

# The 'Silent Guardians' in the Fight against Corruption: The Case of North Macedonia<sup>1</sup>

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## ABSTRACT

Impartial public administration is a key gatekeeper against corruptive practices and the necessary condition for the process of democratisation. Yet, in the case of North Macedonia, there is an ongoing challenge in addressing the problem of politicisation of public administration. On one hand, the ombudsman holds the normative position to safeguard citizens in front of state administration bodies, to act upon the impartiality biases or other deviances of norms, and to annually report to the National Parliament. On the other hand, the parliament should be able to hold executives and institutions accountable for their actions and to act upon the ombudsman's recommendations. However, there is a limited understanding of the role that these two institutions can play in an effective fight against corruption as part of the democratisation processes. The purpose of the article is to examine the institutional gaps where the opportunities for corruption and social traps are encouraged. Based on theoretical, empirical as well as comparative observations, within single case method analysis, this article aims to examine the compliance of the theoretical fingerprints with the actual practice and provide a different angle on the institutional opportunities for social traps, in the context of unconsolidated democracies. The findings show that there is a causality between the institutional 'silent guardian' of the citizens and the prevalence of corruption. It also encourages further discussion on the factors that undermine the positions of the ombudsman and the parliament to take active engagement in rooting out the corruption from societies.

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*JEL: K42, K10*

## 1 Introduction

There is an ongoing debate on the deterioration of the quality of democracy, notably present in the Central and Eastern Europe, commonly linked to the prevalence of corruption and the weak rule of law. (Guasti and Mansfeldova, 2018, pp. 9-21). These practices are especially evident in the case of Macedonia<sup>2</sup> as fragile democracy with ongoing threats of corruptive prevalence and lack of democratic sustainability. Moreover, a situation of state capture has been identified, following a political crisis during 2015, triggered by the wire-tapping scandal on high-level corruptive cases. (EU Progress Report, 2016, p. 9). One of the exemplified forms of the common concerns related to the corruption prevalence, is the weak law enforcement and the lack of impartial public administration. On the one hand, an effective and merit-based public administration has been recognized as a core pillar of the quality of governance and the necessary factor for consolidating democratic societies. On the other, the politicization of the public administration or the citizens' discrimination in public employment based on political grounds, shows to be an important feature behind weak anti-corruption strategies. Moreover, the lack of mutual trust between the citizens and other collective actors proved to inhibit the progress of law enforcement and rooting out corruption from political systems.

Nevertheless, relevant independent bodies, such as the Ombudsman with a mandate to monitor, detect, act and report on biases in public administration bodies or discrimination as experienced by the citizens, have remained under-acknowledged in the institutional set-up for prevention and repression of corruption. Additionally, the role of the national parliaments has as well remained under-acknowledged in the exercise of horizontal accountability as an important feature in constraining the power of executives and reducing the opportunities for abuses of power. Although the national parliaments as political and democratic institutions hold normative power to exercise democratic accountability and hold the Ombudsman accountable for their action, the relation between the Ombudsman and the parliament in addressing the corruptive practices and providing for consolidation of democracies, remains understudied. Hence, this paper aims to grasp the loci of the (frequent) deterioration of the democratization processes in the case of Macedonia and to zoom into the roles of the Macedonian Parliament, i.e. Assembly and the Ombudsman in addressing the deviations of norms related to *politicization of the public administration*, or discrimination in the public employment based on political ground. This approach follows the Rothstein' theoretical arguments

<sup>2</sup> The constitutional name was changed to the Republic of North Macedonia. In the text is referred as Macedonia.

on the use of the principle of impartiality in the exercise of the governmental power and draws perspectives from the institutional theories on the quality of governance, corruption and social trust linked to the key role of the impartial administration in the effective fight against corruption. (Rothstein, 2005, p. 24). It also draws arguments on the democratic theoretical approach in conceptualizing legitimation as a process of actual justification in providing for the exercise of democratic accountability, as one of the key pillars of embedded democracies (Wolfgang, 2004, 2019).

Following the analysis of the theoretical and empirical findings to be discussed in the next sections, this article suggests that both the parliament and the Ombudsman, in cooperation with other collective actors, can provide for a political system that is able to address the citizens' problems and create a political culture of accountability. This is important because the arguments presented in this article further engage with the discussion on the deterioration of democratization processes in Central and Eastern Europe, and encourage discussion on the role of the national parliaments and other independent and regulatory bodies in the fight against corruption, under the EU integration process. It does not, however, allow for definite conclusions concerning the factors that have an impact of these institutions in the system of check and balances, nor the factors that affect the individual choices, due to the limitation of this article.

## **2 The concept of social traps**

In order to examine possible factors behind, this study takes the position of examining the opportunities for corruptive behavior as an obstacle for reaching control of corruption. In this regard, academics have argued that in the absence of public criteria, flow of information and transparency over the quality of procedures and regulations, corruptive behavior is 'invited' and initiated. For example, the political party leaders take the opportunities for non-distributive strategies over (influential) groups of people that can provide for winning elections and keeping their power in place as long it's possible. Such deviations take forms of clientelism, nepotism or patronage, reflected usually in an unequal distribution of goods or resources through social welfare programs (pensions systems, job opportunities in the public sector and whatever necessary for "buying votes" (Stokes et. al, 2012, pp. 14-16). These corrupt practices undermine the protection and the implementation of the collective strategies and allow individuals to further capture the public resources for private or third-party interest.

