

TECHNICAL PAPER

Trends and practice of Special Courts and Specialised Judges in the Anti-Corruption area

Prepared by:
Filipe MARQUES
Council of Europe Expert

and

Kyela LEAKEY
Council of Europe Expert

With input from:
Michael HOPMEIER
Council of Europe expert

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For further information please contact:

Economic Crime Cooperation Division
Action against Economic Crime Department
DG I
Council of Europe
e-mail: contact.econcrime@coe.int
www.coe.int/econcrime
www.coe.int

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TABLE OF CONTENTS

1	EXECUTIVE SUMMARY	7
2	INTRODUCTION.....	12
	2.1 Scope of this paper.....	12
	2.2 Methodology.....	12
	2.3 Approaches to preventing and combatting corruption.....	13
	2.4 Anti-Corruption Courts as an emerging tool in combatting corruption	14
	2.4.1 Categories of judicial anti-corruption specialisation	14
	2.4.2 Domestic challenges to addressing corruption through the courts	16
	2.5 The Case for an International Anti-Corruption Court.....	17
3	RATIONALE FOR SPECIALISED ANTI-CORRUPTION COURTS AND JUDGES	20
	3.1 Specialisation in judicial systems generally	20
	3.1.1 Meaning of specialisation and choosing a model of specialised court.....	20
	3.1.2 Risks of specialisation.....	22
	3.2 Rationales for specialised anti-corruption courts and judges.....	23
	3.2.1 Integrity and prevention of corruption.....	23
	3.2.2 Efficiency and expertise	31
	3.2.3 The role of external factors	42
4	MODELS OF ANTI-CORRUPTION COURTS AND SPECIALISED JUDGES	51
	4.1 Investigation and prosecution.....	51
	4.2 No specialised prosecutors	51
	4.2.1 Specialised prosecution or prosecutors.....	52
	4.3 Court arrangements and jurisdiction	56
	4.3.1 Models of anti-corruption specialisation	56
	4.3.2 Jurisdiction	68
	4.4 Judges and Resources.....	71
	4.4.1 Composition of the specialist bench and allocation of cases	71
	4.4.2 Appointments, vetting, conditions, discipline, and removals.....	73
	4.4.3 Funding	78
	4.5 Impact of anti-corruption specialisation.....	78
	4.5.1 On efficiency	78
	4.5.2 On judicial integrity and independence	79
	4.5.3 On prevention of corruption	80
	4.5.4 On economic growth and investment.....	82
5	PROBLEMS AND CHALLENGES.....	83
	5.1 Resistance from Judges.....	83
	5.2 Political resistance.....	85
	5.3 Sustainability of reforms	87
6	CONCLUSIONS.....	90
	6.1 Restructuring and strengthening the judiciary.....	90
	6.2 No standardised solution.....	91

6.3	The need to identify the reasons and define goals	91
6.4	Choosing the model according to the underlying rationale	92
6.5	Consequences of each option	93
6.5.1	Comprehensive parallel court	93
6.5.2	Embedded Multifunctional Court	95
6.5.3	Embedded Specialised Court	95
6.5.4	Specialist division/specialised judges	96
6.6	The role of international institutions	96
7	BIBLIOGRAPHY	97

List of Tables

Table 1: Global adoption of anti-corruption courts	15
Table 2: Formal membership status of countries in respect of the Council of Europe and EU	43
Table 3: Categories of AC Courts	56
Table 4: Comparison of the Corruption Perception Index (CPI)	80



ABBREVIATIONS

ACC	Anti-Corruption Court
ACOCC	Albanian Anti-Corruption and Organised Crime Court
AJC	Afghanistan Anti-Corruption Justice Centre
APUNCAC	Anticorruption Protocol to the United Nations Convention against Corruption
ARMA	Ukrainian Asset Recovery and Management Agency
BIANCO	Madagascar Anti-Corruption Bureau (<i>Bureau Indépendant Anti-Corruption</i>)
CCJE	Consultative Council of European Judges
CMJA	Commonwealth Magistrates' and Judges' Association
CMS	Slovak Republic Central Court Management System
CPEAC	Madagascar Specialised prosecutors and judges (<i>Chaîne Pénale Economique et Anti-Corruption</i>)
CPI	Transparency International's Corruption Perception Index
CPIE	Senegalese Court for the Prevention of Illicit Enrichment
CPS	English Crown Prosecution Office
EU	European Union
GRECO	Group of States against Corruption, Council of Europe
HACC	Ukrainian High Anti-Corruption Court
HCJ	High Court of Justice
HMCTS	His Majesty's Courts and Tribunals Service of United Kingdom
HMRC	His Majesty's Revenue and Customs of United Kingdom
HQCJ	Ukrainian High Qualification Commission of Judges
IACC	International Anti-Corruption Court
IAP	International Association of Prosecutors
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
IMF	International Monetary Fund
KNAB	Latvian Corruption Prevention and Combating Bureau
KPK	Indonesian Corruption Eradication Commission
MEDEL	Magistrats Européens pour la Démocratie et les Libertés
NABU	Ukrainian National Anti-Corruption Bureau



NACP	Ukrainian National Agency on Corruption Prevention
NAKA	Slovak Republic National Crime Agency of the Presidium of the Police Force
NBI	Albanian National Bureau of Investigation
NCA	National Crime Agency
NECC	UK National Economic Crime Centre
NGO	Non-governmental organisation
OACU	City of London Police Overseas Anti-Corruption Unit
OECD	Organisation for Economic Co-operation and Development
PAC	Madagascar Anti-Corruption Court (<i>Pôles Anti-Corruption</i>)
PCIE	Ukrainian Public Council of International Experts
PNUSKOK	Croatian National Police Office for the Suppression of Corruption and Organised Crime
SAPO	Ukrainian Specialised Anti-Corruption Prosecutor's Office
SCC	Slovak Republic Specialised Criminal Court
SFD	Specialist Fraud Division at the Crown Prosecution Service of United Kingdom
SFO	Serious Fraud Office of United Kingdom
SPAK	Albanian "SPAK" Institutions: National Bureau of Investigation and Special Prosecution Office
SPO	Albanian Special Prosecution Office
UNCAC	United Nations Convention against Corruption
UNGASS	UN General Assembly Special Session against Corruption
USAID	United States Agency for International Development
US DOJ	United States Department of Justice
USKOK	Croatian Office for the Suppression of Corruption and Organised Crime



1 EXECUTIVE SUMMARY

Corruption, money laundering and other forms of economic crime present a great challenge for modern societies in multiple levels, including prevention, identification and investigation, prosecution and adjudication. To illustrate the scale of the challenge it is worth mentioning that various estimates indicate that the cost of corruption annually is about \$2.5 trillion or close to 5% of global GDP¹, and there are between \$800 billion and \$2 trillion laundered annually. These figures clearly show that there is a need for a concerted effort to address these forms of criminality.

Modern societies have been forced to seek to identify means to address corruption, money laundering and other forms of economic crimes in a way that would be proportionate and dissuasive for those involved, the measures adopted include strong legislative frameworks, establishment of specialised law enforcement, prosecution and even judicial bodies.

This study (technical paper (TP)) analyses the rationale for the establishment of specialist anti-corruption courts (ACC) against that of using specialised anti-corruption judges, by comparing the experiences of those countries that have adopted such anti-corruption measures. The in-depth analyses focused on nine member States of the Council of Europe that have anti-corruption courts or anti-corruption judges. Reference is, however, made to a greater number of countries for context and comparison. There are 33 states or jurisdictions in total which have either an anti-corruption court, or judges who have specific jurisdiction to hear corruption cases: 11 in Europe, one in Northern America, 10 in Africa and 10 in Asia and Pacific.

The analysis is based on desk research² and information kindly provided by members of Magistrats Européens pour la Démocratie et les Libertés (MEDEL) and from members of the Commonwealth Magistrates' and Judges' Association (CMJA).

The current trend in anti-corruption practice is to focus on specialisation of institutions, in particular the prosecution services and the judiciary. Most ACCs have been established in the 21st century, however various countries have taken different approaches and these courts are not all the same.

Rationale for Specialised Anti-Corruption Courts

The practice of judicial specialisation is not new, Gramckow and Walsh³ have identified three models of judicial specialisation: i) separate court or court system; ii) separate court division or bench within a court; and iii) judges with special expertise sitting on *ad hoc* court panels when needed. Deciding which model to adopt means identifying why specialisation is necessary – what is the problem that needs to be solved by the introduction of judicial specialisation? According to Gramckow and Walsh if there is a large volume of cases that require judicial specialisation a separate court may be useful, however, if the number of cases and the potential workload is unclear, a specialised division or specialised judges may be sufficient.

¹ Estimated by the [UN](#) and the [World Economic Forum](#)

² Research for this paper was completed in June 2022.

³ Gramckow H. and Walsh B. (2013), *Developing Specialised Court Services: International Experiences and Lessons Learned*.



It has to be noted, however, that there are dangers of specialisation, the possibility of which need to be considered when deciding whether to adopt a specialised ACC.

The main rationales for adopting specialised anti-corruption courts or judges identified in this study are integrity and prevention of corruption; efficiency and expertise; and external factors.

Focusing on case studies conducted under this paper, integrity and prevention of corruption was a reason for establishing ACCs in four countries: Albania, the Slovak Republic, Croatia, and Ukraine. Looking at the broader picture, similar is the case with Indonesia and Madagascar as well.

Improving efficiency and expertise in corruption cases is a stated reason for establishing judicial anti-corruption specialisation in many countries. From the perspective of the European case studies, these include Latvia and Serbia. More broadly, ACCs have been established for reasons of efficiency and expertise in Botswana, Cameroon, Ghana, Malaysia, Palestine⁴, Pakistan, Philippines, Rwanda, Tanzania, Uganda, and Zimbabwe.

Comparing the experiences of ACCs indicates the problems and challenges that can arise when trying to improve the expertise of judges and efficiency in corruption cases through specialisation. The main mechanisms used to improve efficiency and expertise are: a) recruitment of specialised judges who can focus on corruption cases; b) speed and efficiency built into institutional design; and c) introducing deadlines. Generally, problems in recruiting specialised judges are diverting judicial talent away from other areas; lack of specialisation in practice; lack of capacity and training; and frequent transfer of judges or cases. In the European examples, the main concerns are lack of specialisation in practice; lack of capacity and training; personalisation of justice and insulation of judges. Speed and efficiency can be built into institutional design by creating a separate, comprehensive parallel court, or by speeding up the appellate process by skipping one appellate tier.

Where deadlines are introduced to improve efficiency, practice shows that often the deadlines are very tight, and they are frequently missed.

This study has found that external factors have played a significant role in the countries of focus, and this is because many of these have either acceded to the European Union (EU), or are seeking accession, and they must meet the rule of law requirements in Cooperation and Verification Mechanisms (CVM) or accession conditionalities set out in partnership agreements with the EU. However, conditionalities are also present in relationships between non-European countries and the OECD, USAID, or IMF, for example. Recent research has also shown that attracting foreign investment is sometimes a significant factor in the decision to adopt specialised anti-corruption courts or judges.

Models of Anti-Corruption Courts and Specialised Judges

Schütte and Stephenson⁵ outline the five main choices to make when designing the ACC. These are the relationship of the ACC to the prosecution authorities and regular courts and judicial system; the size of the AC court; the procedures for appointing and removing specialised judges and the scope of the ACC's jurisdiction.

⁴ This designation shall not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.

⁵ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*



The present study provides a brief overview of the prosecution authorities in the main countries under comparison. Of the nine, only Latvia has no specialised prosecution authority, but it does have a specialised investigation authority. All the other countries (Albania, Armenia, Bulgaria, Croatia, Serbia, Slovak Republic, Ukraine and the United Kingdom (England and Wales)), have both specialist investigation and prosecution authorities.

This study recognises the following categories of ACCs:

- i) *Comprehensive Parallel Court* – where the anti-corruption court stands alone in parallel to the existing institutional arrangements and includes both first instance trial courts and appellate courts;
- ii) *Embedded Specialised multi-functional court*: the anti-corruption court serves as both a first instance court in some cases, and an appellate court for corruption appeals from the lower courts;
- iii) *Embedded Specialised Court (First Instance or Appellate)* – a distinct anti-corruption court that sits within the existing court system and appeals from which go to the next second instance court above it;
- iv) *Specialised Division or Divisions* – specialist anti-corruption divisions or chambers are created within existing courts, such as the High Court.

There are six countries with a *comprehensive parallel ACC*: Indonesia (2002), Bulgaria (2012), Madagascar (2016), Ukraine (2018), Albania (2019) and Armenia (2021). They are each similar, but unique and different too. The key features of this model are that the primary objective of establishing an anti-corruption court was to insulate the specialised judges from existing corruption or perceptions of corruption in the judiciary and to improve the integrity of the anti-corruption process. Specialisation runs from first instance all the way through the appellate structure, including some form of specialisation in the final court of appeal (apart from in Bulgaria). Moreover, institutional reforms are accompanied by a special judicial appointments process or judicial vetting.

The Philippines (1979) is the only country with an *embedded multifunctional court*. The Sandiganbayan has the status of a Court of Appeal but is primarily a first instance court. It does have jurisdiction as an appellate court but is rarely used in this way.

There are eleven countries with an *embedded first instance ACC*: Bangladesh (1958), Pakistan (1958), Senegal (1981/2012), Nepal (2002), Slovak Republic (2003), Afghanistan (2010, its current status is unclear), Cameroon (2011), Malaysia (2011), Thailand (2016), Sri Lanka (2018), and Latvia (2021). This study shows that this is a very flexible way to introduce an ACC because there are so many ways to tailor arrangements to suit the needs of a particular system.

There are thirteen countries with *specialised AC divisions*: Kenya (2002), Bosnia and Herzegovina (2004), Ghana (2006), England and Wales (2006), Uganda (2008), Croatia (2010), Mexico (2016), Tanzania (2016), Rwanda (2018), Kosovo* (2013), Botswana (2013), Serbia (2018) and Zimbabwe (2020). This is perhaps the most flexible model of ACC, and possibly the easiest to institute. Many of these specialised divisions are established by judicial leaders exercising their administrative powers and therefore they can be established very quickly.

* All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.



The jurisdiction of ACCs varies greatly between a very broad jurisdiction encompassing civil cases, a broad jurisdiction including non-corruption cases, or a very limited jurisdiction focused on corruption cases alone.

The composition of specialist benches and allocation of cases in ACCs varies too and is unique to each court. In terms of appointments, the only country with a special appointments process for the ACC is Ukraine. Otherwise, all judges are appointed in the same way. However, while in Ukraine anti-corruption judges are vetted and appointed through a special process, vetting has also been used elsewhere in the main case studies (Serbia, Albania and Armenia), but for all judges.

This paper does not examine the issue of funding of ACCs because the authors received mixed responses to a questionnaire about the issue and were unable to make useful comparisons.

The efficiency and added value of an ACC can be difficult measure, and while conviction rates, for example, may be a simple way to indicate the progress of a court, they do not give the full picture. This challenge is even greater when considering that very few countries or courts collect or retain information about corruption cases specifically. ACCs alone are not the solution to address problems of judicial integrity and independence. This study has found that without comprehensive restructuring of the judiciary, a new ACC may be compromised or fail to deliver on expected outcomes.

The study finds that ACCs in some cases potentially have positive impact on the increase of foreign direct investments, however there are no direct effects on corruption perceptions in countries with ACCs. It is evident that the establishment of judicial anti-corruption specialisation does not ensure a significant improvement in perceptions of corruption, and the creation of ACCs has not had an impact on the overall corruption environment.

Problems and challenges

Problems and challenges are evident not only once an ACC has been established, but also during the setting up of these courts. Resistance to reform arises from both judges and politicians. In addition, there are concerns about the sustainability of reforms. For ACCs to be successful and sustainable they need resources, and this usually relies on political will. The examples of the Gambia and Mexico demonstrate situations where there is not enough political will to take the final steps towards completing the establishment of the court, whereas the examples of Burundi and Bulgaria demonstrate that once political will is lost, the ACC may be abolished or closed.

Conclusions

This study shows that the reasons for establishing an ACC can have an impact on the success or otherwise of the new court. While different reasons, including efficiency and expertise may be given for establishing an ACC, there is usually a lack of integrity or a lack of trust in the judiciary underlying the reforms. In the nine European case studies included in this paper, the predominant motivation for the introduction of an ACC was external – the need for these countries to meet the requirements of the EU, the standards of the Council of Europe, or aid conditionalities of international donors.

The four main conclusions may be drawn about establishing ACCs.

1. The focus of reform should be on restructuring and strengthening the judiciary.



2. There is no standardised solution. Each country has unique needs and therefore requires a unique solution.
3. It is important to identify the reasons for the ACC, and the goals of the ACC, to ensure that the best solution, and the best institutional design is adopted.
4. The reason for establishing the ACC is relevant to the choice of institutional design.

There are advantages and disadvantages of each ACC model.

Advantages	Disadvantages
<i>a) Comprehensive Parallel Court</i>	
<ul style="list-style-type: none"> - Insulation from the judiciary; - Incentive to foreign investors. 	<ul style="list-style-type: none"> - Resistance from within the judiciary or from politicians; - Possibility of easier control of a separate, comprehensive court by government; - Human and financial resources not sustainable in the long run.
<i>b) Embedded Specialised Multifunctional Court</i>	
<ul style="list-style-type: none"> - More efficient and streamlined in theory; - Might be easier for such a court to innovate. 	<ul style="list-style-type: none"> - Reliant on criminal rules and procedure, which may cause delays and inefficiency anyway; - Reliant on prosecutors not to cause delays; - Small judge-to-case ratio causes backlogs.
<i>c) Embedded Specialised Court</i>	
Design can be tailored to meet specific domestic needs.	<ul style="list-style-type: none"> - Flexibility comes with concerns about process and procedure and whether this can be used to undermine due process or allow for excessive discretion.
<i>d) Specialist Divisions or Specialist Judges</i>	
Solution found within the existing judiciary; greater efficiency leading to an increase in public trust in the judiciary as a whole.	<ul style="list-style-type: none"> - Personalisation of justice; - Potential narrowing or perspective of judges and prosecutors.



2 INTRODUCTION

2.1 Scope of this paper

This paper analyses the rationale for the establishment of specialist anti-corruption courts and the use of specialised anti-corruption judges by comparing the experiences of countries that have adopted such measures to combat corruption. The primary focus of comparisons is on nine member states of the Council of Europe that have anti-corruption courts or anti-corruption judges:⁶ Albania, Armenia, Bulgaria, Croatia, Latvia, Serbia, Slovak Republic, Ukraine and the United Kingdom (England and Wales). Note, however, that the Parliament of Bulgaria voted 134/73 on 14 April 2022 to close the Specialised Criminal Court.⁷ Reference is made in this paper to other jurisdictions where appropriate. In total there are 33 states or jurisdictions which have either an anti-corruption court, or judges who have specific jurisdiction to hear corruption cases:⁸ They include Afghanistan, Albania, Armenia, Bangladesh,⁹ Bosnia Herzegovina, Botswana, Bulgaria, Cameroon, Croatia, Ghana, Indonesia, Kenya, Kosovo, Latvia, Madagascar, Malaysia, Mexico, Nepal, Pakistan,¹⁰ Palestine, Philippines, Rwanda,¹¹ Senegal,¹² Serbia, Slovak Republic, Sri Lanka, Tanzania, Thailand, Uganda, Ukraine, United Kingdom (England and Wales) and Zimbabwe.

2.2 Methodology

Desk research conducted in preparation for this analysis includes detailed research on the nine main case studies and research on the other countries as necessary. Both primary and secondary materials are referred to wherever possible, and the authors have sought to use the most authoritative versions of legislation and case law, including trying to find the most authoritative translations where appropriate. Information was also sought from members of Magistrats Européens pour la Démocratie et les Libertés (MEDEL) and from members of the Commonwealth Magistrates' and Judges' Association (CMJA). The authors are grateful to

⁶ Note that this includes courts or judges that are specifically competent to hear corruption cases, but who also hear other cases as well. And corruption may include "economic crimes" as well. See further below.

⁷ Bulgarian News Agency (2022), Closure of Specialised Jurisdictions Approved on First Reading by Amendments to Judicial System Act, available at: www.bta.bg/en/; Verfassungsblog (2022), Bulgaria's Failed Specialised Criminal Justice Experiment, available at: <https://verfassungsblog.de/>. See further section 4 below.

⁸ Most of these courts are outlined in Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*.

⁹ The "Court of the Special Judge" was established by s.3 of the Criminal Law Amendment Act (CLAA) 1958. The Anti-Corruption Commission (ACC) was established in 2004 by the Anti-Corruption Commission Act 2004, giving jurisdiction over corruption cases set out in the Act to the Court of the Special Judge. See further: Chowdhury G. S. (2007), *Country Report: Bangladesh*, p. 109

¹⁰ The "Court of the Special Judge" was established by s.3 of the Criminal Law Amendment Act (CLAA) 1958 in Pakistan. Bangladesh became independent from Pakistan in 1971 and retained this pre-independence legislation (n.3 above). Pakistan, too, retained this legislation, and supplemented it in later years by creating the "Accountability Court". Information kindly provided in response to questionnaire by Adnan Larik, Deputy Secretary-General, National Judicial (Policy Making) Committee, Law and Justice Commission of Pakistan, December 2020.

¹¹ Information kindly provided in response to questionnaire by Justice Harrison Mutabazi, Judicial Spokesperson, Judiciary of Rwanda, November 2021

¹² The specialised court for hearing cases of illicit enrichment was established in 1981 (Laws 81-53 and 81-54 of 1981) until 1984 when it was removed from the judicial framework (Law 84-19 of 2 February 1984). It was reinstated in 2012 by Decree No. 2012-502 of 10 March 2012.



those who kindly took the time to respond and direct them to the relevant information about their jurisdictions.

In addition to country-specific research, the authors have conducted brief literature reviews of the relevant areas, including global, regional, and domestic trends in approaches to combatting corruption, literature on frameworks for deciding on approaches to combatting corruption, the specialisation of courts, judicial independence as affected by court reform and management, and judicial integrity. Research for this paper was completed in June 2022.

2.3 Approaches to preventing and combatting corruption

Approaches to preventing and combating corruption have evolved. Where once there was a strong focus on the establishment of anti-corruption agencies, now there is a focus on specialisation, particularly in the prosecution services and the judiciary.¹³ The adoption of the United Nations Convention against Corruption (UNCAC)¹⁴ in 2003 and subsequent ratification by 189 States Parties¹⁵ has consolidated efforts to improve both domestic anti-corruption efforts and transnational cooperation in combating corruption.

In Europe there are a number of regional standards and agreements that concern the prevention of corruption, and bodies that implement them:

- Council of Europe Resolution (97)24 on the Twenty Guiding Principles for the Fight against Corruption (1997);
- The EU Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (1997)¹⁶;
- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997);
- Council of Europe Criminal Law Convention on Corruption (1999)¹⁷ and Additional Protocol to the Criminal Law Convention on Corruption (2003)¹⁸;
- Council of Europe Civil Law Convention on Corruption (1999)¹⁹;
- Council of Europe – Model Code of Conduct for Public Officials (2000)²⁰;
- Council of Europe - Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns²¹;
- UNCAC (2003)²²;

¹³ For a full overview of developments in this field see: World Bank (2020), *Enhancing Government Effectiveness and Transparency: The Fight against Corruption*

¹⁴ United Nations (2003), *United Nations Convention against Corruption*.

¹⁵ See www.unodc.org

¹⁶ European Union (1997), *EU Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*

¹⁷ Council of Europe (1999), *Criminal Law Convention on Corruption* (ETS No. 173).

¹⁸ Council of Europe (2003), *Additional Protocol to the Criminal Law Convention on Corruption* (ETS No. 191)

¹⁹ Council of Europe (1999), *Civil Law Convention on Corruption* (ETS No. 174).

²⁰ Council of Europe (2000), *Recommendation No. R (2000) 10 of the Committee of Ministers to Member states on codes of conduct for public officials*.

²¹ Council of Europe (2003), *Recommendation No. R (2003) 4 of the Committee of Ministers to Member states on [Rules against Corruption in the Funding of Political Parties and Electoral Campaigns](#)*.

²² See UNODC (2004), *Global Action against Corruption: The Merida Papers* for information about the development of UNCAC.



- Group of States against Corruption (GRECO)²³

2.4 Anti-Corruption Courts as an emerging tool in combatting corruption

While anti-corruption agencies or commissions may be said to be “ubiquitous”,²⁴ specialised anti-corruption courts and judges are not. However, they are being used more and more as a mechanism for combating corruption. As Table 1 below shows, there are now 33 countries with specialised anti-corruption courts or divisions. Specialisation may be seen as a way to address corruption through problem-solving courts,²⁵ but it is not always clear what problem they are really aiming to solve. There are often tensions between the internal needs of the court system (e.g. greater efficiency), and external or political needs (e.g. the needs of numerous stakeholders, or quick political gain). As will be seen in Section 3, external demands and political pressures often play a significant part in decisions about court specialisation, even if close analysis of the problems in practice suggest a different strategy.²⁶

The specialised anti-corruption court is really a twenty-first century phenomenon: after the first three courts were established (Pakistan/Bangladesh 1958, Philippines 1979, and Senegal, 1981) the remainder have been established (or revived, in the case of Senegal) gradually since the turn of this century.

2.4.1 Categories of judicial anti-corruption specialisation

There are different ways of categorising anti-corruption courts and specialised judges. Schutte and Stephenson categorise the courts as follows:

i) *Comprehensive Parallel Court* (the anti-corruption court system includes both first instance trial courts and appellate courts); ii) *Hybrid Court* (the anti-corruption court may serve as a court of first instance for some (more important) corruption cases and serves as an intermediate appellate court for other corruption cases that are heard in the first instance generalist courts. Appeals from the anti-corruption courts go to the Supreme Court); iii) *First Instance Court* (specialised anti-corruption court which has original jurisdiction over anti-corruption cases, with appeals to the Supreme Court); and iv) *Solo Judge* (judges are designated or appointed on general trial courts; the usual appeals process remains in place).²⁷ Kuvvet distinguishes between: First Instance Court, Hybrid Court and Comprehensive Parallel Court.²⁸

For the purposes of this study, the authors have found that a slightly different set of categories, is more useful, and therefore differentiate between models of specialisation in the following way:

- Comprehensive Parallel Court:** the anti-corruption court stands alone in parallel to the existing institutional arrangements and includes both first instance trial courts and appellate courts.

²³ See www.coe.int/greco

²⁴ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*.

²⁵ Madeira L. M. and Geliski L. (2021), *An Analytical Model of the Institutional Design of Specialised Anti-corruption Courts in the Global South: Brazil and Indonesia in Comparative Perspective*, p. 5

²⁶ See Section 3.1.1, below, and Gramckow H. and Walsh B. (2013), *Developing Specialised Court Services: International Experiences and Lessons Learned*.

²⁷ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, p. 20

²⁸ Kuvvet E. (2021), *Anti-corruption courts and foreign direct investments*, p. 575



- b) **Embedded Specialised multi-functional court:** the anti-corruption court serves as both a first instance court in some cases, and an appellate court for corruption appeals from the lower courts.
- c) **Embedded Specialised Court (First Instance or Appellate):** a distinct anti-corruption court that sits within the existing court system and appeals from which go to the next second instance court above it.
- d) **Specialised Division or Divisions:** specialist anti-corruption divisions or chambers are created within existing courts, such as the High Court.

Table 1: Global adoption of anti-corruption courts

Year	Country	Institutional structure
1958	Bangladesh	Embedded 1 st instance court
1958	Pakistan	Embedded 1 st instance court
1979	Philippines	Embedded multi-functional court
1981	Senegal	Embedded 1 st instance court
2002	Indonesia	Comprehensive parallel court
2002	Nepal	Embedded 1 st instance court
2003	Brazil	Specialist divisions
2003	Kenya	Specialist division
2003	Slovak Republic	Embedded 1 st instance court
2004	Bosnia Herzegovina	Specialist division
2006	Ghana	Specialist division
2006	United Kingdom	Specialist Division
2008	Uganda	Specialist Division
2010	Afghanistan	Embedded 1 st instance court
2010	Croatia	Specialist Division
2010	Palestine	Not enough information
2011	Cameroon	Embedded 1 st instance court
2011	Malaysia	Specialist divisions
2012	Bulgaria	Comprehensive Parallel Court
2013	Botswana	Specialist division
2016	Madagascar	Comprehensive parallel court
2016	Mexico	Specialised judges (not yet appointed)
2016	Tanzania	Specialist Division
2016	Thailand	Embedded 1 st instance
2018	Rwanda	Specialist Division
2018	Serbia	Specialist Divisions
2018	Sri Lanka	Embedded 1 st instance court
2018	Ukraine	Comprehensive Parallel Court
2019	Albania	Comprehensive Parallel Court
2019	Kosovo	Specialist division
2020	Zimbabwe	Specialist Divisions
2021	Armenia	Comprehensive Parallel Court
2021	Latvia	Embedded 1 st instance court

In Table 1, the categories for Bulgaria, Kenya, Tanzania and Uganda differ from those of Schutte and Stephenson²⁹. This Technical Paper includes “anti-corruption” (criminal) courts as well as “economic crimes” (criminal or criminal and civil) courts which have jurisdiction over corruption offences. Respondents to our questionnaire from both Rwanda³⁰ and England and Wales³¹ have stated that they do not have an anti-corruption court. However, Rwanda has an economic crimes chamber in the Intermediate Court, the jurisdiction of which includes corruption;³² and as set out in the case study in Appendix 1,³³ England and Wales have a designated court for receiving fraud and corruption cases. In addition, the Law Commission of England and Wales recommended that Crown Court judges should be specially trained to hear complex cases involving the confiscation of proceeds of crime and that such cases should then be allocated to those specialist judges.³⁴ The authors have therefore included these examples in this study.

2.4.2 *Domestic challenges to addressing corruption through the courts*

As it will be further analysed in Section 4, countries that have decided to establish specialised anti-corruption court structures (either more or less insulated from traditional judiciaries) faced relevant internal challenges during that process.

The research made for this paper showed that the creation of specialised judicial bodies implies the allocation of considerable financial and human resources, which countries more affected by corruption often do not dispose.

