

Commission on the Prevention of Corruption Slovenia

A Review of the Effectiveness of Anti-Corruption Agencies¹

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Background

The Slovenian government began to take anti-corruption efforts seriously in 2000, when it was cited by the Council of Europe for not having a comprehensive anti-corruption strategy and specialized agency for coordination of anti-corruption efforts. In response, the government established an inter-ministerial anti-corruption group, and by decree, established the Office for the Prevention of Corruption in the Prime Minister's Office. By February 2004, a new Law on Prevention of Corruption was passed, which established the present-day Commission for the Prevention of Corruption (hereafter "Commission"). This commission is an independent constitutional body that reports only to Parliament, and is tasked, *inter alia*, with the management of a much more robust income and asset disclosure system.

Slovenia entered the European Union in May 2004, shortly after the passage of the new anti-corruption law. The next month, a national anti-corruption strategy was passed by Parliament, entitled *Resolution on the Prevention of Corruption in Slovenia*, followed by an Action Plan devised by the Commission. The national strategy is updated every three years by Parliament, with inputs from the Commission based on their experience from the previous years.

That same year (2004) saw a change of government that shifted the tide of support against an independent anti-corruption agency. By February 2006, Parliament had pushed through a new law that eliminated the need for a separate agency in favor of a commission composed of deputies from the National Assembly.² However, the Constitutional Court suspended the law in April 2006 and declared the law unconstitutional in a March 2007 decision, ruling the separation of powers outlined in the Constitution was not upheld with the new anti-corruption framework devised by Parliament.³ The provisions of the Prevention of Corruption Act (2004) continued to apply until unconstitutional provisions were amended and/or removed. A change in government in late 2006 swung favor back in support of a separate agency, and the amendments stalled in Parliament. The Commission on Prevention of Corruption maintained its operations, and continues to do so to the present day.

In June 2010, a new Integrity and Prevention of Corruption Act came into effect, expanding the mandate of the Commission and enhancing its ability to regulate anti-corruption efforts. The major changes to the anti-corruption framework are multifold:

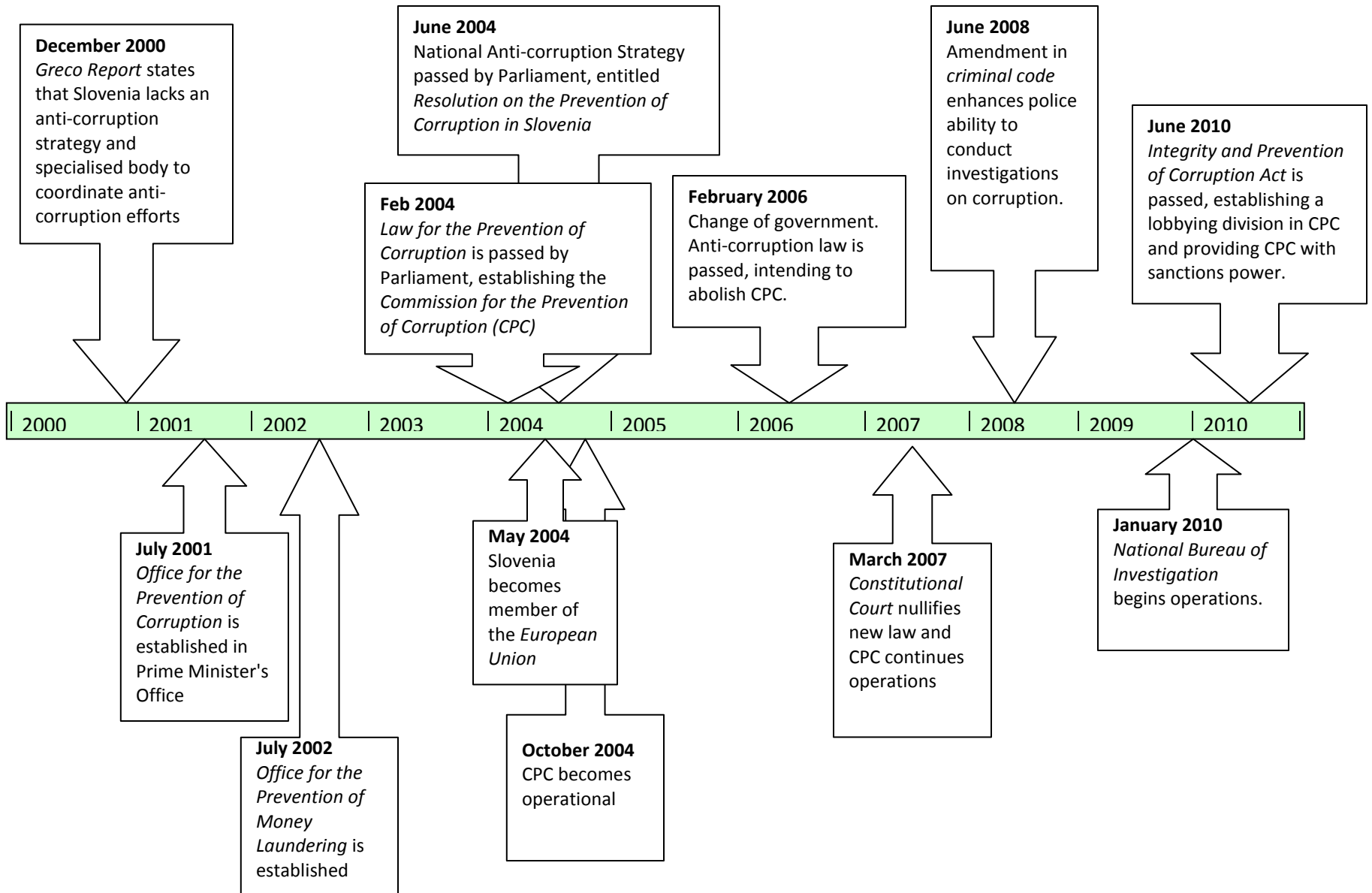
- Whistleblowers protection (Articles 23-25)
- Lobbyist registration (Articles 56-74)
- Sanctions for non-compliance with anti-corruption law (Articles 77-80)
- Shift in nature of penalty for non-filing of income and asset disclosure (IAD) form: instead of automatic termination, the Commission may require withholding of salary up to a certain amount, *automatic termination was previously nullified by the Constitutional Court*
- Public availability of income and asset disclosure data (Article 46), *previously nullified by the Constitutional Court*
- Integrity Plans, required for all sectors of the government (Articles 47-50), *previously nullified by the Constitutional Court*