Therefore, the control of corruption is recognized to be the indispensable final stage of a successful process of democratization (Mungiu-Pippidi and Johnston, 2017, 2014). Countries which can learn how to take control of corruption epitomize countries with effective rule of law systems that are capable of providing legality, protection of human rights and safeguard of the social interest. Effective law enforcement and the ability of societies to empower people to accept the generalized moral norms and engage in en-

deavoring a political culture of resilience against corrupt practices is a necessary criteria for anti-corruption strategies to be considered successful. This would also amount as an indicator of exercising democratic accountability in practice and meeting the standard of representative democracies. The moral costs indeed have been identified as „expression of internalized beliefs attributing positive value to the respect of laws, and has been conceptualized as an informal institutional structure of compliance with legal norms regulating the conduct of public and private agents“ (Della Porta and Vannucci, 2005, p. 2). In this regard, the anti-corruption laws are said to be enforced by high moral costs exercised as informal sanctioning mechanisms based on cultural codes and values and the actors' belief in the functionality of the system: that sanctions and legal prosecutions can sustain and guarantee the rule of law and the principle of legality and predictability. Consequently, the respect of the formal institutions and the rules of the games provide for creating a political culture of account giving that can resist deviations of norms in all spheres of the society and enable empowerment and engagement of the citizens in maintaining the culture of high moral standards. When actors or elites in the allocation of rights and duties violate procedures, benefits and obligations, and the laws and procedures are manipulated, for undue influence on the rules of the game, citizens are entrapped in the vicious cycle of corruption, the law enforcement is ineffective and the legitimacy of the state activities is jeopardized (Kaufmann, 2008; Rothstein, 2011; Kurer, 2005, p. 231).

Moreover, in line with Olsen and Rothstein' arguments, these concepts are not considered as inherited or culturally determinate properties. As such, they are exposed to change, based on the interactions between the institutions, the public servants and the individuals (citizens). (Olsen, 2010, p. 159; Rothstein, 2005, p. 129). Consequently, the joint and mutually inter-dependent cooperation can produce or destroy the mutual, i.e. social trust that can reduce or provoke the transition *into a social trap*. Social trap, on the other hand, is defined as 'situation where individuals, groups or organizations are unable to cooperate owing to mutual distrust and lack of social capital, even where cooperation would benefit all' (Rothstein, 2005, pp. 1-22). The common situation of social trap is exemplified, but not limited, by frequent anchors of the citizens' mistrust in the administrative and democratic institutions, in form of weak law enforcement, disengagement from cooperation with others, or with the society in general. Hence, social trust, as argued by the institutional theorists, can also affect the interpretations and consequently, the political culture of accountability.

## **2.1 The principle of impartiality in representative democracies**

The quality of impartial and professional public service affects the everyday life of the citizens. First, the administrative decisions provide for quality administrative services under which every person should be treated on fair and equal terms, and it's not discriminated in exercising its rights in contact with the administrative bodies. Second, transparent and open administrative decisions provide opportunities and equal access to merit-based job positions that are

not pre-determinate by political affiliation. Scholars have argued that "if a public authority has a reputation for making the right decisions in the first place, this will generate public trust in the government and reinforce the legitimacy of administrative decision-making" (K.J. de Graaf et al., 2007, pp. 1-10). Hence, 'the legal quality of administrative decision-making is therefore of primary importance to the individual citizen and the public at large. It is an important element in the administration of justice by public authorities and it is important in upholding the credibility and sustainability of the government as a whole.' (Ibid.) In this regards, impartial public administrations can act, both as a guardian against deviations of norms, i.e. abuses of public power for public gains and against social traps. On a contrary, politicized public administration indicates risks of social traps or citizens' disengagement in the law enforcements 'as forms of everyday resistance to ineffective governance of state institutions and reactions to large-scale political corruption' (Ledeneva, 2011, p. 12).

Independent and regulatory bodies such as the Ombudsman, but also State Audit, State Commission for Prevention of Corruption etc. have a mandate to gather and report on relevant data, of biases, deviations and administrative malpractices on national, local and municipal level in order to justify the exercise of its normative powers, drawn from the citizens. Citizens indeed have their legal right to express their experiences with shortcomings or malpractices in administrative decisions, inability to access public information or threats to their civil rights. Most common public forum in representative democracies where or when the scrutiny process on the annual reports of these institutions is exercised, is the national parliament. In most of the political democratic systems the Ombudsman and the other independent bodies are appointed and held accountable by the national parliaments, based on semi or annual results.