Another relevant aspect showed by this research is that the establishment of specialised anti-corruption courts or sections often meets serious resistance, either from politicians (mainly the opposition parties, fearing that the new courts may be used as a repressive weapon against them) or from inside the judiciary (fearing to lose privileges or an increased mistrust from society).

Although increasingly seen and used as a tool to combat corruption, research made shows that much of the outcome of the process of creation of specialised judicial bodies depends on objective preconditions: obtaining broad political consensus to back the reform; defining the rationale and goals behind the decision to create such bodies, thus allowing to choose the correct model; allocating adequate resources to create material conditions and hire and train skilled staff. This is the analysis that will be made in the following sections.

²⁹ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*. Our characterisation of these courts as specialist divisions is also informed, in the case of Tanzania and Ghana, by information provided in response to questions sent to members of the Commonwealth Magistrates’ and Judges’ Association.

³⁰ Response to questionnaire kindly provided by Justice Harrison Mutabazi, Judicial Spokesperson, Judiciary of Rwanda, November 2021.

³¹ Response to questionnaire kindly provided by Elena East, Deputy to the Head of the Criminal Justice Team for the President of the Queen’s Bench Division.

³² Response to questionnaire kindly provided by Justice Harrison Mutabazi, Judicial Spokesperson, Judiciary of Rwanda, November 2021.

³³ Hopmeier M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.

³⁴ Law Commission, *Confiscation of the Proceeds of Crime After Conviction: A Consultation Paper*, Consultation Paper 249, September 2020, see Ch.10.



2.5 The Case for an International Anti-Corruption Court

Besides being increasingly used by individual countries since the beginning of the century, in recent years, the debate on the creation of specialised anti-corruption courts moved from national jurisdictions to the international arena. In 2012, Judge Mark. L. Wolf (United States of America) presented the idea of establishing an IACC, at the *International Legal Forum*, in Saint Petersburg (Russian Federation)³⁵. In his view, this international judicial body is needed to ensure the “*extraterritorial prosecution and punishment of corrupt leaders of countries that are unwilling or unable to enforce their own laws against powerful offenders*”³⁶. The problem, he states, is not lack of laws, but the fact that “*countries do not hold corrupt leaders accountable because those very leaders control every element of the administration of justice*”³⁷.

The proposed IACC would have a structure similar to the ICC (established in 2002 for prosecuting genocide, crimes against humanity, and war crimes), and would be composed of “*elite prosecutors from around the world with the experience and expertise necessary to develop and present complex cases effectively*” and be led by “*able and impartial international judges*”³⁸. Its jurisdiction would be complementary – only intervening when States are unwilling or unable to make concrete efforts to investigate, prosecute, and punish corruption – and the offences to be investigated and tried would be those described in the UNCAC. It would have competence over offences committed by citizens of member States, but also citizens of third States that use the financial system of an IACC member to launder the proceeds of corruption or citizens of third States which are referred to the court by the UN Security Council.

The reasons behind the proposal to create an IACC are mainly three³⁹:

- i. The deterrent effect: an IACC would put an end to the feeling of impunity of wrongdoers and impose a *de facto* travel ban on them, as they could be arrested when travelling to signatory States;
- ii. The incentive to improve domestic justice systems: having only complementary jurisdiction, signatory States would feel compelled to improve their national justice systems, in order to prevent the intervention of IACC and show that it is not necessary;
- iii. Political symbolism: the creation of an IACC would be a strong signal sent by the international community against corruption and could inspire further reforms in this field.

The proposal sparked a debate, with many authors criticising it.

Schaefer, Groves and Roberts⁴⁰ start by arguing that the notion of grand corruption is not clear enough and they are alert to the fact that “*equating grand corruption or other crimes with genocide, crimes against humanity, and war crimes, arguably trivialises those crimes*”, besides the fact that the

³⁵ Wolf Mark. L. (2014), [The Case for an International Anti-Corruption Court; The World Needs an International Anti-Corruption Court](#), pp. 144–56.

³⁶ *Ibid.*, p. 145.

³⁷ *Ibid.*, p. 147.

³⁸ *Ibid.*, p. 149.

³⁹ Stephenson M. and Schütte S. (2019), [An International Anti-Corruption Court? A synopsis of the debate](#)

⁴⁰ Schaefer Brett D., Groves S. and Roberts J. M. (2014), [Why the US Should Oppose the Creation of an International Anti-Corruption Court](#)



IACC would infringe national sovereignty and duplicate jurisdiction, as most of the offences are already punished by national legislation. They also argue that the IACC would lack independent means of enforcement, relying exclusively on national authorities, and that the *de facto* travel ban invoked by IACC supporters would be annulled by diplomatic immunity granted to the leaders of corrupt countries by international treaties. They also point out to the big political challenges the creation of an IACC would entail and to the fact that it would not tackle the problem of low-level corruption, often more damaging to national resources than high-level corruption.

Stephenson⁴¹ points out three main objections:

- a) The main goal of the proposal would never be achieved, as leaders of the most corrupt countries would never agree to joining the IACC;
- b) The measures proposed to force States into accepting the jurisdiction of the IACC are unworkable (most of them imply the agreement of countries who are the most likely to oppose the creation of the IACC), or counterproductive (in most cases, those measures would increase corruption and the popularity of corrupt leaders, as well as create the feeling that anticorruption is a sort of neo-imperialism);
- c) An IACC would imply massive costs that would not justify its foreseeable low effectiveness, diverting valuable resources from more effective anticorruption efforts.

Whiting⁴² starts by putting in question the feasibility of the court, recalling that the international political scene is completely different from the one in place when the ICC was created, so it will be much more difficult to reach a consensus to establish an IACC. He also raises doubts on the applicability of the proposed methods to force countries to accept the IACC jurisdiction and argues that there is little margin of interpretation in Chapter VII of the UN Charter to allow the conclusion that the UN Security Council could be able to refer non-member States to the IACC. As for effectiveness, Whiting remembers that international courts depend deeply on the cooperation of States, mainly for investigation of crimes, and the IACC would certainly not have cooperation from the States where investigations on corruption would be most needed, which is even more relevant when considering that corruption investigations are more complex than the ones of genocide or war crimes, thus increasing the need for cooperation of local authorities.

All these criticisms have been answered by Yeh⁴³, arguing that combining the creation of the IACC with the adoption of the Anticorruption Protocol to the United Nations Convention against Corruption (APUNCAC)⁴⁴ – the latter seeking to implement aggressive measures to fight corruption and impunity, including United Nations inspectors who would conduct independent investigations into allegations of corruption – would overcome most of the difficulties pointed out by the critics and allow the IACC to be effective and an important tool in combating corruption.

⁴¹ Stephenson Matthew (2016), [Dear International Anticorruption Court Advocates: It's Time to Answer Your Critics](#)

⁴² Whiting Alex (2108), [Is an International Anti-Corruption Court a Dream or a Distraction?](#)

⁴³ Yeh Stuart S. (2021), [APUNCAC and the International Anti-Corruption Court \(IACC\)](#)

⁴⁴ Yeh Stuart S. (2021), [Anticorruption Protocol to the United Nations Convention against Corruption](#)



Support for the creation of an IACC grew in recent years⁴⁵, with countries such as Colombia or Peru formally advocating for its establishment⁴⁶ and more than 100 personalities and organisations signing in June 2021 a public declaration in support of its creation⁴⁷. Despite this growing support and a formal submission presented in August 2020, by *Integrity Initiatives International*⁴⁸, the UN General Assembly Special Session against Corruption (UNGASS 2021)⁴⁹, held in June 2021, did not mention the creation of an IACC in its final declaration, drawing harsh criticism from its supporters⁵⁰.

The debate on the creation of an IACC is still ongoing⁵¹ and will most likely be a strong topic in coming years.

⁴⁵ A summary of the international campaign for the creation of IACC can be found at www.integrityinitiatives.org

⁴⁶ *Declaración Presidencial Conjunta Perú – Colombia*, [Comunicado Conjunto 018 – 19](#), § 6, 27 May 2019.

⁴⁷ [Declaration in Support of the Creation of an International Anti-Corruption Court](#)

⁴⁸ *Submission to the UNGASS against Corruption 2021 - Proposal on the establishment of an International Anti-Corruption Court to address impunity for grand corruption*

⁴⁹ <https://ungass2021.unodc.org>

⁵⁰ Goldstone Richard and Hoffman Paul (2021), [Do kleptocrats call the shots at the UN? Its special session against corruption was a wasted opportunity](#)

⁵¹ See the March 9th, 2022 webinar [International Anti-Corruption Court: An Idea Whose Time Has Come?](#), organised under the *Anti-Corruption Law Program* of the Centre for Business Law, Peter A. Allard School of Law at University of British Columbia, *Transparency International, Canada Chapter*, and the *Vancouver Anti-Corruption Institute* at the International Centre for Criminal Law Reform and Criminal Justice Policy.



3 RATIONALE FOR SPECIALISED ANTI-CORRUPTION COURTS AND JUDGES

3.1 Specialisation in judicial systems generally

The Consultative Council of European Judges (CCJE), which is the Council of Europe consultative body concerning independence, impartiality, and competence of judges, has examined the question of specialist judges, both in general,⁵² and in respect of preventing corruption among judges.⁵³ In *Opinion No.21* of 2018, the CCJE noted the following:

As to specialised courts, the CCJE confirms its position set out in its *Opinion No. 15* (2012) on the specialisation of judges. It should be possible to introduce specialised courts only under exceptional circumstances, when necessary, because of the complexity of the problem and thus for the proper administration of justice.⁵⁴

3.1.1 *Meaning of specialisation and choosing a model of specialised court*

While widespread use of specialist anti-corruption courts may be relatively new, judicial specialisation is not. Baum explains the different forms as follows:⁵⁵

- Functional specialisation – the type of work that people do;
- Specialisation by geographical jurisdiction;
- Specialisation by case type – generalist = wide range of cases; specialist = narrow range of cases;
- Distinguishing between “specialist judges” and “specialist courts: “One implication of the distinction between courts and judges is that organisation charts of court systems may be misleading about the extent and form of specialisation”;⁵⁶
- Forms of judicial specialisation: long-term and short-term; full-time and part-time; breadth of cases a specialised court or sub-unit of a court hears; subject-matter specialisation in criminal law.⁵⁷

Gramckow and Walsh⁵⁸, identify three main models of specialisation:

- Establishment of a separate court or court system: established either to better accommodate differences in the procedural codes or because administrative processes and internal court rules have been adjusted to better reflect and address the special needs of the cases the courts handle. They can be part of the jurisdiction’s general court system or a separate hierarchy of specialised courts that may include distinct specialised appeals courts;
- Creation of a separate court division or bench within a court: a court division or bench that may have several judges, prosecutors, staff members, and courtrooms assigned to it, with judges possibly allocated to a special division either indefinitely or as needed to

⁵² CCJE Opinion No. 15 (2012), *On the Specialisation of Judges*.

⁵³ CCJE Opinion No. 21 (2018), *Preventing Corruption among Judges*.

⁵⁴ *Ibid.*, para. 50

⁵⁵ Baum L. (2009), *Probing the Effects of Judicial Specialisation*, p. 1667

⁵⁶ *Ibid.*, p. 1667

⁵⁷ *Ibid.*, pp. 667-1675

⁵⁸ Gramckow H. and Walsh B. (2013), *Developing Specialised Court Services: International Experiences and Lessons Learned*.

meet temporary specialisation needs, or to test specialised processes and services to inform future expansion;

- Developing judges with special expertise to serve on *ad hoc* established court panels to process cases that require particular expertise that a court may occasionally receive: in cases of courts not having a sufficient volume of cases that might benefit from specialised processing and expertise, or that cannot predict the future volume of such cases.

Choosing a model means determining why there is a need for specialisation – what problem is going to be solved?⁵⁹ And factors to consider include the foreseeable duration of the need for a specialised court (short-, mid- or long-term), the existence of backlogs in certain types of cases, complaints of users of the system, inconsistencies in the decisions given by courts or new legislation that may prompt an increase in the number of cases.⁶⁰ Gramkow and Walsh also note that there is a distinction between the *internal* need for specialisation (whether it would “ensure better processing and decision-making” and “which model would best address this deficiency”); and the *external* need for specialisation (addressing “user needs, other agency requirements” or “broader jurisdiction requirements”). The adoption of specialised courts may be driven by either internal or external needs (or both), but Gramkow and Walsh caution that:

[O]ften, however, external demand may not match the internal need; while the former may push for specialisation in a certain area, an analysis of the latter may indicate that specialisation is not the best choice. Since external demand—and political pressures—for specialisation cannot easily be disregarded (nor should they), options for low-key specialisation and alternatives to address external demand might be the answer.⁶¹

Once the need is identified, then the choice between models must take into consideration a series of factors. Gramckow and Walsh summarise the relevant choice criteria as follows:⁶²

When deciding which model of specialisation may be most appropriate, again, the main question is whether there is a sufficient volume of cases to warrant allocating judges exclusively to a particular case type. If the answer is yes, a special court or division may be appropriate. When the size of the potential workload and long-term implications and needs are still undetermined, a special bench or division model may be preferred, as it preserves the option of varying the numbers of judges used over time. Where there is uncertainty even about the number of judges to be exclusively dedicated to special case work, however, there is still the option of developing capacities to assign individual judges on an occasional basis to handle special cases as they arise.

⁵⁹ Ibid., p. 14

⁶⁰ Ibid., p. 15.

⁶¹ Gramckow H. and Walsh B. (2013), *Developing Specialised Court Services: International Experiences and Lessons Learned*, p. 5

⁶² Ibid., p. 6.



In the specific case of corruption other factors must also be considered. The *International Association of Prosecutors* has identified a list of considerations that are relevant to assessing the different systems of anti-corruption institutions, and which system to adopt⁶³:

- Estimated level of corruption in the country: for example, a low level of corruption would not necessarily mandate a response in the form of a strong multi-purpose agency with extensive powers. By contrast, endemic corruption might overwhelm a minor agency.
- Integrity, competence and capacities of existing institutions: the anti-corruption institution should perform or strengthen those functions that are missing or particularly weak in the existing overall institutional framework. It is important, therefore, to start by assessing the existing institutional framework first. If the decision is taken to establish a new body, low integrity of existing institutions requires a higher level of independence of the new anti-corruption institution as an “island of integrity” or “island of competence”.
- New anti-corruption body vs. specialisation in existing institutions: it is important to assess if the strategy to fight corruption of the Government can be enforced by setting up a new dedicated anti-corruption body, or whether it could be more effective to promote specialisation/ focusing more particularly on corruption risks in one or several existing institutions.
- Constitutional framework: in many countries, creating an independent institution would face constitutional barriers.
- Existing legal framework and the national system of criminal justice: criminal justice systems worldwide differ significantly in the exact distribution of competencies and responsibilities among different actors - police, prosecution, investigative magistrates, courts - especially in relation to preliminary investigation and pre-trial phase.
- Available financial resources: Reforming or creating new institutions is a costly task. It is important to assess beforehand whether the national budget and other sources can provide sufficient and sustainable funding for such institutional measures, especially in cases when a decision is taken to establish a strong central multi-purpose agency.

While this framework is intended to help decision makers when deciding about anti-corruption institutions more broadly, it can easily be transposed to the decision process concerning whether to establish specialised anti-corruption courts.

3.1.2 Risks of specialisation

As noted above, judicial specialisation is not a new phenomenon. However, the crucial role of the judicial system implies that any change to its structure must necessarily consider the possible negative outcomes for the whole system. Judicial and court specialisation has therefore been the object of analysis for some time. In 1983, Richard A. Posner⁶⁴, defending the “generalist appellate judge”, pointed out what he identified as drawbacks of the specialisation of judges:

- A reduction in job satisfaction, implying a reduction in the calibre of judges;

⁶³ *Anti-Corruption Models - Models of Anti-Corruption Institutions*, available at www.iap-association.org/NACP/Anti-Corruption-Models.

⁶⁴ Posner R. (1983), *Will the Federal Courts of Appeals Survive until 1984?: An Essay on Delegation and Specialisation of the Judicial Function*, p. 761.

- Greater instability in the law;
- Higher risk of lack of independence (“a specialised court will tend to be less independent of the political process than a generalist court because its work can be more effectively monitored and controlled by the political branches of government – that is, by the executive and legislative branches”);
- The risk that judges in a specialised court may tend to enforce the law in a vigorous and not tempered way;
- The risks associated with the “monopoly of jurisdiction” by one single court: reduction of diversity of ideas and approaches and a greater concentration of judicial power;
- The reduction of the geographical diversity of the judiciary.

Although some of these drawbacks may derive from the distinction between civil law and common law and may be overcome to some extent,⁶⁵ the fact is that specialisation carries risks such as insulating judges and thus rendering them less open to new ideas and ways of thinking,⁶⁶ and making them lean more towards the enforcement of law and not the objective analysis of evidence.⁶⁷ There is also the risk of political control of the specialised court, especially if it has a reduced number of judges and the jurisdiction is geographically concentrated.

3.2 Rationales for specialised anti-corruption courts and judges

While Baum identifies efficiency, expertise, and uniformity as the main reasons for judicial specialisation in general,⁶⁸ Schütte and Stephenson identify three main reasons for the establishment of specialised anti-corruption courts that are slightly different.⁶⁹ These are integrity, efficiency, and expertise. There are, however, other external factors that have also played a significant role in the evolution of anti-corruption strategies and the eventual creation of specialised courts in the main countries under consideration here, most notably, meeting EU conditionalities appears to have been a significant motivation for the creation of anti-corruption courts and specialised judges in many of the analysed countries in this study.

3.2.1 Integrity and prevention of corruption

Of course, the notion that courts should be independent and impartial is a given. However, independence and impartiality are not always achieved, or at least, perceptions of judicial independence and impartiality may be low. Effective courts need effective judges who are independent and not compromised in any way, therefore a real or perceived lack of integrity in the judicial system of a country undermines anti-corruption efforts. Most countries that have established a specialised jurisdiction for corruption cases are ones with serious problems with judicial integrity in their judiciaries, even if that is not always the given reason for creating the specialist courts.⁷⁰ The creation *ex novo* of a special court, with specific and strict recruitment criteria for judges, prosecutors, and staff, may be seen as an opportunity to

⁶⁵ Damle S. V. (2005), *Specialise the Judge, Not the Court: A Lesson from the German Constitutional Court*, p. 1267.

⁶⁶ Baum Lawrence (2010), *Judicial Specialisation and the Adjudication of Immigration Cases*, p. 1539, available at: <https://scholarship.law.duke.edu/dlj/vol59/iss8/1>.

⁶⁷ Madeira L. M. and Geliski L. (2021), *An Analytical Model of the Institutional Design of Specialised Anti-corruption Courts in the Global South: Brazil and Indonesia in Comparative Perspective*.

⁶⁸ Baum L. (2009), *Probing the Effects of Judicial Specialisation*, p. 1675

⁶⁹ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*.

⁷⁰ *Ibid.*, p. 11



insulate the handling of corruption cases, thus guaranteeing that only judicial officers with the highest integrity standards would be in charge of prosecuting and trying cases involving the most powerful.

Improving integrity in the court and judicial system has, in some cases, been the main factor driving reform and the creation of anti-corruption courts. Indonesia and Madagascar are example of this. The jurisdiction and geographical reach of the ACC in **Indonesia** expanded significantly in 2009, but the core rationale underpinning the reforms and the introduction of the ACC in 2002 remained the same: to improve public trust in the courts and address “rampant corruption”.⁷¹ In 2002 an ACC was established in Jakarta,⁷² and it had jurisdiction to hear only cases brought by the Corruption Eradication Commission (KPK).⁷³ Other corruption cases could still be pursued by the public prosecutor in the ordinary courts.⁷⁴ A key feature of the ACC in 2002 was the use of *ad hoc* judges, adjudicators who were specialist lawyers or legal experts, but not judges, and who were appointed as temporary judges to hear corruption cases.⁷⁵ Initially, in 2002, the *ad hoc* judges had to be in the majority on a panel hearing a corruption case.⁷⁶ However, while the use of *ad hoc* judges continued, after 2009 when the regional courts were established, *ad hoc* judges no longer had to be in the majority.⁷⁷ The insulation of the ACC from the general courts and the use of *ad hoc* judges were the main features intended to address the integrity of the system. *Ad hoc* judges were “less likely to be entwined in institutionalised corruption or to have divided loyalties”.⁷⁸ However, there have been numerous concerns and problems with the system. From an efficiency point of view (which was another, less prominent, rationale for the ACCs),⁷⁹ the new regional ACCs had a much lower conviction rate. The first court had a 100% conviction rate between 2004 and 2010: the 200 cases brought by the KPK resulted in convictions, but critics have cautioned that rather than being a sign of success, the conviction rate, and a virtual guarantee of a conviction following a KPK prosecution, actually suggested a lack of objectivity and impartiality.⁸⁰ The expansion of the ACC jurisdiction was in response to a decision by the constitutional court that the limited jurisdiction of the Jakarta ACC, alongside the general jurisdiction of prosecutors to try corruption courts, resulted in a dualist system that was unconstitutional: a defendant being tried by the KPK in the ACC would be convicted, while a defendant in the general courts may not be.⁸¹ Following the changes in 2009, the ACCs now have exclusive

⁷¹ Arsil, Astriyani, Rositawati D. and Aziezi M. T., *Anti-Corruption Courts in Indonesia After 2009: Between Expectation and Reality*, p. 25

⁷² Indonesia (2002), *Law 30 of 2002 on the Corruption Eradication Commission*.

⁷³ Ibid.

⁷⁴ Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Indonesia*.

⁷⁵ Ibid.

⁷⁶ Ibid., and see also Arsil, Astriyani, Rositawati D. and Aziezi M. T., *Anti-Corruption Courts in Indonesia After 2009: Between Expectation and Reality*, p. 45

⁷⁷ Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Indonesia*.

⁷⁸ Butt S. (2019), *Indonesia's Anti-corruption Courts and the Persistence of Judicial Culture, The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, p. 160

⁷⁹ Arsil, Astriyani, Rositawati D. and Aziezi M. T., *Anti-Corruption Courts in Indonesia After 2009: Between Expectation and Reality*, p. 51

⁸⁰ Butt S. (2019), *Indonesia's Anti-corruption Courts and the Persistence of Judicial Culture, The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*, p. 152

⁸¹ Butt S. (2012), *Indonesia's Anti-Corruption Courts: should they be abolished?*, p. 149



jurisdiction over all corruption cases. That together with the geographical expansion has put the ACCs under pressure, and not long after they were formed, there were calls for the regional ACCs to be abolished.⁸² Public perceptions about the integrity and effectiveness of the ACC appear to be quite closely tied to conviction rates – there was high public confidence in the ACC when it was achieving a 100% conviction rate, and less confidence as the conviction rate fell. The public perception is that “acquittals in corruption cases are inevitably the result of undue influence.”⁸³ Indeed, one judge in a regional court was transferred out of the ACC for failing to convict.⁸⁴ However, the conviction rate is not necessarily the best indicator of performance, and there are other more profound problems with the ACCs in Indonesia. The following factors have been found to limit the success of the AACs in Indonesia:⁸⁵ there is some ambiguity surrounding the role of the *ad hoc* judges; the design of the system relies on the presumption that *ad hoc* judges will possess greater integrity than career judges which is not necessarily the case; the new system, of a central court and regional courts, is blighted by inefficiency and low morale in part due to the unequal workloads of the *ad hoc* judges and the career judges (the career judges have to try both corruption and other cases) - the “unequal workload causes dissatisfaction among career judges and served as a disincentive for them to adjudicate corruption related cases”⁸⁶; in order to sit in the ACC career judges must be certified, and this system has been very inefficient with certified judges not being appointed to the ACC; the expansion of the jurisdiction of the ACC, with the regional expansion means that prosecutors now have to prosecute corruption cases in the provincial capital, rather than the local district court, meaning that there is restricted access to the ACC; and finally, the ACC’s suffer from some of the same challenges that all courts in Indonesia experience relating to resources, budgets, quality of decisions and capacity in terms of courts buildings and administrative staff. These problems have, over time, undermined the objective of improving integrity and insulating corruption cases from corruption.

Perceptions of judicial corruption and lack of judicial independence were the main reasons for the establishment of the independent anti-corruption courts in **Madagascar** in 2016, the *Pôles Anti-Corruption* (PACs).⁸⁷ The predecessor to the PACs was a group of specialised prosecutors and judges in each of the provincial courts (*Chaîne Pénale Economique et Anti-Corruption*, CPEAC), but a long-term review by the Ministry of Justice and the national anti-corruption authority found that the CPEAC was “lacking effectiveness and independence” and that the judiciary was considered to be “very corrupt and prone to executive interference”.⁸⁸ The reform, and the establishment of these courts, was driven by a combination of public pressure and the anti-corruption authority (*Bureau Indépendant Anti-Corruption*, BIANCO), which was established in response to Madagascar’s international commitments under UNCAC.⁸⁹ There was opposition from the Ministry of Justice, and from

⁸² Ibid.

⁸³ Ibid., p. 151

⁸⁴ Ibid., p. 150

⁸⁵ Arsil, Astriyani, Rositawati D. and Aziezi M. T., *Anti-Corruption Courts in Indonesia After 2009: Between Expectation and Reality*, p. 172

⁸⁶ Ibid., p. 173

⁸⁷ Schatz F. (2019), *Madagascar’s specialised anti-corruption court: the quest to end impunity*.

⁸⁸ Ibid., p. 2

⁸⁹ Ibid., p. 1



judges, but the reforms were pushed through parliament in response to international donor pressure (see more below).⁹⁰ However, the exclusivity and ability of the PACs to address concerns around impunity and judicial corruption have been undermined by the establishment, in 2018, of the High Court of Justice (HCJ) and the special court for logging-related crimes. The HCJ has exclusive jurisdiction to try the president, members of the government and leaders of parliament and the constitutional court for any offences related to the exercise of their duties.⁹¹ Additionally, the logging court has jurisdiction over specific crimes that may also involve corruption.⁹² The introduction of the HCJ and its jurisdiction over corruption cases committed by high level officials poses a significant problem for the effectiveness of the PACs in addressing impunity and restoring integrity because it “undermines the exclusivity of the PAC regarding corruption and money laundering offences”⁹³ and because it is a body composed of senior judges as well as parliamentarians and members of the executive.⁹⁴ Before a case can be heard by the HCJ an allegation must be put to the President of the National Assembly, and a majority vote in Parliament is required before the case is referred to the HCJ.⁹⁵ The practical result of this change is that “criminal proceedings against high-level politicians close to the regime in power have largely halted.”⁹⁶

The experiences of Indonesia and Madagascar demonstrate some of the many challenges and complexities of establishing anti-corruption courts to counter widespread impunity and judicial corruption. Main countries in this study, **Albania**, the **Slovak Republic**, **Croatia**, and **Ukraine** have all cited the need to improve integrity as reasons for establishing their specialised anti-corruption courts. Mistrust of the judiciary is a big problem in **Albania**. In 2016 Transparency International noted that the Albanian judiciary was “yet to demonstrate its independence in practice”⁹⁷ and a 2015 survey found that only 14% of Albanians considered judges to be impartial.⁹⁸ Bribes, cronyism, and political interests were thought to be the key factors in judicial decision-making.⁹⁹ The new Special Courts against Organised Crime (known as SPAK courts), established by the Albanian Parliament in 2013, came about as a result of major constitutional and judicial reforms that were recommended by a group of Albanian and international experts.¹⁰⁰ It was important that the new anti-corruption framework was “independent from the external influence of criminal and political groups”¹⁰¹ and the main reason for establishing the new courts as well as the associated SPAK prosecution service was “to strengthen the integrity and independence of the authorities

⁹⁰ Ibid., p. 2

⁹¹ Ibid., p. 3 and Madagascar (2014) *Loi Organique No. 2014-043 relative à la Haute Cour de Justice*.

⁹² Schatz F. (2019), *Madagascar’s specialised anti-corruption court: the quest to end impunity*, p. 3

⁹³ Schatz F. (2019), *Madagascar’s specialised anti-corruption court: the quest to end impunity*, p. 3

⁹⁴ Madagascar (2010), *Constitution of Madagascar*, Article 136 and (2014), *Loi Organique No. 2014-043 relative à la Haute Cour de Justice*, Article 2

⁹⁵ Madagascar (2014), *Loi Organique No. 2014-043 relative à la Haute Cour de Justice*.

⁹⁶ Schatz F. (2019), *Madagascar’s specialised anti-corruption court: the quest to end impunity*, p. 6

⁹⁷ Halo A. and Llubani M. (2016), *National Integrity Assessment: Albania 2016*, Transparency International, p. 66

⁹⁸ Ibid., p. 66

⁹⁹ Ibid., p. 66

¹⁰⁰ Gunjic I. (2022), *Albania’s Special Courts against Corruption and Organised Crime*, p. 1

¹⁰¹ Ibid.



responsible for processing corruption cases.”¹⁰² Key features of the new system designed to eliminate corruption from the process of prosecution include vetting of all judges and prosecutors (not just SPAK judges and prosecutors); jurisdiction for the SPAK courts over cases of corruption, organised crime and offences committed by senior public officials; better pay, security, and early retirement for the SPAK judges; and monitoring of telecommunications of SPAK judges and their families. Some of these elements have been very controversial (see further below, sections 3.2.2 and 4.3.2), however, Gunjic notes that:

[I]n contrast to other countries that have opted for more limited reform in setting up anti-corruption courts, there is no particular concern in Albania about the integrity of members of the superior instance, the High Court, as its judges have undergone the same vetting process. The same is true in principle for the integrity of SPAK prosecutors and investigators. In addition, the simultaneous initiation of multiple reform projects reduces the risk of the SPAK Courts crowding out other (possibly more decisive) components of justice reform.¹⁰³

In the **Slovak Republic** too, improving integrity was a significant factor driving the need for a new specialised anti-corruption court since there was very low levels of trust in the judiciary.¹⁰⁴ In a 2010 World Bank report, it was noted that:

The legal community openly admits that, to process cases, “informal incentives” are needed for judges and court personnel. The community also indicates that as many as 80 percent of judges are corrupt and believes that judges’ lack of personal accountability is the main reason for the insufficient productivity of the courts.¹⁰⁵

This is a long-standing, and deep-rooted issue in the Slovak Republic. In a 1998 survey, 50% of respondents believed that judges were corrupt, and 36.6% believed that the judiciary was politically influenced.¹⁰⁶ And in 2000, a World Bank survey showed that the judiciary and the health system were the most corrupt sectors, with delays and corruption being the main concerns about the judiciary.¹⁰⁷

Against this backdrop, corruption was a major issue in the 2002 election.¹⁰⁸ The Slovak Republic signed the UN Convention against Corruption in December 2003¹⁰⁹, and the Special Court was established in 2003 along with the Office of the Special Prosecutor.¹¹⁰ The establishment of the Special court was apparently recommended during the pre-accession process of the Slovak Republic to the EU.¹¹¹ At first, the Special Court was exclusively concerned with corruption cases. However, in 2009 the Constitutional Court declared the

¹⁰² Ibid.