² Incompatibility of the Exercise of Public Office with Profit-Making Activities Act (ZNOJF-1)

³ Decision U-I-57/06, dated 29/3-2007. Constitutional Court of Slovenia. Official Gazette RS, Nos. 100/05, 46/06, and 33/07

The new law increased the scope of the Commission's mandate and granted it extensive powers with respect to administrative sanctions and fines. Although the size of the Commission's staff doubled in the 2009, additional personnel and resources were needed in order to meet the goals set by the 2010 law. Approximately 40 staff are now employed by the Commission to fulfill its expanded mandate.

Figure 1: Anti-corruption institutional timeline



Organizational structure and mandate

The Commission

The management of the Commission is performed by three individuals: the Chief Commissioner and two deputies. The independence of the Commission was considerably strengthened in 2010 by the introduction of a new selection procedure that diffuses power across institutions. While the Commissioner and deputies are still appointed by the President of the Republic of Slovenia, the process involves an open recruitment procedure. It is followed by nomination and selection by a special board comprised of representatives from the following entities: Government, National Assembly, non-governmental organizations, Independent Judicial Council, and Independent Council of Officials.

The term of office for the Commissioner is six years without renewal. The deputies have five-year terms and can serve a maximum of two terms of office. Management can be dismissed from office only if they are found to have violated one of four provisions explicitly described in Article 22 of the 2010 law (see below, *Challenges and Factors for Success*). Dismissal is performed by the President of the Republic, either by his own motion or on behalf of the Parliament.

One of the major roles of management is to make decisions on substantive matters related to cases being handled by the Commission; this is done as a collegial body on the basis of majority vote. Approximately 40 professional staff provided support, utilizing their diverse fields of expertise to perform investigatory, oversight, preventative and secretariat functions.

The internal composition of the Commission was re-organized following the passage of the Integrity and Prevention of Corruption Act in 2010. Its current structure reflects a conceptual division between investigation/oversight and prevention activities (see Figure 2).

Investigation and Oversight Bureau

The Investigative and Oversight Bureau handles both investigations and oversight within its remit, including financial disclosures, conflicts of interest, lobbyist registration, whistleblower protection, and inter-agency coordination with law enforcement and prosecutorial bodies.

This pillar of the Commission is responsible for providing guidance on incompatibilities between public sector and private interests, as well as maintaining the financial disclosure system for public officials. Matters of conflicts of interest are determined in two separate ways. The Commission may be requested to provide guidance on specific issues by officials, specifically local officials, concerning the intersection between private and public interests. The Commission also evaluates financial disclosure forms to determine whether conflicts of interest exist.

Disclosure forms are used to identify both conflicts of interest and possible cases of illicit enrichment. All disclosures go through the following process:

1. Basic information is entered into an excel file.

2. A check on incompatibility of functions is performed.
3. A check on business limitations (shares, ownership, etc) is performed
4. A random annual audit of a sample of IAD forms checks for irregularities.