When seeking to account of the quality of decision-making, democratic processes and respect for procedures, democratic theory' scholars have drawn on the concept of *legitimation* as relation between actors that comprise both attributes by the institutions and the moral agents and as a process of *actual justification* through which political rules and procedures are legitimized (Kneip and Merkel, 2018, p. 6). This type of justification also stands as a mechanism for account giving and gives access to the exercise of power relationships, empowered by citizens. When an actual form of legitimation and account-giving between these institutions is in place, the flow of information contributes to the transparency of governmental activities, with a tendency to diminish the concentration of power. Such practices stand as a form of horizontal accountability, by which the relationships between actors, institutions and decision-makers become more visible, reducing the possibilities for capturing institutions for private interest (Scott, 2014, pp. 472-487; Merkel, 2004). When effective, accountability processes have an integrative effect and are conducive to intellectual and moral self-development as well as self-government (Ibid.) As institutional scholars have also argued, „they ameliorate the moral qualities of individuals and society through the internationalization of a democratic and civil ethos, improve communication, learning, and epistemic quality; contribute to power-equalization and political equal-

ity" (Olsen, 2014). Consequently, the politics of accountability involve both the pursuit of accountability within the accountability regime and efforts to change established regimes (Waren, 2014).

## 2.2 Research question and research methodology

This article therefore asks how the process of account giving affects ineffective law enforcement in anti-corruption strategies. First, it takes the assumption that the deviances in the employment practices in public administration bodies affect the citizens' trust in the political system and the situations of social traps. Second, it takes the assumptions that the account giving between the Ombudsman as an independent body that reports on such deviances and the national parliament as an institution that represents the citizens' interests, affects, the culture of political accountability and the process of democratization. To examine the possible causality, the article first explores the institutional framework of the Ombudsman and the Assembly (the national parliament) and the conditions of account giving. By taking qualitative within single case study approach, the first methodological step includes an overview of the normative mandates of both institutions as evident in legal and institutional documents: Law on the Ombudsman, the Law on the Assembly, the Constitution, the Rule of Procedures, etc.

Second, to unpack the conditions of account giving, a comprehensive overview of the Ombudsman annual reports for the period of 2001-2016 is applied, by using a systematic approach, focusing on the deviations in the employment, based on political grounds as reported by the citizens in the annual reports. A sample of 14 annual reports was studied. Then, two types of empirical evidence were listed: *pattern evidence* based on the most common data as reported by the Ombudsman in the period from 2001 to 2016 and *sequence evidence*: showing the temporal evidence on two key events that have been identified as critical junctures, both for the Ombudsman and the national parliament, i.e. the Assembly. The first critical juncture is identified in 2003 when the Constitutional amendments have been introduced and the Ombudsman as an institution expanded its competences to address cases of discriminations and biases in the principle of impartiality, fairness or legality. The second critical juncture is identified in 2015 when the European Commission tasked a group of independent senior rule of law experts to prepare a report and concrete recommendations, which fed into the Commission's "Urgent Reform Priorities", in light of the revelations in the wiretaps scandal, in summer 2015.<sup>3</sup> The same senior rule of law experts prepared a second report, in 2017, assessing implementation of their previous recommendations and providing guidance to the new government. This was the time when European Commission have took different step in the case of an EU applicant state and was the time when the role of the regulatory and independent bodies, including the

<sup>3</sup> During the period under review, January 2015 to January 2017, Macedonia has been engulfed in a political crisis that began when the leader of the opposition released wiretapped material revealing widespread corruption and egregious abuse of power within the government. The report outlined a set of urgent reform priorities comprising the main points in the EU agenda for Macedonia. (BTI, Macedonia country report, 2018).

one of the Ombudsman, has been acknowledged as key actor in meeting the shortcomings in the rule of law and the fight against corruption.

Scholars have identified that during critical junctures, the political decision-making, the initiatives for political mobilization and coalition formation, and the strategic interactions between key actors, are likely to be directly influenced by multiple and contradictory political pressures of varying strength, which, given the generalized uncertainty, are likely to be ambiguous and to change rapidly (Capoccia, 2015, pp. 147-179). Political actors, therefore, have substantial leeway to choose which pressures to yield to, and which instead to resist, in deciding their best course of action (ibid.) The critical junctures are also important features for analyzing the actors' actions that (might) have been taken and contributed for different institutional path development towards a change of political regimes.

Hence, to complement the qualitative analysis, a comprehensive overview of the annual reports of the National Assembly for the period from 2001 to 2016 is also applied, as well as analytical method approach of the available minutes of meetings or stenographic notes for given period. The access to data to the minutes of meetings of the relevant working bodies or relevant Inquiry Committees concerning the process of legitimation or actual justification is inconsistent. The public discussions that have taken place on regular plenary sessions are analysed, with some inconsistency in the dates/years of analysis. A sample of 26 documents was studied and comparative method of analysis was applied. The analysis was focused on the discussions on the discrimination on political ground as identified in the Ombudsman reports. Most of the documents were available in English, while some official documents were only available in Macedonian language, and therefore the findings have been translated in English language. To complement the scope of analysis, additional empirical evidences on corrupt administration practices related to discrimination in public employment based on political ground were drawn from OSCE/ODIHR elections monitoring reports, the EU Progress reports and other findings of international and national institutions, related to corrupt administrative practices, prior and after the period of the critical junctures.