¹⁰³ Ibid., pp. 10-11

¹⁰⁴ World Bank (2003), *Slovak Republic: Legal and Judicial Sector Assessment*, pp. 35-36

¹⁰⁵ Ibid., p. 35

¹⁰⁶ Ibid., p. 35

¹⁰⁷ Ibid., pp. 35-36

¹⁰⁸ Pawelke A. (2010), *A Diagnosis of Corruption in Slovakia*, p. 11

¹⁰⁹ Ministry of Justice of the Slovak Republic (2020), *Second Cycle UNCAC Implementation Review*, Slovakia Self-Assessment, p. 2

¹¹⁰ Slovak Republic (2003), *Act No.458/2003 Coll. on the Special Court and Special Prosecutor*.

¹¹¹ Slovak Republic (2020), *European Rule of Law Mechanism: Input from the Slovak Republic*.



Special Court unconstitutional.¹¹² Objections to the court centred around the jurisdiction of the court and the pay received by its judges.¹¹³ Parliament brought in new laws re-establishing the Special Court, now named the Special Criminal Court (SCC),¹¹⁴ and expanded its jurisdiction beyond corruption cases to include other serious crimes as well.¹¹⁵

In addition to concerns about corruption amongst judges, there were also concerns about the independence of judges under the leadership of Stefan Harabin.¹¹⁶ In 2009, 15 judges sent a letter to the main constitutional officials of the country protesting against the extensive use of disciplinary procedures against judges that interfered with their independence.¹¹⁷ Spáč, Šipulová, and Urbániková argue that “The pattern of using power in favour of judges and their personal gains had considerable spillover to the actual decision-making of the courts.”¹¹⁸ And this appears to have been borne out in 2019.¹¹⁹ Businessman Marian Kocner was arrested and investigated for forgery and murder. During the investigation police and Europol decrypted messages in his phone that showed that he had tried to interfere with the decision-making of courts, and engaged in corruption with judges, prosecutors and lawyers. Judges denied contact with him, but ultimately, in 2020, thirteen judges were arrested on charges of bribery, corruption, and abuse of power. Many of them were court presidents and vice presidents. Five of those arrested were sent immediately for pre-trial detention by the Constitutional Court because there was so much evidence against them. Curoso notes that even with low trust in the judiciary and suspicions about judges circulating for years, “a scandal of such magnitude was shocking.”¹²⁰ He notes that:

The fact that so many judges served private demands and commands was unexpected because the Slovak judiciary’s institutional framework is based on, and shows adherence to, all the significant international recommendations designed to safeguard judicial independence. The critical powers in the management of judicial affairs are in the hands of a balanced and autonomous Judicial Council of the Slovak Republic (Judicial Council), and the powers of other branches are limited. Political pressure on the courts is formally hindered.¹²¹

However, Curoso argues that the deeply ingrained institutional culture in the Slovak Republic undermines the immense progress made in formal, regulatory reforms of the judiciary: “A habitus of informal loyalties leads to informal networks from which political actors and

¹¹² PL. US 17/08 - 238 on 20 May 2009

¹¹³ UNODC (2013), *Country Review Report of Slovak Republic*, para. 459

¹¹⁴ Slovak Republic (2009), *Act. No 291/2009 Coll. on Specialised Criminal Court and Amendments to Certain Laws*.

¹¹⁵ Stephenson M. C. (2016), *Specialised Anti-Corruption Courts: Slovakia*, p. 1, and see s.4 of (2005), *Law No. 301/2005 Coll. Code of Criminal Procedure of the Slovak Republic*.

¹¹⁶ Spáč S., Šipulová K. and Urbániková M. (2018), *The Story of Judicial Self-Governance in Slovakia*, p. 1741.

¹¹⁷ *Ibid.*, p. 1753

¹¹⁸ *Ibid.*, p. 1753

¹¹⁹ See Curoso P. (2021), *Panopticon of the Slovak Judiciary - Continuity of Power Centers and Mental Dependence*, *Ibid.*, (22):1247 for an account of these events.

¹²⁰ *Ibid.*, p. 1248

¹²¹ *Ibid.*, p. 1251

involved judges can benefit.”¹²² Transforming an ingrained judicial culture is a major challenge.

Ukraine has been facing serious problems with corruption for a long time, as its ranking in the Transparency International’s *Corruption Perceptions Index* clearly indicates – in twenty years, between 2000 and 2020, it has moved between positions 146/178 and 117/180. After the 2014 revolution, new bodies were set up with the goal of combatting corruption: National Anti-Corruption Bureau of Ukraine (NABU), with investigative powers; Special Anti-Corruption Prosecutor’s Office (SAPO), with prosecutorial powers; National Agency for Prevention of Corruption (NAPC), in charge of asset declarations; and Asset Recovery and Management Agency (ARMA), for the recovery of assets.

These institutions, however, did not meet needs of efficiency in the prevention and fight against corruption, and the judiciary, as Ivanna Kuz points out, was seen as “the weak link in the chain”, not only due to delay and inefficiency, but also because “Ukrainian judges are widely viewed as susceptible to political influence, and even corrupt themselves”¹²³. The Ukrainian judiciary was considered unable “to deliver fair and impartial judicial decisions regarding cases of high-level corruption”¹²⁴.

The perception of corruption in the Ukrainian judiciary exists not only within Ukraine, but also abroad. In 2017, the Parliamentary Assembly of the Council of Europe clearly stated in its Resolution 2145 (2017) that there is “widespread corruption in the judiciary”¹²⁵. Corruption among judges in Ukraine drove activists to advocate for a specialist anti-corruption court. The raft of reforms undertaken by the government between 2014 and 2016 were not considered to do enough to address the deep-seated corruption in the judiciary, because “Ukraine’s regular courts are notorious for their corruption and susceptibility to political pressure; even when judges act in good faith, it can be hard for these overburdened judges, dispersed all over the country, to process corruption cases expeditiously.”¹²⁶ Calls for a specialist anti-corruption court were resisted by the government, which argued that reform should focus on the judiciary as a whole. However, under pressure, Poroshenko (former President) eventually proposed his own HACC bill in late December 2017, but that bill was criticised as too weak.”¹²⁷ Campaigners kept up the pressure though and sought support from external sources such as the EU, the International Monetary Fund (IMF) and the World Bank (see further section 3.2.3.1, below). Influence and pressure from these activities proved to be “indispensable drivers of the efforts to create the HACC.”¹²⁸

Concerns about the independence of judges have abounded in both Bulgaria and Croatia too. The situation in **Bulgaria** is complex. A first instance Specialised Criminal Court, and an

¹²² Ibid., p. 1256

¹²³ Global Anticorruption Blog (2020), *Ukraine’s Bold Experiment: The Role of Foreign Experts in Selecting Judges for the New Anticorruption Court*, available at <https://globalanticorruptionblog.com>.

¹²⁴ Zhernakov Mykhailo and Shyba Iryna (2016), *Independent Anti-Corruption Courts in Ukraine: The Missing Link in Anti-Corruption Chain*, available at <https://rpr.org.ua/>.

¹²⁵ Council of Europe (2017), PACE Resolution 2145, *The functioning of democratic institutions in Ukraine*, §10.3, available at <http://assembly.coe.int>.

¹²⁶ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*, p. 1

¹²⁷ Ibid., pp. 1-2

¹²⁸ Ibid., p. 2



Appellate Specialised Criminal Court were established in 2012.¹²⁹ Changes to the anti-corruption framework were made in 2017 and 2018, including the expansion of the jurisdiction of the Specialised Criminal Court to include high-level corruption, with the investigation of such cases carried out under the supervision of the Specialised Prosecutor's Office.¹³⁰ However, government commitment to fighting corruption appears to have dissolved, as a proposal put forward by the government to close the anti-corruption courts was debated and passed by the Bulgarian Parliament in April 2022, with a majority of 134-73.¹³¹ This is despite protests in summer 2020 about the lack of progress in the fight against corruption that led to the resignation of five ministers in 2020.¹³² The plans to close these courts have elicited mixed responses, with some celebrating the change,¹³³ and others lamenting the negative impact on the rule of law and the "step backwards" it represents.¹³⁴ The European Commission, in its Rule of Law Report for 2020, praised some progress in judicial reforms, but noted that the level of perceived judicial independence "remains low": only 37% of individuals and 45% of companies considered it to be "fairly good or very good".¹³⁵ In addition, the European Commission cited the Eurobarometer results for 2020 which showed that "80% of Bulgarian respondents to the latest Eurobarometer survey on corruption are of the opinion that corruption is widespread in their country (EU average: 71%) while 85% of companies consider corruption to be widespread (EU average 63%)".¹³⁶

In **Croatia**, the Office for the Suppression of Corruption and Organised Crime (USKOK) and special USKOK judicial departments in the county courts (USKOK courts) were established in 2010.¹³⁷ However, the level of perceived judicial independence "remains the lowest in the EU". The 2021 EU Justice Scoreboard "shows a continued downward trend since 2016. The main perceived reason cited by the public for the perceived lack of independence of courts and judges is the perception of interference or pressure from the Government and politicians."¹³⁸ In addition to specialist lower courts, in January 2021 the new High Criminal Court began its work. The establishment of the new court was challenged as being unconstitutional because it undermined the position of the Supreme Court. However, the Constitutional Court ruled it to be constitutional and it can now operate fully.¹³⁹ The High

¹²⁹ Bulgaria (2007), *Judiciary System Act 2007*, Articles 61(1) and 63

¹³⁰ European Commission (2020), *2020 Rule of Law Report: Country Chapter on the rule of law situation in Bulgaria*, p. 20

¹³¹ See www.bta.bg/en/ and <https://verfassungsblog.de/> See further section 4 below.

¹³² European Commission (2020), *2020 Rule of Law Report: Country Chapter on the rule of law situation in Bulgaria*, p. 10

¹³³ <https://verfassungsblog.de/>

¹³⁴ www.bta.bg/en/ and European Parliament, Priority question for written answer P-000433/2022 to the Commission, Rule 138, Emil Radev (PPE), Andrey Kovatchev (PPE), Andrey Novakov (PPE), Asim Ademov (PPE), Eva Maydell (PPE), Alexander Alexandrov Yordanov (PPE), Angel Dzhambazki (ECR), Andrey Slabakov (ECR) Subject: Closure of the Specialised Court and Public Prosecutor's Office in Bulgaria

¹³⁵ European Commission (2020), *2020 Rule of Law Report: Country Chapter on the rule of law situation in Bulgaria*, p. 6

¹³⁶ *Ibid.*, p. 10

¹³⁷ Republic of Croatia (2020), *Report of the Rule of Law in the Republic of Croatia for the preparation of the Annual Report on the Rule of Law in the European Union Member States by the European Commission*, p. 20

¹³⁸ European Commission (2021), *2021 Rule of Law Report Country Chapter on the rule of law situation in Croatia*, pp. 2-3

¹³⁹ Croatia (2020), Decision No. UI-4658/2019 and UI-4659/2019, *Decision and Ruling of the Constitutional Court of the Republic of Croatia No. UI-4658/2019 and UI-4659/2019 of 3 November 2020 and Separate opinion of judges*, Constitutional Court.

Criminal Court is not a specialist court, but all county court criminal appeals now go to this court.¹⁴⁰

3.2.2 Efficiency and expertise

Many judicial systems face severe problems of inefficiency and serious delays in criminal proceedings. Minimising delay and delivering timely justice is important in all judicial proceedings, but in corruption cases delay can be even more serious as it can deeply undermine the public trust in the functioning of the judicial system and in its impartiality, giving the impression that the politically and economically powerful manage to control or subvert the system.¹⁴¹ Schütte and Stephenson note that the need to improve efficiency in corruption cases is “[P]erhaps the most common rationale for the creation of specialised anti-corruption courts”.¹⁴² Another justification frequently associated with the creation of anti-corruption courts is the need for greater expertise when dealing with corruption cases. These cases are often complex and involve cross-border financial operations, requiring state-of-the-art skills at the level of information technologies, forcing judges and courts to deal with massive amounts of information. A court dedicated exclusively to deal with corruption cases would, in theory, be more apt to process great quantities of information and data and could surround itself with skilled staff, capable of assisting judges in analysing all the complex information usually associated with the economic criminality.

In the main case studies under consideration in this paper, efficiency was a key reason for the establishment of the anti-corruption court in **Latvia**. In **Serbia** specialised anti-corruption judges were considered to enable easier, more efficient, and faster proceedings.¹⁴³ **Albania**, **Bulgaria**, and the **Slovak Republic** have each formally indicated that the adoption of specialised courts would improve speed and efficiency, but these comments were made in response to a questionnaire issued by the CCJE about the use of specialised courts in general.¹⁴⁴ **Albania** noted that an advantage of specialised courts is to “help to achieve an efficient legal system” and that specialisation “helps judges act more professionally.”¹⁴⁵ In response to the same questionnaire, the United Kingdom (**UK**) noted that specialised courts are “very advantageous because it enables specialist judges and specialist lawyers to deal with specialist types of dispute. This leads to a more efficient procedure and disposal of cases.”¹⁴⁶ For the **UK**, the “advantages are particularly marked” in the context of the Commercial Court and the Patents Court,¹⁴⁷ and there is no formal specialised anti-corruption court.

In their contribution to the EU Rule of Law Report 2021, the **Bulgarian** Government explained that “[An] opportunity is being created for all judges at the regional courts to achieve complete specialisation. The number of judges will create an opportunity to assemble at least two specialised sections, which will speed up the administration of justice and improve the quality

¹⁴⁰ The new Article 26a of the Croatia (2010), *Courts Act*.

¹⁴¹ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, p. 10

¹⁴² *Ibid.*

¹⁴³ Information based on response to questions sent to MEDEL members.

¹⁴⁴ CCJE (2012), *Compilation of replies to the questionnaires on specialisation of judges*.

¹⁴⁵ *Ibid.*, p. 6

¹⁴⁶ *Ibid.*, p. 149

¹⁴⁷ *Ibid.*



of their performance.”¹⁴⁸In **Albania** and **Bulgaria**, it is seen that efficiency and professionalism, or improved performance, are considered to complement each other. In the **Slovak Republic**, judges have expressed a preference for increased judicial specialisation, but not the specialisation of courts: the 2017 CEPEJ report on the quality and efficiency of the **Slovak** Judiciary found, in response to a survey of judges and court staff,¹⁴⁹ that:

“... 54% of the replies to the Questionnaire on Quality were negative as concerns the need to create or to maintain the existence of specialised courts in the Slovak judicial system, while only 25% were positive. Moreover, *although not favourable to the specialisation of courts, the respondents supported the specialisation of judges*. Thus 64% of all respondents (and 71% among the respondents who are judges) replied “Yes” to judges’ specialisation, 13% (10% among the respondents who are judges) said that it is partially necessary and 23% (19% among the respondents who are judges) replied “No”.¹⁵⁰

In **Latvia**, there are several reasons for the establishment of the Economic Court and efficiency is high among them. Judicial reform has been on the political agenda for many years.¹⁵¹ The economic crisis of 2008 had a significant impact on the Latvian economy and highlighted both the weaknesses in the economy and concerns about the judiciary that were undermining the rule of law.¹⁵² The government issued a white paper setting out a reform agenda for the judiciary for the years 2009-2015, focusing on the quality, independence and efficiency of the judiciary.¹⁵³ And in 2015, a territorial reform of the courts began, the aim of which was to “consolidate multiple jurisdictions into larger units with the aims of increasing efficiency and flexibility, and ensuring a more even caseload.” These reforms also “aimed to promote more in-depth specialisation among judges.”¹⁵⁴ By 2019, discussions had begun about the establishment of a specialist economic court and the draft laws were developed.¹⁵⁵ The laws were passed by the Latvian Parliament in 2020,¹⁵⁶ and the Court was opened in March 2021.¹⁵⁷ Efficiency, both in terms of processing cases and of financing the courts, appears to be at the core of the decision to create the new Economic Court. The Ministry of Justice gives the following as the “key purpose” of the court: “[F]ast, high quality and effective examination of complicated commercial disputes, economic and financial crimes and corruption cases, ensuring useful and rational use of the funds of the national budget.”¹⁵⁸ The advantages of the new court are said to be “to concentrate the current specialisation in one place” and to “develop (expand) them”;

¹⁴⁸ Republic of Bulgaria (2021), *Contribution of the Republic of Bulgaria to the 2021 Rule of Law Report*, p. 1

¹⁴⁹ CEPEJ (2017), *Report on the Efficiency and Quality of the Slovak Judicial System: Assessment and Recommendations on the basis of CEPEJ Tools*.

¹⁵⁰ *Ibid.*, p. 17

¹⁵¹ Discussed in Reinholde I. (2020), ‘Justice for Growth’: Case study of a Latvian ESF project under the study ‘Progress Assessment of ESF Support to Public Administration’ (PAPA).

¹⁵² *Ibid.*, p. 8

¹⁵³ *Ibid.*, p. 8

¹⁵⁴ *Ibid.*, p. 8

¹⁵⁵ Ministry of Justice Republic of Latvia (2021), *Economic Court*, Retrieved 13.12.2021, from www.tm.gov.lv

¹⁵⁶ *Ibid.*

¹⁵⁷ See www.tm.gov.lv

¹⁵⁸ Ministry of Justice Republic of Latvia (2021), *Economic Court*, Retrieved 13.12.2021, from www.tm.gov.lv

“not only to develop the current areas, but to ensure also the specialisation in other disputes”; and “to promote development of the business environment in a complex manner”.¹⁵⁹

The Latvian Economic Court is very new, having opened on 31 March 2021, therefore it is not possible to evaluate its efficiency effectively. However, the following countries have established specialised anti-corruption courts or judges in part to improve efficiency: Botswana,¹⁶⁰ Cameroon,¹⁶¹ Ghana,¹⁶² Malaysia,¹⁶³ Palestine,¹⁶⁴ Pakistan,¹⁶⁵ Philippines,¹⁶⁶ Rwanda,¹⁶⁷ Tanzania,¹⁶⁸ Uganda,¹⁶⁹ and Zimbabwe.¹⁷⁰ These examples demonstrate some of the issues that may arise in connection with the mechanisms used to increase efficiency in dealing with corruption cases, and the experiences in our case studies show that they can arise even when improving efficiency was not a primary motivation for the establishment of the specialised court. The main issues are the impact of recruiting specialised judges who hear only corruption cases;¹⁷¹ the institutional design of the courts;¹⁷² the effect of deadlines for corruption cases;¹⁷³ and ensuring related laws and procedures are coherent and do not allow for unnecessary delays.

3.2.2.1 Recruitment of specialised judges who can focus on corruption cases

The establishment of a specialised jurisdiction would, in theory, allow for the recruitment of specialised judges, prosecutors and staff capable of handling cases in a more expeditious and effective manner. Specialised judges should be able to process cases more quickly because they are not additionally dealing with other kinds of cases, and the “judge-to-case ratio”¹⁷⁴ is improved. But the practice of existing anti-corruption courts and specialised judges shows that there are several potential problems with this approach as follows:

¹⁵⁹ Ibid.

¹⁶⁰ UNODC (2014), *Country Review Report of the Republic of Botswana*, p. 168

¹⁶¹ Iliasu M. (2014), *The Creation of the Cameroon Special Criminal Court: Change from Confiscation and Punishment to Restitution and Nolle Prosequi*, p. 2

¹⁶² Response to questionnaire kindly provided by Justice Asare-Botwe, judge of the Ghana Economic Crimes Court (Division of the High Court), November 2021

¹⁶³ Response to questionnaire kindly provided by Datuk Ahmad Terrirudin Bin Mohd Salleh, Chief Registrar, Federal Court of Malaysia, January 2021.

¹⁶⁴ Miller D. E. (2010), *Palestine Authority Inaugurates Anti-Corruption Court*.

¹⁶⁵ Response to questionnaire kindly provided by Adnan Larik, Deputy Secretary-General, National Judicial (Policy Making) Committee, Law and Justice Commission of Pakistan, December 2020

¹⁶⁶ Stephenson M. C. (2016), *Specialised Anti-Corruption Courts: Philippines*.

¹⁶⁷ Response to questionnaire kindly provided by Justice Harrison Mutabazi, Judicial Spokesperson, Judiciary of Rwanda, November 2021

¹⁶⁸ Response to questionnaire kindly provided by Justice E.B. Luvanda, Judge-in-Charge, Corruption and Economic Crimes Division, Tanzania, November 2021

¹⁶⁹ Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Uganda*.

¹⁷⁰ Zimbabwe (2020), Gazette Notice 625 of 2020, *Creation of the Anti-Corruption Division of the High Court*, see Explanator Note.

¹⁷¹ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, p. 10

¹⁷² Ibid., p. 10

¹⁷³ Ibid., p. 10

¹⁷⁴ Ibid.

- *Diverting judicial talent away from other areas*

Judges are often selected to sit in specialised courts or divisions because they are more “capable” or “talented” and therefore more readily able to specialise and dispose of cases quickly and efficiently.¹⁷⁵ But allocating the best judges away from the general courts to the specialised anti-corruption court means that those other areas, where there may be an equally pressing need, will suffer.¹⁷⁶ In Ghana the law allows the Chief Justice to appoint members of the Court of Appeal or the Supreme Court to hear difficult cases in the High Court.¹⁷⁷ This inevitably means that more senior, and highly expert individuals from an already limited pool, may be taken away from their other work to try cases in a lower court. In Uganda, the shortfall may be made up in another way: the Chief Justice has the power to designate magistrates (lower court judges) to assist the High Court, and thereby increase judicial numbers in the Anti-Corruption Division.¹⁷⁸ These magistrates are therefore being moved away from their usual work in the Magistrates’ Courts, but they are gaining valuable experience, before being rotated out to another court.¹⁷⁹ The movement of judges, however, has consequences for efficiency, as discussed below.

- *Lack of specialisation in practice*

Sometimes the judges who are appointed to the specialised court or division will also have to hear other types of cases,¹⁸⁰ so while the court or division may be specialised the judge’s day-to-day practice might not be. In Bangladesh the Court of the Special Judge is the court responsible for corruption cases.¹⁸¹ It is a Court of Sessions (i.e. a lower court),¹⁸² and an individual judge, appointed as a Special Judge, is also likely to be a District Judge, a general Sessions Judge and a judge of another specialist court.¹⁸³ This means that Special Judges are hugely overburdened, and therefore there are inevitable and considerable delays.¹⁸⁴ There was a similar problem in Kenya where there have been special anti-corruption magistrates since 2002,¹⁸⁵ the use of which was then legislated for by the Anti-Corruption and Economic Crimes Act of 2003.¹⁸⁶ Over time the number of specialised anti-corruption Magistrates increased, and

¹⁷⁵ *Ibid.*, p. 11

¹⁷⁶ *Ibid.*

¹⁷⁷ Response to questionnaire kindly provided by Justice Asare-Botwe, judge of the Ghana Economic Crimes Court (Division of the High Court), November 2021

¹⁷⁸ Uganda (1971), *Magistrates’ Court Act 1971*, s.5. See also www.judiciary.go.ug/

¹⁷⁹ Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Uganda*.

¹⁸⁰ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, pp. 10-11

¹⁸¹ Hoque R. (2014), Courts and the adjudication system in Bangladesh: In quest of viable reforms, *Asian Courts in Context*, p. 457

¹⁸² Bangladesh (1958), *Criminal Law Amendment Act 1958* (Act No. XL of 1958), ss 3(2) and 6(a), and see Hoque, R. (2014). Courts and the adjudication system in Bangladesh: In quest of viable reforms, *Asian Courts in Context*, pp 455 and 457

¹⁸³ Chowdhury G. S. (2007), *Country Report: Bangladesh*, p. 110

¹⁸⁴ *Ibid.*

¹⁸⁵ Then Chief Justice Bernard Chunga created specialised anti-corruption Magistrates’ Courts using his powers as Chief Justice. This was formalised under s.3 of the Anti-Corruption and Economic Crimes Act 2003 (ACECA), which allowed for the appointment of special magistrates by the Chief Justice. Their jurisdiction is set out in s.4 of the ACECA. See further: Kenya (2015), *Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya*, p. 41

¹⁸⁶ Kenya (2003), *Anti-Corruption and Economic Crimes Act* (Act No.3 of 2003), ss 3,4 and 5



by 2013, there were special Magistrates hearing corruption cases in every county.¹⁸⁷ At the time of the creation of the Special Magistrates, Kenya was in the midst of a major crisis in the judiciary – corruption was rife, and the judiciary was “viewed as a market-place where justice was on sale to the highest bidder”.¹⁸⁸ Improving the integrity of the judiciary was therefore no doubt a significant factor behind the decision to use Special Magistrates, however, their main purpose was to speed up the hearing and resolution of corruption cases in general.¹⁸⁹ By 2015, this had not happened.¹⁹⁰ The Magistrates were becoming less specialised over time as they were often allocated to other matters,¹⁹¹ and corruption cases were taking an average of three years to progress through the courts, in part due to this lack of specialisation.¹⁹² Recommendations were made by a Special Task Force to the Chief Justice in 2015 that “Special Magistrates should hold trials of offences under the Act on a day-to-day basis until completion”, which is in line with the relevant legislation.¹⁹³

In Ghana, there is a similar situation where the specialised court, as a High Court, has jurisdiction in “all matters” and is therefore open to receiving a case on any issue.¹⁹⁴ The same in Zimbabwe, where a new Anti-Corruption Division of the High Court was established by the Chief Justice in 2020.¹⁹⁵ The explanatory note to the Gazette Notice creating the Specialised Division explains that: “A specialised division of the High Court such as the Anti-Corruption Division is able to exercise the general jurisdiction of the High Court in any matter that is brought before it. Hence the Anti-Corruption Division will have jurisdiction to deal with matters falling outside those specified in this notice.”¹⁹⁶ In Tanzania the jurisdiction of the specialised court is set out in an Act of Parliament,¹⁹⁷ so it may be that the specially appointed judges are somewhat insulated from hearing other matters, but the jurisdiction of the court is broad and includes terrorism, drug trafficking and “government trophies”.¹⁹⁸

In **England and Wales**, Southwark Crown Court in London is a *de facto* specialised anti-corruption and fraud court.¹⁹⁹ While there is no formal anti-corruption court in England and

¹⁸⁷ Kenya (2015), *Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya*, p. 31

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.* The President of Kenya appointed a Task Force “to examine the legal, policy and institutional framework for fighting corruption with a view to recommending appropriate interventions for enhancing the fight against corruption in the country”, which reported in 2015.

¹⁹¹ *Ibid.*, p. 31

¹⁹² *Ibid.*, p. 31

¹⁹³ *Ibid.*, p. 79

¹⁹⁴ Response to questionnaire kindly provided by Justice Asare-Botwe, judge of the Ghana Economic Crimes Court (Division of the High Court), November 2021

¹⁹⁵ Zimbabwe (2020), Gazette Notice 626 of 2020, *High Court Act [Chapter 7:06] Creation of the Anti-Corruption Division of the High Court*.

¹⁹⁶ *Ibid.*

¹⁹⁷ Tanzania (2016), *Written Laws (Miscellaneous Amendments) Act No.3 of 2016* and Tanzania (2016), Gazette Notice No.267 of 2016, *Economic and Organised Crime Control (The Corruption and Economic Crimes Division) Rules*.

¹⁹⁸ Response to questionnaire kindly provided E.B. Luvanda, Judge in Charge, Corruption and Economic Crimes Division, Tanzania

¹⁹⁹ Hopmeier M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.



Wales, Southwark Crown Court was designated, by Practice Direction issued by the Presiding Judge in 2006, as the serious fraud centre to receive cases from around England and Wales “of alleged fraud or money laundering (not e.g. a combination of drugs and money laundering) estimated by the Crown to last 6 weeks or more”.²⁰⁰ Also, just as in the cases discussed above, any indictable case (the most serious offences) could be heard by any Crown Court. This means that in theory a fraud or corruption case could go to another Crown Court, or judges in Southwark Crown Court could hear other criminal cases.

- *Lack of capacity and training*

Removing talented judges away from other areas is not the only problem: finding judges and training them may be an issue too, as seen in Kenya, where a “lack of capacity and training for judicial officers in the adjudication of corruption, economic crimes and related cases” remains a serious problem,²⁰¹ and undermines the effectiveness of the specialised judges. However, a respondent to our survey from Ghana, has highlighted that there may be benefits to judges being appointed to specialised anti-corruption courts and divisions because specialisation “builds expertise over time”, making the courts more efficient. Additionally, specialised judges will also have the experience to train other judges.²⁰² Concerns about the lack of training of specialised judges have also been raised in Bangladesh and Malaysia.²⁰³ In Mexico, the National Anti-Corruption System was established and the relevant laws came into force in 2017. However, neither the special chamber of the Federal Tribunal for Administrative Justice, nor the specialised chambers of regional courts have begun work because not enough judges have been appointed. Commentators have lamented the President’s “apparent indifference to the anti-corruption system”.

In **Latvia** one of the issues that the Council for the Judiciary must address now that the Court has opened, is training judges for the new court. These judges are all at the beginning of their judicial careers and will therefore be provided with judicial mentors or “coaches”, as well as being supported by the Riga Regional Court, which is the designated appellate court for the first instance Economic Court.²⁰⁴ So, far from being specialised, the judges of this court are very inexperienced. They will, however, at least benefit from the experience and guidance of their mentors.

In **Albania**, the problem is that there are not enough judges. While efficiency may not have been the main reasons for establishing the Anti-Corruption and Organised Crime Court (SPAK), lack of efficiency is now a problem.²⁰⁵ Ensuring that all courts are fully operational and have the requisite number of judges has been problematic, especially as the Justice Reform

²⁰⁰ Ibid.