The number of disclosures included in the random audit is calculated each year based on the number of staff available. For 2009, 33% of declaration forms were audited in this manner. The Commission has designed internal procedures for the verification process, which involves a comparison between the information on the declaration form and information from official databases. In fact, information provided in disclosures is checked against tax records, land registries, vehicle registries, livestock records, and corporate records of ownership and shares.⁴ If there are irregularities present, the Commission will ask for clarification from the declarant. If further administrative investigation is required, the Commission will inform the office where the declarant is employed, as this office may be required to perform its own investigation (inspection) based on public mandate. If criminal activity is suspected, the case is referred to the police or prosecutor's office.

Lobbyists are required to be registered with the Commission and to provide an annual report of their activities. The Commission is also allowed to verify the accuracy of the data in the report. Moreover, lobbied individuals must keep a record of all visits by lobbyists and submit the record to the Commission within three days of the visit. Failure on the part of the lobbyists to conform to the regulations may result in a written admonition, a ban on lobbying in a specific case or for a specific amount of time, or deletion from the register.

Center for Prevention and Integrity of the Public

The Center for Prevention and Integrity of the Public deals with preventative measures, including the implementation of the National Anti-Corruption Action Plan, the development of Integrity Plans for public sector entities, review of draft anti-corruption legislation, and coordination with civil society and research institutions.

In 2010, a meeting was called to re-present the Resolution and Action plan so as to ensure that agencies and individuals were aware of their responsibilities under the new law.⁵ In particular, it became clear that the requirement to appoint two representatives to provide progress reports had been ignored by many agencies. The Commission has also able to establish links with several entities to engage in the following preventative actions:

- Compare the Commission's reports with those of the Council of Inspectors, to identify gaps and to improve effectiveness of agency investigations.
- Collaborate with the Court of Auditors regarding requests for clarification on financial audits.
- Collaborate with the State Commission for Revision of Funds (the second instance body that reviews public tenders). This would include discussion of risks in certain public tenders concerning railroad networks and road building, areas that have been identified by the EU as being problematic for Slovenia.⁶

⁴ By law, bank accounts cannot be accessed by the Commission.

⁵ The meeting consisted of 75 individuals from the public sector, private sector, unions, and universities.

⁶ The EU has recommended that the transport and building sectors be separated into different Ministries.

In terms of public awareness, the Commission hired a Communications Officer in 2009 to assist with public relations and the dissemination of information. Brochures, pamphlets, and posters have been designed to instruct the public of the functions of the Commission and the means by which corruption can be identified. There are also weekly media reports on cases involving corruption, a radio show on integrity, and public debates by members of the Commission on matters of corruption.

Trainings for public officials are conducted, arranged jointly with the Academy of Administration under the Ministry of Public Administration. These seminars are tailored specifically to the audience members, with vignettes and case studies targeting certain fields. The Commission has also recognized that it is important to provide training on the mandate and functions of the Commission to counter false perceptions. The 2010 law also incorporated the role of non-governmental organizations (NGOs) into the anti-corruption efforts, allowing the Commission to finance NGO work in this area. Presentations and discussions with local NGOs regarding points of possible collaboration have already taken place.

The Integrity division assists public and private sector entities in preparing risk assessments of corruption through trainings, monitoring and evaluation. Integrity plans employ both quantitative and qualitative methodology to estimate the level of corruption risk in an institutional environment and to propose solutions to alleviate that risk.

Each public entity must create a project group of 5-7 individuals who will design and implement the integrity plan, which must consist of the following information⁷:

- Assessment of corruption exposure of the institution
- Personal names and work posts of individuals responsible for the integrity plan
- Description of typical work processes and decision-making method, including a corruption risk exposure assessment and proposed improvements regarding integrity
- Measures for timely detection, prevention, and elimination of corruption risks
- Other information as determined by the Commission through its guidelines (published on its website)

Because the Constitutional Court struck down the regulatory provisions requiring integrity plans in its 2007 ruling, few entities have prepared integrity plans, aside from the customs department and some private sector firms. Under the 2010 law, however, public entities are subject to stiff penalties if they fail to prepare or implement an integrity plan.