In the discussion section, the theoretical fingerprints drawn from the institutional and democratic theoretical approach, are analyzed from the perspective of the empirical findings. The methodological approach for this paper follows the tradition of 'explanation through interpretation' in the Weberian sense<sup>4</sup> aiming to elaborate on the causalities between observed theoretical fingerprints and the actual empirical findings. The outcome seen as democratic deterioration and ineffective prevention of the opportunities for corruption is indicated in the secondary literature. Macedonia as an EU candidate country is a typical case of a fragile democracy. According to the Bertelsmann Stiftung's Transformation Index (BTI) published in 2018, Macedonia has reached limited transformation in the democratization process and

4 Social science in this view 'is a science concerning itself with the interpretative understanding of social action and thereby with a causal explanation of its course and consequences' (Weber, 1978, p. 4).



is identified as defective democracy rather than consolidated democracy, reaching deterioration in the democratization process (BTI, 2018, p. 11). That said, an analysis is proceeds in the next section.

### **3 Results: the competences of the Ombudsman and the Assembly**

#### **3.1 The competences of the Ombudsman**

The Ombudsman is an independent and self-governing body, regulated under the Constitution since 1991 (The Ombudsman Law, 2003, Article 3). The Ombudsman protects the constitutional and legal rights of citizens when there have been violations by state administration bodies or other bodies and organizations with public mandates (Constitution, 1991, Article 77). The Macedonian Parliament adopted the first Law on the Public Attorney (Ombudsman) in 1997. Relevant critical juncture for the development of Ombudsman in this period is the adoption of the Ohrid Framework Agreement in 2001.<sup>5</sup> Following the constitutional amendments upon the Ohrid Framework Agreement, the Ombudsman Law was amended in 2003 by which the institution was decentralized and six regional offices were established (Official Gazette of RM, 2003, No. 60).

According to the Constitution and the Ombudsman Law, the Ombudsman is accountable to the Macedonian Assembly by the mechanism of ex-ante and ex-post scrutiny. The Ombudsman is elected by the Assembly upon nomination, and is accountable to the Assembly, by reporting with annual report in a public session attended by representatives of the Government (The Ombudsman Law, 2003, Article 5; 2009, Article 36). The annual report is a public document and contains the Ombudsman's findings regarding the level of respect for the human rights and freedoms of citizens, a description of the main problems, statistical data, information on processed and ongoing complaints, a description of specific cases of violations, as well as a report of the other activities of the Ombudsman (Rules of Procedure of the Ombudsman, Article 56). Submitting its findings to the Assembly accounts for exercise of democratic horizontal accountability and the reports should be scrutinized in sessions with Government representatives (Assembly of the Republic of Macedonia, 2014, p. 209).

The Ombudsman may also submit special reports to bodies within local government. The Ombudsman is obliged to handle complaints conscientiously, impartially, efficiently and responsibly (The Ombudsman Law, 2003, 2009, Article 7). The Ombudsman's office may initiate procedures at its own initiative if it assesses that the constitutional and legal rights of citizens are violated or if the principles of non-discrimination and equitable representation of community members in the bodies (The Ombudsman Law, 2003, 2009, Article 13).

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<sup>5</sup> This agreement was established, between political parties representing ethnic Macedonians and ethnic Albanians, after the inter-ethnic conflict which occurred the same year.



### **3.2 The parliamentary oversight framework**

The Assembly on the other hand, performs legislative, representative and oversight role. As a regulated system of parliamentary democracy, the powers of the executive, the legislature and judiciary are separated and the executives are accountable to the Assembly (Constitution of the Republic of Macedonia, 1992, Article 92; 2005, 2019).<sup>6</sup>

The oversight functions of the Assembly are regulated with the Constitution, the Law on Assembly and the Rules of Procedures of the Parliament and several means are available for executing the normative power of holding executives accountable of their performances in the protection of the public interest. Important feature of the normative functions of the Assembly is the oversight over the actions of the Government administration: Parliament may ask for reports and information from those ministers and officials who are responsible for the work of administrative bodies, or on matters within the scope of the respective ministries' competencies. More precisely, they can ask them to submit reports on enforcement and implementation of the law or other particulars at their disposal. The state administration bodies perform their duties autonomously and on the basis and within the framework of the Constitution and laws, being accountable for their work to government (Article 96 of the Constitution).