²⁰¹ Kenya (2015), *Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya*, p. 31

²⁰² Response to questionnaire kindly provided by Justice Asare-Botwe, judge of the Ghana Economic Crimes Court (Division of the High Court), November 2021

²⁰³ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, p. 14

²⁰⁴ Republic of Latvia Supreme Court Senate (16 March 2021), *Call for the support of judges of the Economic Court and their mentors*.

²⁰⁵ European Commission (2021), *Albania 2021 Report, accompanying the 2021 Communication on EU Enlargement Policy*, p. 22



project is in progress and the vetting of judges is ongoing.²⁰⁶ For example, the Constitutional Court only became fully operational in 2020 with the appointment of three new judges to the Constitutional Court (taking it to seven), which meant that the court had regained its quorum of six for plenary sessions.²⁰⁷ The vetting process has led to staff shortages in the High Court and the SPAK court. Initially, judges of the Special Criminal Courts (predecessor to the SPAK courts) were assigned to the SPAK court, but this was conditional, and they were only assigned “unless there [were] reasons for the termination of the status of the magistrate or as a result of the re-evaluation process” that was also introduced in 2016 for all judges.²⁰⁸ In practice, the vetting process has resulted in a loss of judges from SPAK because they resigned, were dismissed or were promoted to the High Court.²⁰⁹ Two fifths of Albania’s judges are not eligible for the SPAK court either because they have not been vetted yet or do not meet the experience requirements.²¹⁰ In addition, potential candidates have been put off by the monitoring of SPAK judges which involves monitoring communications, finances, and family members.²¹¹

While being selected to sit on an anti-corruption court may bring prestige to a judge for being trusted to deal with complex corruption cases, and therefore judges may be attracted to being on the court, that may not be enough. One way that judges may be encouraged or persuaded to apply for a position on the new anti-corruption court is to offer incentives to get the best judges. This approach was taken by the **Slovak Republic**, using salaries as an incentive. The base salary of judges is equivalent to the salary of a Member of the National Council and salaries are graduated to reflect experience and function,²¹² with “functional supplements” where necessary for more senior roles or leadership roles such as for being a Court President. The base salary for SCC judges is the same as the base salary of Supreme Court judges and is “equal to multiple of 1.3 that of salary of Member of the National Council monthly”.²¹³

Ukraine’s new and unique system for the appointment of judges to the High Anti-Corruption Court (HACC) is discussed in more detail in section 4.3.2 below, however, it is worth mentioning that concerns have been raised about the potential for delay caused by the number of judges and composition of the panels:

“...the caseload may prove excessive relative to the number of HACC judges. This problem is compounded by the fact that HACC judges must sit in panels of three, and if one judge is absent for any reason, the remaining two must wait for the third in order to proceed with hearing a case.”²¹⁴

In **England and Wales** judges in the Crown Court are either Circuit Court Judges or Recorders who are practicing lawyers sitting part-time as judges. The judges in Southwark Crown Court

²⁰⁶ Assembly of Albania (2020), *Justice Reform Albania*.

²⁰⁷ European Commission (2021), *Albania 2021 Report, accompanying the 2021 Communication on EU Enlargement Policy*, p. 21

²⁰⁸ Albania (2016), *Law No.96/2016 On the Status of Judges and Prosecutors in the Republic of Albania*.

²⁰⁹ Gunjic I. (2022), *Albania’s Special Courts against Corruption and Organised Crime*, p. 9

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² Slovak Republic (2000), *Act 385/2000 Coll. on Judges and Lay-Judges*, Title Seven

²¹³ *Ibid.*, s.66(1)

²¹⁴ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*, p. 9



are experts in dealing with complex fraud, money laundering and bribery cases and “will often have gained experience as Judges at other Courts before coming to Southwark Crown Court.”²¹⁵ In addition, some of the judges will have “practised as lawyers in civil law before becoming judges sitting in the criminal court”,²¹⁶ so may have experience of the economic complexities of these cases. This is the norm in England and Wales: judges of specialist courts “will have practiced in these specialist areas when barristers and so they know the law and procedure very well. The advocates appearing in those courts will also be specialist. There are special rules of procedure to deal with those particular types of cases. The whole system is designed to enable cases to be dealt with as quickly and efficiently as possible.”²¹⁷ This practice of appointing judges who already have considerable expertise in the relevant area means that specialised training is unnecessary.

- *Personalisation of justice and insulation of judges*

The fact that there are usually only small groups of judges, prosecutors, and lawyers working in specialised courts also increases the risk of external influence,²¹⁸ biased decisions or even corruption.²¹⁹ Another important consequence of the specialisation of justice is the possible “personalisation” of justice. If a single court is entrusted the competence to hear all cases of corruption and if its jurisdiction is geographically concentrated, should that court be composed of a small number of judges and there will be the inevitable tendency to publicly associate the decisions with individual judges. That could eventually lead to an undesirable effect not only for judges themselves (subject to a high degree of public exposure, not usual for judges) but also for the system, as public opinion could start having a perception of the administration of justice as a subjective and not objective function.

This was one of the concerns raised by judges in **Latvia** in response to proposals for the Economic Court. The Council for the Judiciary was concerned that the new court would not function properly, and one concern (of many) was that having a limited number of judges would mean that the same judges would hear all the cases, and this would “inevitably lead to public suspicion of corruption”.²²⁰ The Council for the Judiciary cited the example of the Latvian Insolvency Court, in which all the cases were handled by the same 2-4 judges, and in 2018 allegations of corruption and the risk of corruption were raised in the press. Such mistrust, stemming from the small number of judges responsible for the same kinds of cases, was an “unavoidable side-effect of judges’ specialisation”,²²¹ and the Council for the Judiciary argued that the same would happen in the case of the Economic Court, with only seven judges.²²² On this point, they concluded that having such a small number of judges on the

²¹⁵ Hopmeier M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.

²¹⁶ *Ibid.*

²¹⁷ CCJE (2012), *Compilation of replies to the questionnaires on specialisation of judges*, p. 149

²¹⁸ Baum Lawrence, *Judicial Specialisation and the Adjudication of Immigration Cases, cit.*, p. 1539.

²¹⁹ Gramckow Heike and Walsh Barry, *cit.*, p. 8.

²²⁰ Republic of Latvia Supreme Court Senate (10 June 2019), *The Council for the Judiciary informs the Government and the Saeima about the arguments against formation of the Economic Court*.

²²¹ *Ibid.*

²²² *Ibid.*



court would lead to suspicions about corruption, but also that “a closed, small circle of judges is also a factor contributing to corruption.”²²³

An example from **Portugal** demonstrates the risks of a small number of judges hearing several cases of the same kind, and the potential for the “personalisation of justice”. Although Portugal does not have a specialised jurisdiction for corruption cases, the pre-trial stages of the criminal procedure in the most complex cases are conducted by special bodies of the prosecution and the judiciary. From 1999 there has been a specialised department, the DCIAP (*Departamento Central de Investigação e Ação Penal*), for investigating among others, of crimes of corruption and money laundering.²²⁴ At the same time, the *Tribunal Central de Instrução Criminal* (TCIC)²²⁵ was created. It is a Court of Instruction with competence to act whenever the intervention of a judge is necessary in the investigations of the crimes carried out by DCIAP. At the time, there were calls for the establishment of a specialised court to try the cases originating from the investigations carried out by the DCIAP and the TCIC²²⁶, but that never came to light. The TCIC is competent not only to carry out all judicial acts in ongoing investigations, but also to conduct one of the pre-trial phases of the criminal procedure – the instruction (“*Instrução*”). It is a non-obligatory pre-trial stage of the procedure, where the defendant (when the Public Prosecution decides to accuse) or the victim (when the Public Prosecution decides to close the case) asks the Judge to verify if the evidence collected by the Public Prosecution are sufficient or not to accuse. Until 2015, the TCIC was composed of one single judge. That year, another judge was added. In recent years, due to the growing number of corruption and money laundering investigations started by the DCIAP (some of them involving the most powerful members of Portuguese banks and even a former Prime Minister),²²⁷ the TCIC has been at the centre of the media attention, not only when deciding on restraining measures requested by the Public Prosecution during the investigation, but also when deciding on the “*instruções*” requested by defendants accused of corruption by the Public Prosecution. That led to an increase in the public exposure of the two judges working at that court, whose names became familiar to the majority of citizens and were the object of extensive media reports.²²⁸ Due to the quite different personalities and juridical approaches of the judges – especially when analysing evidence - the public perception was that, depending on the judge to whom the cases would be randomly allocated, the defendants could have more or less chances of avoiding trial. The media attention was such that TV reporters and cameras were present during the electronic random allocation of the case involving the former Prime Minister.²²⁹

²²³ Ibid.

²²⁴ Law nr. 60/98 of 27 August created the department on the dependency of the Prosecutor-General. Decrees nr. 264/99 of 12 April and 386-B/99 of 25 May, as well as *Circular* of the Prosecutor General nr. 11/99, made that department operational as of 15 September 1999.

²²⁵ Law nr. 3/99 of 13 January 1999.

²²⁶ Triunfante Luís de Lemos (2011), *Tribunal Central Nacional (Utopia recorrente ou necessidade premente)*, speech given at the 9th Congress of Portuguese Judges, Ponta Delgada, Açores, 2011, available at www.asjp.pt/.

²²⁷ Like case nr. 122/13.8TELSB (known as “Operação Marquês”), involving former Prime-Minister José Socrates, or case nr. 207/11.5TELSB (known as “Monte Branco”), involving Ricardo Salgado, former CEO of one of the largest private banks operating in Portugal (“Banco Espírito Santo”).

²²⁸ www.rtp.pt/ and <https://sicnoticias.pt/>.

²²⁹ www.publico.pt/

This situation eventually triggered a reaction from both Parliament and the Judiciary. The Government presented to the Parliament a draft Law (nr. 103/XIV/2.^a), proposing to merge the TCIC with the Lisbon Instruction Court (*Tribunal de Instrução Criminal de Lisboa*), thus increasing the number of judges to 9. In the motives of that proposal, the government said that “the current configuration of this court with regard to the number of judges performing duties therein leads to an imperfect degree of randomness in the distribution of cases and, consequently, to an undesirable personalisation of justice, which does not benefit the adequate public perception of the objectivity of judicial action”, so the merger was needed in order to “strengthen the citizens' confidence in the justice system.”²³⁰ This proposal was the object of positive opinions, among others, of the Superior Council of Magistracy (*Conselho Superior da Magistratura*)²³¹ and the Portuguese Judges' Association (*Associação Sindical dos Juizes Portugueses*)²³². On 15 October 2021, the Portuguese Parliament approved the Law, on 13 November 2021 the President of the Republic signed it, and on 23 November 2021 it was published in the official journal as Law 77/2021.²³³ As of 4 January 2022, the TCIC is composed of 9 judges and will have its competences merged with those previously attributed to the Lisbon Instruction Court.

- *Frequent transfers of judges or cases*

In many cases, where there are specialised divisions or courts, the practice of transferring both cases and judges can disrupt proceedings and cause delays. In Bangladesh, the territorial jurisdiction of each Special Judge is determined by the Government.²³⁴ Where there is only one Special Judge in an area, that judge will hear all corruption cases. Where there is more than one Special Judge in a territorial area, the designated Senior Special Judge may transfer a case to another Special Judge.²³⁵ A Senior Special Judge may order the transfer of “any case”, “at any stage of the trial”, “from the Court of one Special Judge to the Court of another Special Judge having jurisdiction within the same territorial limits”.²³⁶ In addition, the High Court Division has the authority to “transfer any case from the Court of a Special Judge to the Court of another Special Judge” providing that the Special Judge from whom the case is being transferred “shall not be bound to adjourn the case”.²³⁷ In Kenya there can be frequent transfers of Special Magistrates in the middle of hearing cases, meaning that some cases have to be heard anew.²³⁸ Recommendations were made to the Chief Justice in 2015 that Special Magistrates “as far as is practically possible, should not be assigned other cases”²³⁹ and that the Chief Justice establish a specialised High Court Division. The Anti-Corruption and Economic Crimes Division of the High Court was established in 2016 “in the interest of effective case management of the expeditious disposal of cases and in order that similar

²³⁰ <https://app.parlamento.pt/> .

²³¹ <https://app.parlamento.pt/> .

²³² <https://app.parlamento.pt/> .

²³³ <https://dre.pt/>.

²³⁴ Bangladesh (1958), *Criminal Law Amendment Act 1958* (Act No. XL of 1958), s.4(1)

²³⁵ *Ibid.*, s.4(2)

²³⁶ *Ibid.*, s.4(3)

²³⁷ *Ibid.*, s.10(3)

²³⁸ Kenya (2015), *Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya*, p. 31

²³⁹ *Ibid.*, p. 80



disputes are effectively and efficiently adjudicated".²⁴⁰ In Uganda the Magistrates assigned to the Anti-Corruption Division of the High Court are moved to another court after three years. This means that they take their expertise with them, and their replacements have very little experience as magistrates and very little knowledge of corruption cases.²⁴¹

3.2.2.2 *Speed and efficiency built into institutional design*

The institutional design and models of anti-corruption courts are discussed more fully in section 4. However, it is worth noting the potential for institutional design to impact on efficiency here: for example, appeals going straight from a first instance AC court directly to the Supreme Court, thereby reducing the overall time the case takes through the system. Examples of systems in which the lower appellate courts are bypassed include Cameroon, and Nepal.²⁴² In Nepal, while the Special Court has jurisdiction to trial corruption cases at first instance, the court has the status of an appellate court, which means that appeals from corruption trials go straight to the Supreme Court.²⁴³ In contrast to Nepal, in the **Slovak Republic**, the SCC has retained its status as a district court, and functions exclusively as a first instance trial court with judges whose status is equivalent to district court judges, but appeals from the SCC go directly to the Supreme Court.²⁴⁴ The HACC in **Ukraine** is a comprehensive parallel system, and decisions from the appellate chamber of the HACC can be appealed to a panel of the Criminal Cassation Court, a chamber of the Supreme Court, specially established to hear anti-corruption cases.²⁴⁵

Institutional design and procedural issues can also slow down the progress of corruption cases through the courts. This is the case, for example, in Botswana, where two elements of the legal and constitutional framework pose a problem for efficiency in corruption cases. The first is that only the High Court has jurisdiction to resolve constitutional questions,²⁴⁶ which means that, for example, if a constitutional rights question is raised in proceedings in a Magistrates' Court, it may be referred to the High Court before the case can proceed (unless the question is deemed to be "vexatious").²⁴⁷ This causes delay. The other issue is that until 2014, all criminal cases had to be initiated in the Magistrates' Courts and transferred to the High Court. Concerns about the delay caused by this procedure apparently motivated an amendment to the Criminal Procedure and Evidence Act that would allow corruption cases to be initiated in the High Court. However, the authors have not been able to confirm whether this proposal was implemented. The practice of beginning criminal cases in the Magistrates' Court is not unusual in Commonwealth jurisdictions. In **England and Wales** all criminal cases

²⁴⁰ Kenya (2015), Gazette Notice No.9123, *Notification of Practice Directions on the Division of the High Court of Kenya*.

²⁴¹ Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Uganda*.

²⁴² Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*. Note, however, that the special court in Burundi has since been abolished, and the High Court was bypassed because a constitutional provision allowing for a High Court was never implemented. See further: Présidence de la République, S. G. d. I. E, République du Burundi (2020), *Communiqué de Presse, No.10 de la Réunion du Conseil des Ministres du Mercredi 09 Décembre 2020*; and Rufyikiri, G. (2016), *Grand Corruption in Burundi: a collective action problem which poses major challenges for governance reforms*, p. 11

²⁴³ Poudel M. S. (2012), *A Summary of Anti-Corruption Measures in Nepal*, p. 171

²⁴⁴ Stephenson M. C. (2016), *Specialised Anti-Corruption Courts: Slovakia*, p. 1

²⁴⁵ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine's High Anti-Corruption Court: Innovation for Impartial Justice*, p. 3

²⁴⁶ Botswana (1966), *Constitution of Botswana, with Amendments to 2016*, Article 95

²⁴⁷ *Ibid.*, Article 18(3)



begin in the Magistrates' Courts and if the case involves an "indictable only" offence, the case will be sent to the Crown Court (in corruption cases, Southwark Crown Court) for trial.²⁴⁸

Simply introducing a specialised court or division can help to speed up the progress of corruption cases through the courts because there is clarity about where the case is to be heard. The progress of an unexplained wealth order²⁴⁹ in the infamous Anglo-Leasing²⁵⁰ case in Kenya illustrates this. The case was started in 2008, and a final ruling was given in 2021.²⁵¹ There were land assets involved so the case was first heard in specialist land courts, which were ill-equipped to deal with the complex new laws surrounding unexplained wealth orders. In the meantime, the Anti-Corruption Division of the High Court was created, after which the case was transferred to the new division and progressed more quickly.²⁵²

3.2.2.3 *Introducing deadlines*

The imposition of deadlines for the prosecution and hearing of corruption cases as they proceed from investigation through the specialised court system is another way of limiting delay. Countries in which deadlines have been introduced in an effort to minimise delay in corruption cases include: Cameroon, Nepal, Palestine, the Philippines, Indonesia and Malaysia.²⁵³ However, often the deadlines are very tight, and many countries have "struggled to adhere to the statutory deadlines".²⁵⁴

3.2.3 *The role of external factors*

In each of the countries in this study corruption in general is a big concern, and judicial corruption or integrity is also a concern. Therefore, integrity is a factor as well as efficiency and expertise in enforcing anti-corruption laws effectively. However, what the authors see with the eight countries being compared here is that, while those factors do inform the decisions to create anti-corruption courts or divisions, other significant motivating factors are external, and changes happen in response to recommendations from bodies like the EU, which is concerned to bring accession or candidate countries into line with its rule of law requirements, or the OECD, pressing to improve the business environment and implement its anti-corruption and anti-money laundering standards. In addition, these countries have all ratified the UN Convention against Corruption, which does not require specialist courts as such, but does require anti-corruption specialisation either within existing structures, or in specialist bodies.²⁵⁵

²⁴⁸ Hopmeier M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.

²⁴⁹ Kenya (2019), *Ethics and Anti-Corruption Commission (EACC) of Kenya v Patrick Ochiemo Abachi*.

²⁵⁰ This was a scandal in which high value contracts were awarded to fictitious companies in the early 2000s. See: Basel Institute on Governance (12 August 2021), *Case study: Upholding an unexplained wealth judgement in Kenya's Anglo Leasing affair*, from <https://baselgovernance.org/>.

²⁵¹ Kenya (2019), *Ethics and Anti-Corruption Commission (EACC) of Kenya v Patrick Ochiemo Abachi*.

²⁵² Basel Institute on Governance (12 August 2021), *Case study: Upholding an unexplained wealth judgement in Kenya's Anglo Leasing affair*, from <https://baselgovernance.org/>.

²⁵³ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*.

²⁵⁴ *Ibid.*, p. 12

²⁵⁵ UNCAC United Nations Convention against Corruption, Article 6, and see UNDOC (2009), *Technical Guide to the United Nations Convention against Corruption*.



Of the countries that are not the main focus of this study, the only other one in which international pressure and aid appears to have played a significant factor is Madagascar. Faced with strong opposition from the government and the judiciary, anti-corruption activists turned to the international community in particular, the EU which included specific requirements that had to be met as a conditionality in their budget support.²⁵⁶ The IMF included a similar conditionality in their Extended Credit facility,²⁵⁷ and together this pressure “helped overcome multiple attempts by the government to slow down the reform”.²⁵⁸ But in the countries in this study, there are additional factors that have emerged as being significant in the decisions governments make when implementing judicial and anti-corruption reforms. The first issue is the role of the EU and other external bodies, and the second, more subtle factor is the impact these reforms will have on the attractiveness of a country to foreign investors.²⁵⁹

Table 2: Formal membership status of countries in respect of the Council of Europe and EU

Country	Constitution	Council of Europe Membership	Accession to EU	UNCAC Ratification	AC Court / Specialised judges
Albania	1998/Rev.2016	1995	Negotiating	S:18/12/03, R:25/5/06	2019
Armenia	1995/Rev. 2015	2001	Aiming to accede	S: 19/5/05, R:28/8/07	2021
Bulgaria	1991/Rev.2015	2007	2007	S:10/12/03, R: 20/9/06	2012/ 2017
Croatia	1991/Rev.2013	1996	2013	S: 10/12/03, R: 24/4/05	2008/2010/2021
Latvia	1922, Reinstated 1991	1995	2003	S:19/5/05, R: 4/1/06	2021
Serbia	2006	2002	Negotiating	S: 11/12/03, R: 20/12/05	2018
Slovak Republic	1992/Rev.2017	1993	2004	S: 9/12/03, R: 1/6/06	2003/2009
Ukraine	1991/Rev.2016	1995	Planning to apply 2024	S: 11/12/03, 2/12/09	2018

²⁵⁶ Schatz F. (2019), *Madagascar’s specialised anti-corruption court: the quest to end impunity*, p. 2

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ This is not unique to Council of Europe countries, or countries on the path to EU accession. The World Bank’s annual *Doing Business* publication has ranked countries according to the efficiency of their legal and court systems by measuring how easy or otherwise it is to enforce a contract. See: www.doingbusiness.org/en/doingbusiness



3.2.3.1 EU Accession and Aid Conditionalities

Faced with the candidacies of countries formerly belonging to the Eastern Block, the European Union developed criteria to be met by candidate countries in order to be admitted as members. These criteria were established by the Copenhagen European Council in 1993²⁶⁰ (and reaffirmed at the Madrid European Council in 1995²⁶¹) and became known as the Copenhagen Criteria:

- Stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- A functioning market economy and the ability to cope with competitive pressure and market forces within the EU;
- the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the 'acquis'), and adherence to the aims of political, economic and monetary union.

The accession to the EU in almost all candidate countries became a goal with broad social consensus, leading to a "quasi-constitutionalisation" of the accession criteria²⁶².

The specificity of the political, economic and social challenges faced by countries transitioning from communist systems, however, soon showed that these criteria were insufficient to assess full compliance with European standards, and so the EU developed specific goals and criteria to be achieved in regard to each of the countries, namely in the case of corruption²⁶³.

Although not making it a general criterion for accession, in some cases the European Union encouraged the creation of specialised courts for corruption, as it was the case in **Slovak Republic**²⁶⁴. The incentive to specialisation may also have resulted from EU-funded twinning projects that exposed candidate countries' judges, such as the Bulgarian, to systems that already had specialisation²⁶⁵.

For **Bulgaria** and Romania, the European Commission established, prior to the formal accession, a Cooperation and Verification Mechanism, "to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime", expressly recognising that "the remaining issues in the accountability and efficiency of the judicial system and law enforcement bodies warrant the establishment of a mechanism for cooperation and verification of the progress of Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime"²⁶⁶. This Cooperation and Verification Mechanism (CVM) was intended to allow close monitoring of the areas where both countries had not fully met the accession criteria, in order to assist them

²⁶⁰ www.consilium.europa.eu

²⁶¹ www.europarl.europa.eu

²⁶² Kuzmova Yoana (2014), *The Bulgarian Specialised Criminal Court After One Year: A Misplaced Transplant, An Instrument Of Justice, Or a Tool of Executive Power?*, p. 232, www.bu.edu/.

²⁶³ Grubiša D. (2010), *Anti-corruption Policy in Croatia: Benchmark for EU Accession*, pp. 69-95, available at <https://scholar.google.pt/>

²⁶⁴ Kuzmova Yoana, *cit.*, p. 243.

²⁶⁵ *Ibid.*, p. 244.

²⁶⁶ European Commission (2006), *Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Bulgaria to address specific benchmarks in the areas of judicial reform and the fight against corruption and organised crime*, p. 58–60, available at <http://data.europa.eu>.



in that goal. In the case of Bulgaria, the CVM reports have played a major role in the creation of the Specialised Criminal Court, as they have backed the project, seeing it as an important tool for the combat against corruption²⁶⁷.

The two most significant sources of external influence in the direction of judicial and anti-corruption reform in the eight countries in this study are the EU and the OECD.

In 2014, the European Council granted **Albania** candidate status for accession to the EU.²⁶⁸ In preparation for accession “regular political and economic dialogue between the EU and Albania”²⁶⁹ began within the framework of the Stabilisation and Association Agreement (SAA) 2009 between the EU and Albania. This meant that judicial reform, and sustained efforts to effectively combat corruption, were essential.²⁷⁰ In Albania, the EU invested millions of euros into judicial reform,²⁷¹ as did USAID,²⁷² and assistance was also provided by the Venice Commission of the Council of Europe.²⁷³ The creation of the Anti-Corruption and Organised Crime Courts was part of this package of laws,²⁷⁴ and accession was conditional on the effective establishment and functioning of this new court as part of Albania’s fight against corruption.²⁷⁵

External factors are a major part of reforms in **Armenia**. The European Union-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA) entered into force on 21 March 2021. This is an agreement between the EU and Armenia through which they can work together in a wide range of areas: strengthening democracy, among other things. By entering into this agreement, the Government of Armenia has committed to “ensuring effectiveness in the fight against corruption”²⁷⁶ through domestic reform, and to cooperating “fully with regard to the effective functioning of institutions in the areas of law enforcement, the fight against corruption and the administration of justice.”²⁷⁷ Even with the current legislative

²⁶⁷ European Commission (2018), *Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism*, available at <https://ec.europa.eu/>

Rufyikiri G. (2016), *Grand Corruption in Burundi: a collective action problem which poses major challenges for governance reforms*.

See also Kuzmova Yoana, *cit.*

²⁶⁸ Kelly Thomas (2014), [EU to grant Albania ‘candidate’ status](#).

²⁶⁹ European Commission (2015), [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions](#).

²⁷⁰ Albania (2009), *Stabilisation and Association Agreement with the Republic of Albania*, Article 78

²⁷¹ Bakiaski M. (2021), *Policy Paper: Albanian Judiciary under Construction*, p. 1

²⁷² Justice for All Project, 2016-2020, See: www.usaid.gov/albania/democracy-human-rights-and-governance

²⁷³ For example: Venice Commission (2014), *Opinion No.754/2014* and Venice Commission (2016), *Opinion No.824/2015*.

²⁷⁴ Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Ch.VI

²⁷⁵ European Commission (2021), *Albania 2021 Report, accompanying the 2021 Communication on EU Enlargement Policy*, p. 5

²⁷⁶ Armenia (2021), *Comprehensive and Enhanced Partnership Agreement between the European Union and the Republic of Armenia*, Article 4(f). See further Khvorostiankina, A. (2021), *The EU-Armenia Comprehensive and Enhanced Partnership Agreement: A New Instrument of Promoting EU’s Values and the General Principles of EU Law, EU External Relations Law*.

²⁷⁷ Armenia (2021), *Comprehensive and Enhanced Partnership Agreement between the European Union and the Republic of Armenia*, Article 12



reforms, in November 2021 the CSO Anti-Corruption Coalition of Armenia held an event calling for in-depth, and real, reform of the judicial system in Armenia.²⁷⁸ In 2017 the Government drafted a strategy for judicial and legal reforms for 2018-2023.²⁷⁹

Croatia was granted the status of candidate country by the European Council in June 2004, and the Stabilisation and Association Agreement between Croatia and the EU was signed in October 2001, entering into force in February 2005. Under this agreement the government of Croatia agreed to “cooperate on fighting and preventing criminal and illegal activities, organised or otherwise, such as... illegal economic activities, and in particular corruption...”²⁸⁰ In preparing for EU accession, implementation of Croatia’s Anti-Corruption Strategy was a “key Accession Partnership priority”.²⁸¹

The assessment of Croatia’s progress on corruption was not glowing in 2008 and 2009. In 2008, the Progress Report noted that there had been some progress in anti-corruption policy and measures, but that there had been few prosecutions, although the role of USKOK was “more widely acknowledged” and “reports to it of suspected corruption [had] increased significantly, particularly as regards abuse of office cases.”²⁸² By 2009, it was reported that the National Council had been more proactive, and the first verdicts in important cases had been given, but that the administrative capacity of “State bodies fighting corruption” needed “improvement”.²⁸³ By 2010 (when the new specialised County Court divisions were established) there was said to be “good progress in the application of the new Criminal Procedure Code”, which came into force in 2009, and which “accelerated the investigation phase, with better cooperation between the police and prosecution services leading to more indictments.”²⁸⁴

The judicial system and anti-corruption rules in **Bulgaria** have been reformed and amended numerous times, and concerns about rule of law, judicial independence and corruption remain. While Bulgaria joined the EU in 2007, the relationship between Bulgaria and the EU is still regulated by the CVM because when it joined the EU “...Bulgaria still had progress to make in the fields of judicial reform, corruption and...organised crime.”²⁸⁵ Progress is regularly measured against benchmarks set by the Commission. Pavlovska-Hilaiel has argued that the CVM was ineffective from the outset because “the EU... failed to establish a working relationship with domestic civil society prior to 2007” and this meant that the “effects of the

²⁷⁸ <https://armla.am/en/>

²⁷⁹ Government of the Republic of Armenia (2017), *Draft Decision on Approving the 2018-2023 Strategy for Judicial and Legal Reforms in the Republic of Armenia and the Action Plan Deriving Therefrom*.