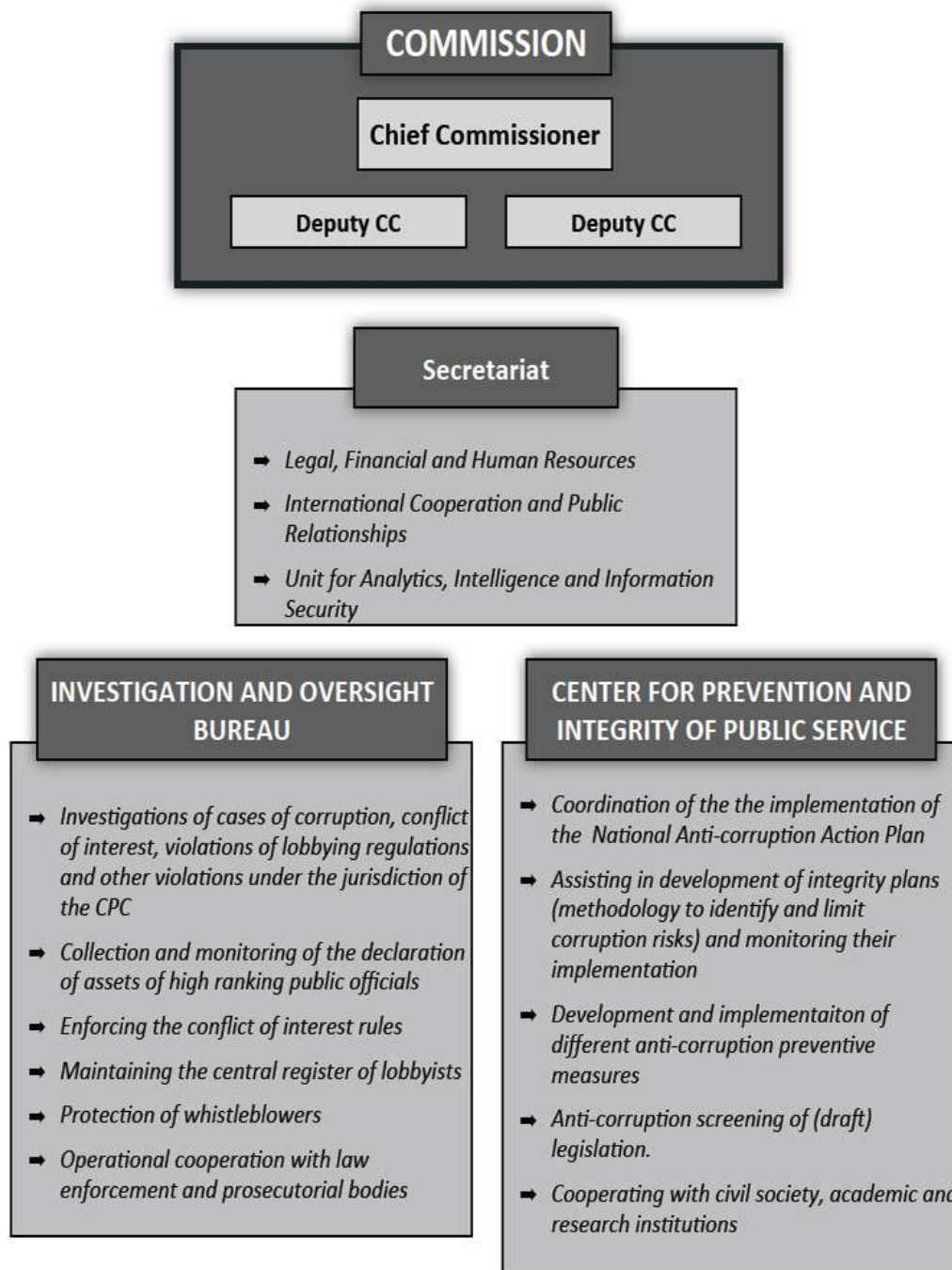
Although the Commission worked with a delegation from the Netherlands in 2002 during the time that the anti-corruption leadership was housed in the Prime Ministry, relatively little guidance was garnered regarding the implementation of integrity plans at the national level. Most of the impressive expertise gained by the Commission was acquired through hard-won experience. The reputation of the Integrity Division is such that private sector companies in Slovenia and regional countries (Serbia, Montenegro, Moldova, Bosnia, and Croatia) have requested their assistance in preparing integrity plans for their firms.⁸

⁷ Article 47 of the 2010 Law

⁸ It may be that these governments have also asked for assistance. Confirmation from the Commission is necessary regarding this point.

Figure 2: Organizational Chart⁹

COMMISSION FOR THE PREVENTION OF CORRUPTION



⁹ Organigram provided on the Commission’s website: <https://www.kpk-rs.si/en/the-commission/organisational-structure-and-staff>

Resources and Capacities

The resources and capacities of an anti-corruption agency are essential to the successful achievement of its mandate.

Facilities and technology

The Commission is housed in on one floor of an office building fairly close to the center city. The overall area of the premises is 1100m², with staff sharing separate offices. Computers are assigned to all staff, and server hardware and software is less than 2 years old. All data from income and asset declaration forms is maintained in a locked room, in locked cabinets.¹⁰

Human Resources

Recruitment

All civil servants are hired through a competitive process overseen by hiring commission, while members (chairs, deputies, and advisors) are appointed by the President based on their qualifications for the positions. For example, in 2010, one of the Commission deputies had experience in the Court of Auditors, and thus assisted with financial matters in cases.