An important means for this type of parliamentary scrutiny are: 1) Oversight (Committees) Hearings: the government's accountability to the parliament is brought into play by holding hearings in committees. 2) Inquiry Committees set up for any domain or any matter of public interest (Article 76 of the Constitution, Official Gazette, 2013). The Assembly can also set up a permanent committee of inquiry for the protection of the freedoms and rights of citizens. The findings of the committee form the basis for any initiation of proceedings to ascertain the answerability of public officials. The oversight hearings as a control mechanism in the case of Macedonia were introduced under the Law on the Assembly, in August 2009. Any relevant working body can initiative oversight hearing (RoL, Article 21: (1). The working body can decide to hold an oversight hearing with the majority of the votes from the present members and with at least one third from the total number of members (RoL, 2009, Article 22). Oversight hearings are held in order to obtain information and expert opinion about the creation and implementation of new policies, enforcement of laws and other Governmental activities of the state administration bodies (IPU, 2016). During the oversight hearing, the respective working body can invite authorized representatives of Government or state administration bodies at the session and ask them to provide information and explanations regarding the subject of the oversight hearing. The working body can also ask the authorized representatives to submit the requested information, opinions and positions in writing, at least three days before the session of the respective body is held. During the oversight hearings, information is required,

<sup>6</sup> The Assembly is comprised of 123 MPs elected for four-year mandates by a proportional representation system.

if necessary, to harmonize or clarify concrete issues and facts. Moreover, each parliamentary group is entitled to expert advice and a separate office, according to the number of Members of the Assembly in the group (Rules of procedures, Article 22 and 33). As regulated with Article 104 of the Rule of Procedures, minutes shall be kept from parliamentary sessions. After the end of the oversight hearing, the working body submits a report to the Assembly, which includes the essence of the presentations, and can propose conclusions to submit to the Government.

The Inquiry Committee, on the other hand, is a mechanism that ensures an ex-post control over the Government and other institutions that accountable to parliament, i.e. the Assembly. An inquiry committee is a body, which can be established by a decision of the Assembly to undertake the function of political control in all areas and all matters of public interest. Proposal for the establishment of an inquiry committee can be submitted by at least 20 MPs. An exception to this rule is the Committee for Protection of Civil Freedoms and Rights, which is a standing inquiry committee. Terms of reference and composition of inquiry committees are specified by the decision for establishment, whereby presidents of inquiry committees by the rule are from among the MPs from the opposition parliamentary groups. Inquiry committees are formed to establish facts and situations related to controversial matters, which are under the competence of ministries and other state authorities. An inquiry committee has a task to inspect the documentation, make an analysis of each separate event or case and present the findings in front of the Assembly. Inquiry committees cannot have investigative and other judicial functions. However, the findings of the inquiry committees may be the base to initiate a procedure to call to account the holders of public office (Rules and Procedures of the Assembly of RM, 2008, 2010, 2013). In 2008, the Macedonian Assembly has an established Standing Inquiry Committee for Protection of Civil Freedoms and Rights, in reference to Article 26 of the Constitution and the Decision for establishing working bodies in the Macedonian Assembly from 26 June 2008. The Assembly has, however, no specialized anti-corruption commission (Constitution of RM, 1992, Article 76.159).

### **3.3 The principle of impartiality in public administration**

A professional, competent and impartial public administration has been identified as one of the key factors behind effective anti-corruption strategies and law enforcement. The employees of the public sector are obliged to perform their activities conscientiously, professionally and efficiently in an orderly and timely manner by law and Constitution. Civil and public servants are obliged to perform their jobs impartially, without being influenced by political parties, their own political beliefs or personal financial interests, and are obliged to protect the reputation of the public sector (Code of Ethics of Public Servants, 2011, Article 139). Public sector employees may not participate in election campaigns or in other public events of a similar nature during office hours.

The principle of legality and the principle of equality is also regulated under the Law on Preventing Corruption. (1) Every citizen has the right to an equal

approach in the performance of the matters of public interest and to equal treatment on the part of persons carrying out public functions, without being the victim of corruption. (2) Every citizen has the right to a free appearance on the market and to free competition, without fearing that he may be the victim of monopolistic or discriminatory behavior, which is the result of corruption (Law on Prevention of Corruption, 2002, 2004, 2006, 2008, 2010, 2015). These principles have shown to be crucial for an effective fight against corruption.

In order to create independent, professional and impartial public administration, politically unbiased and based on the principle of competence and merit in recruitment, the Constitution and the legal framework have stipulated criteria for recruitment and promotion in public administration, which should provide for its professionalism and expertise. Hence, the competences of the public administration are regulated under the Constitution and the relevant legislation stipulate the enforcing law, monitoring the situation in the area they are established for, giving initiatives, drafting regulations, settling with administrative affairs, and performing administrative oversight. Macedonia has developed a legal and institutional framework to guarantee the civil and political rights of citizens and provides for fundamental democratic processes (Law on Public Sector Employees, 2014, 2016). Nevertheless, most of the citizen's complains as reported by the Ombudsman annual reports in the period from 2001 to 2016 are related to biases in the labour relations and discrimination on political ground, followed by complaints from the discrimination in the judiciary and the exercise of their legal rights in the front of courts.

