should be pursued;
   - to advice on such matters as the Commissioner may refer to the Committee or on which the Committee may wish to advice;
   - to draw the Chief Executive's attention to any aspect of the work of the Operations Department or any problem encountered by the Committee;
   - to submit annual reports to the Chief Executive which should be published.

   At the conclusion of an investigation, if there is insufficient evidence for a prosecution, the case will be tabled before the ICAC's Operations Review Committee. Only the Committee can authorize the termination of an investigation.[39]

3. *Corruption Prevention Advisory Committee* performs the following functions:

   - to receive and call for reports from the Commission about practices and procedures of Government Departments, public bodies, and the private sectors which may be conducive to corruption and to advice the Commissioner what areas should be examined and the degree of priority to be accorded to each;
   - to consider recommendations arising from such examinations and to advise the Commission on further action to be taken;
   - to monitor action taken to implement recommendations made on the advise of the Corruption Prevention Advisory Committee.

[39] *See* at http://www.icac.org.hk/nav6.asp?top=top6b.asp&p1=h&main=ops.html&p2=h.

4. *Citizens Advisory Committee on Community Relations* advises the Commissioner of the ICAC on the work of the Community Relations Department. The Committee gives advice on polices and measures to be taken to foster public support in combating corruption and to educate the public about the evils of corruption. Its functions include:

- to receive and call for reports on action taken by the Community Relations Department of the Commission;
- to monitor community response to the Commission's work and public attitudes toward corruption in General.

Besides, the ICAC has set up the *ICAC Complaints Committee*, which receives complaints from the public about ICAC officers or the Commission's practices and procedures, and advises the ICAC on suitable punishments, changes in practices, and so forth.

The work of Independent Commission Against Corruption of New South Wales of Australia is also a subject of external monitoring and control. However, unlike the Hong Kong example, the institutional formations exercising this function do not place much importance on community participation. In this respect, it can be said that this segment of checks and balances' system is more politicized in character, i.e. it is more aimed at maintaining the balance between executive and legislative bodies and various agencies of the executive branch.

In New South Wales, the *Operations Review Committee* and *Parliamentary Joint Committee* were set up under the 1988 Independent Commission Against Corruption Act No. 35. Operations Review Committee consists of eight members including the Commissioner, Assistant Commissioner and the Commissioner of Police. Other members are appointed by the Governor on the Recommendation of the Attorney General and the Minister with the concurrence of the Commissioner. As we see, representatives of the executive branch make up a substantial part of the Committee. This fact raises certain questions on the objectivity and impartiality of this structure. We will touch upon this question below.

The functions of the *Operations Review Committee* are as follows:

- to advice the Commissioner whether the Commissioner should investigate a complaint made under Independent Commission Against Corruption Act of New South Wales or discontinue an investigation of such a complaint;
- to advice the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.

Parliamentary Joint Committee consists of eleven members, of whom three shall be members of, and appointed by, the Legislative Council, and 8 shall be members of, and appointed by, the Legislative Assembly.

The functions of the *Joint Parliamentary Committee* are as follows:

- to monitor and to review the exercise by the Commission of its functions;
- to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of the Parliament should be directed;
- to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
- to examine trends and changes in corrupt practices and methods relating to corrupt conduct, and report to both Houses of Parliament any changes which the Joint Committee may think desirable to the functions, structures and procedures of the Commission;

- to inquire into any question in connection with its functions which is refereed to it by both House of Parliament, and report to both Houses on that question.

One of the most important aspects of the Committee's powers is related to veto power as to the appointment of the Commissioner.

The Committee on the Independent Commission Against Corruption of New South Wales also serves as one of the checks and balances in monitoring and reviewing the exercise by the Commission of its functions. Under the section 64 ICAC Act the Committee is empowered to report the Commission's exercise of its functions, and to examine trends and changes in corrupt conduct, and practices and methods elating to corrupt conduct, and report on any change to the Commission's functions, structures and procedures which the Committee thinks desirable. Since its establishment in 1996, the Committee has held formal inquiries into matters such as the Commission's procedures with witnesses, televising of proceedings, the Operations Review Committee, etc.[40]

Both in Hong Kong and New South Wales the external monitoring mechanisms are coupled with internal accountability instruments. Right after the establishment of the Hong Kong Independent Commission Against Corruption, the *Internal Investigation and Oversight Group* was created in 1974, which later became known as 'L Group'. The group is under direct control of the head of Investigations of the Operations Department. The Secretary for Justice gives instructions for every investigation conducted by L Group as well as for every case filed against the officer of the Commission. The results of each investigation are reported to Operations Review Committee for final decision. ICAC of the New South Wales has also developed internal procedures to enable reporting and dealing with protected disclosures made by ICAC staff. The ICAC is committed to ensuring that those who make protected disclosures do not suffer detrimental action as a result of providing such information.

Another important element of checks and balances is judicial supervision, which basically deals with the preliminary enquiry and investigation of corruption offences. The Judiciary plays an important part in ensuring that independent anti-corruption agencies do not step out of line.

Prior court approval is required for the Hong Kong's ICAC to exercise some of the powers. Moreover, comments made by judges on investigation procedures are considered by the ICAC and operational procedures reviewed to ensure that there will be no abuse.[41]

For instance, under the ICAC Ordinance any arrested person must be brought before a magistrate as soon as practicable and in any event within 48 hours after his arrest. The officer authorized by the Commissioner may arrest any person who has been released from custody on the grounds stipulated under the Ordinance. Even in such cases, the person arrested must be brought within the period of 24 hours after his arrest or as soon as practicable after expiry of that period before a magistrate.

Protection of human rights and fundamental freedoms in the course of the Commission's investigation procedure is ultimately subject to the court's control. Regular reviews of the ICAC's powers are done in line with growing public awareness of individual rights. In light of the enactment of the Bill of Rights, the ICAC has made the following changes: making legislative amendments to ICAC-related ordinances to strike a balance between the powers of investigation and the rights of individuals. For example, ICAC's powers of detention and remanding a person to prison are subject to greater control, and restrictions on the disclosure of a suspect's identity or investigation details by the media have also been relaxed; and conducting

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[40] *See The Legislative and the Judicial System in Preventing and Fighting Corruption,* Workshop Paper prepared by the Parliamentary Committee of the ICAC of the New South Wales.

[41] *See* at http:// www.icac.org.hk/.

reviews of ICAC's powers in accordance with future court rulings under the Bill of Rights Ordinance.

Australia's ICAC findings are subject to judicial review by the Supreme Court of New South Wales on limited grounds. For instance, in public and private hearings according to Independent Commission Against Corruption of New South Wales parties are legally represented. The Commissioner applies the judge or Magistrate to issue any summons in order to summon witnesses and take evidence. The Supreme Court may, on the basis of the application of detained witness, review the Commissioner's decision not to release or failure to release the witness. The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness. Any indication that the Commission has wrongly used its powers can be immediately challenged and exposed.[42] In some cases, however, such as conducting searches, the Commissioner's discretionary powers are not completely limited. According to the general rule, search warrants are issued by authorized justices, but the Commissioner has discretion to issue them as well.

The activity of Independent Commission Against Corruption of New South Wales also falls within other external scrutiny. The Ombudsman scrutinizes Commission's compliance with the statutory requirements regarding telephone intercepts.

In Hong Kong's ICAC, another important peculiarity of the checks and balances system is the fact that it has no separate powers of prosecution. It is worth noting that the ICAC of Hong Kong only enquires and investigates corruption offences. It has no power of prosecution in the courts. The power to prosecute after completion of investigations is vested in the Attorney General. The separation of powers ensures that no case is brought to the courts solely on the judgment of the ICAC. This separation, in one commissioner's words, 'avoids suggestions that zealousness is clouding objectivity'.[43]

Accountability and responsibility mechanisms, that we already touched upon in the chapter dealing with the agencies' legal status, also serve the purpose of balancing the powers of the independent anti-corruption agencies. This entails the relations of anti-corruption agencies with the bodies of executive and legislative branch.

Neither does the ICAC of New South Wales have the power to conduct its own prosecutions. The body may make recommendations that consideration be given to the prosecution of an individual and may forward evidence to the relevant Director of Public Prosecutions (DPP). It is the responsibility of the DPP to decide whether or not to commence prosecution. This provides an important check or balance and a separation between the investigative and prosecutorial functions.[44]

The media and the non-governmental sector are essential elements of the existing system of checks and balances both in Hong Kong and Australia. They play an important role in transparency and publicity of the activities independent anti-corruption agencies, in implementing key directions of anti-corruption policies as well as various other programs. The representatives of these spheres come in active cooperation with anti-corruption agencies. This is especially true in case of Hong Kong.

With respect to Corruption Prevention Bureau of Tanzania, we can say definitely that the lack of a proper checks and balances system constitutes one of the main reasons for its failure. It is especially so with reference to the early stage of the Bureau's activity, when the it was operating under the one-party system and the Bureau's top officials were appointed by the President, who represented the ruling party. As we have mentioned earlier, the Corruption Prevention Bureau of Tanzania is placed in the President's Office. The Bureau is accountable

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[42] *See* 1988 ICAC Act, Division 3, Section 36B.