²⁸⁰ Croatia (2005), *Stabilisation and Association Agreement between the EC and the Republic of Croatia*, Article 80

²⁸¹ Commission of the European Communities (2009), *Croatia 2009 Progress Report, Accompanying the Communication on Enlargement Strategy and Main Challenges 2009-2010*, p. 10

²⁸² Commission of the European Communities (2008), *Croatia 2008 Progress Report, Accompanying the Communication on Enlargement Strategy and Main Challenges 2008-2009*, p. 9

²⁸³ Commission of the European Communities (2009), *Croatia 2009 Progress Report, Accompanying the Communication on Enlargement Strategy and Main Challenges 2009-2010*, p. 54

²⁸⁴ European Commission (2010), *Croatia 2010 Progress Report, Accompanying the Communication on Enlargement Strategy and Main Challenges 2010-2011*, p. 48

²⁸⁵ <https://ec.europa.eu/>



CVM then become limited to persuading governments to create new institutions which do not enjoy domestic legitimacy and ownership.”²⁸⁶

It is clear from the numerous CVM Progress Reports and the most recent EU Rule of Law Reports and the responses by the Bulgarian Government²⁸⁷ that the government is motivated by the EU recommendations in the way that it develops its reform initiatives, and this is clear from the 2009 Commission report:

Based on its most recent assessment the Commission invites Bulgaria to take up action in the following areas regarding organised crime and the fight against corruption:

- Develop an integrated strategy against organised crime and corruption;
- Make the *ad hoc* structure of joint investigation teams on organised crime permanent;
- Set up specialised structures for *prosecuting and judging* high level corruption and organised crime cases with appropriate functional and political independence...²⁸⁸

The Specialised Anti-Corruption Court was set up in 2012, and the 2012 Progress Report notes that:

There has been an overall trend towards more specialisation, more training and more careful security vetting. Specialised joint teams for organised crime cases within the prosecution were created at the level of five district courts in 2010, and in 2012 a new specialised central prosecution office for organised crime and a new specialised court started its work. This approach is in line with recommendations in successive CVM reports.²⁸⁹

In a response to a consultation by the CCJE on judicial specialisation, the Bulgarian Government notes that the advantages of special courts are: “higher qualification of the judges in the relevant field – better in-depth knowledge of specific issues, routine; well-harmonised, stable and predictable court practice; less contradictory judgments; speediness; efficiency”. A disadvantage is that “the narrow specialisation leads to a limited knowledge of the other branches of law – this might sometimes hinder the delivery of a well-balanced judgment.”²⁹⁰ The Government has indicated in 2021 that “An opportunity is being created for all judges at the regional courts to achieve complete specialisation. The number of judges will create an opportunity to assemble at least two specialised sections, which will speed up the administration of justice and improve the quality of their performance.”²⁹¹

Ukraine is working towards applying for EU accession²⁹², and the EU-Ukraine Association Agreement of 2014 sets out Ukraine’s obligations in respect of anti-corruption. Under this

²⁸⁶ Pavlovska-Hilal S. (2015), *The EU’s Losing Battle against Corruption in Bulgaria*, p. 201

²⁸⁷ For the most recent example, see: Republic of Bulgaria (2021), *Contribution of the Republic of Bulgaria to the 2021 Rule of Law Report*.

²⁸⁸ Commission of the European Communities (2009), *Report from the Commission to the European Parliament and the Council on Progress under the Cooperation and Verification Mechanism*, p. 7

²⁸⁹ European Commission (2012), *Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism*, p. 12

²⁹⁰ CCJE (2012), *Compilation of replies to the questionnaires on specialisation of judges*, p. 23

²⁹¹ Republic of Bulgaria (2021), *Contribution of the Republic of Bulgaria to the 2021 Rule of Law Report*, p. 1

²⁹² On 17 June 2022 the European Commission published a recommendation that Ukraine be granted candidate status, on the understanding that additional steps are taken. Regarding corruption it stated the following: “further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-



agreement, “cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption.”²⁹³ The agreement also includes provisions on Financial Cooperation, with Anti-Fraud Provisions as an Annex.²⁹⁴ The High Anti-Corruption Court HACC, as initially planned, was considered by many not to go far enough. And Ukrainian activists sought help from the IMF, the EU and the World Bank.²⁹⁵ They were initially reluctant to be involved, but ultimately the IMF made \$1.9 billion funding conditional on the establishment of the HACC, and the EU followed suit. The Venice Commission and the IMF were instrumental in keeping up pressure on the government to create a robust court and not water down the proposals.²⁹⁶ Specific assistance from external sources was as follows:

- OECD, through its *Anti-corruption Network for Eastern Europe and Central Asia* (OECD/ACN), first recommended the creation of such a court in 2015, in the Round 3 Monitoring report of the *Istanbul Anti-Corruption Action Plan*²⁹⁷;
- IMF, with whom Ukraine signed a financial assistance program in 2015, established the creation of an anti-corruption court as an essential requirement for the continuation of the assistance program²⁹⁸;
- The Parliamentary Assembly of the Council of Europe also endorsed in 2017 the creation of a specialised court, encouraging “the authorities to establish a specialised anti-corruption court”, deemed “essential for the success of the fight against overall corruption”²⁹⁹;
- The EU, in the 14 September 2018 Memorandum of Understanding between the EU and Ukraine for Macro-Financial Assistance to Ukraine of up to EUR 1 billion, included the establishment and operationality of a HACC as a condition for the disbursement of the first and second instalments³⁰⁰;
- The United States (US) Government stated in 2018 that “the establishment of a genuinely independent anti-corruption court is the most important, immediate step the government can take to (...) roll back corruption that continues to threaten Ukraine’s national security, prosperity, and democratic development”³⁰¹.

Both the EU and the OECD have encouraged and supported judicial reform in **Latvia**, particularly judicial reform that emphasises efficiency and the ease of use of the courts. In 2014 the European Council specifically recommended that Latvia “complete judicial reforms... to

Corruption Prosecutor’s Office through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine”, <https://ec.europa.eu/commission/>

²⁹³ Ukraine (2014), *Association Agreement between the EU and Ukraine*, Article 3

²⁹⁴ *Ibid.*, Annex XLIII to Title VI

²⁹⁵ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*, p. 2

²⁹⁶ *Ibid.*, p. 2

²⁹⁷ *Anti-Corruption Reforms in Ukraine - Round 3 Monitoring of the Istanbul Anti-Corruption Action Plan*, adopted at the ACN meeting on 24 March 2015 at the OECD in Paris, new recommendation 2.9, available at www.oecd.org/daf/.

²⁹⁸ IMF (2017), *IMF Statement on the Efforts to Fight Corruption in Ukraine*, available at www.imf.org/en/.

²⁹⁹ Council of Europe (2017), PACE Resolution 2145, *cit.*

³⁰⁰ Memorandum of Understanding between the European Union and Ukraine for Macro-Financial Assistance to Ukraine of up to EUR 1 billion, available at <https://ec.europa.eu/>.

³⁰¹ *The Importance of an Independent Anti-Corruption Court for Ukraine*, Press Statement by Heather Nauert, Department Spokesperson, Washington, DC, 5 June 2018, available at <https://ua.usembassy.gov/>.



ensure a more business and consumer-friendly legal environment”.³⁰² The “Justice for Growth” project (2014-2020), supported through the European Social Fund (ESF), aimed to “improve the competence of the staff of courts and law enforcement authorities to promote improvement of the business environment”.³⁰³ The OECD in particular recommended greater specialisation in both the prosecution services and the judiciary to improve Latvia’s efforts against corruption.³⁰⁴ One recommendation in 2018 was to: “Develop a comprehensive strategy towards specialisation including updating the training needs of judges and staff.”³⁰⁵ The Secretary-General of the OECD, Angel Gurría addressed the opening of the new Economic Court and noted that “*The creation of this Economic Court is a testament to Latvia’s ambitious agenda to enhance the accessibility and effectiveness of its justice system, as well as an indicator of the strong Latvia-OECD relationship. It is also in line with the OECD recommendations...*”³⁰⁶

3.2.3.2 Attracting Investment

It is certainly not a coincidence that the biggest surge of specialised anti-corruption courts happened in the last two decades, in which the world has witnessed serious global financial and economic crises. Global flows of investment were redirected, when not reduced, and the need to attract foreign investment became even more essential, mainly for developing countries.

Kuvvet³⁰⁷ has analysed the link between the establishment of specialised anti-corruption courts and the flow of foreign direct investment, and drew two main conclusions:

- a) the establishment of a comprehensive parallel court (one which has anti-corruption trial courts, as well as anti-corruption appeal courts) has a direct impact in the increase of foreign direct investment;
- b) the composition of foreign investors is associated with the type of anti-corruption court systems that a country establishes.

The existence of a comprehensive anticorruption court system reassures foreign investors and creates a more levelled playing field for all the firms, thus creating a more favourable environment for foreign investors. Not only is it important to create a specialised jurisdiction for corruption crimes, but it is also crucial to insulate to the great extent that jurisdiction from the existing court system. In Kuvvet’s words: “*foreign investors seem to put importance on this institutional separation, as they cannot trust the integrity and independence of the existing court system in a corrupt country*”.

Moreover, the research found that foreign direct investment from corrupt investor countries tends to decrease in countries where there is a comprehensive anti-corruption court system,

³⁰² Council of the European Union (2014), *Council Recommendation of 8 July 2014 on the National Reform Programme 2014 of Latvia and delivering a Council opinion on the Stability Programme of Latvia*.

³⁰³ Reinholde I. (2020), ‘Justice for Growth’: Case study of a Latvian ESF project under the study ‘Progress Assessment of ESF Support to Public Administration’ (PAPA), p. 7

³⁰⁴ OECD (2018), *Access to Justice for Business and Inclusive Growth in Latvia*.

³⁰⁵ *Ibid.*, p. 19

³⁰⁶ OECD (2021), *Remarks by Angel Gurría, Secretary-General, OECD at the Opening Session of the Economic Court of Latvia* from www.oecd.org.

³⁰⁷ Kuvvet Emre (2021), *Anti-corruption courts and foreign direct investment*, p. 573-582.



and increases when that system is composed only of first-instance courts or is a hybrid system (where specialised courts serve as first instance courts for the most important cases and appeal courts for the less important cases, decided in first instance by regular courts).



4 MODELS OF ANTI-CORRUPTION COURTS AND SPECIALISED JUDGES

In their mapping of anti-corruption courts Schütte and Stephenson outline “five of the most significant choices that institutional designers must make”.³⁰⁸ These are:

- The relationship of the AC court to the prosecution authorities;
- The relationship of the AC court to the regular courts and judicial system;
- The size of the AC court;
- The procedures for appointing and removing specialised judges; and
- The substantive scope of the AC’s jurisdiction.

Considerations of all these factors mean that each jurisdiction will find a unique approach that suits their requirements and systems. In this section the outline of the following is done: the prosecution arrangements in the nine countries of this study, as well as the models of AC courts adopted, the jurisdiction choices made, the composition, appointments and vetting of judges, and resources of the courts, and finally the impact of these choices. Comparative detail beyond the nine main case studies is given to provide context.

4.1 Investigation and prosecution

As noted in section 2.3, approaches to addressing corruption now tend to focus on specialisation of services, rather than on developing specialised agencies or commissions. One area of practice in which there has been a push for specialisation is in the prosecution of corruption. Article 36 of UNCAC requires some anti-corruption specialisation in “law enforcement”, in the form of either specialised personnel, or a specialist prosecutorial body.³⁰⁹ As it is not within the scope of this paper to discuss the investigation and prosecution arrangements in detail, below is a simple overview of the approaches adopted by the main countries in this study. As discussed in section 3.1.1. above, the International Association of Prosecutors has set out useful guidance on the factors to consider when making decisions about anti-corruption specialisation in the prosecution services.³¹⁰

4.2 No specialised prosecutors

Of the nine case studies in this report, only Latvia does not have the specialist anti-corruption prosecutors. The Corruption Prevention and Combating Bureau (KNAB) is the main specialised anti-corruption authority in **Latvia**.³¹¹ KNAB is supervised by the Cabinet,³¹² and has a broad range of competences covering corruption prevention (policy and strategy)³¹³ and

³⁰⁸ Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, p. 16

³⁰⁹ United Nations (2003), *United Nations Convention against Corruption*, Article 36: “Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialised in combating corruption through law enforcement.” For further discussion see: UNDOC (2009), *Technical Guide to the United Nations Convention against Corruption*, pp. 113-115; and for discussion with further examples, see International Bar Association (2021), *Maintaining Judicial Integrity and Ethical Standards in Practice: a study of disciplinary and criminal processes and sanctions for misconduct or corruption by judges*, pp. 60-64

³¹⁰ *Anti-Corruption Models - Models of Anti-Corruption Institutions*, available at www.iap-association.org/ And see p. 23 above.

³¹¹ See: www.knab.gov.lv/en/about-us

³¹² Latvia (2002), *Law on Prevention of Corruption and Combating Bureau*, s.2(1)

³¹³ *Ibid.*, s.7



the combating of corruption (investigation).³¹⁴ It is responsible for addressing the administrative liability of public officials,³¹⁵ for example, and also for “investigative and operational actions to discover criminal offences provided in the Criminal Law in the service of State authorities, if they are related to corruption.”³¹⁶

The Prosecution Office is “a judicial power authority which independently exercises supervision over the compliance with law within the scope of the competence”,³¹⁷ and is responsible for criminal prosecutions. The law on the Prosecution Office has been amended numerous times, most recently in September 2021, although an official translation for those amendments is not available.³¹⁸ The website of the Prosecution Office notes that the Office is being restructured at present.³¹⁹ It appears that there is currently no specialist anti-corruption division or body within the Prosecution Office.

4.2.1 *Specialised prosecution or prosecutors*

Armenia, Albania, and Bulgaria have each introduced anti-corruption focused reforms into their prosecution services within the past five years; **Croatia, the Slovak Republic and Ukraine** introduced prosecutorial reforms in the past ten years, while in **England and Wales**, the Serious Fraud Office has been in operation since 1988.

In **Armenia**, following major political upheaval and the “Velvet Revolution” of 2018,³²⁰ the new government adopted a Programme of Government for the Republic of Armenia, and “leading a more targeted and radical fight against corruption, public rejection of corruption and the existence of a society free of corruption” were defined as fundamental benchmarks for the activities of the Government of the Republic of Armenia.³²¹ In 2019 a Corruption Prevention Commission was established. The Commission holds and maintains a registry of assets of public officials, including of judges and prosecutors, and monitors rules of ethics and violation of those rules.³²² A new Anti-Corruption Committee, with responsibility for investigating corruption offences and pre-judicial criminal proceedings was established in 2021.³²³ Deputy Minister of Justice Srbuhi Galian explained that the ACC is “the first link in the chain”.³²⁴ Investigators will be vetted, and trained. There will be an anti-corruption subdivision of the prosecutor’s office, and “members of this subdivision will also be vetted to specialise in that field.”³²⁵ The head of the Anti-Corruption Committee has already been

³¹⁴ *Ibid.*, s.8

³¹⁵ *Ibid.*, s.8(1)(1)

³¹⁶ *Ibid.*, s.8(1)(2)

³¹⁷ Latvia (1996), *Office of the Prosecutor Law*, s.1(1)

³¹⁸ See: <https://likumi.lv>

³¹⁹ See: www.prokuratura.gov.lv

³²⁰ Lansky M. and Suthers E. (2019), *Armenia’s Velvet Revolution*, p. 85.

³²¹ Armenia (2019), *Government of the Republic of Armenia Decision No - N of 2019*, p. 7

³²² <http://cpcarmenia.am> and see (2017), *Law on the Corruption Prevention Commission*, Article 23

³²³ Armenia (2021), *Law on the Anti-Corruption Committee of 17 April 2021 No. ZR-147*, Article 4(1).

³²⁴ www.azatutyun.am

³²⁵ www.azatutyun.am

appointed and is the former head of the Special Investigative Service,³²⁶ a division of which was previously one body with the power to investigate corruption.³²⁷

In **Albania**, the specialised prosecution service is a key part of the anti-corruption reform measures. The “vertically integrated” anti-corruption “structures”³²⁸ are the Special Prosecution Office (SPO),³²⁹ operational from 2019; the National Bureau of Investigation (NBI),³³⁰ operational from 2020; and the Anti-Corruption and Organised Crime Courts (ACOCC),³³¹ operational from 2019. Together the NBI and the SPO are known as the “Special Organised Crime and Anti-Corruption Structure”, abbreviated as the “SPAK” institutions.³³² The NBI is a “specialised section of judicial police which investigates criminal offences under the jurisdiction of the Special Prosecution Office”.³³³ The Director of the NBI, its investigators and judicial police services are all “supervised by and operate at the direction of” the SPO.³³⁴ In accordance with Articles 135(2) and 148(4) of the Constitution, the SPO has the jurisdiction to investigate and prosecute corruption, organised crime,³³⁵ and “criminal offences committed by the President of the Republic, Speaker of the Assembly, Prime minister, the member of the Council of Ministers, the judge of the Constitutional Court, and High Court and the Prosecutor General, High Justice Inspector, the Mayor, Deputy of the Assembly, deputy minister, the member of the High Judicial Council and High Prosecutorial Council, and heads of central or independent state institutions as defined by the Constitution or by law”.³³⁶ The SPO “exercises criminal prosecution and represents the accusation in the name of the state in the Anti-Corruption and Organised Crime Court of First Instance, Anti-Corruption and Organised Crime Court of Appeal, and the High Court, takes measures and oversees the execution of criminal decisions, as well as performs other duties provided by law.”³³⁷

The prosecution elements of the anti-corruption framework in **Bulgaria** have also undergone extensive changes recently. In 2018 the Act on Countering Corruption and on Seizure of Illegally Acquired Property (Anti-Corruption Act) set up a new Commission for Counteracting Corruption and for Seizure of Illegally Acquired Property (Anti-Corruption

³²⁶ <https://hetq.am> and www.azatutyun.am/a/

³²⁷ www.azatutyun.am/

³²⁸ Assembly of Albania (2020), *Justice Reform Albania*, p. 9

³²⁹ Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Articles 1(2), 4 and Ch. III; Albania (2016), *Law No.97/2016 On the Organisation and Functioning of the Prosecution Office of Albania* and Albania (2016), *Constitution of the Republic of Albania*, Rev.2016, Article 148(4)

³³⁰ Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Article 5 and Ch. V

³³¹ *Ibid.*, Article 1(3) and Ch.VI and s.75/a, Albania (1995, Rev.2017), *Law No.7905/1995 Criminal Procedure Code of the Republic of Albania*.

³³² Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Article 3(7)

³³³ *Ibid.*, Article 5(1)

³³⁴ *Ibid.*, Article 5(3)

³³⁵ Albania (2016), *Constitution of the Republic of Albania*, Rev.2016, Article 148(4)

³³⁶ *Ibid.*, Articles 135(2) and 148(4)

³³⁷ Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime* (Albania), Article 4(1)



Commission).³³⁸ The Commission is primarily responsible for Corruption Prevention,³³⁹ regulating the declaration of assets³⁴⁰ and seizure of illegally acquired property. Crimes within the competence of the Specialised Criminal Court are investigated by the Investigation Department of the Specialised Public Prosecutor's Office,³⁴¹ and prosecuted by a specialised prosecutor from Specialised Public Prosecutor's Office.³⁴²

Croatia has what the government terms the “USKOK axis” for the prevention of corruption.³⁴³ This includes the National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK); the Office for the Suppression of Corruption and Organised Crime (USKOK); and special USKOK judicial departments in the county courts (USKOK courts).³⁴⁴ Investigation of corruption offences falls within the remit of the National Police Office for the Suppression of Corruption and Organised Crime (PNUSKOK),³⁴⁵ which is within the Crime Police Directorate of the Ministry of the Interior.³⁴⁶ The USKOK is a special prosecutor’s office responsible for prosecuting corruption and organised crime,³⁴⁷ in the State Attorney’s Office.³⁴⁸ The jurisdiction of the USKOK is quite varied, ranging from offences of misuse in bankruptcy proceedings, to abuse of office and bribery, to kidnapping, human trafficking, drug abuse and voter suppression.³⁴⁹ In addition, the Council for the Prevention of Corruption and the National Council for the Monitoring the Implementation of the Strategy for Combating Corruption (a Parliamentary body) have a general oversight function, and contribute to the development of policy and strategy.³⁵⁰

Detection and investigation of corruption offences in the **Slovak Republic** is within the remit of the National Crime Agency of the Presidium of the Police Force of the Slovak Republic (NAKA), which before 2012, was the Anti-Corruption Bureau.³⁵¹ The General Prosecutor’s Office is headed by the General Prosecutor, and the Special Prosecutor’s Office is part of it, headed by the Special Prosecutor.³⁵² The Special Prosecutor is elected by Parliament,³⁵³ and is

³³⁸ Bulgaria (2018), *Act on Countering Corruption and on Seizure of Illegally Acquired Property*, Ch. 2

³³⁹ *Ibid.*, Ch.4

³⁴⁰ *Ibid.*, Ch.5

³⁴¹ Bulgarian Penal Procedure Code, Article 411c(2)

³⁴² *Ibid.*, Article 411c(1)

³⁴³ *Ibid.*, p. 20

³⁴⁴ *Ibid.*, p. 20

³⁴⁵ European Commission (2021), *2021 Rule of Law Report: Country Chapter on the rule of law situation in Croatia*, p. 9

³⁴⁶ Republic of Croatia (2020), *Report of the Rule of Law in the Republic of Croatia for the preparation of the Annual Report on the Rule of Law in the European Union Member States by the European Commission*, p. 20

³⁴⁷ *Ibid.*, p. 20

³⁴⁸ Croatia (2001), *Law on the Office for the Suppression of Corruption and Organised Crime*.

³⁴⁹ *Ibid.*, Article 21

³⁵⁰ Republic of Croatia (2020), *Report of the Rule of Law in the Republic of Croatia for the preparation of the Annual Report on the Rule of Law in the European Union Member States by the European Commission*, p. 18

³⁵¹ Ministry of Justice of the Slovak Republic (2020), *Second Cycle UNCAC Implementation Review, Slovakia Self Assessment*, p. 4, and see <https://bit.ly/31lg9tv>

³⁵² *Ibid.*, p. 5

³⁵³ Slovak Republic (2020), *Act No.241/2020 Coll. amending Act No. 153/2001 Coll. on the Prosecutor’s Office*.



equivalent in seniority to a Deputy Prosecutor General.³⁵⁴ The Special Prosecutor has “national jurisdiction for the supervision of prosecution of the most serious criminality falling within the competence of the Specialised Criminal Court, including corruption offences.”³⁵⁵ Any prosecutor in the Special Prosecutor’s office must have “top-secret” level clearance.³⁵⁶ Once the Special Prosecutor files an indictment, the corruption cases are brought before the Specialised Criminal Court.³⁵⁷

Ukraine has four anti-corruption bodies: the National Anti-Corruption Bureau (NABU), which investigates high-level corruption cases; the Specialised Anti-Corruption Prosecutor’s Office (SAPO), which is an independent unit within the Prosecutor General’s Office that oversees NABU’s investigations and prosecutes its cases; the National Agency for Prevention of Corruption (NAPC), which administers the asset declaration system and participates in anti-corruption policy making; and the Asset Recovery and Management Agency (ARMA), which focuses on recovery of stolen assets.³⁵⁸ According to Kuz and Stephenson, the prosecutorial and investigative units “have not been as successful as many hoped”.³⁵⁹

Serbia’s Anti-Corruption Agency, set up in 2010, is responsible for oversight of the national anti-corruption strategy and action plan.³⁶⁰ However, the 2013-2018 national anti-corruption strategy has expired, and Serbia has been criticised by the EU for not having an up to date strategy.³⁶¹ A new law in 2020 is aimed at improving the organisation and oversight capacity of the Anti-Corruption Agency.³⁶² The Prosecutor for Organised Crime has jurisdiction over offences of organised crime and corruption as set out in the Law on Organisation and Jurisdiction of Government Authorities on the Suppression of Organised Crime, Corruption and Other Severe Offences.³⁶³

In **England and Wales**, the Serious Fraud Office (SFO) has the power, as an independent body, to investigate and prosecute corruption and serious financial crime cases in England and Wales, and Northern Ireland.³⁶⁴ The Crown Prosecution Service (CPS), which is the general prosecution service for England and Wales, also has a Specialist Fraud Division which takes the operational lead on bribery and corruption cases for the CPS.³⁶⁵ In 2018, the National

³⁵⁴ Ministry of Justice of the Slovak Republic (2020), *Second Cycle UNCAC Implementation Review*, Slovakia Self Assessment, p. 5

³⁵⁵ *Ibid.*, p. 5

³⁵⁶ *Ibid.*, p. 5

³⁵⁷ *Ibid.*, p. 5

³⁵⁸ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*.

³⁵⁹ *Ibid.*

³⁶⁰ See www.acas.rs/?lang=en and Serbian (2008), *Anti-Corruption Agency Act 2008*.

³⁶¹ European Commission (2021), *Serbia 2021 Report, accompanying the 2021 Communication on EU Enlargement Policy*, p. 31

³⁶² See: www.acas.rs/?lang=en

³⁶³ Serbia (2002), *Law on the Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime, Corruption and Other Severe Criminal Offences*, Articles 2 and 4

³⁶⁴ See discussion in Hopmeier, M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.

³⁶⁵ *Ibid.*



Economic Crime Centre (NECC) was created to coordinate the UK response to corruption and economic crime.³⁶⁶

4.3 Court arrangements and jurisdiction

The details of anti-corruption specialisation in courts vary from country to country, but as noted in section 2.4.1 above, they fall into four categories of institutional arrangement: i) a Comprehensive Parallel Court; ii) an Embedded multi-functional court; iii) an Embedded Specialised Court (First Instance or Appellate); and iv) Specialised Division or Divisions.

Another relevant issue in the design and practice of specialised anti-corruption courts is the scope of the special court's jurisdiction. This will have an impact on the degree of specialisation, and on its effectiveness. Examples demonstrate that there is a very diverse approach to jurisdiction. In some cases, the anti-corruption court has exclusive jurisdiction over all anti-corruption offences, and this can have implications for efficiency; in other cases, jurisdiction is limited to a particular class of offence or offender (such as public officials) which gives the court limited impact. At the other end of the spectrum, the anti-corruption court might not be restricted to corruption offences alone, and in some cases, jurisdiction has been expanded to encompass other offences such as terrorism, for example. This can also affect the efficiency and performance of the court.

4.3.1 Models of anti-corruption specialisation

Table 3: Categories of AC Courts

Category	Year	Country
Comprehensive Parallel Court	2002	Indonesia
	2012	Bulgaria
	2016	Madagascar
	2018	Ukraine
	2019	Albania
	2021	Armenia
Embedded multi-functional court	1979	Philippines
Embedded first instance court	1958	Bangladesh
	1958	Pakistan ³⁶⁷
	1981	Senegal ³⁶⁸
	2002	Nepal
	2003	Slovak Republic
	2010	Afghanistan

³⁶⁶ The National Economic Crime Centre, *Improving the UK's response to economic crime* <www.nationalcrimeagency.gov.uk> accessed 12 February 2020.

³⁶⁷ There are two anti-corruption courts in Pakistan: The Court of the Special Judges was established in 1958, and the Accountability Court was established in 1999.

³⁶⁸ The established court in 1981 was "removed" two years later, but reinstated, based on the same law and institutional design, in 2012.

Category	Year	Country
	2011	Cameroon
	2011	Malaysia
	2016	Thailand
	2018	Sri Lanka
	2021	Latvia
Specialised division(s)	2002	Kenya ³⁶⁹
	2004	Bosnia Herzegovina
	2006	Ghana
	2006	United Kingdom (England and Wales)
	2008	Uganda
	2010	Croatia
	2016	Mexico
	2016	Tanzania
	2018	Rwanda
	2019	Kosovo
	2013	Botswana
	2018	Serbia
	2020	Zimbabwe
Not enough information	2010	Palestine

4.3.1.1 Comprehensive parallel courts

The comprehensive parallel court model is one in which the anti-corruption court stands alone in parallel to the existing institutional arrangements and includes both first instance trial courts and appellate courts, with a specialised pathway from first instance to appeals, only being integrated into the wider court system at the point of final appeal, such as the Supreme Court. Very few countries have adopted this model. Of the main countries in this study, both **Ukraine** and **Albania** have established a Comprehensive Parallel Court, and **Armenia** is in the process of creating one. There are only two other such courts: in Indonesia and Madagascar. **Bulgaria** is included in this category because it has a specialised first instance court, and a specialised appellate court.³⁷⁰ It differs from the others in this category in that specialisation does not extend to the final court of appeal.

Indonesia's anti-corruption court system has evolved since it was first established in 2002.³⁷¹ Initially, there was a single first instance anti-corruption district court in the capital Jakarta,

³⁶⁹ The division was established before the Anti-Corruption and Economic Crimes Act came into effect.

³⁷⁰ Bulgaria (2007), *Judiciary System Act 2007*, Articles 61(1) and 63

³⁷¹ See further: Rusmiati E., Sumika Putri N. and Tajudin I. (2018), *The Corruption Court in Indonesia: History and Development*; Butt S. (2019), *Indonesia's Anti-corruption Courts and the Persistence of Judicial Culture, The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*; Butt S. (2015), *The rule of law and anti-corruption reforms under Yudhoyono: the rise of the KPK and the Constitutional Court, The Yudhoyono Presidency: Indonesia's Decade of Stability and Stagnation*; Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Indonesia*.



with appeals going to specialised panels in the High Court and on to the Supreme Court.³⁷² The specialised trial court could only hear cases that were brought by the Indonesian Anti-Corruption Commission (KPK),³⁷³ but other corruption cases could be initiated by the public prosecution service in the general courts.³⁷⁴ This “dual” system was found to be unconstitutional in 2006,³⁷⁵ so a new comprehensive system was created in 2009, with the Anti-Corruption Courts having exclusive jurisdiction over all corruption offences,³⁷⁶ and a system of separate courts with their own judicial leadership structures and a separate Registrar for each court.³⁷⁷ Now there are 34 first instance and appellate specialised anti-corruption courts in each provincial capital, with final appeals being heard in the anti-corruption division of the Supreme Court.³⁷⁸ While addressing grave concerns about judicial integrity was at the core of the establishment of the anti-corruption court in 2002,³⁷⁹ practical and constitutional hurdles had to be overcome, and the response to these challenges was to create a comprehensive parallel court with expanded jurisdiction in 2009. Alongside the institutional framework, there were new provisions relating to the composition of the benches on these courts. The 2002 law required that *ad hoc* judges were to be brought in to hear cases alongside career judges, and that there had to be three *ad hoc* judges and two career judges on each panel.³⁸⁰ This measure was intended to further minimise the potential for judicial corruption, as *ad hoc* judges were not chosen from among the current pool of judges. The 2009 expansion made this element harder to implement in practice, and the new law did away with the requirement of the three *ad hoc* judges to two career judges on each panel.³⁸¹

While the anti-corruption court in Indonesia underwent changes and refinement in response to practical and constitutional challenges,³⁸² the anti-corruption court in Madagascar (*Pôles Anti-corruption*, or PAC), which was established in 2016 and became operational in 2018, was very carefully designed to be “completely stand-alone and independent”³⁸³ to insulate the new court from the rest of the judiciary and from interference by the executive.³⁸⁴ Again, this new court system was needed to “fight impunity”, and was established in the face of opposition from the Ministry of Justice and judges.³⁸⁵ The anti-corruption court in Madagascar consists of a separate unit within the court hierarchy, with both first instance and appellate courts, and final appeals to the Supreme Court. There is also a division for the seizure and confiscation of

³⁷² Indonesia (2002), *Law 30 of 2002 on the Corruption Eradication Commission*.