Qualifications

In June 2010, 82% of non-administrative staff at the CPC had at least 4 years of post-secondary education. All staff are expected to have a working knowledge of computer programs upon hiring.

Training

By law, all staff are required to receive training on privacy laws. Informal training is conducted by senior staff on regulations and procedures, if necessary. There is also an intranet forum that allows staff share information across divisions and hierarchies. Staff may attend external training (e.g., public procurement laws) if relevant, as was the case when staff were granted permission by management to attend external trainings on a new procurement law, as it was directly related to their scope of work.

Performance evaluations

Annual performance evaluations are conducted, in line with the civil service regulations. So far, there has been little turnover since the Commission's inception, except for the handover from former commissioner Drago Kos (2004-2010) to the current commissioner Goran Klemenčič (2010-present). Until recently, the staff size has been small, and loyalty to the organization is considerable, given the threat of dismantling from previous governments. By 2012, there were 40 staff employed at the Commission.

¹⁰ All declarants are randomly assigned a number, and all data is stored according to those file numbers, both hard copy and electronically.

Budget

The proposed budget is submitted by the Commission directly to the Ministry of Finance based on the number of staff, whose wages are set according to the Slovenian public wage system. Parliament approves and dispenses funding directly to the Commission.

2009 Expenditures	
Salaries of permanent staff	562.406 EUR
Materials	431.017 EUR
Investments (e.g., durable goods, training)	55.657 EUR
Total	1.049.080 EUR

Figure 3: 2009 Expenditures

The budget for the Commission has increased steadily since its inception in 2004, which has allowed the Commission to correspondingly enlarge the scope of its operations in order to meet its regulatory mandate.

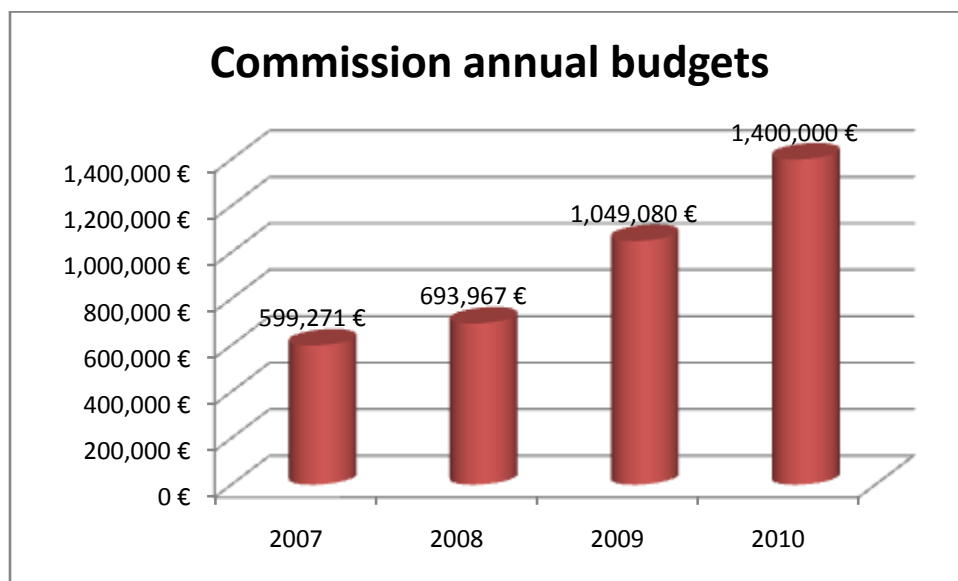


Figure 4: Annual budgets 2007-2010

Regulatory Function

If specified by law, the Commission will issue administrative (technical) regulations to implement specific provisions. The primary means of communicating the Commission's position on corruption cases is conducted through *opinions* that are posted online for public access, with details of the case removed for privacy purposes. FAQs regarding laws are also posted online.

Investigations

Each division of the Commission may conduct investigations. However only administrative investigations are conducted; the Commission is not allowed to conduct criminal investigation. All cases suspected of criminal activity are forwarded to the police or prosecutor's office.

An investigation is initiated under any of the following circumstances:

1. Signed letter
2. Anonymous complaint
3. In person complaint
4. Commission decides to investigate of its own accord

Once a case is initiated, the Commission determines whether its involvement is allowed in accordance with its regulatory mandate. If not, the case is referred to the appropriate body. Under the new law, the Commission must reply in person to the complainant within 30 days with a case status update.