[43] KLITGAARD, *supra* note 4, at 109.

[44] *See The Legislative and the Judicial System in Preventing and Fighting Corruption,* Workshop Paper prepared by the Parliamentary Committee of the ICAC of the New South Wales.

and responsible before the President. In this respect, the role of the legislative branch is limited only to parliamentary control mechanisms. Bureau reports to Parliament Committee through the Minister of State for Good Governance. The courts have the finality in determining issues brought before them whether of criminal or civil nature. Bureau submits the cases for prosecution to the courts.

The role of the civil society, namely the media and non-governmental sector, cannot be evaluated by the same parameters. Although the Bureau has a special division charged with community relations[45], other aspects also come under consideration in this respect. The media have played a key role in the current war against corruption by writing on and discussing the Warioba Report on Corruption in Tanzania, thus raising high the expectations of the people. The media have the greatest role in the promotion of the culture of transparency and accountability; also the opposition parties have made the full use of the media. Concurently, it is worth mentioning that often reporters and journalists are bribed to publish good stories for those who afford to bribe. NGO is relatively new phenomenon in Tanzania. Almost all NGOs are less than 10 years old. Private civil society organizations have during the years been able to show that they can act with some forcefulness. But most NGOs are still weak and need support in order to gain strength. Therefore, their role in exercising public control over the Commission's activities cannot be deemed sufficient.

V. RESULTS OF THE MODEL IMPLEMENTATION

a) Hong Kong

One of the challenges related to the establishment of Hong Kong Independent Commission Against Corruption was a lack of precedence. Such an organization had not existed before in Hong Kong – and there was a dearth of the hardened expertise and experience required.[46] The Commission needed skilled and well-motivated honest people. As mentioned above, the law-enforcement bodies and their officers involved in systemic corruption lacked public confidence, and their ability to fight and prevent corruption was raising questions. Therefore, the question of recruitment demanded special attention and scrutiny. Newly appointed Commissioner Jack Carter decided that that he could not simply assume the staff of the police force's Anti-Corruption Office (ACO). Nor could he rely solely on Hong Kong civil servants seconded from other agencies. Cater needed both capability and honesty.[47] Attracting young employees from outside the system seemed one of the alternatives.[48] However, in the initial years only few were found suitable for appointment.[49]

Thus, Independent Commission Against Corruption of Hong Kong faced a hard challenge. In this respect, attention should be shifted to the influence of the British factor that we mentioned above. Great Britain provided significant assistance to Independent Commission Against Corruption during the establishment period and afterwards. And this factor essentially contributed to the Commission's success.

With the agreement of the British Home Office, Commission recruited experienced police officers from the Metropolis. Meanwhile other key staff, including 181 Police officers and

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[45] Namely, the Community Education Division.

[46] The ICAC's 25th Anniversary Commemorative Publication, *supra*, note 7, at 26.

[47] KLITGAARD, *supra* note 4, at 109-110.

[48] We have already discussed the role of so-called 'new class' in anti-corruption campaign in Hong Kong.

[49] The ICAC's 25th Anniversary Commemorative Publication, *supra*, note 7, at 26.

44 civilians from the Anti-Corruption Office, were also seconded. In addition, Commission hired best young Hong Kong Chinese possible to give them formal training in order to strengthen the Commission and ensure the Commission's strong heritage in the future.[50]

The essential objective of the Commission was to demonstrate quickly and forcibly through some early striking successes to a sceptical public that the ICAC was determined and capable of rooting out public service corruption. This strategy was also vital in establishing the ICAC as a credible enforcement agency. Priority was given to investigation of government servants, in order to meet the community's expectations for an honest and efficient civil service.[51] One of the main objectives of the Commission was to go after the syndicates. Syndicated corruption, as mentioned earlier, was seen to be the heart of the problem in the police force. The Commission determined to combat syndicated corruption in the police within two years. Between 1974 and 1975, the ICAC Operations Department investigated 2466 corruption complaints out of 6368 received. The number of cases brought to trial increased from 108 in 1974 to 218 in 1975.[52] From 1975 to 1977, ICAC investigations successfully eliminated many corrupt Police syndicates in various regions of Hong Kong.[53]

But the Commission's attention was not solely on the Police. The Commission's investigations covered the Departments of Fire, Housing, Immigration, Labour, Marine, Medical and Health, Post Office, Prisons, Public Works, Transportation and Urban Services, and private sectors.

Section 10 of Prevention of Bribery Ordinance was a powerful through controversial weapon employed by the ICAC in weeding out corruption in the civil service. Section 10 makes it an offence for government servants to have assets disproportionate to their official income. In the 1970s, apart from the initiatives against syndicated corruption, ICAC investigations also revealed that a number of individual Police officers had hoarded substantial wealth. Some were subsequently prosecuted under Section 10. Among the early catches were two retired Detective Staff Sergeants. One was sentenced to four years imprisonment and ordered by the court to pay HK $ 6 million unexplained assets back to the Government. The other was sentenced to two years imprisonment and had to pay HK $ 16 million to the Government.[54]

Corruption prevention and anti-corruption propaganda were other important spheres of the Commission's activity. Especially after the first few years' emphasis on the Operations Department, these two areas received increasing attention. By the end of 1981, ICAC Corruption Prevention Department had carried out almost 500 studies on various policies and practices in government agencies. It had followed up many of these studies with full-scale monitoring reports on how well the recommendations were being implemented. Its training seminars on the prevention of corruption had been attended by over 10,000 officials. Equally, by the end of 1981, the Community Relations Department had set up ten local offices, received more than 10,000 reports of corrupt activities, and held more than 19,000 special events such as seminars, camps, exhibitions, and competitions.[55]

All the above proved that the new anti-corruption force meant business. Above all, it restored faith in the justice system. Today the Hong Kong Independent Commission Against

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[50] *Id.*

[51] *Id.*, at 35.

[52] This includes any offense irrespective of category. The figures are provided according to KLITGAARD, *supra* note 4, at 113.

[53] *See* The ICAC's 25th Anniversary Commemorative Publication, *supra*, note 7, at 38.
[54] *Id.*, at 26-39.

[55] KLITAGAARD, *supra* note 4, at 114-115.

Corruption is regarded as the most successful example of the implementation of an anti-corruption agency model, which is reflected in the impressive results of the ICAC's activities.

b) Australia's New South Wales

Independent Commission Against Corruption of New South Wales is also considered among the positive examples of the model implementation.[56] However, its achievements do afford conflicting interpretation.

According to Commissioner O'Keeffe, the Commission fostered public sector climate, thereby creating necessary guarantees to individuals and business entities and ultimately bringing considerable economic benefits to New South Wales. Today, New South Wales has less corruption, more ethical public service delivery, and is better place to do business with government agencies than a decade ago.[57]

At the same time, during the last ten years the Commission's investigation reports have found 360 people to have acted corruptly and criminal charges have been laid against 140 people. Over 110 public sector employees have been dismissed or disciplined as a result of reports. Although we express no doubt and fully agree with the Commissioner's words, these figures are incomparably low in comparison with the Hong Kong ICAC's statistics. Obviously, in our opinion, this can be explained by two arguments. On the one hand, we may suppose that the level of corruption and the areas it affected were not as intense as they were in Hong Kong and Tanzania. On the other hand, though, if corruption was actually a serious problem in the country, we may conclude that the Commission's repressive activities were insufficiently effective.

We have already discussed the preconditions for the establishment of Independent Commission Against Corruption of New South Wales, emphasizing that this decision was more an outcome of the political profile rather than the measure of inevitable necessity. And the figures provided above found their reflection in this certainty in the context of the existing background.

However, in order to determine the effectiveness of the Commission, it is worth mentioning that 70 percent of the Commission's recommendations for improved operating systems or policies had been adopted. At the same time, Chief Executive Officers and General Managers had increased their requests for ICAC assistance from less than 200 in 1992/93 to nearly 500 in 1997/98. The Commission made significant contributions to improvements in public sector legislation and operating procedures, for instance, managing relationships between the police and criminals, unauthorized release of governmental information, driver licenses, etc.[58]

As a result of the investigations carried out by Independent Commission Against Corruption of New South Wales, sweeping changes were made in the public sector. These changes tightened specific requirements for public procurement, and established the code of conduct for local councils and public agencies. This is indicated even in the few examples mentioned below:

- The conclusions drawn from the investigation of the North Coast Land Development Case served as basis to series of changes made in the Election Funding Act related to the supply of information on political donation.

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[56] *See* Jeremy Pope and Frank Vogl, *Making Anticorruption Agencies More Effective*, in FINANCE AND DEVELOPMENT, June 2000.

[57] *See* Commissioner O'Keefe's speech stated in a celebration of the ICAC's 10th birthday, at http://www.icac.nsw.gov.au/pub_corruption_matters/pub2_6cm.htm.