³⁷³ *Ibid.*

³⁷⁴ Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Indonesia*.

³⁷⁵ Indonesian Constitutional Court Decision No. 12-16-19/PUU-IV/2006. See *ibid.* and Rusmiat E., Sumika Putri N. and Tajudin I. (2018), *The Corruption Court in Indonesia: History and Development*.

³⁷⁶ Indonesia (2009), *Law 46 of 2009 on the Anti-Corruption Court*.

³⁷⁷ Arsil, Astriyani, Rositawati D. and Aziezi M. T., *Anti-Corruption Courts in Indonesia After 2009: Between Expectation and Reality*.

³⁷⁸ Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Indonesia*.

³⁷⁹ See, for example, *ibid.*

³⁸⁰ Arsil, Astriyani, Rositawati D. and Aziezi M. T., *Anti-Corruption Courts in Indonesia After 2009: Between Expectation and Reality*, p. 44

³⁸¹ *Ibid.*, p. 54

³⁸² *Ibid.*

³⁸³ Schatz F. (2019), *Madagascar’s specialised anti-corruption court: the quest to end impunity*, p. 1

³⁸⁴ *Ibid.*, p. 4

³⁸⁵ *Ibid.*, p. 2



assets, which is unusual. There is currently one PAC in the capital, Antananarivo, and one will be established in each of the other five provincial capitals in due course. Like Indonesia, judges of the new court are further insulated from impunity and undue influence through a special appointments process, which is carried out by the PAC Monitoring and Evaluation Committee.³⁸⁶

In **Ukraine**, the HACC was established in 2018.³⁸⁷ It was created in response to criticisms of the four anti-corruption bodies responsible for investigating and prosecuting corruption, asset declaration and asset recovery (NABU, SAPO, NACP and the ARMA, which were proving to be less effective than expected).³⁸⁸ A key problem was “corruption and susceptibility to political pressure” within the judiciary.³⁸⁹ The new court, therefore, had to be a “robust”, separate specialised anti-corruption court.³⁹⁰ Initial proposals put forward by former President Poroshenko were considered too weak, and advocates campaigned until a more comprehensive approach was adopted.³⁹¹ The HACC, which is based in the capital, Kyiv, consists of a first instance court and an appellate court, with both the trial and appellate chambers being part of a single entity with the chief judge of the trial chamber as its head. Decisions from the appellate chamber can be appealed to a panel of the Criminal Cassation Court, a chamber of the Supreme Court, specially established to hear anti-corruption cases.³⁹² In addition, judges of the specialised court are appointed through a unique process and vetted before they can serve on the court (see further below).³⁹³

Albania chose to streamline anti-corruption investigations, prosecutions, and court proceedings through one new, specialised, and integrated process.³⁹⁴ The forerunner to the ACOCC were the Courts for Serious Crimes and the Courts of Appeal for Serious Crimes.³⁹⁵ The ACOCC is a comprehensive parallel, first instance and appellate court.³⁹⁶ And, like the new court in Ukraine, judges of the Albanian anti-corruption court must be vetted, as part of the temporary “transitional re-evaluation process”.³⁹⁷ In addition, to ensure the integrity of

³⁸⁶ *Ibid.*, p. 4

³⁸⁷ The law providing for its establishment was Law of Ukraine No.1402-VIII On the Judiciary and Status of Judges, (2016). Institutional arrangements were set out in Law of Ukraine No.2470-VIII On the Formation of the Anti-Corruption Court, (2018), and the arrangements for the vetting of judges were provided for in Law of Ukraine 2447-VIII On the Anti-Corruption Court (2018).

³⁸⁸ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*, p. 1

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*, p. 2

³⁹¹ *Ibid.*

³⁹² *Ibid.* p. 3

³⁹³ *Ibid.*, p. 4

³⁹⁴ Assembly of Albania (2020), *Justice Reform Albania*.

³⁹⁵ Albania (2003), *Law No. 9110/2003 On the Organisation and Functioning of the Courts for Serious Crimes*, repealed by Article 57(7) of (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*.

³⁹⁶ Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Article 8 and Albania (1995, Rev.2017), *Law No.7905/1995 Criminal Procedure Code of the Republic of Albania*, Article 75/a. See Schütte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, p. 20 and Gramckow H. and Walsh B. (2013), *Developing Specialised Court Services: International Experiences and Lessons Learned*, for an explanation of models of judicial specialisation.

³⁹⁷ Gunjic I. (2022), *Albania’s Special Courts against Corruption and Organised Crime*.

judges, their telecommunications and finances are periodically monitored too (see section 3.2.1.1).

In **Armenia** Deputy Minister of Justice Srбуhi Galian says that the anti-corruption “chain will be closed with the establishment of the court with specialised staff”.³⁹⁸ The draft legislation was published for public discussion in 2020,³⁹⁹ and ultimately passed in the National Assembly in April 2021.⁴⁰⁰ However, two days before this vote, President Sarkissian applied to the Constitutional Court for a declaration on whether or not the new law “On Making Amendments and Addenda in the Constitutional Law, The Judicial Code of the Republic of Armenia” was constitutional.⁴⁰¹ The Constitutional Court validated the law in October 2021, and the reforms could proceed.⁴⁰² Changes to the Civil Code were also challenged and held to be in conformity with the Constitution.⁴⁰³ The new Economic Court has both first instance and appellate jurisdiction in criminal and civil cases.⁴⁰⁴ The court will include both a first instance and an appeal court. The first instance court will be composed of 25 judges, 20 of whom will hear corruption cases, and five of whom will hear civil asset seizure cases.⁴⁰⁵ The appellate court will have at least ten judges. In addition, the Criminal Chamber of the Court of Cassation will function with 8 judges, whereas the Civil and Administrative Chamber will have 13 judges.⁴⁰⁶

When the package of laws was introduced, the Ministry of Justice explained the extent of the reforms:

The drafts have prescribed the procedure for replenishing the Anti-corruption specialisation division of the list of candidates for judges of the Anti-Corruption Court, the Anti-corruption specialisation division of the promotion list of candidates for judges of the Anti-Corruption Court of Appeal, the requirements for judges, restrictions on the appointment of a judge, structures for checking the integrity of candidates for judges in all instances. In order to strengthen the general integrity of the bodies involved in the anti-corruption institutional system, the draft package also proposes to establish, for the candidates of prosecutors, a requirement to undergo an integrity check, which will contribute to the reduction of corruption risks and the strengthening of integrity in the prosecutor's office.⁴⁰⁷

³⁹⁸ www.azatutyun.am

³⁹⁹ <https://moj.am>

⁴⁰⁰ <https://armenpress.am>

⁴⁰¹ President of the Republic of Armenia (12 April 2021), *Statement regarding the law “On Making Amendments and Addenda in the Constitutional Law”, “The Judicial Code of the Republic of Armenia” and related laws, submitted to the President of the Republic for signing.*

⁴⁰² Armenia (12 October 2021), *On the Case of Conformity of the Law on “On Making Amendments and Addenda in the Constitutional Law” with the Constitution on the basis of an application by the President of the Republic, DCC-1613, Constitutional Court.*

⁴⁰³ Armenia (5 October 2021), *On the Case of Conformity of the Law Making Amendments to the Civil Code of the Republic of Armenia with the Constitution on the Basis of an application of the President of the Republic, DCC-1612, Constitutional Court.*

⁴⁰⁴ www.moj.am/en/article/2770

⁴⁰⁵ www.moj.am/en/article/2770

⁴⁰⁶ www.moj.am/en/article/2770

⁴⁰⁷ www.moj.am/en/article/2770

In 2020 changes to the law on the Corruption Prevention Commission and the Judicial Code⁴⁰⁸ mean that judges will go through a process of “verification of integrity”.⁴⁰⁹

In **Bulgaria** there is a first instance Specialised Criminal Court, and an Appellate Specialised Criminal Court.⁴¹⁰ The first instance court was equivalent to a Regional Court, and is located in Sofia.⁴¹¹ The jurisdiction of the specialised courts is set out in the Penal Procedure Code, covering quite broad and varied offences under the Penal Code, including organised crime,⁴¹² and malfeasance (abuse of office)⁴¹³ The specialised court has been controversial, and in April 2022, a majority of Parliament voted for a bill to amend the relevant law and abolish the special court (the legislative amendment entered into force on 27 July 2022).

The key features of the comprehensive parallel court model are as follows:

- The primary objective of establishing an anti-corruption court is to insulate the specialised judges from existing corruption or perceptions of corruption in the judiciary and to improve the integrity of the anti-corruption process.
- Apart from Bulgaria, specialisation runs from first instance all the way through the appellate structure, including some form of specialisation in the final court of appeal.
- Institutional reforms are accompanied by some form of judicial vetting, or at least, as in Indonesia and Madagascar, a separate, more independent appointments process for anti-corruption judges.

As the CCJE has stated (see section 3.1 above), specialised courts should be a last resort, introduced “*only under exceptional circumstances, when necessary, because of the complexity of the problem.*”⁴¹⁴ The use of a comprehensive parallel anti-corruption court is exceptional among those countries that have adopted some form of anti-corruption specialisation, and they have done so to address entrenched corruption within their judicial and justice systems.

4.3.1.2 *Embedded specialised multi-functional court*

The embedded specialised multi-functional court model is where the anti-corruption court serves as both a first instance court in some cases, and an appellate court for corruption appeals from the lower courts in other cases. None of the main countries in this study have adopted the embedded multi-functional court model. The only country in which this approach has been taken is the Philippines. The anti-corruption court, known as the Sandiganbayan, was established in 1979.⁴¹⁵ The Sandiganbayan has the status of a Court of Appeal, but it operates primarily as a court of first instance.⁴¹⁶ It was established to speed up the resolution of corruption cases⁴¹⁷ and has jurisdiction over specified crimes of corruption

⁴⁰⁸ www.coe.int/

⁴⁰⁹ www.azatutyun.am/

⁴¹⁰ Bulgaria (2007), *Judiciary System Act 2007*, Articles 61(1) and 63

⁴¹¹ *Ibid.*, Article 100a

⁴¹² Bulgaria, *Penal Procedure Code*, Article 411a(1) and *Penal Code*, Articles 321 and 321a

⁴¹³ Bulgaria, *Penal Procedure Code*, Article 411a(2) and *Penal Code*, Article 282

⁴¹⁴ CCJE Opinion No. 21 (2018), *Preventing Corruption among Judges*, para.50

⁴¹⁵ Stephenson M. C. (2016), *Specialised Anti-Corruption Courts: Philippines*.

⁴¹⁶ *Ibid.*

⁴¹⁷ *Ibid.*



where the public official involved is a senior official (as defined in statute), and the amount of money involved meets the threshold for consideration by the Sandiganbayan.⁴¹⁸ The court also has appellate jurisdiction for corruption cases from the lower courts, but it is rarely used in this way.⁴¹⁹ Decisions of the Sandiganbayan can be appealed to the Supreme Court.⁴²⁰ Stephenson found that the experience of the Sandiganbayan illustrates four issues that ought to be considered when making decisions about establishing an ACC and what model to adopt.⁴²¹ These are case management and trial procedure, because in the case of the Sandiganbayan its establishment was not enough to achieve the necessary efficiency without addressing the causes of inefficiency in the judiciary generally; the relationship between the court and prosecutors, because in the case of the Philippines, the main “culprit” for long delays in corruption cases is the prosecutor; resources - there needs to be an adequate “judge-to-case ratio” to be able to reduce delays in practice; and the scope of the ACCs jurisdiction – in the Philippines the jurisdiction of the Sandiganbayan is limited to cases involving only high level officials, and large amounts of money.

4.3.1.3 Embedded Specialised Court

The embedded specialised court model is where a distinct anti-corruption court is created that sits within the existing court system and appeals from which go to the next second instance court above it. Reasons for the establishment of embedded specialised anti-corruption courts vary from the need to improve efficiency, to the need to improve integrity, but in most cases the main reason for establishing such courts is efficiency and expertise (see section 3.2.1). For the most part these specialised courts are created to channel corruption cases more efficiently through the courts, although introducing specialisation in the first instance tier, but not in the second instance tier can create backlogs.⁴²² Another mechanism for speeding up the progress of cases is to expedite the appellate process. One way, as in the **Slovak Republic**, is to create a lower level first instance court and fast-track appeals directly to the Supreme Court.⁴²³ Another way, as in Nepal, for example, is to elevate the first instance court so that appeals are automatically fast tracked.⁴²⁴ Some countries also have a specialised division or bench in the Supreme Court to hear fast-tracked corruption cases.

Of the main countries in this study, both the **Slovak Republic** and **Latvia** have adopted the model of an embedded specialised court. Around a third of all specialised anti-corruption courts take this form and the others are: Bangladesh (1958), Pakistan (1958/1999), Senegal (1981/2012), Nepal (2002), Cameroon (2011), Afghanistan (2016), and Sri Lanka (2018). However, the courts in each of these countries are very different.

The Court of the Special Judge was established in *Pakistan* in 1958, and after independence from Pakistan in 1971, *Bangladesh* retained the court, as did Pakistan. However, in 1999 in Pakistan, the Accountability Courts were also established. The criminal jurisdictions of these

⁴¹⁸ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*.

⁴¹⁹ Stephenson M. C. (2016), *Specialised Anti-Corruption Courts: Philippines*.

⁴²⁰ Ibid.

⁴²¹ Ibid.

⁴²² Schutte S. A. and Stephenson M. C. (2016), *Specialised Anti-Corruption Courts*, p. 18 and see also Schutte S. A. (2016), *Specialised Anti-Corruption Courts: Uganda*.

⁴²³ Stephenson M. C. *ibid.*, *Specialised Anti-Corruption Courts: Slovakia*, p. 1

⁴²⁴ Poudel M. S. (2012), *A Summary of Anti-Corruption Measures in Nepal*, p. 171



courts overlap to some extent, but the older court is focused on bribery, and the newer court is more focused on corrupt practices, misuse/abuse of power, misappropriation of property and kickbacks. The main difference appears to be in their territorial jurisdiction: the Court of the Special Judge has jurisdiction within specified territorial limits, and the jurisdiction of the Accountability Court covers the whole of Pakistan. Appeals from the Court of the Special Judge go to highest court having appellate jurisdiction in their territory, and appeals from the Accountability Court go to the High Court of whichever Province the court is in.

The Court for the Prevention of Illicit Enrichment (CPIE) in *Senegal* was first established in 1981 but was only in operation for “a short spell in 1982 and 1983” after which it was “dormant” until 2012, when the then President appointed members of the court again, and prosecuted Karim Meïssa Wade, a prominent of the previous government. It is not clear what the status of the court is at this time, but a study conducted by Afrobarometer in 2017 found that only 54% of Senegalese citizens were aware of its existence, and almost half of those who know about the court believe that bias in the court undermines its credibility. However, a defendant may only appeal on a point of law, not fact, whereas the Prosecutor may appeal on both points of law and fact,⁴²⁵ and this restriction applies only to the CPIE under Senegalese criminal law. Wade challenged his conviction before the UN Committee on Human Rights which found that “a review that is limited to the formal or legal aspects of the conviction without any consideration whatsoever of the facts is not sufficient under the Covenant.”⁴²⁶ The Committee therefore found a violation of Art.15(4) of the ICCPR, and emphasised that “rules of procedure and the right to a fair trial must be respected” in the fight against corruption.⁴²⁷ Mr Wade challenged his prosecution, conviction, and subsequent incarceration domestically, in the Court of Justice of West Africa (ECOWAS) and before the UN Human Rights Committee. Before the ECOWAS court he argued, among other things, that the court had been “removed from the judicial set-up” of Senegal in 1984 and that the law on illicit enrichment had been impliedly repealed by the failure to appoint any judges to the court, and/or by the fact that the court no longer existed. The ECOWAS court ruled that it did not have the jurisdiction to determine the lawfulness of the reactivation of the court, but that Mr Wade’s presumption of innocence had been violated. The UN Human Rights Committee found a violation of his right to appeal under Art.14(5) of the ICCPR.

In *Nepal* the Special Court is a first instance court, but has the status of an appellate court, so appeals go directly to the Supreme Court.⁴²⁸ The Special Criminal Court in *Cameroon* has jurisdiction to try offences of misappropriation of public property where the value of the loss is at least fifty million francs CFA,⁴²⁹ and like the court in Nepal, appeals from the Cameroon Special Criminal Court go directly to the Supreme Court, but there is an added element. Appeals from the Special Criminal Court must be heard by a special bench, designated by the

⁴²⁵ UN Human Rights Committee (2019), *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, concerning Communication No. 2783/2016*.

⁴²⁶ *Ibid.*

⁴²⁷ *Ibid.*

⁴²⁸ Poudel M. S. (2012), *A Summary of Anti-Corruption Measures in Nepal*, p. 171

⁴²⁹ Iliasu M. (2014), *The Creation of the Cameroon Special Criminal Court: Change from Confiscation and Punishment to Restitution and Nolle Prosequi*.



Chief Justice, and consisting of two judges from each of the Judicial, Administrative and Audit Benches of the Supreme Court.⁴³⁰

The Anti-Corruption Justice Centre (AJC) of *Afghanistan* was very much an international community, and donor driven initiative.⁴³¹ It had jurisdiction over high value “bribery, money laundering, destruction or the selling of cultural and historical relics, crimes against internal or external security, illegal extraction of mines, and land usurpation... cases involving high-ranking government officials, such as deputy-ministers, generals, governors, and Provincial Council members”.⁴³² Appeals from the AJC went straight to the Supreme Court. Given the internationally led push for this court, it is unclear what its status is now, but even at its most effective it was facing major operational challenges, including lacking the “capacity, resources, or security ... to perform [its] functions”.⁴³³

In *Sri Lanka*, the Permanent High Court at Bar is the new corruption and economic crimes court, which was established in 2018 and is a first instance High Court composed of three judges.⁴³⁴ There may be more than one High Court at Bar as they may be established in different High Courts.⁴³⁵ While this specialised court has similar features to other embedded specialised courts, it has one unusual limitation. Before a prosecution can proceed, the Attorney General or the Director General for the Prevention of Bribery and Corruption can refer the case to the Chief Justice, who then decides whether it meets the criteria (which are quite broad and ambiguous)⁴³⁶ to be heard in the High Court at Bar, or whether it should be heard in another court.⁴³⁷ Initial proposals were for this discretion to lie with the Attorney General, however, following objections raised in the Supreme Court, it was decided that the Chief Justice should exercise this discretion. It is not clear why such a discretion is necessary, as the number of judges was increased to allow for the new court, so there are unlikely to be administrative or operational reasons for directing the case to another court. This discretion represents a similar constraint on the jurisdiction of the AC court as the requirement in *Madagascar* that Parliament must vote in favour of a prosecution of high-profile officials, although here of course, the body responsible is the judiciary. In *Sri Lanka* the power the Chief Justice has over where corruption cases are heard has been described as “less than ideal” and open to misuse.⁴³⁸

In the **Slovak Republic** there are 54 District Courts, and 8 Regional Courts.⁴³⁹ The regional courts hear appeals from the district courts and appeals from the regional courts are heard by

⁴³⁰ *Ibid.*, p. 10

⁴³¹ <https://cco.ndu.edu/>

⁴³² www.afghanistan-analysts.org/

⁴³³ www.sigar.mil/

⁴³⁴ *Sri Lanka* (2018), *Judicature (Amendment) Act No.9 of 2018*, and see Centre for Policy Alternatives (2018), *A Brief Guide to the Judicature (Amendment) Act No 9 of 2018*.

⁴³⁵ Centre for Policy Alternatives (2018), *A Brief Guide to the Judicature (Amendment) Act No 9 of 2018*, para.4

⁴³⁶ *Ibid.*, para.9

⁴³⁷ *Ibid.*, para.6

⁴³⁸ *Ibid.*, para.18

⁴³⁹ European Commission (2021), *2021 Rule of Law Report: Country Chapter on the rule of law situation in Slovakia*, p. 2



the Supreme Court.⁴⁴⁰ However, while SCC judges are equivalent to district court judges, and the SCC functions exclusively as a first instance trial court, appeals from the SCC go directly to the Supreme Court.⁴⁴¹ The SCC is not exclusively an anti-corruption court: 12 serious crimes fall under the jurisdiction of the court, including aggravated murder, crimes involving procurement and public funds, abuse of power of public officials, crimes pertaining to criminal groups, and corruption-related offences.⁴⁴²

The Economic Court of **Latvia** began functioning at the end of March 2021.⁴⁴³ It has the status of a District (City) Court and is a court of first instance.⁴⁴⁴ The Economic Court has both criminal jurisdiction over prescribed offences of the Criminal Law,⁴⁴⁵ and civil jurisdiction over matters set out in the Civil Procedure Code.⁴⁴⁶ The criminal jurisdiction of the court covers the laundering of proceeds of crime and terrorism, bribery offences, offences of acceptance of a non-permitted benefit, and participation in property transactions.⁴⁴⁷ But the civil jurisdiction covers a wide range of matters including underinsurance contracts, financial security agreements, violations of competition law and insolvency claims.⁴⁴⁸ It is expected that the annual caseload in the first instance criminal division will be about 25 cases and of the first instance civil division will be about 125 cases.⁴⁴⁹ In the appellate court the caseload is expected to be 13 criminal cases and 55 civil cases.⁴⁵⁰ The Riga Regional Court is the designated appellate court for cases from the Economic Court, and appeals go to a specialised chamber of that court.⁴⁵¹ After which, appeals go to the Supreme Court.

The examples illustrate that there are many ways to tailor arrangements around an embedded specialised court, and this may be one of the advantages of this model. However, it is important to remember that such a court is nevertheless part of the judicial system, and the example of Senegal demonstrates how basic rights to a fair trial (in that case the right to an appeal) must be protected and adhered to especially when the need for efficiency accelerates cases through the appellate system as in Senegal, Nepal, Afghanistan, and the **Slovak Republic**. Similarly, while discretion may be necessary in some circumstances, it should only be deployed when absolutely necessary and there is a risk, as in Sri Lanka, that excessive discretion in the hands of one official or body, may undermine positive perceptions, or the actual practices of the new court and its effectiveness.

⁴⁴⁰ Stephenson M. C. (2016), *Specialised Anti-Corruption Courts: Slovakia*, p. 1

⁴⁴¹ *Ibid.*, p. 1

⁴⁴² Slovak Republic (2005), *Law No. 301/2005 Coll. Code of Criminal Procedure of the Slovak Republic*, s.14

⁴⁴³ www.tm.gov.lv

⁴⁴⁴ Latvia (2005), *Criminal Procedure Law*, s.442

⁴⁴⁵ *Ibid.*, s.442

⁴⁴⁶ Latvia (1998), *Civil Procedure Law*, s.24

⁴⁴⁷ Latvia (2005), *Criminal Procedure Law*, s.442 and related sections of the Latvia (1998), *Criminal Law*.

⁴⁴⁸ Latvia (1998), *Civil Procedure Law*, s.24(1¹)

⁴⁴⁹ Ministry of Justice Republic of Latvia (2021), *Economic Court*, Retrieved 13.12.2021, from www.tm.gov.lv/

⁴⁵⁰ *Ibid.*

⁴⁵¹ Latvia (2005), *Criminal Procedure Law*, s.442(2) and (1998), *Civil Procedure Law*, s.24(2²)

4.3.1.4 Specialist Divisions

Most of the countries that have judicial anti-corruption specialisation have adopted the model of specialist divisions in existing courts. These specialist divisions or chambers are often, but not always, created by the judiciary themselves on the authority of the Supreme Court or the Chief Justice with the power to organise and manage the judicial system. **Croatia** and **Serbia** both have specialised divisions, of the County Court and the High Court respectively, and these specialist divisions are prescribed by law. **England and Wales** does not have a formal specialised anti-corruption court, but Southwark Crown Court, in London, has been designated to try complex fraud and corruption cases involving large sums of money. Other countries with specialised anti-corruption divisions are: Kenya (2002), Bosnia and Herzegovina (2004), Ghana (2006); Uganda (2008), **Croatia** (2010), Malaysia (2011), Botswana (2013), Mexico, (2016), Tanzania (2016), Rwanda (2018), **Serbia** (2018), Kosovo (2019), and Zimbabwe (2020).

Croatia has a three-tiered justice system. There are 34 Municipal Courts, which are first instance courts of general jurisdiction dealing with both civil and criminal cases; and 15 County Courts, which are second instance courts of general jurisdiction, with competence as first instance courts in some matters. There are also specialised courts: nine Commercial, and four Administrative, courts at first instance, and the High Criminal Court, the High Misdemeanour Court, the High Commercial Court and the High Administrative Court at second instance. The Supreme Court deals with all types of cases. The Constitutional Court conducts constitutional review.⁴⁵²

From 2001, the County Courts in Osijek, Rijeka, Split and Zagreb have had “subject-matter and territorial jurisdiction in criminal cases” for the cases that fall within the jurisdiction of USKOK.⁴⁵³ In 2010 the role of these courts was reinforced by the establishment of court divisions in the County Courts in Zagreb, Split, Rijeka and Osijek with specialised jurisdiction over the matters that fall within the competence of the USKOK.⁴⁵⁴ It has to be noted that in “municipal courts operating in the seats of county courts referred to in [this law], the president of the court shall be obliged to establish a special court division due to proceed in cases involving criminal offences from the competence of USKOK.”⁴⁵⁵ The jurisdiction of the USKOK is quite varied, ranging from offences of misuse in bankruptcy proceedings, to abuse of office and bribery, to kidnapping, human trafficking, drug abuse and voter suppression.⁴⁵⁶

In addition to specialist lower courts, in January 2021 the new High Criminal Court (HCC) began work, after the Constitutional Court ruled it to be constitutional.⁴⁵⁷ The jurisdiction of the HCC is very broad and not limited to corruption cases, which is why the Croatian

⁴⁵² European Commission (2021), *2021 Rule of Law Report Country Chapter on the rule of law situation in Croatia*, p. 2. See further: www.vsrh.hr

⁴⁵³ Croatia (2001), *Law on the Office for the Suppression of Corruption and Organised Crime*, Article 24

⁴⁵⁴ Croatia (2010), *Courts Act*, Article 32

⁴⁵⁵ *Ibid.*, Article 32(4)

⁴⁵⁶ Croatia (2001), *Law on the Office for the Suppression of Corruption and Organised Crime*, Article 21

⁴⁵⁷ Constitutional Court of Croatia (2020), Decision No. UI-4658/2019 and UI-4659/2019. *Decision and Ruling of the Constitutional Court of the Republic of Croatia No. UI-4658/2019 and UI-4659/2019 of 3 November 2020 and Separate opinion of judges.*



specialised court is categorised as a specialist division rather than being an example of embedded specialised first and second instance courts. The HCC:

- Decides in the second instance on appeals against decisions of county courts in criminal cases;
- Perform other tasks determined by law.⁴⁵⁸

And it will also “decide in the third instance on appeals against decisions made in the second instance in accordance with Article 490, paragraph 1, item 2 of this Act.”⁴⁵⁹

In **Serbia**, the Higher Court in Belgrade and the Appellate Court in Belgrade have jurisdiction over the offences set out in the Law on Organised Crime, Corruption and Severe Offences.⁴⁶⁰ A Special Department of the High Court processes cases of organised crime and corruption,⁴⁶¹ and a Special Department in the Appellate Court processes appeals concerning cases of corruption and organised crime as prescribed by the Act.⁴⁶² There are now special departments for the suppression of corruption in the Higher Courts of Belgrade, Kraljevo, Novi Sad and Niš.⁴⁶³

As noted in section 3, above, in **England and Wales**, Southwark Crown Court is a *de facto* specialised court, rather than a formal specialised court. It was designated, by Practice Direction issued by the Presiding Judge in 2006, as the serious fraud centre to receive cases from around England and Wales (see further below for more on jurisdiction).⁴⁶⁴

Establishing specialised divisions in existing courts is a relatively straightforward way of streamlining corruption cases. Many specialised divisions are established by judicial leaders, such as the Chief Justice, in exercise of their administrative powers (for example in Kenya, Ghana, England and Wales, Malaysia, Botswana, Rwanda and Zimbabwe), and this means that they can be set up quite quickly. However, in most cases, as discussed in section 3.2.2.1, the judges hearing cases in the specialised division may also have to hear other non-specialised cases and this leads to over work and a lack of specialisation in practice. However, other specialised divisions have been established by legislation, which requires broader political will. But establishment by legislation does not necessarily insulate judges against over work or having to hear other cases apart from corruption cases. Procedural problems, stemming from the fact that specialised divisions are established within existing ordinary courts, may slow cases down and create backlogs.

⁴⁵⁸ The new Article 26a of the Law of Courts/Courts Act, as presented by the Constitutional Court in *ibid.* (an updated version of the text of the Act does not appear to be available). Article 490(1) states that an “appeal may be taken from the judgement of a court at second instance with a court at third instance” in only limited circumstances.

⁴⁵⁹ Article 19e of the CPC, as presented by the Constitutional Court in *ibid.* (an updated version of the text of the Act does not appear to be available).

⁴⁶⁰ Serbia (2002), *Law on the Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime, Corruption and Other Severe Criminal Offences*, Article 12

⁴⁶¹ *Ibid.*, Article 13

⁴⁶² *Ibid.*, Article 14

⁴⁶³ Information based on response to questions sent to MEDEL members.