## **4 Discussion**

### **4.1 Discussion on the Ombudsman reports' findings**

The document analysis and the Ombudsman reports for the period from 2001 to 2016, has identified several patterns of deviances in exercising power by administrative bodies. Citizens' complaints to the Ombudsman during 2001 to 2004/5 are related to the labour relations, a particular problem with labour relation stopped on the grounds of technological surplus (Ombudsman Annual Report, 2002, p. 4). This period in the process of privatization set a framework of building a new path for edification of the inter-institutional system and integrity system that would be able to address the citizens complains as experienced in practice. However, as evident in the Ombudsman report in 2002, the taken initiatives to address the citizens complains did not deliver the required outcomes. Namely, the Agency of the Republic of Macedonia for Privatization confirmed the allegations for unlawfulness in the procedure of transformation of the public property. The Ombudsman sent a complaint to the Public Attorney for annulling the procedure for privatization. Yet, the recommendation, for unclear reasons and without any arguments was not accepted (Ombudsman Annual Report, 2002, pp. 4-12). This type of lack of institutional cooperation and lack of actions of the state bodies to the Ombudsman requests is evident in the following period.

The information on the employment discrimination on the political ground, has become even further evident in the Ombudsman report in the period from 2003 to 2016. In 2003, the Ombudsman reported on “drastic increase in the number of complaints in the field of labour which shows that the practice of so-called “party retaliation” continues after the conduct of any elections. This was particularly pronounced in the field of education and child protection institutions, both in the selection of candidates for employment and in and in the transformation of employees’ employment from indefinite to indefinite contracts.

In 2005, the Ombudsman continued with the practice of taking actions against corrupt practices. As reported, the Ombudsman took respectively disclosure of three judges for unprofessional and unethical working. The Ombudsman reaction has recognized as “the brightest event” in the fight against corruption in 2005 in the cooperation corruption barometer, in which were included 19 Chief in Editors of national media (Annual Report, 2005, p. 33). “The frequent illegal and tolerant passive attitude by the local authorized bodies and officials caused by personal interests or political influences” continued to be reported as practice in the upcoming years. In, 2007 the Ombudsman reported, “This situation creates justified revolt and dissatisfaction of citizens and their disbelief in the institutions, most of all in the higher officials in charge” (Ombudsman report, 2007, p. 38). During the course of procedures for appointing, in which the process was conducted according to the Law on working relations, the problems mainly referred to appointing an employee to a position, which was not in accordance with his/her professional background. (Ibid.) Once again, “typical cases referring to a violation of the right to working relations in conducting employment procedures at the state administration bodies, the unjustified reassigning, termination of the working relation, expressing dissatisfaction for calculated lower unemployment benefit, unrealized right to annual leave etc.” were also reported in the Ombudsman Annual report (2009, p. 41). The citizens continued to complain “on violation of the equality right during employment procedures at the municipal administration, as well as violation of rights to working relation, according to them on political grounds (2010, p. 85). Moreover, the Ombudsman reported that additionally “another worrying fact is spread in other areas where it is decided on citizens’ rights and selective approach is evident as well as unequal treatment in approaching justice.” (Ombudsman report, 2010, p. 90). On this ground, the Ombudsman suggested the employment of state servants to be liberated from any influences on a political basis as it directly concerns the quality, professionalism and responsibility in the execution of their work and certainly in the realization of citizens’ rights (Ombudsman report, 2011, p. 35).

During this period of time, the international OSCE/ODIHR monitoring missions prior or during elections have also reported on common allegations concerning threats to the public sector workers for losing their jobs, threats that pensions or social benefits would be withdrawn if their recipients choose not to support the party in control at the local or national level etc. (OSCE/ODIHR reports, 2004, 2006, 2009, 2011, 2014, 2017). All of these threats served as

evidence of politicization of the civil service. Moreover, in 2010, the Government made a decision to change the status of 5,000 full-time employees, lacking transparency and objectivity of the decision, despite the EU criticism and expert opinion that such a procedure violates all principles of transparency, fairness and merit (CUP Report, 2017, pp. 8-9). Withal, the OSCE survey data has also revealed that citizens believe that there is the highest level of corruption (62.8%) in the recruitment and career advancement in public administration (OSCE, 2012, p. 147).

During this period, the Ombudsman has continued to call for active participation of the Assembly in holding executives accountable, to pushing for control over these occurrences, while alarming about the partisanship of the institutions (Ombudsman reports, 2004, pp. 3-10; 2017). If such practices took place, this would have been considered as taking a new path towards a political culture of accountability or breaking patterns of the vicious cycle of misdoings.

In 2013, the Ombudsman has also raised the concerns that the conclusions of the Assembly, which should have obliged the Government and other bodies and organizations with public authority, to comply with the requests. Rather, it has reported that the decisions and Ombudsman's interventions have remained only declarative and rare, lacking compliance and respect to the normative conditions by the relevant bodies (Ombudsman report, 2013, p. 22). On this occasion, the Ombudsman has reported on the non-cooperative attitudes by the Public Prosecutor's Offices, the Basic Public Prosecutor's Office for Organized Crime and Corruption (Ombudsman report, 2013, p. 66), the Administrative Court (Ombudsman report, 2014, p. 65) and other institutions. The largest number of complaints received on the Ministry of interior occurred in 2015, the same year when the corruptive scandal, on the wire-tapping materials, was revealed in the public. That said, 2015 was also another event of a critical juncture when the Urgent Priority Reforms were issued. In the next section, we will examine the process of actual justification through the national parliament.