[58] *See* at http://www.icac.nsw.gov.au/pub_corruption_matters/pub2_6cm.htm.

- In 1991 Independent Commission Against Corruption of New South Wales launched investigations on relationship between police and paedophiles. This resulted in major police system reforms.
- The Operation 'Tamba', which was conducted in 1990-92, investigated the release of confidential information by government officials. A major trade in information was disclosed and the ICAC report let to a tightening of procedures for release of confidential information by New South Wales public agencies and security initiatives in federal and state agencies.[59]

The Commission played a proactive role in the activity of *Steering Committee* formed by the Premier to assist all areas of the public sector to effectively deal with internal complaints which fall within the Protected Disclosures Act 1995. Simultaneously, the ICAC has also released the *Practical Guide to Corruption Prevention*, which provides practical solutions to everyday corruption prevention issues.[60]

Right after its establishment, the Commission conducted major education initiatives. One of them was strategic school curriculum project including various education measures. Whilst attitudinal change towards corruption is hard to measure, the ICAC's *Community Attitude Surveys* showed that the public is increasingly well motivated to act on corrupt conduct.[61]

c) Tanzania

Corruption Prevention Bureau of Tanzania is the example viewed by many as negative. The activity of the Bureau was rather ineffective.[62] We have already mentioned that the establishment of the Bureau was a compulsory step. One important issue regarding corruption in Tanzania was the clientalistic links between businessmen and decision-makers, particularly politicians.[63] In this respect, the major reason for Bureau's failure was the lack of political will. The Bureau, which was operating successfully during the presidency of Nyerera, later lost political support and became a subject to public criticism.[64] The corrupt ruling elite was able to lobby its interests, which is clearly indicated in the fact that the institutional model designed for the Corruption Prevention Bureau encompassed numerous barriers, which offered possibilities to limit the Bureau's independence and influence its activities.[65]

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[59] *See Publications: The History of the ICAC* at http://www.icac.nsw.gov.au/.

[60] *See id.*

[61] *Id.*

[62] *See* Pope et al., *supra* note 1.

[63] Doig and Riley, *supra* note 3, at 54.

[64] Pope, *supra* note 1, at 99.

[65] Doig and Riley, *supra* note 3, at 53-54.

VI. CONCLUSIONS

Even this brief review clearly illustrated the significant differences resulted from the implementation of the model of an independent anti-corruption agency in light of the specifics of particular country and the organizational and legal structure selected for the agency.

One of the main conclusions that we can draw from the comparative analysis of the examples in question, and which is a subject to broad recognition among the experts underlies the need to ensure political support to the work of the independent anti-corruption service and the importance of political will. It involves not just public declaration of its intentions by the government but rather the actual desire to give agency practical support. This is proved by the experiences of Hong Kong and Australian anti-corruption agencies, however the Australian example cannot be compared to that of Hong Kong in this respect. In the Tanzanian example, the corrupt ruling elite whose interests were in conflict with the successful operation of the Corruption Prevention Bureau defused the latter under the one-party system of government. Besides, the Bureau experienced gradual limitation in its powers.

Here it's worth noting that the experience of Hong Kong is quite specific and should be necessarily taken into account in order to objectively evaluate the circumstances regarding the formation and activity of the anti-corruption commission. Hong Kong, which at the time being was a British Crown Colony, was placed under the British increasing pressure on the local administration policy. From across this perspective it can be definitely declared that the trace of the anti-corruption campaign in Hong Kong finds itself in Britain. The newly appointed Chief Executive and his subsequent steps culmination the in the establishment of an independent anti-corruption commission constitute logical links of the chain. We also discussed that Britain was a key player in the creation and operation of the independent anti-corruption commission and provided institutional and other support for the service. This is a decisive element that significantly contributed to the success of the commission.

The second important element for the implementation of an independent anti-corruption agency lies in ensuring powers adequate to the functions assigned. Although prevention is always better than prosecution, the service must enjoy maximum powers to prosecute corruption offences. We clearly see that where the anti-corruption service lacks this power, for instance in Tanzania, its operation is unsuccessful.

We have already mentioned that the main reason that gave rise to the creation of independent anti-corruption agencies lies in ineffectiveness of the existing state structures, and especially, law-enforcement bodies. In such conditions, prevention and education alone cannot produce effective results unless they are accompanied by repressive measures. Any recommendation elaborated as a result of the realization of prevention policy demands real implementation guarantees and mechanisms while anti-corruption education and propaganda cannot yield practical results. First Commissioner of the ICAC of Hong Kong Jack Cater had no doubt that the first task of the Anti-Corruption Commission should be to change ingrained public attitudes. The graft fighters would go after 'the men at the top' and the Commission would aim as much at the rich and powerful as at the small fry. To Cater, there was nothing more important than ensuring the public knew that the ICAC meant business.[66]

The anti-corruption agencies need to be effective in performing their duties. This speaks of a need for making the agencies independent of political interference and the necessity to introduce a strong and relatively reliable system of accountability.

One of the important independence elements of the anti-corruption agency is related to the appointment power, i.e. the procedure to appoint top officials and public servants. No doubt that it is impossible to choose the system of staff appointment for the anti-corruption agencies

[66] *See* The ICAC's 25th Anniversary Commemorative Publication, *supra*, note 7, at 25.

that would guarantee their complete independence. The appointment power in itself provides vast opportunities to influence the officers and activity of the anti-corruption service.

Although the power to appoint heads of anti-corruption agencies in Hong Kong, Australia and Tanzania is vested in the heads of the executive branch, the appointment procedure has its own specifics in every respective country. In Hong Kong, for instance, the Commissioner and Assistant Commissioner of the ICAC are appointed by the Chief Executive. Similarly, in Tanzania the Director General of the Corruption Prevention Bureau and the heads of departments of the Bureau are appointed by the President. In contrast with these examples, in Australia's New South Wales the Governor's authority to appoint the ICAC Commissioner is limited by the veto power of the Joint Parliamentary Committee. We have already mentioned the reasons for introducing such mechanisms, but here we will touch upon the issue just to illustrate how it influenced the activity of the Commission.

If reviewing the experience of the New South Wales in this regard, it must be emphasized that the establishment of an Anti-Corruption Commission turned out to be such a successful step of the newly elected government, that its first victim was no other than the country Premier, who played the key role in the Commission's establishment. As turned out later, the Premier acted with corrupt intentions when he, deriving from the interests of his political party, offered a highly paid position to one of the members of Parliament in return of the member's resignation from the Parliament. The Premier was supported by then political opponent -- Prime-minister Bob Hock, who remarked that this was a solely political proposition and nothing more. The Commissioner of the ICAC, who launched an ongoing battle against various corrupt disclosures, was able to carry on, however, later on, it took the Commission huge efforts in order to survive.[67]

It is obvious that the discretion of the executive branch or Head of the State in the field of appointment demands certain measure of limitation for the purpose of ensuring the independence of anti-corruption agencies. However, the mechanisms adopted in New South Wales of Australia in this regard are less acceptable.

This is where we encounter the problem of selecting a rational model of checks and balances, one of the important aspects of which is the accountability aspect. Joint Parliamentary Committee that we came across in Australia should be viewed within this very context. In order to guarantee independence of anti-corruption agencies, it is necessary to make them answerable to an advisory board, which is directly responsible only to its mandate. The selection of such a board is crucial, as they would decide the effectiveness of the agencies by the policies that they institute. The advisory boards would have the freedom and impartiality in their activity and decisions, especially when it comes to the powers they are vested with in Australia and Hong Kong. In our opinion, the weakness of the Australian model is that the Joint Parliamentary Committee, due to its composition, will be essentially dependent on the political profile and therefore cannot ensure the due degree of objectivity. In this respect, far more acceptable is the advisory board model of the Hong Kong ICAC, which entails active participation of civil society in its activity. As for Tanzania, its example verifies our conclusion on the significance of an independent advisory board. Although it would not be justified to theoretically reason as to how events would develop if creating similar bodies in Tanzania, but there is absolutely no doubt that the absence of such institution constitutes one of the main reasons for the negative experience of the Corruption Prevention Bureau.

As we discussed, Hong Kong SAR's ICAC has established arrangements that ensure public participation in policy formulation and oversight. By providing for such an arrangement (which could take the form of a committee), the anticorruption framework would encourage transparency. In Hong Kong SAR, a file that has been opened cannot be closed without the consent of the external oversight committee, which includes representatives of civil society and the private sector. This protects against corruption inside the agency.[68]

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[67] *See* Pope, *supra* note 1, at 99.
[68] Pope and Vogl, *supra* note 56, at 9.

A successful anti-corruption agency needs to have a charter that provides for the involvement of a wide range of people and interests in the formulation of prevention policies and their execution. In this way, various stakeholders become involved in the prevention process, and their own institutions—both government and the private sector—can be mobilized to support of the agency's efforts.[69]

At the end we will touch one more aspect which, on the basis of the analysis of the discussed countries, stands as a primary precondition for successful implementation of independent anti-corruption agency. The activity of the agency should be supported by relevant normative base, which firstly entails adoption of so-called 'friendly legislation'. For instance, in the Hong Kong example, under Section 10 of the Prevention of Bribery Ordinance the suspects whose personal wealth exceeds their official incomes have to demonstrate their innocence. 'Unexplained Enrichment' constitutes a criminal offence inviting both dismissal and punishment.