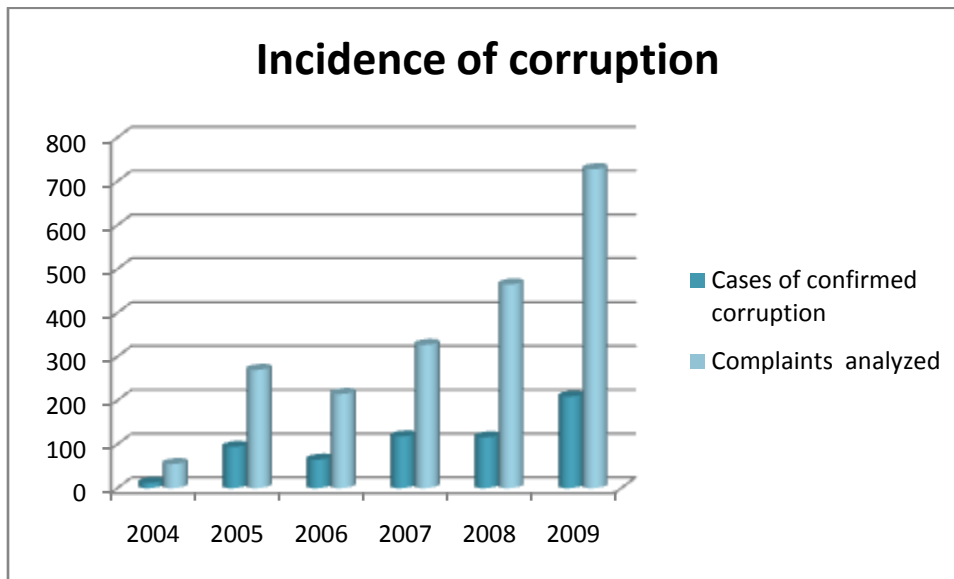


Figure 5: Incidence of corruption

There has been difficulty working with the Ministry of Interior and police until a recent change in management. Now, the Commission has a memorandum of understanding with the police. However, the attorney general has proven to be relatively uncooperative in implementing criminal policy in line with anti-corruption regulations.

Performance

Leadership

As substantiated by the statements of many of the staff within the Commission, effective leadership is vital to success of agency. The former commissioner reached his term limit in 2010.¹¹ He was instrumental in getting Slovenia to ratify the United Nations Convention Against Corruption (UNCAC), in increasing the resources available to the Commission, and in protecting the mandate of the Commission against Parliamentary initiatives. New leadership has been tasked with not only maintaining the profile of the Commission, but also implementing the provisions of the new 2010 law, which substantially enlarged the scope of the Commission's activities.

Impact

The primary means of communicating the Commission's position on corruption cases is conducted through *opinions* that are posted online for public access, with details of the case removed for privacy purposes. In the absence of criminal prosecution, and a lack of enforcement authority ascribed to the Commission by law, the issuance of opinions on corruption cases serves as both public commentary and condemnation of ill-functioning government enforcement agencies, e.g., police, attorney general, inspection boards, etc. In some cases, action is only taken once an opinion is issued, in the face of media coverage and public demand.