⁴⁶⁴ *Ibid.*



One such issue is the initiation of cases. In several common law legal systems committal proceedings either used to begin in the lower courts, or still do. In Kenya, for example, committal proceedings had to begin in the subordinate courts until 2003, when the Criminal Law (Amendment) Act, No. 5 of 2003, repealed the relevant provisions of the Criminal Procedure Code. Similarly, in Botswana, the requirement to begin criminal proceedings in the subordinate court was noted as a cause of delay in corruption cases.⁴⁶⁵ In addition, constitutional issues cannot be determined in the Magistrates' courts, so cases are further delayed waiting for references and constitutional determinations to be returned to the Magistrates' courts from the High Court.⁴⁶⁶ It is understood that the Botswana Criminal Procedure and Evidence (Amendment) Act of 2014 changed committal proceedings to allow cases to be initiated in the High Court, however the authors have not seen the text of this law. Whereas some countries have amended their committal procedures, in **England and Wales** criminal cases must still begin in the Magistrates' Courts.⁴⁶⁷ However, this does not appear to be a significant cause of delay.

4.3.2 Jurisdiction

Section 3 discussed some of the practical obstacles to specialisation by judges. However, the focus of specialised judges does, of course, begin with their jurisdiction, and anti-corruption courts vary in terms of the scope of the specialised anti-corruption jurisdiction. A detailed overview of the jurisdiction of all the anti-corruption courts is not practical in the present paper, but the countries under study demonstrate the breadth of possibilities. The jurisdiction of AC courts can be roughly categorised as follows: very broad jurisdiction, including economic and commercial crime; broad jurisdiction including non-corruption crimes; specific jurisdiction limited to corruption and corruption-related crimes, and finally, those corruption courts where jurisdiction has been transferred away from them.

- *Very broad jurisdiction*

The anti-corruption court with the broadest jurisdiction is the **Latvian** Economic Court. In **Latvia** the criminal jurisdiction of the court covers the laundering of proceeds of crime and terrorism, bribery offences, offences of acceptance of a non-permitted benefit, and participation in property transactions.⁴⁶⁸ The civil jurisdiction covers a wide range of matters including underinsurance contracts, financial security agreements, violations of competition law and insolvency claims.⁴⁶⁹

⁴⁶⁵ UNODC (2014), *Country Review Report of the Republic of Botswana*, para. 435

⁴⁶⁶ *Ibid.*, para. 434

⁴⁶⁷ Hopmeier M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.

⁴⁶⁸ Latvia (2005), *Criminal Procedure Law*, s.442 and related sections of the (1998), *Criminal Law*.

⁴⁶⁹ Latvia (1998), *Civil Procedure Law*, s.24(1¹)



- *Broad jurisdiction*

In Serbia the Special Department of the High Court processes cases of organised crime and corruption,⁴⁷⁰ and a Special Department in the Appellate Court processes appeals concerning cases of corruption and organised crime as prescribed by the Act.⁴⁷¹

In Croatia the jurisdiction of the HCC is very broad and not limited to corruption cases. It “decides in the second instance on appeals against decisions of county courts in criminal cases” and it performs “other tasks determined by law”.⁴⁷² However, the amendment to the Criminal Procedure Code indicates that the HCC will also “decide in the third instance on appeals against decisions made in the second instance in accordance with Article 490, paragraph 1, item 2 of this Act.”⁴⁷³

In the Slovak Republic, the SCC is not exclusively an anti-corruption court: 12 serious crimes fall under the jurisdiction of the court, including aggravated murder, crimes involving procurement and public funds, abuse of powers of public officials, crimes pertaining to criminal groups, and corruption-related offences.⁴⁷⁴

In Albania the general subject matter jurisdiction of the court is set out in Article 135(2) of the Constitution:

Specialised courts shall be competent to adjudicate corruption and organised crime, as well as criminal offences committed by the President of the Republic, Speaker of the Assembly, Prime minister, the member of the Council of Ministers, the judge of the Constitutional Court, and High Court and the Prosecutor General, High Justice Inspector, the Mayor, Deputy of the Assembly, deputy minister, the member of the High Judicial Council and High Prosecutorial Council, and heads of central or independent state institutions as defined by the Constitution or by law, as well as charges against former above mentioned officials.⁴⁷⁵

The court is based in Tirana and has a geographical jurisdiction covering the whole of Albania.⁴⁷⁶ The ACOCC (with the SPO) has both “primary” and “subsidiary” competence.⁴⁷⁷

⁴⁷⁰ Serbia (2002), *Law on the Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime, Corruption and Other Severe Criminal Offences*, Article 13

⁴⁷¹ *Ibid.*, Article 14

⁴⁷² The new Article 26a of the Law of Courts/Courts Act, as presented by the Constitutional Court in (2020), Decision No. UI-4658/2019 and UI-4659/2019, *Decision and Ruling of the Constitutional Court of the Republic of Croatia No. UI-4658/2019 and UI-4659/2019 of 3 November 2020 and Separate opinion of judges* (an updated version of the text of the Act does not appear to be available). Article 490(1) states that an “appeal may be taken from the judgement of a court at second instance with a court at third instance” in only limited circumstances.

⁴⁷³ Article 19e of the CPC, as presented by the Constitutional Court in *ibid.* (an updated version of the text of the Act does not appear to be available).

⁴⁷⁴ Slovak Republic (2005), *Law No. 301/2005 Coll. Code of Criminal Procedure of the Slovak Republic*, s.14

⁴⁷⁵ Reiterated in Albania (1995, Rev.2017), *Law No.7905/1995 Criminal Procedure Code of the Republic of Albania*, Article 75/a(c)

⁴⁷⁶ Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Article 10(1)

⁴⁷⁷ *Ibid.*, Article 1(3)



The primary competence of the court is set out in Article 135(2) of the Constitution and in the Criminal Code:⁴⁷⁸

- Specific crimes relating to the active corruption of persons exercising public functions,⁴⁷⁹ foreign public officials or high state officials and local elected representatives;⁴⁸⁰ unlawful influence on persons exercising public functions;⁴⁸¹ illegal benefit of interests;⁴⁸² breaching the equality of participants in public bids or auctions;⁴⁸³ passive corruption of public, foreign and high state officials and elected representatives;⁴⁸⁴ active corruption of the witness, expert or interpreter;⁴⁸⁵ active corruption of judges, prosecutors, other justice officials, judges and officials of international courts, domestic and foreign arbitrators as well as members of foreign courts juries;⁴⁸⁶ and passive corruption of judges, prosecutors, other justice officials, judges and officials of international courts, domestic and foreign arbitrators as well as members of foreign courts juries;⁴⁸⁷ active and passive corruption in elections.⁴⁸⁸
- Any crime committed by a “structured criminal group, criminal organisation, terrorist organisation and armed gang” as defined by the Criminal Code.⁴⁸⁹
- As stated in Article 135(2) of Constitution, criminal charges against the most senior public officials.⁴⁹⁰
- Criminal charges against former officials “when the offence was committed on duty”.⁴⁹¹

The subsidiary competence of the court (and the SPO) is to “review, investigate and prosecute any other criminal offence which is closely related to the investigation or criminal case”⁴⁹² that falls within its competence; and the ACOCC has “jurisdiction over investigations, cases and requests” brought under Article 9 of the SPAK law.⁴⁹³ Where there are linked cases that cannot be severed, the ACOCC has competence.⁴⁹⁴

⁴⁷⁸ Albania (1995, Rev.2017), *Law No.7905/1995 Criminal Procedure Code of the Republic of Albania*, Articles 13(1) and 75/a

⁴⁷⁹ Albania (1995, Rev.2017), *Law No.7895/1995 Criminal Code of the Republic of Albania*, Article 244

⁴⁸⁰ *Ibid.*, Articles 244a and 245

⁴⁸¹ *Ibid.*, Article 245/1

⁴⁸² *Ibid.*, Article 257

⁴⁸³ *Ibid.*, Article 258

⁴⁸⁴ *Ibid.*, Articles 259, 259a and 260

⁴⁸⁵ *Ibid.*, Article 312

⁴⁸⁶ *Ibid.*, Articles 319, 319a, 319b and 319c

⁴⁸⁷ *Ibid.*, Articles 319ç, 319d, 319dh and 319e

⁴⁸⁸ *Ibid.*, Articles 328 and 328b

⁴⁸⁹ Albania (1995, Rev.2017), *Law No.7905/1995 Criminal Procedure Code of the Republic of Albania*, Article 75/a(b)

⁴⁹⁰ *Ibid.*, Article 75/a(c)

⁴⁹¹ *Ibid.*, Article 75/a(ç)

⁴⁹² Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Article 9(1)

⁴⁹³ Albania (2016), *Law No. 95/2016 on the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime*, Article 9(4)

⁴⁹⁴ Albania (1995, Rev.2017), *Law No.7905/1995 Criminal Procedure Code of the Republic of Albania*, Article 80(1)



- *Specific jurisdiction*

In **England and Wales**, Southwark Crown Court is designated as a Serious Fraud Centre and is the primary Court in England and Wales to hear specific cases of: “serious and complex fraud and corruption cases – which require specialist knowledge and typically last up to three months or more”; “confiscation hearings (dealing with applications under the Proceeds of Crime Act 2002 seeking repayment of the benefits of crime from convicted defendants)”; and “European Investigation Order and Requests for Mutual Legal Assistance”.⁴⁹⁵ Southwark Crown court hears the most high-profile cases, “including those brought against Members of Parliament that attract significant media and public interest” and it is interesting to note that it is the fourth largest Crown Court Centre in **England and Wales**.⁴⁹⁶

The HACC in **Ukraine** has perhaps the most specific and specialised jurisdiction. It covers cases brought by both the NABU and the SAPO,⁴⁹⁷ and includes cases against high level officials for crimes of corruption that result in damage of over 968,000 hryvnia (about US\$39,500).

- *Limited jurisdiction*

In **Bulgaria**, the jurisdiction of the Specialised Criminal Court, and of the Appellate Specialised Criminal Court⁴⁹⁸ is set out in the Penal Procedure Code, covering quite broad and varied offences under the Penal Code: organised crime,⁴⁹⁹ and malfeasance (abuse of office).⁵⁰⁰ In 2017 a controversial amendment to the Penal Procedure Code transferred competence to hear high-level corruption cases away from the Specialised Criminal Court to the Specialised Court for Organised Crime.⁵⁰¹

4.4 Judges and Resources

4.4.1 Composition of the specialist bench and allocation of cases

There is no clear pattern in terms of numbers of judges, the composition of anti-corruption panels, or the allocation of cases. Each country has adopted measures suited to their own circumstances.

In **Ukraine** the first instance court is made up of 27 judges, some of whom are investigative judges rather than trial judges, and the appellate chamber has 11 judges.⁵⁰² The Criminal Chamber of the Court of Cassation in **Armenia** will function with 8 judges, whereas the Civil and Administrative Chamber will have 13 judges.⁵⁰³ In **Albania** ensuring that all courts are fully operational and have the requisite number of judges has been problematic, especially as

⁴⁹⁵ Hopmeier M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.

⁴⁹⁶ *Ibid.*

⁴⁹⁷ Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*, p. 3

⁴⁹⁸ Bulgaria (2007), *Judiciary System Act 2007*, Articles 61(1) and 63

⁴⁹⁹ *Bulgarian Penal Procedure Code*, Article 411a(1) and *Penal Code*, Articles 321 and 321a

⁵⁰⁰ *Bulgarian Penal Procedure Code*, Article 411a(2) and *Penal Code*, Article 282

⁵⁰¹ European Commission (2018), *Report from the Commission to the European Parliament and the Council on Progress in Bulgaria under the Cooperation and Verification Mechanism*, p. 4

⁵⁰² Kuz I. Y. and Stephenson M. C. (2020), *Ukraine’s High Anti-Corruption Court: Innovation for Impartial Justice*, p. 3

⁵⁰³ www.moj.am/en/



the Justice Reform project is in progress and the vetting of judges is ongoing.⁵⁰⁴ For example, the Constitutional Court only became fully operational in 2020 with the appointment of three new judges to the Constitutional Court (taking it to seven), which meant that the court had regained its quorum of six for plenary sessions.⁵⁰⁵ In a transitional period, judges of the Special Criminal Courts were assigned to the ACOCC “unless there [were] reasons for the termination of the status of the magistrate or as a result of the re-evaluation process” that was also introduced in 2016 for all judges.⁵⁰⁶ They could be permanently assigned to the new court, as long as they passed the rigorous new vetting procedures introduced for all judges,⁵⁰⁷ the relevant promotion procedures,⁵⁰⁸ and consented to periodic review of their finances and communications.⁵⁰⁹ After that, all judges of the new court, like other judges, would be vetted and appointed following the new vetting and appointment procedures introduced as part of the judicial reform package. When deciding procedural matters the ACOCC first instance court is composed of a single judge.⁵¹⁰ When hearing substantive matters, the ACOCC first instance court is only composed of a single judge when the case concerns criminal charges, other than corruption and organised crime, against public officials where the offence is punishable by a fine or up to 10 years imprisonment.⁵¹¹ A bench of three judges must hear the substance of corruption or organised crime cases that fall within the court’s jurisdiction.⁵¹²

In **Bulgaria** decisions as to the composition of courts are taken by the plenum of the Supreme Administrative Court, and this procedure is the same for all courts.⁵¹³ All judges may receive additional pay to reflect their workload,⁵¹⁴ and after a decision taken by the Supreme Judicial Council on its rules for individual assessment of the professional work of judges, members of the Specialised Courts may get additional pay of up to 6 month’s salary.⁵¹⁵ In the **Slovak Republic** since 2008 a system of randomised case allocation has been in place and efforts to improve the system are ongoing. The Central Court Management System (CMS) ensures that cases are allocated “within one court to a senate or a single judge without any human interference or influence”.⁵¹⁶ In **Latvia** there will be up to 10 judges in the first instance court, and up to an additional four judges in the appellate division.⁵¹⁷ Transitional arrangements are

⁵⁰⁴ Assembly of Albania (2020), *Justice Reform Albania*.

⁵⁰⁵ European Commission (2021), *Albania 2021 Report, accompanying the 2021 Communication on EU Enlargement Policy*, p. 21

⁵⁰⁶ Albania (2016), *Law No.96/2016 On the Status of Judges and Prosecutors in the Republic of Albania*.

⁵⁰⁷ *Ibid.*, Article 162(2)(a) and Albania (2016), *Law No.84/2016 On the Transitional Re-Evaluation of Judges and Prosecutors in the Republic of Albania*.

⁵⁰⁸ Albania (2016), *Law No.96/2016 On the Status of Judges and Prosecutors in the Republic of Albania*, Article 162(2)(b)

⁵⁰⁹ *Ibid.*, Article 162(2)(c).

⁵¹⁰ Albania (1995), *Law No. 7905, (as Amended up to amendments by Law no.35/2017) Criminal Procedure Code of the Republic of Albania*, Article 13(2)

⁵¹¹ *Ibid.* Article 13(3/1)

⁵¹² *Ibid.*

⁵¹³ Bulgaria (2007), *Judiciary System Act 2007*, Promulgated, State Gazette No. 64/7.08.2007, Article 119(2)

⁵¹⁴ *Ibid.*, Article 233(6)

⁵¹⁵ Information provided in response to questions sent to MEDEL members.

⁵¹⁶ Slovak Republic (2021), *European Rule of Law Report 2021*, Input from the Slovak Republic.

⁵¹⁷ Ministry of Justice Republic of Latvia (2021), *Economic Court*, Retrieved 13.12.2021, from www.tm.gov.lv/



in place to assign judges to the court for the moment.⁵¹⁸ In **Croatia** the Annual Schedule of Work specifies the “judges and court employees due to proceed in cases involving criminal offences within the competence laid down in the Act on USKOK.”⁵¹⁹ Judges of the USKOK divisions must pass security checks, as set out in the Security Checks Act.⁵²⁰ In the HCC, cases are tried in “chambers composed of three judges, and in a panel of five judges when deciding on appeals against convictions for criminal offenses punishable by long-term imprisonment. A single judge of the HCC decides when required by law.”⁵²¹

In **Serbia** the Law on the Suppression of Corruption has been amended several times, including most recently in 2018. The text of the 2018 amendments does not appear to be available, and the information here is based on the amendments up to 2011. The President of the Special department of the High Court is appointed by the President of the Belgrade High Court from among the judges assigned to the Special department of the High Court for a four-year term. The President of the Special department of the High Court is required to have at least a ten-years professional experience in criminal law.⁵²² The President of the Belgrade High Court appoints judges to the Special department of the High Court for a term of six years, with their written consent. A judge of the Special department of the High Court is required to have at least eight years of professional experience in the domain of criminal law.⁵²³ It has to be noted, however, that the response to questions from members of MEDEL indicates that for a judge to be assigned to the Special Department they need a minimum of six years of judicial practice, which is the requirement for judges of the Higher Court in general.⁵²⁴ In exceptional circumstances, the High Judicial Council may designate a judge from another court to work in the Special department of the High Court, for a term of six years, with his written consent. The President of the Special Department is responsible for the administration of the court.

4.4.2 *Appointments, vetting, conditions, discipline, and removals*

From the countries analysed in this study, apart from **Ukraine**, rules of appointment to specialist courts or specialist divisions are the same as for other judges, as are disciplinary and removal procedures.

As seen in this paper, the creation of specialised anti-corruption courts is often associated with structural problems of the existing judiciaries and the correlated lack of public trust in regular courts/judges. In this context, some countries that have decided to create specialised anti-corruption courts felt they could not rely on (all or at least a substantial part of) the judges available in the justice system or they would risk contamination of the newly formed court by the problems of the “old” judiciary. This led to the adoption of vetting processes of judges – specifically for the Anti-Corruption court only in the case of **Ukraine** and in other cases such

⁵¹⁸ Ibid. and Latvia (1993), *Law on Judicial Power*, s.32(3) and ‘Transitional Arrangement’, s.104

⁵¹⁹ Croatia (2010), *Courts Act*, Article 32(5)

⁵²⁰ Ibid., Article 32(6)

⁵²¹ Article 19e(2) of the CPC, as presented by the Constitutional Court in Croatia (2020), Decision No. UI-4658/2019 and UI-4659/2019, *Decision and Ruling of the Constitutional Court of the Republic of Croatia No. UI-4658/2019 and UI-4659/2019 of 3 November 2020 and Separate opinion of judges*.

⁵²² Serbia (2002), *Law on the Organisation and Jurisdiction of Government Authorities in the Suppression of Organised Crime, Corruption and Other Severe Criminal Offences*, Article 13

⁵²³ Ibid., Article 13

⁵²⁴ Serbia (2008), *Law on Judges*, Article 44



as **Albania** or **Armenia**, applied to the whole judicial system (therefore including the specialised anti-corruption courts).

Vetting of judges is a highly delicate and sensitive topic. The CCJE, in its Opinion no. 21 (2018) (*Preventing Corruption among Judges*), makes a serious warning about the

*“...negative effects of lustration as a means to combat corruption. The process where all judges are screened for corruption, and those who do not pass the review are dismissed and possibly prosecuted, can be instrumentalised and thus misused to eliminate politically “undesirable” judges. The mere fact of being a judge in a member State where the judiciary is compromised at a systemic level is, by democratic standards, not sufficient to establish responsibility on the part of individual judges. Another issue that arises concerns guarantees that the process will be conducted by competent, independent, and impartial bodies”.*⁵²⁵

In fact, vetting or lustration processes⁵²⁶ have been carried out in several countries, such as Greece, Bosnia and Herzegovina or Kenya, often within the framework of transitional justice, but its results have not always been those expected, be it by miscalculation of domestic elite resistance to changes, overestimation of the influence and power of players such as NGOs or civil society organisations⁵²⁷, or by undue political motivations that undermined the process.

A clear example of a vetting process that failed all its objectives and led to increased destabilisation and loss of independence of the judiciary was the one carried out in **Serbia** after 2009. In an audit of MEDEL, it was concluded that *“the judiciary system established as a result of the reforms implemented since 2009 with the brutal dismissal of a significant number of judges and prosecutors does not under any circumstances respond to the requests of an independent, impartial judiciary that serves its citizens”*⁵²⁸. With Marina Matic Boskovic⁵²⁹, the authors may identify the main reasons that led to the failure of the Serbian experience: unclear rationale of the vetting process; lack of proper legal ground for termination of functions; challenges in implementation (lack of administrative capacities and short deadlines); fear of judges and prosecutors that any new government or political majority could run further vetting, putting their security of tenure at risk; lack of independence of the bodies in charge of the process; procedural flaws, such as absence of an effective appeal against the decision of non-reappointment.

In the case of Bosnia and Herzegovina a first attempt to review all judges with the participation of an international body was unsuccessful, due to insufficient resources made

⁵²⁵ Par. 28.

⁵²⁶ As in the above quoted CCJE opinion, we use “vetting” and “lustration” as identical concepts, although a distinction can be made, the former being focused on individual responsibility and the latter on collective responsibility – McAllum Rebecca (2016), *Judicial Complicity in Human Rights Violations: an Exploration of the Judicial Vetting Process from a Transitional Justice and Comparative Perspective*, p. 163-178, *maxime* p. 168.

⁵²⁷ Subotic Jelena (2014), *Bargaining justice - A theory of transitional justice compliance*, p. 134.

⁵²⁸ Gaboriau Simone and Bottcher Hans-Ernst (2012), *Review of the Situation in the Serbian Judiciary - the Current State of the Affairs in the Serbian Judiciary is not in Compliance with EU Standards*, MEDEL – Magistrats Européens pour la Démocratie et les Libertés, available at www.medelnet.eu/

⁵²⁹ Matic Boskovic Marina (2020), *Vetting of judiciary in transitional countries -successful tool or entry point for political influence*, available at www.researchgate.net/

available to this international commission, while a second attempt, this time of reappointment of judges, had far more positive results⁵³⁰.

For all these reasons, vetting of judges to rid the system of corruption is perhaps the most controversial aspect of judicial reform in the countries in this study: vetting has happened or is happening in **Ukraine, Armenia and Albania**.

One of the most distinctive characteristics of the court in **Ukraine** is the appointment procedure of its judges. A Public Council of International Experts (PCIE) was created, with the goal of vetting all candidates for honesty and integrity, based on asset declarations and previous experience. From a total of 343 candidates, 38 were selected after a competitive process, where all aspects related to integrity, potential conflicts of interest and technical skills were taken into consideration.⁵³¹ Hiring of skilled staff was also at the centre of the concerns, before the court formally started its operations.⁵³²

The PCIE is composed of members appointed for a two-year, non-renewable, term by the High Qualification Commission of Judges (HQCJ), from among candidates proposed by international organisations that cooperate with Ukraine in preventing and combating corruption. The PCIE has competence to assess ethics and integrity of candidates to the position of judge in the Anti-Corruption Court. Candidates can only pass to the following stages if approved by the PCIE or, in the case of candidates regarding which the PCIE raises doubts, after a positive vote of 12 members out of the total 22 of PCIE and HQCJ together, and as long as at least three of the positive votes are from members of the PCIE (and as long as four of PCIE members do not vote against).

The **Ukrainian** vetting system is seen as a successful one, as it allowed a genuine screening of candidates and a serious selection of integrity-strong judges. However, the financial and administrative structure it implies has raised doubts on its future replication⁵³³.

The self-governing institutions of the judiciary (the High Judicial Council) and the prosecution (the High Prosecutorial Council) of **Albania** were established in 2018. They are responsible for appointments, transfers, evaluations, discipline and ethical rules and monitoring. Moreover, the HJC is responsible for directing and managing the administration of the courts.⁵³⁴ In addition to these changes, a comprehensive programme of vetting of all judges is underway, conducted by an Independent Qualification Commission, an Appeals Chamber, Public Commissioners and an International Monitoring Operation.⁵³⁵ The SPO officers and the ACOCC judges have all been vetted and assigned.⁵³⁶

Unlike the previous experience in Serbia, the Albanian model of vetting has received support from international institutions. The Venice Commission clearly stated that vetting measures “are not only justified but are necessary for Albania to protect itself from the scourge of

⁵³⁰ McAllum Rebecca, *Judicial Complicity...*, cit., pp. 170-171.

⁵³¹ Vaughn D. and Nikolaieva O. (2021), *Launching an effective anti-corruption court: Lessons from Ukraine*.

⁵³² Ibid.

⁵³³ The Global Anticorruption Blog (2020), *Ukraine's Bold Experiment: The Role of Foreign Experts in Selecting Judges for the New Anticorruption Court*, available at <https://globalanticorruptionblog.com>.

⁵³⁴ Assembly of Albania (2020), *Justice Reform Albania*.

⁵³⁵ Ibid.

⁵³⁶ Ibid.



corruption which, if not addressed, could completely destroy its judicial system”⁵³⁷. The European Court of Human Rights (European Court) was also called to rule upon the vetting process and in the case of *Xhoxhaj v. Albania* (09/02/2021, application no. 15227/19) – concerning a Constitutional Court judge who had been dismissed from office following the vetting process – the Court found that there had been no violation of the rights to a fair trial or to respect for private and family life, as the vetting bodies had been independent and impartial, the proceedings had been fair, holding a public hearing before the Appeal Chamber had not been strictly required, the principle of legal certainty had not been breached, the dismissal from office had been proportionate and the statutory lifetime ban imposed on rejoining the justice system on the grounds of serious ethical violations had been consistent with ensuring the integrity of judicial office and public trust in the justice system.

As in Ukraine, one of the main characteristics of the Albanian system is the intervention of a body composed of international experts. Although with different competences in both countries (in Ukraine with direct impact in the final choice of candidates, while in Albania mainly with advisory/supervision functions⁵³⁸), the intervention of international experts is seen as a guarantee of transparency and impartial monitoring, essential for the increase of public trust and non-politisation of the vetting process.

As of February 2022, the vetting process had led to the screening of approximately 500 of the total 800 judges and prosecutors, with 180 having been fired, 70 withdrawn from their posts and only 190 having passed.⁵³⁹

The apparent success of the process has not prevented critics from pointing out that it was not designed on a “step-by-step” basis – thus leading to the paralysation of the justice system and the consequent increase of organised crime –, it is based on strict criteria that led to numerous vacant posts, and in a certain way it favoured impunity, as no sanctions were applied to all those judges who decided to pre-emptively leave the system in order to avoid the vetting⁵⁴⁰.

Despite these criticisms, the EU and the USA have urged the Albanian authorities to continue the vetting process, considering that “the vetting of judges and prosecutors is a fundamental element of justice reform” which “is showing results”⁵⁴¹, and the Parliament approved in February 2022, with an expressive majority, a two-year extension of the process, so it could be concluded⁵⁴².

In **Armenia**, in the context of the reforms initiated in 2019⁵⁴³ after the 2018 *Velvet Revolution*, the government announced its intention to put all judges and prosecutors under a vetting

⁵³⁷ Council of Europe Venice Commission (2016), CDL-AD(2016)009, *Final Opinion on the Revised Draft Constitutional Amendments on the Judiciary of Albania*.

⁵³⁸ For a description of the competences of the Albanian International Monitoring Operations see Matic Boskovic Marina, *Vetting of judiciary...*, cit., p. 3-4.

⁵³⁹ Semini Llazar (2022), *EU, US urge Albania to keep vetting judges, prosecutors*, available at <https://apnews.com/>

⁵⁴⁰ Zhuja Hoxha Rreze (2021), *Five Integral Questions about the Vetting Process*, available at www.legalpoliticalstudies.org

⁵⁴¹ *Joint press statement of the EU Delegation to Albania and the U.S. Embassy in Tirana*, 08/02/2022, available at www.eeas.europa.eu/delegations/albania/

⁵⁴² Semini Llazar (2022), *Albania amends constitution to keep on vetting the judiciary*, available at <https://abcnews.go.com/>

⁵⁴³ See 4.1.3 above.



procedure. After public consultations, it was decided to step back and start a less radical process, decision that was welcomed by the Venice Commission⁵⁴⁴, but met serious criticism from the civil society⁵⁴⁵. A *Commission on Constitutional Reforms* was set up in 2020 to produce a document for the strategic direction to take, but its work is still ongoing⁵⁴⁶.

Despite the initial impetus for reforms, the changing of the judiciary never stopped being a political battlefield, with little consensus and mutual accusations of attempt of control of the judiciary by the executive⁵⁴⁷.

More recently, however, the government has reaffirmed that there is a need for a comprehensive vetting of all sitting judges, because the existing methods does not address that issue in a satisfactory manner. With a formal vetting procedure dependent on constitutional amendments, the government is seeking to screen judges through

“three bodies independent from each other, including the Corruption Prevention Commission, the Ethics and Disciplinary Commission and the Ministry of Justice”, which “apply to the Supreme Judicial Council with motions to subject judges to disciplinary liability, as a result of which, a number of judges have already been subjected to disciplinary liability, and the powers of some of them have been terminated”⁵⁴⁸.

Draft amendments to the Constitutional Law on the Judicial Code and to the Constitutional Law on the Constitutional Court were presented, introducing a new “incompatibility requirement” for sitting judges: “a deliberate violation by a judge of a fundamental human right, which was asserted by the act rendered by an international court or another international institution of which the Republic of Armenia is a party, and if fifteen years have not elapsed since the act of an international court or another international institution of which the Republic of Armenia is a party came into force”⁵⁴⁹. The Venice Commission issued a negative opinion on these amendments, not only regarding their necessity or undefinition, but also raising questions related to their retroactivity and the lack of rules of procedure for the termination of office of the judges affected⁵⁵⁰.

⁵⁴⁴ Council of Europe (2019), *Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Amendments to the Judicial Code and some other Laws* (CDL-AD(2019)024), par. 12, available at www.venice.coe.int/

⁵⁴⁵ *Concerning Failure of Effective Vetting in the Judiciary and Law-Enforcement*, Open Society Foundations, April 2020, available at www.osf.am/

⁵⁴⁶ Council of Europe (2022), *Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft laws on making amendments to the Constitutional Law in the Judicial Code and to the Constitutional Law on Constitutional Court* (CDL-AD(2022)002), par. 13, available at www.venice.coe.int

⁵⁴⁷ Grigoryan Armen (2021), *Armenia’s reformers struggle on*, available at www.opendemocracy.net/en

⁵⁴⁸ “Vetting of judges can be carried out in three ways; two of them — now, one — after constitutional reforms”, Ministry of Justice of the Republic of Armenia, 11/11/2021 - www.moj.am/en/article/3005 .

⁵⁴⁹ Venice Commission, (CDL-AD(2022)002), *Armenia, cit.*, par. 16.

⁵⁵⁰ *Ibid.*, par. 88-90.

Despite the negative opinion regarding these specific draft amendments, the Venice Commission keeps supporting a vetting process⁵⁵¹, but there appears to be no internal consensus on the process, either between political parties or from within the judiciary⁵⁵².