VII. CENTRAL AND EAST EUROPEAN AND FORMER USSR COUNTRIES

The model of an independent anti-corruption service continues to attract increasing interest in countries of Central and Eastern Europe and former Soviet Union, where the challenges of the transition period have resulted in dramatic rise of corruption. As mentioned from the beginning, this growing attention is based on the fact that the effectiveness of the existing state institutions to prevent and combat corruption is rather low. Meanwhile, the corruption continues to grow and the trend takes on an essentially new form that undermines the very legitimacy of the government.

It is true that today there are few examples of the anti-corruption agencies in the region of Central and Eastern Europe and the former Soviet Union, but debate about the possibilities and adequacy of their implementation as well as various related aspects still remains.

How far the 'Hong-Kong model' would be transferable is problematic, since it very much a product of a particular social environment and polity – a small 'city-state' with a distinctive culture and highly efficient administrative machine operating in a society characterized by sustained high economic growth. The ICAC was well-resourced and used seconded and expatriate staff. It had intensive selection and training programes and its public education programes were excellent. While it was thus a relatively expensive model to emulate, Doig and Riley observe that it is worth nothing de Speville's[70] comment that the ICAC was not the strategy itself but was a mechanism for implementing the broader strategy that included the enforcement of the law and the wining of popular support.[71] This are the main trends that are subject to existing debate around the independent anti-corruption services. In this context they more often point to the specifcs that are common to the countries in this region.

The diversity of corruption and various perspectives and approaches to it has had an impact on attempts at reducing or minimizing the effects of corruption through anti-corruption agencies. From a consideration of three country experiences discussed in this paper, it is possible to argue that there are difficulties with an over-reliance upon one particular model of an anti-corruption agency. An anti-corruption agency must be designed to tailor the needs of the particular country, more precisely, an anti-corruption strategy should reflect the specific causes, occasions and appropriate corrective measures that are directly related to a country's individual circumstances. But one aspect that is true to all countries, irrespective of size, development and location, is that notwithstanding the above-mentioned viewpoint, independent anti-corruption

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[69] *Id.*

[70] Former Commissioner of the ICAC of Hong Kong.

[71] Doig and Riley, *supra* note 3, at 52-53.

agency is not the strategy itself but a mechanism for implementing the broader strategy that included the enforcement of the law and the wining of popular support. In this regard, we absolutely share de Speville's viewpoint.[72]

We have emphasized from the beginning that one of the reasons for establishing anti-corruption agency is ineffectiveness of the existing state institutions, which is basically a direct result of various influencing factors and, mostly, corruption. Any program, including anti-corruption program, which lacks the institutional mechanisms for implementation, will end up in failure right from the beginning. In this respect, an independent anti-corruption agency represents an alternative, which should realize in practice the government policies. However, this does not exclude the possibility that the idea of creating the agency could be a part of a broader strategy. And this consideration is not a subject to further dispute.

If going back to de Speville's view, we can argue that the issue of implementation of the model of an independent anti-corruption agency is less related to what concrete factors in every particular case contributed to the increase in the size of corruption. Revealing and analyzing these causes should constitute a foundation for anti-corruption strategy.

In order to decide whether there is a need to set up an independent anti-corruption agency in any country, it is necessary to find out whether there exists systemic corruption in that particular country, how widespread is corruption in government sectors, is it deeply rooted in the society and does the government lack ability to fight corruption with traditional institutions and mechanism.

There is a growing concern about corruption in Eastern Europe and the countries of the former Soviet Union.[73] Corruption thus frequently takes place in societies where there is considerable discretion for public officials, limited accountability and little transparency in governmental operations; in such societies, civil society institutions and an independent private sector are often weak or undeveloped. The establishment of corruption on a systematic or systemic basis may be a consequence of the perpetuation of existing inequalities and weak where it can thrive on disorganization, the absence of stable relationships among groups and of recognized patterns of authority. But its permanence may rest in a self-supporting dynamic because it adapts or displaces according to circumstance and context and thus its demise should not necessarily be associated with political modernization. Neither is corruption doomed to destruction as a political system matures. Corruption alters its character in response to changing socio-economic cultural and political factors. As these factors affect corruption, so does corruption affect them.[74]

According to Andras Sajo, corruption in Eastern Europe is structural in the sense that it is part and parcel of the region's emerging clientelistic social structures. Clientelistic structures in Eastern Europe are realted to the previous communist nomenklatura. But the actual socioeconomic developments are currently unfolding that create levels and forms of state-centered clientelism distinct from those of earlier regimes.[75] Practically the same is true to the former Soviet Union countries.

In this regard, it is useful to consider the increase of systemic corruption with its various forms and dimensions in the region.[76] Systemic corruption is pervasive, institutionalized (maybe accepted but not necessarily approved), built into the economic and political institutions. It

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[72] *See id.*
[73] Doig and Riley, *supra* note 3, at 48.
[74] *Id.*, at 49.

[75]Andras Sajo, *Corruption, Clilentelizm, and the Future of the Constitutional State in Eastern Europe,* EECR, Vol. 7, Spring 1998.

[76] Sahr J. Kpundeh, *Political Will in Fighting Corruption*, in CORRUPTION AND INTEGRITY IMPROVEMENT INITIATIVES IN DEVELOPING COUNTRIES, (edited by UNDP).

occurs when malfeasance has become an integral part of the process. It flourishes in situations where public sector wages fall below a living wage. Unlike systematic corruption, it involves all levels of employment. Even junior-level managers and employees engage in wrongdoing. It is a downward spiral that begins with civil servants influence or co-operation for the most banal of their job responsibilities. Politicians may not be highly motivated to act against systemic corruption. Reform strategies are not immediately apparent and the political costs, measured by the effects of an uncooperative bureaucracy or hostile security forces, may appear prohibitive.[77]

The combination of politics and corruption that takes the form of disciplined, organised and orchestrated groups. They manipulate elections and other democratic processes, while avoiding serious conflict. Entrenched elites dictate terms to businesses, particularly those that have little support and few political opportunities for recourse or appeal. Domestic and international concerns are subjected to extortion or bureaucratic harassment. The threat of uncontrollable corruption is minimal because these machines depend on the preservation of a profitable status quo.[78]

The situation with respect to corruption in most countries of the region raises much concern. In these conditions of widely spread corruption discussed by us, it's difficult to say that the community has ability to implement an effective anti-corruption program without institutional and legislative reforms in the existing system of government. And with regards to this, we would like to mention that the reforms demand more time, financial and material resources than the expenditures necessary to implement independent anti-corruption service. In addition, benefits obtained from successful operation of the model are more valuable than expenses spent for the agency's implementation.

Here we would like to consider the argument, which emphasizes that, the question of the possible and adequate implementation of independent anti-corruption agency is directly linked with characteristics of particular country. This is only true within the existence of political and public support in the country. But we cannot say the same in case if the issue of establishment of an anti-corruption service is connected to the peculiarities of corruption determinants in the country. Once again, we underline that agency is, ultimately, a mechanism for implementing the broader strategy that includes the enforcement of the law and the winning of popular support. And with this regard, the specifics of corruption processes are more a subject to elaboration by the anti-corruption strategy. An independent anti-corruption agency deals with already existing results, i.e. established reality, which is equally characterized for the countries in the region.

Judging from this, when we speak about the model of an independent anti-corruption agency in Eastern and Central Europe and former Soviet countries, it is worth discussing one example of the region, which will be applicable to other countries of the same region. The following chapters highlight the example of Georgia in this respect.

VIII. PROBLEMS IN IMPLEMENTING AN INDEPENDENT ANTI-CORRUPTION AGENCY IN GEORGIA

1) Prehistory

The last decade have been characterized by a number of decisions and various campaigns targeted at combating corruption by the Georgian Government that should have been a signal for achieving certain success in this field. Back in March 1996, the Parliament of Georgia passed a resolution on establishment of Parliamentary Temporary Anti-Corruption Investigation

[77] *Id.*, at 96-97.

[78] *Id.*, at 96.