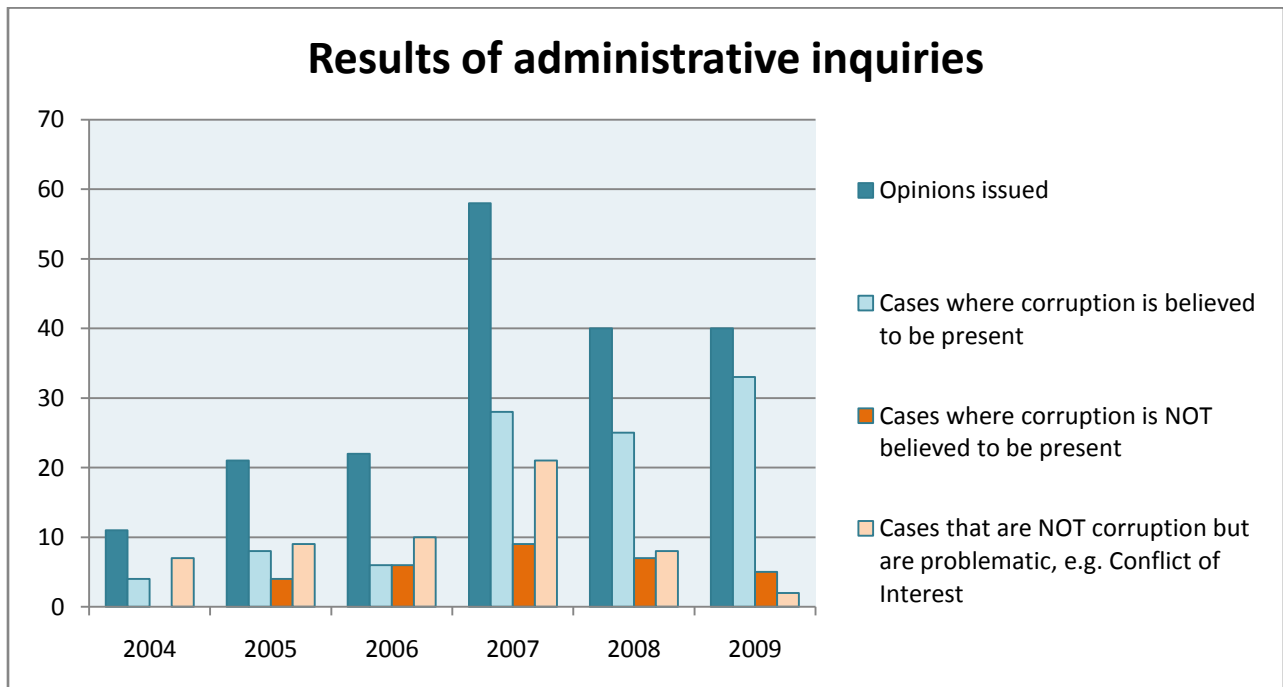


Figure 6: Opinions, Nature of findings, 2004-2009

¹¹ Drago Kos, former Commission Chair and GRECO head

Given the expansion of the Commission’s mandate, and its new ability to sanction individuals and agencies with administrative penalties, the impact of its actions may be intensified. However, the Commission requires a large number of personnel and resources to conduct the necessary trainings and investigations that now exist within its purview.

Collaboration and awareness-raising

Over 66% of Slovenians believe that corruption is either a big or very big problem, and a vast majority believes that lack of enforcement is a major impediment to effective anti-corruption efforts.¹² The Commission is well-regarded by the public as an enforcement agency, as it is seen as the final backstop in the fight against corruption. A considerable number of complaints are received from ordinary citizens, rather than public officials, and each complaint is taken seriously and responded to within an appropriate period of time. The Commission garners well-earned support from the public through its commitment to explaining issues of corruption through public opinions and investigating matters that the police tend to overlook.

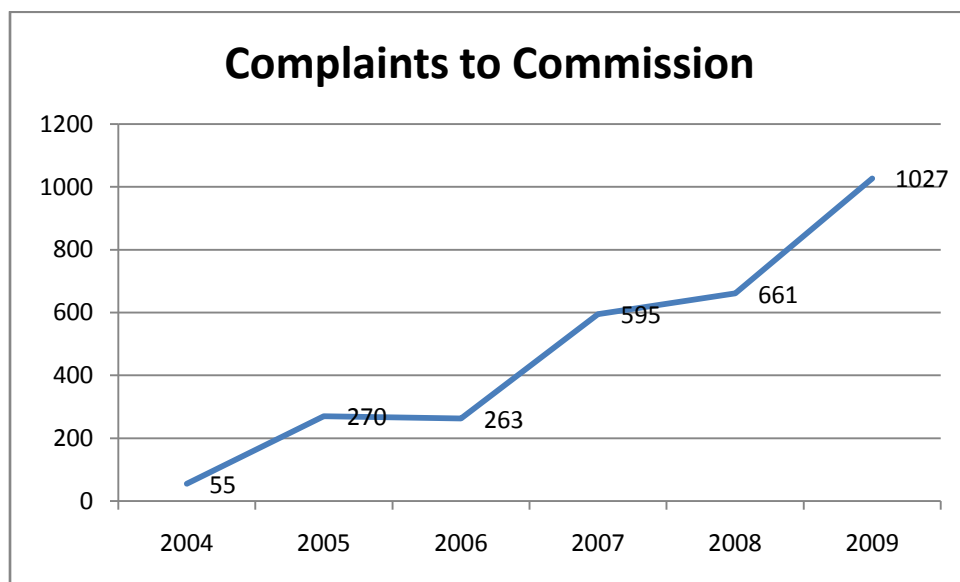


Figure 7: Number of complaints made to the Commission

The increase in the Commission’s staff over the past year has allowed it to focus on prevention efforts, which entails establishing collaborative relationships with outside entities, such as Inspection Boards, the Court of Auditors, the police force, and the State Commission for Review of Funds. Successful working relationships with these agencies can serve to augment the Commission’s effectiveness in anti-corruption efforts and also enhance its positive public image, particularly in cases where technical

¹² (FDV - CJMMK, Stališca o korupciji, 2008, N =911)

qualifications (money laundering, complex political corruption, etc.) are lacking in the agencies tasked with investigation, or political obstacles are preventing cases from moving forward.

The combination of functions (COI/IAD, investigations, corruption risk assessment) within one agency seems to be unproblematic, as citizens believe the Commission is technically competent to conduct fair investigations and is unbiased in its decisions. This faith in the impartiality of the Commission may be enhanced by the restriction barring it from conducting criminal investigations, thus preventing a perception of political targeting.