## **4.2 Legitimation or the process of actual justification through the national parliament**

In the period from 2001 to 2008, the data analyses on the available Minutes of Meetings/ Stenographic Notes and the annual parliamentary reports have identified few patterns in the process of actual justification. First, there has been some awareness among the parliamentarians on the need of institutional cooperation between the Ombudsman and the other state bodies on the findings, including the data on the politicization or discrimination in the employment-based on political grounds. There is also awareness of more effective engagement of the parliament in exercising its normative power to demand from the state bodies to respect the requirements by the Ombudsman. In this period, the Ombudsman Annual Reports are discussed by the Commission for Political System and occasionally, the Commission has been

inviting representatives from ZELS, local communities, academics and experts in their respective fields (Assembly annual report, 2002 - 2003, p. 64).

During the discussion of the Ombudsman annual report from 2003, few parliamentarians raised the issue on the biases of the impartiality by the public authorities and public servants. It was also suggested, "there is a need of much broader elaboration of the necessary activities and behaviours that public officials should have, in line with their duties to respect and exercise human rights and freedoms in the Republic of Macedonia, rather than to formally adopt the report" (Stenographic notes, 2004, p. 71). However, it was decided that "given our time is limited, and since this is a comprehensive report that touches on virtually all spheres, all areas of social life, we should make an effort to skip these topics." (Ibid.). Moreover, it was stated that the fact that 75% of complaints are disregarded and the fact that none of the summoned officials has responded to the Ombudsman's indications, diminishes the confidence in this important institution" was concluded during the sessions (Minutes of the meeting, 2004, p. 49). Yet, there is no record on the follow-up of these recommended measures or conclusions.

That said, due to the repetition of these similar patterns of scrutiny, the analysis has found that the discussions on the Ombudsman reports lacked consistency and quality in the performance of actual justification. During the presentation of the Ombudsman Annual report in 2004, at the 97 Parliamentary Session, held on May 31, 2005, the Ombudsman has called on the need of increased action by the MPs, by evaluating how laws are applied, rather than to perform a technical exercise of a formal adoption of the reports. During the regular plenary sessions, the Ombudsman has addressed the problems concerning the citizens' complaints on employment based on party affiliation. These practices of facades of legitimation continued in the following period, and yet the regulations under the Rules of Procedures that would improve the time-frameworks, or the rules that can introduce quality to the debate, did not change. Some of the MPs have recognized the negative long-term impact of such practices, as on the forthcoming youth "brain-drain" (51 regular Plenary Session, 10 April 2009). Yet, these discussions were followed by another formal adoption of the annual report.

The lack of normative compliance of the state bodies to the Ombudsman complains and initiatives to the Agency for public administration reacted upon, remained constant. Nevertheless, the formality of the public discussions has continued in the following years, with limited use of the oversight means. Although the Standing Inquiry Committee for Protection of Civil Freedoms and Rights was established in 2008 with a duty to exercise quality discussion on the Ombudsman findings and support the capacities of exercising oversight in the protection of human rights and freedom, in the following period from 2014 and 2015, remained completely silent. During the period from 10 May until 31 December 2014, 1 January to 5 March 2014 and from January 1 2015, to December 31, 2015 the Standing Inquiry Committee for Protection of Civil Freedoms and Rights did not hold any sessions (Annual Report, 2014,

p. 87; 2015, 2016). Much of the institutional theory critique on the social trap is evident in the Ombudsman reports for the period of 2013-2016 as well, before and after the peak of the political crisis in 2015. That said, the indicators of corruptive practices in form of the politicization of public administration and the unequal access to justice, i.e. biases of the principle of impartiality, have continued to be raised in the Ombudsman annual reports (Ombudsman annual report, 2014, p. 72). During this period, the analysis of the EU Progress reports on the democratization progress of the country, show that the European Commission has been identifying the lack of significant efforts in ensuring transparency, professionalism and independence of the public administration, in particular respect for the principle of merit-based employment that are not subject to political influence, together with the principle of equitable representation (EU Progress Reports, 2003-2014). However, there is also a lack of sufficient acknowledgement of the normative and legal need of compliance among the Ombudsman, the National Assembly and the other regulatory and independent bodies, concerning the strengthening of the rule of law and the implementation of anti-corruption strategies.

On 9 February 2015, a wire-tapping scandal was revealed, and the main opposition party accused the government of having been involved in widespread illegal surveillance of the private communications of political actors and state officials (European Commission, 2015, pp. 6-7). With the introduction of the Urgent priority reforms, based on the rule of law experts' fact-finding mission in the country in 2015 and 2017, the i.e. Priebe report, the EU has called the institutions for ensuring legal sanctioning of non-compliance with the requirements and recommendations of independent bodies and has called on cooperation between the public authorities and the Ombudsman, acknowledging the role both of the Ombudsman, the parliament and the other regulatory bodies in addressing the rule of law shortcomings and the fight against corruption, as a necessary conditions for the process of democratic consolidation.