Commission. The step entailed the effective use of the existing parliamentary control mechanisms, implementation of coordinated policy by various branches of government and voiced concerns for the situation. The year of 1997 was declared by the President and the Parliament of Georgia as the year of launching an anti-corruption campaign. In the years of 1997-1999 the legislative and the executive branches initiated various attempts to prevent corruption and conflict of interest. In order to improve and harmonize an anti-corruption legislation, series of laws, including 'On Conflict of Interests and Corruption in Public Service', 'On Public Service' were adopted which provided the scope of corruption offences, introduced general ethical norms for public servants, established an institution for Property and Financial Declaration, etc. The Codes of Civil and Criminal Procedure were also adopted. A number of amendments were made with respect to other legislation. The president of Georgia issued various legislative acts, including Decree No. 78 of January 30, 1997 and Decree No. 48 of January 29, 1998, whereunder the law-enforcement bodies were assigned to implement necessary measures in order to intensify the fight against corruption. On the basis of the President's Decrees No. 208 and 282 of 1998, a program aimed at reducing the scales of black economy in Georgia was approved, the realization of which was assigned to the Permanent Group composing of the representatives of the executive and legislative branch. Specialized structural divisions were set up in the Prosecutor General's Office, the Ministry of Internal Affairs and the Ministry of Security of Georgia to detect and prevent corruption and economic crime. The institutional and organizational reforms of law-enforcement and judicial structures, which began with the restructuring of the judicial system, constitute an integral part of the legal reforms launched in the country.

This is a incomplete list of the Government's efforts directed towards the anti-corruption policy in Georgia, however, despite the efforts mentioned above, the situation regarding prevention of corruption and conflict of interests, disclosure and investigation of corruption offences remains the same.

This situation is attributed to a number of factors among which the following has to be underlied:

- ***Non-systemic and fragmental character of the anti-corruption policy and the measures to be taken within this context***

Today there is no officially recognized anti-corruption program in the state that would include intersected package of measures. In addition, there exists no unified institutional formation, which would be functionally charged with elaboration of short and long term anti-corruption campaign to be implemented by the government, provide analysis of the effectiveness, and if necessary, regulation of the measures taken, coordinate the implementation process of an anti-corruption policy, and grant support to the appropriate government structures in this aspect. Unfortunately, efforts to deter corruption by establishing various commissions either under the President or within various other structures have failed to produce any result. This requires institution of an independent anti-corruption agency that would determine main directions in the anti-corruption policy. Today this issue is discussed within the Group for Elaboration of Georgian Anti-Corruption Program set up by the President of Georgia, which will be reviewed below.

- ***Corruptness and ineffectiveness of existing state institutions, including law-enforcement structures***

One of the most plausible conclusions that we can draw from the analysis of the experiences of discussed countries, sources of comparative law and various theoretical works or popular literature on the issue is that the necessity of establishment of an independent anti-corruption service signals a dramatic inability of government institutions to effectively fight and curb corruption.

a. After declaring its independence from the Soviet Union Georgia inherited old communist bureaucratic apparatus the substantial part of which was affected by systemic corruption. The existing reforms were undertaken in conditions where the state structures retained the core of Soviet-style servants. In addition, the institutional and organizational reforms were delayed and are being implementing even today. Simultaneously, permanent economic and financial difficulties make it impossible to fully finance the government projects and programs of various state structures in this field. The state cannot supply public servants with appropriate economic and social conditions, which prompts the majority of them to use their positions and official powers to get additional income. It should be stressed that systemic corruption infected not only low and medium category public servants, but also the top officials. Within the existence of strict hierarchy scheme of official supervision, corruption has developed as an organized system to the extent of particular state structures, agencies and institutions. Coupled with the broad possibilities of influencing particular corrupt officials within the system, an effective mechanism of checks and balances is established, which considerably precludes the disclosure and prevention of corruption offences.

   This question is tightly linked with the problem of corruptness of state institutions but goes beyond it to a certain extent.

   As we have already mentioned, the approved institutions and mechanisms, which are primarily aimed at guaranteeing rule of law and order and tackle and prevent corruption offences, lose their effectiveness under systemic corruption. In Georgia, it is equally true to the mechanisms of control, supervision and prosecution, also the state institutions charged with the implementation of these mechanisms.

b. Like other state institutions, corruption is widespread in the state structures that are designed to disclose and prosecute corruption offences. The effectiveness of the efforts of supervisory and law-enforcement bodies in combating corruption is insufficient, which is evidenced not only by population's opinion (see chart 1)[79], but also by the statistics in the field of disclosure and prosecution of corruption offences.

According to the estimates of the Prosecutor General's Office, in 1997 the total of 34 cases of bribery were closed by preliminary investigation, 24 of which were prosecuted in the court ending up in conviction against 30 persons, and dismissing charges against persons in 10 cases. According to the figures provided by the Prosecutor General's Office of Georgia, the situation did not improve even in 1998:

- Only 9 persons out of 42 bribery cases were convicted;
- In 3 out of 4 bribery cases in one of the regions of Georgia the bribe amounted to 15, 20 and 30 lari;
- In 6 out of 8 bribery cases disclosed by the Transport Procuracy the bribe amounted to $30;
- In the bribery cases detected in the law-enforcement structures in Tbilisi are sergeant, sergeant-major, inspector, inspector-custodian for documents, etc.

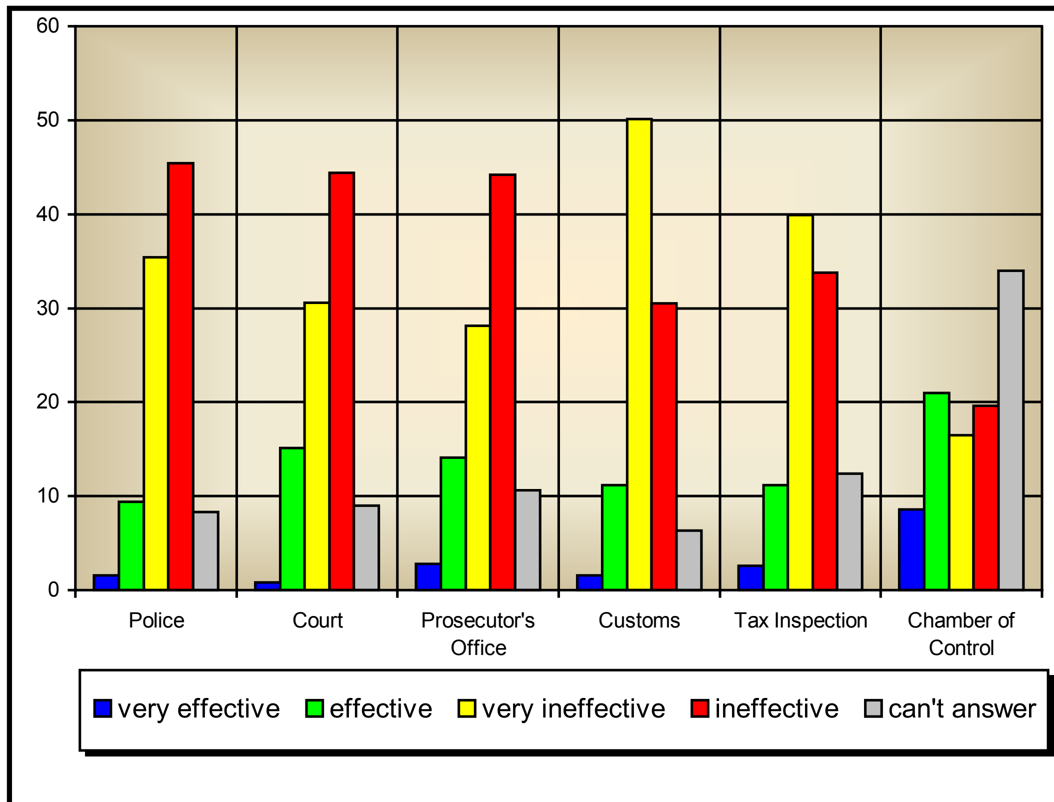
According to the estimates provided by Mr. Nugzar Gabrichidze, Deputy Prosecutor General of Georgia at the general meeting of January 18, 2000 of the Board of the Prosecutor General's Office of Georgia, in 1999 43 cases of bribery were detected and the persons disclosed in bribery are 'persons unknown to public' – 'controllers, traffic inspectors and other privates who extorted some 50 or 100 lari from people'. According to the same source, majority of 43

[79] The estimates are provided according to survey conducted by Corruption Research Centre in 1999.

cases of bribery are qualified as inducement in offering a bribe. However, no bribe-taker is identified in these cases. Crime in the process of investigation is qualified as fraud. In fact, the case is filed with wrong qualification to make someone believe that bribery is detected and create illusion that the law-enforcers fight against this crime. Only one case of bribery was heard in the Supreme Court of Georgia in 1999.

In light of this situation, there have been delays in hearing the cases referred to the law-enforcement structures by the Parliamentary Temporary Anti-Corruption Investigation Commission regarding the violations in the allocation and utilization of Word Bank, TACIS and other investments and a number of other wrongs committed by top officials.

Chart 1. ***Effectiveness of supervisory and law-enforcement structures in combating corruption***



The problems related to the activity of the supervisory and law-enforcement structures have considerably to do with the lack of funds. For the last years the state has been unable to fully supply them with adequate material-technical base and provide the officers with appropriate compensation and social benefits.

The lack of budgetary funding finds response in such negative consequences as:

- Retirement of a considerable part of experienced and qualified officers from supervisory, law-enforcement and judicial bodies;
- Lack of the material-technical base, vehicles and means of communication necessary for effective work, and insufficiency of equipment and materials needed to collect and corroborate evidence and conduct expert examinations.