Challenges and factors for success

Political will

The National Assembly is the primary oversight mechanism for the Commission, requiring an annual report on the contents and scope of work, the decisions, findings and opinions issued by the Commission, and an assessment of the current state of corruption and potential for its prevention. However, Parliament continues to demand more information from the Commission than is warranted by law, including the names of complainants. Despite public proclamations of support for the anti-corruption agenda and its implementation by the Commission, Parliament persists in indirectly blocking investigations that are related to ministries.

One major change that was introduced in the 2010 law concerns the appointing authority for the Commission. Rather than the Parliament, it is now the President that appoints the Commission chair and other members based upon the recommendations by a selection committee, whose composition is explicitly outlined in the 2010 law. The President is also allowed to discharge the commissioner or deputies if one of the following conditions is met:

1. Upon a request of the chair or deputy chair (in cases of resignation)
2. If he/she has been formally sentenced to prison
3. Due to permanent loss of capacity to hold office
4. Incompatibility with the holding of outside employment

This list of conditions excludes a former provision that allowed the National Assembly to remove a chairman from office if he or she “violate[s] the Constitution or law while holding office,”¹³ which was employed in 2004 in a failed attempt to remove the present chairman from office. However, the continuing absence of a counterbalancing mechanism for the appointment of Commission members may present challenges that the Commission has faced before, particularly in cases where the appointing entity agency refuses to cooperate and demands the resignation of the chairman or deputies.

Resources

Since its inception in 2004, the Commission has been able to secure an independently authorized budget that has increased in each year of its operation. This has allowed for corresponding increases in the number of personnel, the quality of its facilities, and the scope of projects that the Commission is able to undertake. Moreover, the sizable pool of qualified individuals in the civil service from which the Commission was able to staff its positions has provided much needed balance and the capacity for learning-by-doing.

¹³ Article 7, 2004 law

	Population	GDP	ACA Staff	ACA Budget	Per capita expenditure	Expenditure as % of GDP
Slovenia	2 million	\$48.48 billion	28	\$2 million	\$ 1.00	0.04%
Ethiopia	88 million	\$77.47 billion	272	\$2.2 million	\$ 0.03	0.003%
Kenya	39 million	\$62.56 billion	273	\$24.6 million	\$ 1.59	0.04%
Singapore	4.7 million	\$243 billion	88	\$17 million	\$ 3.63	0.70%
Uganda	33.4 million	\$43.22 billion	320	\$9 million	\$ 0.27	0.02%

Figure 8: Macroeconomic comparisons

Size/Scope

There is no question that the population of Slovenia is small by global standards (just over 2 million in 2010) and ethnically homogenous, and this has provided a more contained environment in which to establish anti-corruption reform. But it is also important to note that the Prevention of Corruption Act of 2004 did not provide the Commission with an expansive mandate. In fact, the Constitutional Court further limited its scope of activities in 2007 by determining that integrity plans were voluntary. Therefore, the Commission was forced to start small, and gradually increased its operations in proportion to its resources (both material and human). This approach to anti-corruption reform allows for the identification of gaps and challenges before extensive resources have been committed, and most significantly, supplies the benefit of time to recognize how best to address those challenges.

Leadership

The Commission was led by an extremely experienced and technically qualified individual from 2004-2010s, who also held the position of President of GRECO.¹⁴ Without his vision and capacity for withstanding political onslaughts from Parliament and elsewhere, there is little doubt the Commission would not be in the position it is today. His departure in late 2010 presented a particular crossroads for the Commission in terms of its direction and character. The new configuration of the Commission structure reflects an intention to both continue its work in traditional areas, while also more clearly articulating a vision for its role in the broader fight against corruption.

Rule of law

The role of the Constitutional Court was critical to the present-day success of the Commission, not in the least because it ascribed a fundamental role to the Commission in upholding the rule of law through anti-corruption efforts. By insisting on a constitutional separation of powers in anti-corruption efforts, the ruling by the Court also ensured that an independent agency would remain responsible for integrity and anti-corruption reform, thereby virtually eliminating the possibility that Parliament would be able to appropriate the Commission's mandate.

The Commission also benefitted from a well-designed regulatory framework, which was further enhanced in 2010 with the new Integrity and Prevention of Corruption Act (2010), drafted by experienced members of the Commission. In the years since 2008, the criminal code has been revised to allow for easier facilitation of criminal corruption investigations, and a National Bureau of Investigations

¹⁴ Group of States Against Corruption, Council of Europe.

has been established. Though political party financing laws are weak and the financing system lacks transparency, the regulatory framework supporting anti-corruption reform has been steadily strengthened through the passing of new and revised laws.

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