The initiative of the European Commission, with i.e. Priebe reports to stress the normative position of the Ombudsman and the need for in-depth cooperation with the Parliament, the judiciary and other state bodies, also introduced the possibility for acknowledging the need of legitimation as a process of actual justification in delivering an actual act of account-giving. A break of patterns in this regard, would amount for breaking a situations of mutual mistrust, introduction of standards for higher moral costs and development of political culture of accountability. However, the formal character of the public debates of the Ombudsman reports revealing data on biases on laws, corruptive practices, ineffective rule of law and discrimination in the employment on political ground have continued upon the period of issuing the Urgent Priority Reforms, with some changes in the level of Governmental engagement in the follow-up recommendations to the responsible institutions. Yet, the use of the normative oversight means for challenging the social traps or systemic corruption, remains under-acknowledged, both on national and EU level.



## 5 Conclusion

This article has demonstrated that the independent role of the Ombudsman as a key guardian of the human rights has a crucial role in understanding the citizens' concerns and the lack of trust in the political system, seen as a necessary condition for effective law enforcement of anti-corruption strategies. The Parliament, on the other hand, serves as the guardian of representative democracy, but also as the impetus of the quality of democracy when legitimacy is drawn from its citizens if the principles of equality and legality are respected. This paper found that the consolidation of democracy requires an actual process of parliamentary oversight and control of the work of the administrative bodies through the process of democratic legitimation and account giving.

That said, when the relation between actors is compromised as a result of unjustified or hidden actions that benefits 'the few' rather than 'the many', for unduly influence on *the rules of the game*, the trust between actors is broken and actors end up in *situations of social traps* (Kaufmann, 2008; Rothstein, 2011; Kurer, 2005, p. 231). In this type of situation of mistrust there is loss of beliefs that the "others" will follow the rules of the game, or that rules and procedures are equally applicable to all. (i.e. equal access to justice). That said, the problems of social trust are seen in the citizens' mistrust in democratic and administrative institutions. Hence, the complaints on discrimination in employment based on political grounds further disengage the citizens from the society or they start to accept the corrupt political system as part of the game. In this regard, this article recognize the 'silent treatment' of the citizens' complains as reported to the Ombudsman, as an act of everyday resistance to ineffective governance of state institutions as well as a trigger for compliance with the "corrupt system" (Ledeneva, 2011, pp. 318-320).

This article identified that the Ombudsman hold normative power to report on deviances and malpractices as discrimination in employment, access to justice etc. However, as an independent body cannot stand alone, if a system of institutional cooperation and the political accountability is not well established. Hence, although the Ombudsman has potential to actively engage in rooting out corruption, it is up to the Parliament as democratic institution to exercise actual legitimation, increase the quality of scrutiny and oversight, and start establishing culture of democratic accountability. Constraining the power of executives and reducing the opportunities for corruption requires collective actions, and no single body, such as the State Commission for prevention of Corruption or the State Audit as well, can stand alone in the process. That said, the actual exercise of democratic accountability is a necessary condition for pursuing effective process of democratization and actual exercise of horizontal accountability in democratic political systems.

However, this article has shown that in the case of Macedonia, the exercise of the normative means of account giving or acknowledgment of the citizens complains of the system, had gradually eroded in the period from 2001 to 2016. Moreover, up to 2017 and 2018, the Assembly had taken none or limit-

ed follow-up measurements or actions to create public pressure to the state bodies which refused to cooperate with the Ombudsman, or call the Government on accountability based on the findings as reported by the Ombudsman. This lack of actual exercise of democratic accountability created facades of legitimation, under which the vicious cycle of corruption continued to develop into sophisticated forms such as state capture, and engage the citizens in the corrupt system and social mistrust.

Based on the presented discussion, this article has tested the theoretical observations from the democratic and institutional theory perspectives, and find that the quality of democracy and the process of democratization is affected by the absence of exercise of horizontal accountability, as regulated under the specifics of the political system. As a necessary condition for taking control over corrupt practices in the Governmental administration, the oversight means can contribute to the increase of transparency and flow of information between actors, institutions and individuals, and create conditions for actual account giving as well as to re-connect with the citizens. That said, reaching an impartial and professional public administration is a demanding and complex process that can start with breaking patterns of situations of social trust. As evident from the findings, in the case of Macedonia, there is a lack of parliamentary scrutiny over Ombudsman report(s) and second, there is insufficient understanding of its impact on the prevention of corruption, in forms of reduced impartiality, administrative malpractices or politicization of administration. That said, Parliament and Ombudsman are failing to bridge their competences and mandates in inter-institutional cooperation that can contribute to the prevention of corruption, nepotism, clientelism or state capture. These arguments can confirm that account giving affects the ineffective law enforcement in anti-corruption strategies. In fragile democracies, the risks to quick transitions to situation of social traps, and high corruptive practices, are still ongoing, and the indicators of the respect of the civil rights should be taken very seriously. As long as the respect of the civil rights is in decline, rather than in progress, as evident in the case of Macedonia or other countries in the CEE, no progress in the fight against corruption is likely to be expected.

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