Each of the above-mentioned problems affects rather adversely the ability and willingness of the controlling, law-enforcement and judicial bodies to fulfill their assignments and duties.

At the general meeting of January 18, 2000 of the Board of the Prosecutor General's Office of Georgia, Mr. Nugzar Gabrichidze, Deputy Prosecutor General of Georgia gave the following description of this situation in Prosecutor's Offices:

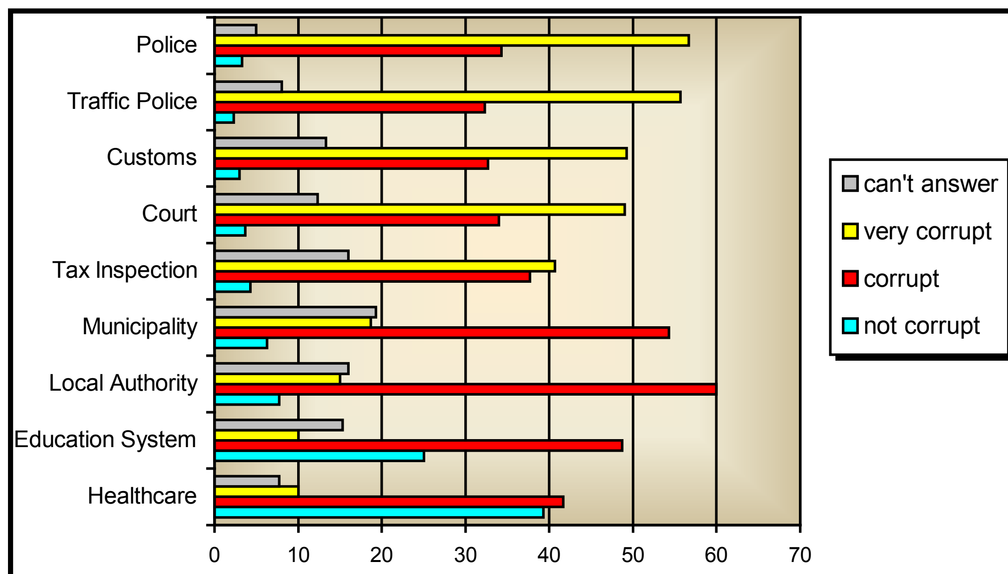
"I'd like to draw attention to our problems, namely material compensation of an officer of the Prosecutor's Office. In this respect, there have been certain improvements in the law-enforcement structures. However, the average salary of an officer of the Prosecutor's Office is 35-40 lari. Daily, we face the lack of the material-technical base in our work. Prosecutors in many regions and cities have no official vehicles, petrol, and officers cannot take leaves for lack of funds. As a result, there is a serious personnel outflow. They have to start work in private structures. Regrettably, 80 officers resigned last year. Majority of them was highly qualified."

As stated above, one of the serious problems caused by lack of funding is increased scale of corruption that permeated through most system of hierarchy.

Having scarce material-technical base and affected with systemic corruption, supervisory, law-enforcement and judicial bodies seem extremely low in their effectiveness to fight corruption practices.

The results of sociological surveys point to the same. According to the popular estimates, the level of corruption in state structures differs considerably from that seen in the statistics of detection and prosecution of corruption offences (see chart 2).

Chart 2. ***Level of Corruption in the State Structures***



2) Temporary Anti-Corruption Investigation Commission of Georgian Parliament

Before we directly touch the issue of implementation of anti-corruption agency, it is worth mentioning the establishment and activities of the Temporary Anti-Corruption Investigation Commission of Georgian Parliament. This is more interesting because the Commission to some extent resembles the model of an independent anti-corruption agency.

In December 1995 the Parliament of Georgia adopted new Constitution which is assumed as a basis for introducing the institution of parliamentary control, approved all over the world-the temporary investigation commissions. With a view to realize Article 56 of the Constitution, a new law 'On Temporary Investigation Commission' was adopted on March 8, 1996, on the basis of which the Parliamentary Temporary Anti-Corruption Investigation Commission was set up in March 1996.

The chairman of the Georgian Parliament Mr. Zurab Zhvania was initiator of the idea of establishing the Commission, which was approved by the majority of votes and backed up by all political parties representing the Parliament of Georgia.

The step was taken by the Parliament in order to introduce political methods in anti-corruption campaign and implement integral and coordinated policies by the different branches of government. The fact that Georgia's President and Parliament announced the year of 1997 as beginning against the struggle against corruption is a logical sequence of the mentioned processes. By this the government once again confirmed its political will for actualising the problem of corruption in the country.

According to the Resolution No. 254-11s, passed by the Parliament, the subject of the Commission's activity was determined as 'investigation of the corruption processes and offences committed by the officials and taking corresponding measures within the Commission's scope of authority', which underlies the following orientation of activities:

1. Investigation and political evaluation of the activities of top officials and State institutions. Besides, the main objective of the Commission was not disclosure of offences committed by certain persons and applying sanctions against them on legal grounds (it was beyond the competence of the Commission), but denunciation of the inadequate, unqualified and wrong actions, causing the significant losses to the State and finally resulting in activization of the institutions of political or other responsibility.
2. Exertion of political influence upon the officials and certain bodies of the executive branch, responsible for prevention, exposure or suppression of corrupt offences, i.e. the Commission should have taken the function of a catalyst in taking the effective and intensive procedural measures against corruption.
3. Investigation and analysis of the determinants of corruption in the State structures and elaborating appropriate recommendations on the basis of the obtained results, improvement and rationalization of the existing legislation by the means of revealing and eradication of the weaknesses in the legislation as well as identifying inducing factors for development of the corrupt processes. From this perspective, special attention should be given to the law making by the institutions of executive branch as well as studying some other aspects of their activity, such as the establishment of different unnecessary and in some cases, unlawful structures and barriers hampering the development of private sector in the country.

The Commission has contributed to the perfection of anti-corruption legislation. On the Commission's initiative in October 1997 the Parliament of Georgia approved the law 'On Corruption and Conflict and Interest Public Service'. The law, for the first time in history of Georgian law-making, has introduced the definition of corruption and corrupt offences, established the institution of property and financial declaration for the public servants and their family members, as well as the norms, i.e. Code of Ethics for public servants. The mentioned legislation has also improved and systematized the existing fragmentary legislative norms.

The Commission has investigated more than twenty sizeable cases of corruption and results and conclusions have been passed to the corresponding structures for taking appropriate measures. The Temporary Anti-Corruption Commission had extensive powers. According to the law 'On Temporary Anti-Corruption Investigation Commission', at the request of the Commission, the government bodies, public officials, legal and physical entities, within the time specified by the Commission, had to submit the references and other materials required for investigation of the issue in accordance with the rule provided under the law. The Commission was authorized under the written request and permission of the Prosecutor General of Georgia, in accordance with the procedure provided under the Criminal Procedure Code, to get acquainted on place with the inquiry or the criminal case being in the process of preliminary investigation,

as well as the materials available for dismissal of the criminal case, if the Commission determined that such case or materials contained the information required for investigation of the issue by the Commission.[80]

For obtaining information on the issue of investigation, the Commission was authorized to submit a proposal before the appropriate body of the state control and make a contract with non-governmental structures on carrying out controlling and auditing activities. The Commission was also empowered to put the issue on violation of law revealed as a result of hearing, control and oversight of the information on the examined issue before the state body or official, who is obliged to eradicate the violation of law, and taking into consideration of the nature of violation, could put the issue before the appropriate body or official on making decision on institution of a criminal case, administrative or disciplinary proceeding, withdrawal of the state property from illegal possession or compensation of the loss to the government. The results of the issue considered, as well as the measure taken had to be presented to the Commission not later that one month or within the time specified by the Commission.[81]

As we mentioned, the Commission investigated more than twenty cases[82], which, after reviewing and drawing conclusions, were passed to the President and Parliament of Georgia and relevant structures including law-enforcement bodies. Despite the fact, the work of the Commission did not yield any results. The most cases referred by the Commission lacked appropriate reaction from the corrupt state structures.

3) The Brief Review of the Issue of Implementation of an Independent Anti-Corruption Agency

The significant increase in corruption scales demanded decisive measures that had to be implemented by the government. In this regard, it should be taken into mind not only the influence of domestic factors, but also International Community—the definite demand from the international organizations and donor countries to implement real anti-corruption program by the Georgian government.

The existing situation and the related experience in this field dictated new and unusual decisions. On 19 May 1998, the President of Georgia supported the legislative initiative and submitted the Parliament the bill on ‘Special Anti-Corruption Service under the President of Georgia’. The bill highlighted the experience of Hong Kong Independent Commission Against Corruption.

The Parliament of Georgia dedicated only one session to the discussion of this question, after which the official review of the Bill is still pending in Parliament. However, in the years of 1998-2000 the President has made definite statements directed to the establishment of an independent anti-corruption service.

Despite all the above, the public positively accepted this initiative. With the initiatives of the international organizations accredited in Georgia and local NGOs, the creation of independent anti-corruption agency has actively been discussed on various conferences and meetings, and the elaborated recommendations has been passed to the government. In this respect, it is worth mentioning the 1999 Conference dedicated to ‘Prevention and Combating Corruption and Conflict of Interest in Georgia’, which was organized by Corruption Research Centre and the financial support of the UNDP.

On 21 December 1999, The World Bank for Reconstruction and Development, United Nations Development Program, International Monetary Fund, European Union and the Embassy

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[80] *See* article 24 of the law *On Temporary Anti-Corruption Investigation Commission*.

[81] *See* article 27 of the law *On Temporary Anti-Corruption Investigation Commission*

[82] *See Anti-Corruption Temporary Investigation Commission*, (published by the Corruption Research Centre, 1998).

of the United States in Georgia applied to the President of Georgia Edward Shevardnadze, by which they all supported the idea of setting up an independent anti-corruption agency. According to this application, establishing an independent agency is one approach to address corruption in government, provided that certain specific safeguards and preconditions exist. Such an agency should at the minimum be independent, objective and nonpartisan; enjoy widespread popular support and incorporate broad civil society participation; be transparent and have strong safeguards against corrupt influences and political interference; strike an appropriate balance between the functions of prevention, public education and enforcement.

Today the issue of creating the independent anti-corruption agency is actively debated within the Group for Elaboration of Georgian Anti-Corruption Program set up by the President Shevardnadze on 9 July 2000. Obviously, it is too early to make some comments on the results of the activity of the Group, because the final version of the program is still in the course of elaboration. But the first draft of the program published for public debate incorporates the establishment of the anti-corruption agency with very limited powers. This approach, in our opinion, is wrong and cannot yield appropriate results.

In light of the above, it is necessary to mention that there is a real opposition in the government, which representing the interests of corrupt groups and clans actively hinders the process of establishment of the independent anti-corruption agency. In addition, due to various reasons, certain resistance is seen from the law-enforcement structures, which was stressed many times in the comments and speeches of the representatives of these bodies. All this combined with a variety of other factors essentially delays and questions the idea of implementing the independent anti-corruption agency.

4) .Is there any alternative to the idea of establishing an independent anti-corruption agency?

The most pressing problem currently facing the government is the lack of mechanisms to guarantee the rule of law and order and enforcement of the decisions. As mentioned, the effectiveness of the existing institutions in combating corruption and the approved forms and methods with this regard are very unproductive.

One of the keys to the problem that the government cannot sidestep lies in launching a complete organizational and institutional reforms of the appropriate government structures, and primarily, the law-enforcement structures. However, at this stage the success of this reform is very much open to question for the following reasons:

1. Scarce budget revenues;
2. The available experience provides basis to conclude that approved methods of organizational reforms (those applied in the judicial system and other state structures) fail to provide strong guarantees for attracting honest and well-motivated personnel in the public service;
3. The special role of crucial state institutions and law-enforcement and supervisory structures in exerting substantial pressure on political relations and decision-making process. Delays in the reform in the Prosecutor General's Office is one of the examples attesting to the foregoing.

Proceeding from the abovementioned, the independent anti-corruption agency that would be vested with adequate powers, with relatively flexible and small staff, definitely has its priorities, one of which lies in the relatively small financial expenditures to ensure its operation.

5) *Basic parameters of the model of an independent anti-corruption agency*

a. Functions

Determining the functions of a future independent anti-corruption agency is an important issue that has a decisive effect not only on the organizational structure and powers but also on creation the preconditions for successful operation of the service.

The available international and Georgian experience provides basis for acceptance of the so-called *concept of three-pronged attack* – i.e. directing an anti-corruption campaign through rational integration of repressive, preventive and educative policies.

Vesting the agency with only function of recommendation (including the participation in elaborating anti-corruption programs) will not yield produce appropriate effects. This is clearly seen from the so-called *African model* as well as from the experience of Parliamentary Temporary Anti-Corruption Investigation Commission. The enforcement should constitute an integral and essential part of the agency's powers.

Considering the above, the agency should be vested with the following functions:

a. Criminal prosecution of corruption offences;
b. Corruption prevention, analysis and generalization of the incentives for corruption, experience of foreign countries and current anti-corruption policies, and drawing appropriate recommendations;
c. Anti-corruption propaganda and education.

b. Some aspects related to the agency's powers

1. Jurisdiction

Any corruption offence should fall within the agency's jurisdiction in a sense by which this term is used in the Law of Georgia on Public Service and Conflict of Interests.[83] It should not escape our notice that the agency, coming from its small staff, is not aimed at fighting corruption on a large scale. Its primary function is to deter and prevent corruption in the highest government structures and the institutions, which determine the main policies and trends of the country's social and economic development and are responsible for state revenues and their rational utilization as well as protection of the rule of law and order. Thus, the service should in any case be vested with the right to independently determine whether to conduct an investigation of corruption offences on its own or refer them to other authorized law-enforcement structures. Commercial bribery shall also fall within the agency's jurisdiction, i.e. the jurisdiction of the agency should cover the corruption offences in the public as well as private sectors.

[83] According to Article 3 of the Law on *Conflict of Interest and Corruption in the Public Service*:
1. *'Corruption in public service'* means misuse of official powers or any related opportunities by public official for personal benefit or other advantage, including giving or promoting the acceptance and legalization of such advantage.
2. *'Corruption offence'* means any action including signs of corruption and for which the law provides disciplinary, administrative and criminal responsibilities.
3. *'Conflict of interest in public service'* means contradiction of public official's personal interests and interests of public service.

2. *Means of prosecution*

The question of vesting the independent anti-corruption agency with the powers of prosecution also involves some problems. The agency's performance of operations activities, enquiries and preliminary investigation in relation to the corruption offence is subject to the supervision by the Prosecutor's Office that raises certain questions about the extent of independence and effectiveness of criminal prosecution. Therefore, it is advisable to employ alternative mechanisms. The agency should be given the power of disciplinary, administrative and civil prosecution.

c. Independence and integrity

The problem of ensuring the independence and integrity of the agency is linked with a group of aspects:

- *Power to appoint and dismiss heads of the service and its servants*

In previous chapter we already highlighted the importance of appointment procedures. Within this context with respect to the Australian example, we noted that it is a daunting challenge to restrict opportunities for over-politicization of the appointment procedures and prevent the latter from becoming a battling ground for various political and lobbying groups. In addition, it is worth to take into consideration the experience of transitional countries, where the Parliament mandate is often used as a means of corrupt dealings and produces various clan interests within the Parliament. From this perspective, it is desirable to reject parliamentary involvement in the appointment procedure.

The right to appoint the head of the agency, like in Hong Kong example, should be vested in the head of the executive branch – the President. For balancing the President's discretion in this respect, it is suitable to share international, or even Hong Kong experience and give advisory boards the veto power in the appointment procedure. In this case, advisory boards can be seen as part of the checks and balances system. The same procedure should be applied to the appointment of public servants, i.e. with the consent of the head of the agency and the advisory board.

Both the head of the agency and public servants must be appointed without any direct competitions or conditions that the supervisory committee has studied in detail the experience and reputation of each candidate.

The question of dismissing the head of the agency and public servants must be strictly regulated that entails an extensive list of grounds for dismissal and an open and fair dismissal procedure. The dismissal procedure should be applied by direct participation of the advisory board.

Appointment procedure needs to address the issue of whether the proposed mechanism sufficiently insulates the process to ensure that persons of integrity are given leadership and that they are protected from political pressure while they are in office.[84]

d. Prosecution

The mechanism of cooperation between the agency and with structures of Prosecutor's Office demands considerable attention.

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[84] *See* Pope and Vogl, *supra* note 56, at 8.

The relationship between an anti-corruption agency and the Prosecutor's Office is critical. Agencies must be seen to have real impact leading to prosecutions and convictions. Otherwise, as has happened in several countries, they will be widely viewed as a farce. A country must have legislation that ensures the political independence not only of the anti-corruption agency but also of the judiciary and the public prosecutors.[85]

We should bear in mind that the main reason for establishment of the agency is ineffectiveness and corruptibility of the existing state institutions, including the law-enforcement and judicial structures that may substantially impede the operation of the commission. For instance, in cases where the agency's powers are limited to only enquiry and investigation of corruption offences while the power to file an action in the court and support the public prosecution is a prerogative of other state institution, due to the attempts of the corrupt officials, the case investigated by the commission may end up without results and criminals may have change of getting away.

Therefore, it is desirable to strengthen the agency's procedural independence against the supervision of the Prosecutor's Office and make necessary amendments in the Law of Georgia on the Prosecutor's Office of Georgia, the Organic Law of Georgia and the Criminal Procedure Code of Georgia or directly assign the Prosecutor General of Georgia to supervise the process of criminal prosecution of the agency, or give such assignment to an the 'independent prosecutor', which will be provided with the same social and economic guarantees as are guaranteed for the agency's officers.

Besides, it would be advisable to hear the cases investigated by the agency in the Supreme Court of Georgia as a first instance. As for the conflict of jurisdictions, the agency should be vested with the right to claim any suit from any enquiry or investigation organ on basis of the existence of reasonable grounds.

e. Accountability of the agency, elements of the checks and balances system

It is beyond doubt that while implementing independent anti-corruption agency model, best efforts should be made to minimize the possibility of turning the agency into a tool of political prosecution or/and making it itself a source of corruption. There is a tangible threat that the ruling political group may, within the existence of appropriate conditions, use the agency as a tool against the opposition. In addition, the commission may fall under serious pressure when there is a question of responsibility of the ruling majority representatives. In this case, the head of state may face a tough dillema. This is evident in the case of Tanzania, which was highlighted above.

On the other hand, an independent anti-corruption agency may itself grow into an institution of corruption and extortion that definitely requires introduction for the agency's accountability and responsibility mechanisms as well as those influencing its activities. Proceeding from the above, increasing importance is placed on the challenge to develop a reasonable and rational accountability and checks and balances system.

- In our opinion, placing political responsibility for the agency's activity on the President is definitely a reasonable approach to the question. It provides opportunities to activate the mechanisms of political responsibility and, in addition, offers certain guarantees to give political support to the work of the agency. Therefore, it seems advisable that the president, or on behalf of the president – head of the commission, should present annual reports before the parliament on the activities of the commission. The head of the commission, in turn, will be accountable before the President of Georgia. But in this case, an important objective is to balance the

[85] *Id.*

discretion of the president himself that can be achieved through an institution of the so-called *advisory board*. The president's discretion with respect to the agency's activity must be limited only to appointment procedure and accountability system, and according to the stipulations mentioned above. What concerns to the prosecution of corruption offences, prevention of corruption and conflict of interest and conducting educational propaganda by the agency, these areas of activity should be free from the presidential interference as well as any other official intervention (except that of the mechanisms of judicial control). The authority to provide control and oversight in these fields should be vested in the advisory board.

- The examples discussed by us show that advisory boards (such board is set up with the anti-corruption agency in a number of countries) are seen as an essential element for the control on, objectivity and integrity of, the activity of the agency. We already emphasized the advantage of the Hong Kong model, which has established arrangements that ensure public participation in policy formulation and oversight. We also discussed the weaknesses of the Australian model. In this respect, there are two important questions – composition and powers of the advisory board.

In Georgia, like in any other country being at the stage of transition, this aspect is related to special difficulties. There is a question –who shall select and appoint the members of the Advisory Board? If this is going to be the President, as it is in Hong Kong, then how can we guarantee impartiality and objectivity of the Advisory Board? The same question is raised, even more intensively, if vesting this authority in the Parliament.

It is not surprising that the media and some NGOs play the role of marionets in the hands of various corrupt clans and interest groups. In this case, it is hard to speak about the solid guarantees that these groups would not compose the Advisory Board. It is also difficult to speak about the self-selection mechanisms for the representatives of NGOs and media. All the above essentially destroys the idea of advisory board itself.

In this case we have to make a choice for the less threatening system and vest the authority of selection of the Advisory Board members in the President. However, at the same time, to safeguard the impartiality of its activities, it is important to include in the Advisory Board the international organizations and agencies, as well as representatives of the foreign countries that provide institutional and financial support to existing reforms in Georgia.

In our opinion, participation of the international organizations and representatives of the foreign countries in the selection procedure for the Advisory Board members, as well as their participation as members in the activities of the Advisory Board yield possibilities to:

- Neutralize significantly the threat which is related to the selection and composition of the Advisory Board; and
- Provide effective monitoring of anti-corruption campaign in Georgia, particularly, of the activities of independent anti-corruption agency as well as financial and material resources allocated for this purpose by these organizations and representatives.

As for the powers, in addition to hearing reports, giving recommendations and some other powers, the board must be vested with certain procedural powers as well. In particular, the power to commence and discontinue the prosecution of the corruption offence (including in the course of criminal procedure that requires relevant amendments to be made in the legislation), and various other powers. In this respect, we absolutely accept the Hong Kong model.

- It is necessary to determine the questions of responsibility of the head and officers of the commission, namely the issues of imposing disciplinary, administrative, criminal

liabilities. It is advisable that the draft provide certain guarantees that would minimize opportunities to illegally influence the head and officers of the service.

f. Adoption of so-called 'Friendly Legislation'

There is no doubt that prosecution of corruption offence is related to a number of problems. This is especially true to criminal prosecution. Therefore, in order to raise the effectiveness of this activity, it is advisable to also introduce the approved anti-corruption and organized crime mechanisms that international practice dictates. The responsibility for unfounded enrichment, money laundering and other similar practices, which should become an effective way of prosecuting corruption offences by the independent anti-corruption agency, must be thoroughly regulated by the legislation. Precisely, it is necessary to:

- *Perfection of ethical standards and the mechanisms of their implementation*

The uniform standards and code of conduct for public servants, as provided under the laws of Georgia "On Conflict of Interest and Corruption in Public Service" and "On Public Service", which have been introduced recently, practically remains inapplicable today. One of the reasons for this is the declarative nature of the norms. The general norms prescribed under the laws lack detailed explanation. Namely, there is no legislative or normative act as so called 'ethics code' which would stipulate concrete list of administrative offences or disciplinary misconduct of corrupt nature and the responsibility imposed for such offences. Besides, the norms provided under the mentioned legislative acts contain plenty of provisions, which come into collision with each other thus raising difficulties in comparison thereof.

The implementation mechanisms for ethical norms are far from perfection. The institutions for public servants disciplinary responsibility and official supervision, as provided under the legislation of Georgia, are set up on the official subordination (hierarchical) principle, which considerably declines the effectiveness of the mentioned institutions under the systemic terms of corruption. In addition, the process of disciplinary proceedings is regulated in a quite fragmented manner. It is true, that for the last period, in the course of the court reform the attempts have been made to eliminate these weaknesses, which has resulted in adoption of the normative acts regulating the issues of disciplinary responsibility of judges. Notwithstanding the above, the situation in other state structures in this respect practically remains unchanged. Here we would like to emphasize that it is absolutely necessary that the anti-corruption service have a power to prosecute disciplinary offences.

g. Imposition of responsibility for 'unexplained property'

The foreign countries' legislations provide different kinds of responsibility for public servants in cases when their official income does not conform to their standard of living.[86] The necessity of introducing such provisions may be considered in the context of the ethical norms, on the one hand, and the problems of legalization of the illegal income, on the other.

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[86] For instance, Section 10 of the Prevention of Bribery Ordinance of Hong Kong imposes punishment on the possession of 'unexplained property', i.e.:
'Any person who, being or having been a Crown Servant--
a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,
shall, unless he gives a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control, be guilty of an offence
In addition, the burden on proof for honest possession of property lies upon the suspect.

Thus, it is reasonable to reflect similar norms in the Georgian legislation that will promote the prevention of conflict of interests and corruption, organized crime and the dismissal of corrupt officials.

h. Perfection of the legislation regulating the prevention of money laundering, i.e., legalization of illegal income, and the prosecution

Practically any kind of criminal action including that of the corruptive nature involves illegal income. Legalization of illegal income is an important aspect of the criminal activity and in most cases stands as its explicit indicator. It is true that Code of Criminal Procedure of Georgia stipulates responsibility for legalization of illegal income, but the relevant provisions demand further precision.

6) The role of the International Community

We already saw what role the British assistance played in the success of Hong Kong Independent Commission Against Corruption. In this respect, it is not hesitating to say that the help of the International Community can play the same role in establishment and strengthening of institutional and tecnical aspects of the anti-corruption service in Georgia.

Implementation of independent anti-corruption agency is a necessary and quite ambitious project, which requires financial and political support of the International community. This support is not limited to providing financial and material resources, but also involves more global objective, such as participation in the formulation of anti-corruption policy and monitoring its realization.

IX. CONCLUSION

The work presented above attempted to highlight the basic trends and obstacles in the implementation of an independent anti-corruption agency. It explicated the advantages and disadvantages of various models of the anti-corruption agencies existing in the international practice. We saw in particular cases how certain powers or limitations affect s agency's operation and what aspects are considered necessary for the proper functioning of the anti-corruption service.

Since corruption has given the extensive and far-reaching implications of what it may entail, it increasingly demands the efforts from both anti-corruption agency and the population. Successful results cannot be yielded without community's participation and cooperation with the anti-corruption service. So, the agency first of all shall put high emphasis on involving people in these processes.

In the conditions of the modern society the context of corrupt practice continues to acquire new denotation, and it is important that the agency's powers be increased along with existing conditions. Despite all the above, the ultimate truth once again lies in the fact that the anti-corruption model must be designed to fit the demands of the particular society, due to the specifics and peculiarities that are characterized for each country. The evaluation of the international experience in this field and relevant recommendations can assit the developing countries to rationally design and implement an anti-corruption agency.

What else may contribute to the agency effectiveness is a subject to be revealed in the future. New social developments will surely shape the alternative means for the agency's successful anti-corruption campaign and the future experience perhaps will say its word in this respect.