The underlying reason for vetting judges is corruption or a failure of judicial integrity. The case of **Serbia** demonstrates some of the potential problems with vetting.

4.4.3 Funding

For this study questionnaires were sent to Council of Europe offices in the countries under examination, and information was asked about the funding of the courts before the creation of the specialised courts, and afterwards. Unfortunately, the responses received were mixed, and hard to compare. It was not possible to see obvious trends or make generalisations about funding.

4.5 Impact of anti-corruption specialisation

4.5.1 On efficiency

Choosing how to evaluate efficiency or effectiveness is difficult. For the public, conviction rates might be a relatively easy way to understand whether specialised courts are dealing with corruption, however, the experience of Indonesia demonstrates how focusing on conviction and acquittal rates can be problematic and can obscure other problems.⁵⁵³ However, very few countries collect or retain information about corruption cases specifically.⁵⁵⁴ **England and Wales** statistics on corruption offences were briefly included in the Statistical Bulletin for the first time in 2018,⁵⁵⁵ and the December 2021 Statistical Bulletin includes corruption offences recorded by police for the year December 2020 to December 2021.⁵⁵⁶ Other measures of efficiency include the length of proceedings, clearance rates, or time on remand or in custody.

In **Albania** “Efficiency of the judicial system has been affected by the length of proceedings, low clearance rate and high backlog. Appeal courts have a high number of inherited cases and judicial vacancies, with only 40 out of 78 appeal judges in office. A new judicial map must be urgently adopted and implemented to re-distribute judges and resources within the judicial

⁵⁵¹ Interview of Peter Bussjäger, member of the Venice Commission, to Aravot - Armenian News: “This is very difficult for us to judge why Armenia has still not implemented effective rules on the vetting of sitting judges”, 12 April 2022, available at www.aravot-en.am/2022/04/12/301672/

⁵⁵² Nalbandian Naira (2022), *Armenian Judges Decry ‘Government Pressure’*, The Armenian Mirror-Spectator, 18 January 2022, available at <https://mirrorspectator.com/>

Avedian Lillian (2022), *The ruling party is restricting judicial independence, critics warn*, Armenian Weekly, 16 February 2022, available at <https://armenianweekly.com/>

⁵⁵³ Butt S. (2012), *Indonesia’s Anti-Corruption Courts: should they be abolished?*

⁵⁵⁴ For examples of the challenges of collecting data on corruption convictions see: International Bar Association (2021), *Maintaining Judicial Integrity and Ethical Standards in Practice: a study of disciplinary and criminal processes and sanctions for misconduct or corruption by judges*.

⁵⁵⁵ Office for National Statistics (2018), *Crime in England and Wales: Year ending June 2018*, section 13 and Table F6 <www.ons.gov.uk/>

⁵⁵⁶ www.ons.gov.uk/



system. The average lengths for a case at appeal level is 998 days for criminal cases and 1 742 for civil and commercial cases.”⁵⁵⁷

In **Serbia** the published average lengths of proceedings for criminal cases in 2019 was 6.38 months, disposition time in criminal cases first instance courts was 119.3 days and the clearance rate in criminal cases first instance courts was 101.5%.⁵⁵⁸

In **England and Wales**, the performance of Southwark Crown court can be demonstrated by the number of cases and outstanding cases, and by waiting times. As of October 2021, the court had “722 outstanding cases for trial (of which 185 are custody cases and 537 are bail cases). In addition, there are 119 committals for sentence including bring backs and breaches, and 53 outstanding appeals.”⁵⁵⁹ This is an increase from March 2020, when the figures were “399 outstanding cases for trial (of which 87 were custody cases and 312 were bail cases) with 68 committals for sentence and 57 outstanding appeals.”⁵⁶⁰ The difference may, in part be due to an increase in the investigation of fraud cases during the Covid lockdown period.⁵⁶¹ Waiting times for defendants on bail have also increased during the lockdown period, but custody waiting times have not. The average waiting time on bail in August 2020 was 21.8 weeks, compared to 51.4 weeks in August 2021.⁵⁶² The average waiting time for defendants in custody in August 2020 was 23.6 weeks, compared to 18.8 weeks in August 2021.⁵⁶³

4.5.2 *On judicial integrity and independence*

As seen above, the establishment of special anti-corruption courts is often connected to the lack of trust in national judiciaries, either in their independence and integrity or their efficiency, when not both.

The creation of anti-corruption courts, however, is not a solution *per se* to the lack of trust. First, creating a separate judicial body not only has no effect in the regular judicial system, but may also deepen the public perception of distrust – if the political authorities themselves think that there is no way to find a solution within the normal judiciary, how can we expect ordinary citizens to do it?

Secondly, diverting resources to the establishment of a separate jurisdiction necessarily affects the resources available to comprehensively reform and renew the judiciary, once again deepening the crisis it is already in.

Another aspect is the possible contamination of the new specialised body by the problems of the “old” judiciary. If the judicial system has long-standing and serious integrity problems, the new judicial body to be created cannot be designed following the same principles and structure of the one previously in place. Integrity issues affecting judges selected to specialised anti-corruption courts show that the mere creation of such body does not guarantee a different

⁵⁵⁷ European Commission (2021), *Albania 2021 Report, accompanying the 2021 Communication on EU Enlargement Policy*, p. 22

⁵⁵⁸ Slovak Republic (2021), *European Rule of Law Report 2021*, Input from the Slovak Republic.

⁵⁵⁹ Hopmeier M., *Report on Southwark Crown Court, London and its work in relation to Corruption and other Economic Crime cases*.

⁵⁶⁰ *Ibid.*

⁵⁶¹ *Ibid.*

⁵⁶² *Ibid.*

⁵⁶³ *Ibid.*



outcome⁵⁶⁴. On the other hand, positive experiences such as the Ukrainian model of involving international experts in the selection process of judges for the new anti-corruption court are not sustainable in the long term, either for financial or structural reasons⁵⁶⁵.

The conclusion the authors may draw is that specialised anti-corruption courts are not in themselves a solution to the problems of a specific country. Without comprehensive and deep restructurings of national judiciaries, the mere creation of specialised anti-corruption judicial bodies may not have the expected outcomes or end up being seriously compromised.

4.5.3 On prevention of corruption

The first and most important reason for the creation of an anti-corruption court (be it a comprehensive court or a solo judge/hybrid model), is obviously the need to combat corruption and economic criminality. The more efficient the judicial system is in prosecuting and punishing corruption, the bigger the deterrent effect it will presumably have in that type of criminality.

This, in turn, will have direct effect in many areas, such as the trust of foreign investors or the public perception of corruption.

In order to analyse if the creation of specialised anti-corruption courts has had any effect on the public perception of corruption, the authors consulted the *Transparency International's Corruption Perceptions Index*, and compared the rank and score of each of the countries in the year of creation of the court.⁵⁶⁶

Table 4: Comparison of the Corruption Perception Index (CPI)

YEAR OF CREATION	COUNTRY	CORRUPTION PERCEPTIONS INDEX			
		RANK		SCORE	
		Start year	2021 (/180)	Start year	2021
1979	Philippines	36 /41 (1995)	117	2.77 (1995)	33
1999	Pakistan	87 /99	140	2.2	28
2002	Indonesia	96 /102	96	1.9	38
2002	Nepal	90 /145 (2004)	117	2.8 (2004)	33
2003	Kenya	122 /133	128	1.9	30

⁵⁶⁴ See [US bars Bulgarian Specialised Criminal Court judge over 'significant corruption'](#), The Sofia Globe, 5 February 2020.

⁵⁶⁵ Kuz Ivanna (2020), [Ukraine's Bold Experiment: The Role of Foreign Experts in Selecting Judges for the New Anticorruption Court](#), GAB - The Global Anticorruption Blog, 2 March 2020.

⁵⁶⁶ In the case of Philippines, the index was published for the first time in 1995 while Nepal was included in the index for the first time in 2004.



YEAR OF CREATION	COUNTRY	CORRUPTION PERCEPTIONS INDEX			
		RANK		SCORE	
		Start year	2021 (/180)	Start year	2021
2004	Bangladesh	145 /145	147	1.5	26
2006	Burundi	130 /163	169	2.4	19
2008	Uganda	126 /180	144	2.6	27
2009	Slovak Republic	56 /180	56	4.5	52
2010	Palestine	(n.a.)	(n.a.)	(n.a.)	(n.a.)
2010	Croatia	69 /178	63	4.1	47
2010	Afghanistan	176 /178	174	1.4	16
2011	Cameroon	134 /183	144	2.5	27
2011	Malaysia	60 /183	62	4.3	48
2012	Bulgaria	75 /176	78	4.1	42
2012	Senegal	94 /176	73	3.6	43
2013	Botswana	30 /177	45	6.4	55
2015	Mexico	111 /168	124	3.1	31
2016	Tanzania	116 /176	87	3.2	39
2016	Thailand	101 /176	110	3.5	35
2016	Madagascar	145 /176	147	2.6	26
2018	Sri Lanka	89 /180	102	3.8	37
2018	Ukraine	120 /180	122	3.2	32

Source: Transparency International - Corruption Perception Index (www.transparency.org)

When analysing the data above, a conclusion that immediately becomes inevitable is that almost all the countries that have decided to create specialised anti-corruption courts are countries with high levels of perception of corruption. With the exception of Malaysia and Botswana, none of those countries was in the top third of the lowest perception of corruption in the year of creation of the court, and the vast majority (16 out of 23) was in the lower half. High level of perception of corruption points out to an inefficiency of the regular judicial system to prosecute and convict corrupt agents, so from the reasons pointed out above,

efficiency and integrity certainly played an important role in the decision to establish specialised anti-corruption courts⁵⁶⁷, more than expertise or attraction of foreign direct investment.

Focusing now on the consequences of the creation of specialised anti-corruption courts, if we exclude the countries that have established those courts after 2015 (as the results of the activity of those courts could not have yet materialised by 2021), it appears from the table above that there has not been a significant improvement either in the score or the position in the ranking of those countries in the Corruption Perception Index. With the exception of Senegal – which has improved its ranking position by roughly one third – all the other countries remained in the same position (with slight moves upwards or downwards) and some of them (Burundi, Uganda and Cameroon) even suffered a significant deterioration of their perception of corruption. Certainly, there are many reasons for this, the explanation not laying exclusively (or even mainly) in the inefficiency of the anti-corruption courts, but the fact is that the creation of such specialised judicial bodies has not had any impact in the overall corruption environment of the respective countries.

4.5.4 On economic growth and investment

The direct relationship between high levels of corruption and low economic growth is well studied and widely admitted and anti-corruption agencies have not apparently had a direct and relevant impact in reducing the levels of corruption⁵⁶⁸.

As analysed above, however, research by Kuvvet has shown that the existence of anti-corruption courts, namely comprehensive courts that include specialised first instance and appeal courts, has a positive impact in the amount of foreign direct investment.

More than that, it has direct impact in the composition of the investors. Investors from corrupt countries tend to direct their money to countries with no specialised courts or countries without comprehensive anti-corruption court systems, while countries with the latter receive more foreign direct investment from non-corrupt countries. This has consequences that go far beyond the judicial system and the immediate corruption: if the largest share of foreign investment comes from non-corrupt countries, undue influence over political decision-makers will be less likely to occur, as not only the investors come from countries where integrity standards are higher, but are also often bound by domestic laws that impose strict restrictions on national companies when dealing with foreign officials, when it comes to corruption (such as the 1977 US Foreign Corrupt Practices Act or the 2010 UK Bribery Act).

The existence of anti-corruption specialised courts can therefore contribute to reduce corruption, by changing the composition and source of foreign investors.

⁵⁶⁷ See [Ukraine Must Create an Independent Anti-Corruption Court](#).

⁵⁶⁸ Jenkins Matthew, Maslen Caitlin and Bak Mathias (2021), [The relationship between anti-corruption agencies, robust enforcement and economic development](#)



5 PROBLEMS AND CHALLENGES

In section 3 some of the challenges faced by ACCs once they had been established are outlined, including the impact these problems had on achieving the stated goals for establishing the court. However, while many problems and challenges arise once the new courts begin their work, getting to the point of being able to establish such a court in the first place can be very difficult, and those behind the changes can face multiple problems, and challenges from several quarters. Any kind of reform challenging the status quo disrupts the existing institutional structure and culture. As such, it is likely to meet resistance from various corners. Judicial reform focused on introducing anti-corruption courts or anti-corruption specialisation has been challenged in many ways, most notably through constitutional challenges, brought by both judges and political actors. In many of the nine countries in this study, either the validity of the court itself, the validity of its procedures or associated institutional changes have been challenged before establishment or very soon after establishment of the court. But there are longer term issues too, and two anti-corruption courts have now been abolished, with the **Bulgarian** court being the most recent one to close.

5.1 Resistance from Judges

Resistance to the new anti-corruption courts can be pushback against a change to judicial culture, but it can also be a response to the tension between the political need and the internal needs of the system as noted in section 2.4, where the political need to be seen to be acting quickly may override the practical internal needs of the courts.

In **Albania** the National Association of Judges of Albania, and the Union of Judges of Albania sought a declaration from the Constitutional Court that parts of Law No.96/2016 On the Status of Judges and Prosecutors in Albania were unconstitutional, and they sought a suspension of Law No.95/2016 On the Organisation and Functioning of the Institutions for Combatting Corruption and Organised Crime until the final decision of the Constitutional Court came into force.⁵⁶⁹ The Constitutional Court partially accepted the application and repealed parts of the Act.⁵⁷⁰

The reforms in **Ukraine** also met strong resistance from inside the judiciary, as well as from politicians. Among allegations of judicial corruption of several members of the judiciary⁵⁷¹, including judges from the Constitutional Court itself⁵⁷², in August and September 2020 the latter declared the appointment of NABU's director unconstitutional as well as the law governing it, namely the provisions giving the president powers to form the bureau, appoint and dismiss its director, and appoint members of the commission that runs the selection process for the investigative body's chief⁵⁷³. In another decision, the Constitutional Court also declared unconstitutional the powers of the NACP to check public officials' declarations of assets, finding that the power to review asset declarations submitted by judges breaches the

⁵⁶⁹ Albania (2017), *Decision No.34/2017*, Constitutional Court.

⁵⁷⁰ *Ibid.*

⁵⁷¹ Olearchyk Roman (2020), *Judge in spotlight as Ukraine's anti-corruption drive hits buffers*, available at www.ft.com/

⁵⁷² Ukraine's constitutional court attacks anti-corruption laws, *The Economist*, 12 November 2020, available at www.economist.com/

⁵⁷³ Makszimov Vlagyiszlav (2020), *Ukraine top court deals another blow to anti-corruption bureau*, available at www.euractiv.com/



independence of the judiciary, and also the law that imposes criminal liability for submitting a false asset declaration, for disproportionality between the penalties and the damage caused by the crime⁵⁷⁴.

Despite this resistance, international pressure eventually led to the adoption on 7 June 2018 of the Law on the HACC. One of the most distinctive characteristics of the court is the appointment procedure of its judges. A PCIE was created, with the goal of vetting all candidates for honesty and integrity, based on asset declarations and previous experience. From a total of 343 candidates, 38 were selected after a competitive process, where all aspects related to integrity, potential conflicts of interest and technical skills were taken into consideration⁵⁷⁵. Hiring of skilled staff was also at the centre of the concerns before the court formally started its operation⁵⁷⁶. Albeit a relatively positive performance in terms of backlog and duration of cases since it started activity in September 2019, public trust in the specialised court is at the same low level as the rest of the judiciary⁵⁷⁷.

The overall process of conceiving and establishing a specialised anti-corruption court in Ukraine seems to have been well designed, either structurally or in the concrete selection and appointment of judges and staff. It showed, however, the serious challenges that the creation of such a body has to face, be it from politicians or from inside the judiciary itself.

Another aspect to be considered when analysing the Ukrainian experience is that one of the main factors that led to its initial success – the intervention of a body of international experts in the process of appointment of judges – is not sustainable in the long run, either for budgetary reasons (it involves very high administrative costs, only affordable through international donors' cooperation that cannot be permanent) or for risk of neglect of reforms to domestic institutions⁵⁷⁸.

The Council for the Judiciary in **Latvia** did not support the development of the Economic Court. In 2019 the Judicial Council sent a letter to the Prime Minister, the Chair of the Legal Affairs Committee and the Chair of the Judicial Policy Committee of the Legal Affairs Committee to inform them of the decision not to support the formation of the new court, and the reasons for that decision.⁵⁷⁹ The Council for the Judiciary repeatedly raised concerns about the court.⁵⁸⁰

The Council for the Judiciary's objections are as follows:⁵⁸¹

⁵⁷⁴ Korol Kyrylo (2020), *The Ukrainian Constitutional Court's Invalidation of Anticorruption Laws Has Plunged the Country into a Double Crisis*, available at <https://globalanticorruptionblog.com/>

⁵⁷⁵ Vaughn D. and Nikolaieva O. (2021), *Launching an effective anti-corruption court: Lessons from Ukraine*.

⁵⁷⁶ Ibid.

⁵⁷⁷ Ibid.

⁵⁷⁸ Kuz Yvanna, *Ukraine's Bold Experiment: The Role of Foreign Experts in Selecting Judges for the New Anticorruption Court*, cit.

⁵⁷⁹ Republic of Latvia Supreme Court Senate (10 June 2019), *The Council for the Judiciary informs the government and the Saeima about the arguments against formation of the Economic Court*.

⁵⁸⁰ www.at.gov.lv/en/

⁵⁸¹ www.at.gov.lv/en/



- The government's justification for the new court contradicts the reforms that have already happened – these reforms are sufficient to create the conditions for judicial specialisation within the existing framework;
- The proposals were initially very abstract, and after repeated calls for further elaboration on the purpose of the new court, the Council for the Judiciary remained unsatisfied that it was in fact necessary;
- There was no analysis of the causes and consequences of the problems that prompted the establishment of the new court;
- Given the current complex criminal procedure which slows down the processing of cases, the workload of judges, and the number of cases, the court will be paralysed with only seven judges;
- There is a risk that the public will be suspicious of possible corruption in the court if only seven judges are adjudicating one type of case. The Council for the Judiciary gives the experience of the 2-4 judge special insolvency court as an example. "Such a closed, small circle of judges is also a factor contributing to corruption;"
- A single specialised court will also limit access to justice, creating problems with jurisdiction and the separation of cases.

In 2021, the Government accused the Chair of the Judicial Council of a breach of ethics for speaking on national television about the challenges facing the new court and sought an investigation from the Judicial Ethics Commission.⁵⁸² The Judicial Ethics Commission concluded he had not violated any ethical rules as he was only providing information and an assessment of court organisation in his capacity as Chair of the Judicial Council.⁵⁸³

5.2 Political resistance

In **Bulgaria**, opposition parties saw the project of creation of the Specialised Criminal Court as a tool for repression of opposition party members, fearing its control by the dominant party. In effect, there are some comments on the use of specialised courts in Bulgaria – a separate system that competes with regular courts – as an instrument of harassment of political opponents, with judges selected mainly among prosecutors with a weak culture of respect for fundamental rights⁵⁸⁴. NGOs and members of the judiciary feared that it would endanger the independence of the judiciary, the latter being traditionally suspicious of top-down reforms imposed by the executive, given the relatively recent conquer of independence, in the 1990's⁵⁸⁵. Now, in 2022, Bulgaria's Parliament has voted to close the court.

Croatia had specialist divisions in the County courts from 2001,⁵⁸⁶ and in 2010 the role of these courts was reinforced.⁵⁸⁷ In addition, in January 2021 the new HCC began work, after the

⁵⁸² www.at.gov.lv/en/

⁵⁸³ www.at.gov.lv/en/

⁵⁸⁴ Vassileva Radosveta (2019), *Capturing Bulgaria's Justice System: The Homestretch*, <https://verfassungsblog.de/>, DOI: 10.17176/20190109-140600-0.

⁵⁸⁵ Kuzmova Yoana, *cit.*, p. 249.

⁵⁸⁶ Croatia (2001), *Law on the Office for the Suppression of Corruption and Organised Crime*, Article 24

⁵⁸⁷ Croatia (2010), *Courts Act*, Article 32



Constitutional Court ruled it to be constitutional.⁵⁸⁸ The case was based on a motion brought by Peđa Grbin, President of the Social Democratic Party of Croatia, and Orsat Miljenić, a former Minister of Justice. They argued that “the establishment and regulation of the jurisdiction of the High Criminal Court deprives the Supreme Court of the Republic of Croatia of jurisdiction to decide in the second instance on appeals against decisions of county courts in criminal cases.”⁵⁸⁹ The result of this, they claimed, would be that

the Supreme Court in the criminal sphere is left with only the decision on extraordinary legal remedies (request for protection of legality and request for extraordinary review of a final judgment) which are very limited in terms of authorised applicants and conditions for filing their effects. Therefore, in their opinion, by deciding exclusively on extraordinary legal remedies, the Supreme Court cannot ensure consistent law enforcement and harmonise judicial practice in criminal matters, i.e., fulfil its task prescribed by the Constitution.⁵⁹⁰

The Constitutional Court rejected those arguments and decided that the new High Criminal Court would begin work on 1 January 2021.⁵⁹¹

The reforms intended to fight corruption and the idea of creating a specialised court faced resistance from internal actors in **Ukraine**. In 2017, Ukrainian President Poroshenko rejected the idea of creating a separate specialised court, saying that Ukraine was not Uganda.^{592 593} That same year, declarations by the President of the European Commission suggested that Ukrainian political authorities would prefer the creation of specialised sections within the judiciary, rather than the establishment of a completely separate court.⁵⁹⁴ A group of 50 Members of Parliament, mostly from the pro-Russian and Eurosceptic fraction *Opposition Platform – For Life*, challenged before the Constitutional Court the law on the NABU and the appointment of its director. Political resistance of the kind seen in Bulgaria, Croatia and Ukraine inevitably have consequences on the performance and effectiveness of the specialised courts, leading to what Kuzmova calls a “significant reform fatigue”⁵⁹⁵.

One must also note that the pre-accession political agreement that leads to the adoption of anticorruption measures demanded or encouraged by the EU, such as the creation of specialised courts, quickly gives place to political division after the accession⁵⁹⁶, emphasising

⁵⁸⁸ Constitutional Court of Croatia (2020), Decision No. UI-4658/2019 and UI-4659/2019, *Decision and Ruling of the Constitutional Court of the Republic of Croatia No. UI-4658/2019 and UI-4659/2019 of 3 November 2020 and Separate opinion of judges*, Constitutional Court.

⁵⁸⁹ *Ibid.*

⁵⁹⁰ *Ibid.*

⁵⁹¹ *Ibid.*

⁵⁹² *12 Facts on The High Anti-Corruption Court*, Transparency International Ukraine, 5 August 2020, available at <https://ti-ukraine.org/en/>.

⁵⁹³ *Simulation or step forward: will there be the Anti-Corruption Court in Ukraine?*, Ukraine Crisis Media Center, 5 January 2018, available at <https://uacrisis.org/en/>.

⁵⁹⁴ *TI Ukraine Opposes the Creation of Anti-Corruption Chambers in Lieu of the Independent Anti-Corruption Court*, Transparency International Ukraine, available at <https://ti-ukraine.org/>.

⁵⁹⁵ *Ibid.*, p. 262.

⁵⁹⁶ Batory Agnes (2010), *Post-accession malaise? EU conditionality, domestic politics and anti-corruption policy in Hungary*.



the problems deriving from the nature of specialised courts, such as the possibility of their political manipulation.

In **Albania** an analysis of the period between 1992 and 2009 by Gjevori demonstrates the extent of the political challenges faced by successive governments to pass their judicial reform packages.⁵⁹⁷ In the seventeen-year period before Albania signed the SAA with the EU, discussions about judicial reform were highly politicised. Newspaper coverage in the two main news outlets, each associated with a different political party, and in parliamentary debates “relied on the memory of communism as the main justificatory mechanism to frame—oppose or justify—judicial reform.” They also “relied on the alleged transgressions of the ‘other side’ when in power as a secondary justificatory mechanism to reject one another’s arguments and proposals.”⁵⁹⁸ This “depiction of the opponent’s judicial reform as an existential threat to the health of democracy” meant that “the other side had to be defeated rather than accommodated.”⁵⁹⁹

5.3 Sustainability of reforms

The sustainability of the reforms brought about by the introduction of anti-corruption specialisation in the courts depends on many factors, but primarily it depends on judicial will (or cooperation) to adjust to the changes, and political will and action to give effect to the changes in full. These tensions can mean that measures to establish an anti-corruption court falter, or that the court once established is challenged (as discussed above). But judicial and political resistance or challenge is not the only issue - the design and functioning of the new system needs to be sustainable in the long term as well.

Unless there is sufficient political will, the setting up of the new court, even where legislation is in place for its existence, can falter. This is what has happened in the Gambia where the current Constitution provides for the establishment of a Special Anti-Corruption Court by law,⁶⁰⁰ but to date such a law has not been passed and the court has not been established.⁶⁰¹ The court envisaged in the 1997 Constitution is not included in the draft Constitution of 2020.⁶⁰² Mexico is another example, but here the process had progressed even further: the court has been established by legislation but the judges have not been appointed, so it cannot function.⁶⁰³

The authors have shown above the degree and nature of both judicial and political resistance to change. However, in terms of sustainability, the executive and parliament often have the power, either to ensure that the new court functions in the long term, or that it ceases to exist. For example, in **Burundi** corruption is a major problem: it “exists in all Burundian public

⁵⁹⁷ Gjevori E. (2018), *Democratisation and Institutional Reform in Albania*.

⁵⁹⁸ *Ibid.*, p. 129

⁵⁹⁹ *Ibid.*, p. 108

⁶⁰⁰ Gambia (1997), *Constitution of the Republic of the Gambia*, Articles 134 and 135, available at <http://hrlibrary.umn.edu>

⁶⁰¹ The Anti-Corruption Bill 2009, which is currently before the National Assembly, gives the Anti-Corruption Commission greater independence, but does not establish a Special Criminal Court. For further context see: Bak M. (2021), *Overview of Corruption and Anti-Corruption in the Gambia*, U4 Helpdesk Answer.

⁶⁰² See draft of 29 March 2020, available at www.constituteproject.org

⁶⁰³ www.wola.org/



institutions and services, affecting the daily lives of citizens in multiple ways”.⁶⁰⁴ According to Gervais Rufyikiri, a former Speaker of the Senate, and Second Vice-President of the Republic,⁶⁰⁵ the “large number” of anti-corruption institutions have produced “few results” in tackling the widespread corruption he has witnessed.⁶⁰⁶ In 2006 Burundi created an anti-corruption institutional framework consisting of the Anti-Corruption Brigade, the Public Prosecutor’s Office at the Anti-Corruption Court, and the Anti-Corruption Court.⁶⁰⁷ The Anti-Corruption Court had significant, but not exclusive, jurisdiction to try corruption cases,⁶⁰⁸ and importantly, the power to hear cases against the highest officials of the country is reserved to the High Court under the constitution,⁶⁰⁹ a court which has yet to be established.

For observers like Rufyikiri, the solution to the limitations of the anti-corruption framework would be to strengthen the institutions and “extend the missions of anti-corruption institutions, to allow its alignment with international conventions against corruption”.⁶¹⁰ The Government, however, took a different approach. In its report to the UN Human Rights Council in September 2021, the Commission of Inquiry into the Situation in Burundi concluded that the “judiciary’s lack of independence is long-standing, but its instrumentalisation for political or diplomatic gain has worsened under President Ndayishimiye”,⁶¹¹ and there is evidence of efforts to increase control over the judiciary and its decision-making.⁶¹² Against this background the Government decided to abolish the Anti-Corruption Brigade and the Anti-Corruption Court.⁶¹³ In April 2021, the Minister of Justice, Jeanine Nibizi, explained to Parliament that “specialised institutions require significant material and human resources to operate whereas they produce mixed results. Anti-corruption sections should therefore be implemented within prosecutors’ offices, same as anti-corruption chambers in first-instance courts and courts of appeal.”⁶¹⁴ The work of the Public Prosecutor’s Office at the Anti-Corruption Court, and the work of the Anti-Corruption Court itself has therefore been integrated back into the remit of the Public Prosecutor and ordinary courts respectively. The work of the Anti-Corruption Brigade has been passed on to a specialised anti-corruption unit established within the judicial police”.⁶¹⁵ This is considered by many to be a “step backwards” in the fight against corruption.⁶¹⁶

⁶⁰⁴ Rufyikiri G. (2016), *Grand Corruption in Burundi: a collective action problem which poses major challenges for governance reforms*, p. 6

⁶⁰⁵ *Ibid.*, p. 8

⁶⁰⁶ *Ibid.* – examples throughout the paper.

⁶⁰⁷ *Ibid.*, p. 11

⁶⁰⁸ *Ibid.*, p. 11

⁶⁰⁹ Burundi (2005), *Constitution of Burundi 2005*, Article 234

⁶¹⁰ Rufyikiri G. (2016), *Grand Corruption in Burundi: a collective action problem which poses major challenges for governance reforms*, p. 18

⁶¹¹ UNHRC (2021), *Report of the Commission of Inquiry on Burundi*, (A/HRC/48/68), para.55

⁶¹² *Ibid.*, para.

⁶¹³ Présidence de la République, S. G. d. I. E, République du Burundi (2020), *Communiqué de Presse, No.10 de la Réunion du Conseil des Ministres du Mercredi 09 Décembre 2020*.

⁶¹⁴ www.assemblee.bi/

⁶¹⁵ www.assemblee.bi/

⁶¹⁶ UNHRC (2021), *Report of the Commission of Inquiry on Burundi*, (A/HRC/48/68), para.56



In April 2022, the **Bulgarian** Parliament voted to close the anti-corruption court. Critics of the court have long argued that the court was a failure that has undermined the rule of law in Bulgaria.⁶¹⁷ Some of the resistance to the court appears to be rooted in the fact that much of the motivation for the establishment of the court was tied to Bulgaria's accession to the EU and to the CVM agreement (discussed in section 3.2.3.1 above).⁶¹⁸ The Specialised Criminal Court and the Specialised Court of Appeal have had a mixed record of success, but have been consistently criticised for being used as a tool against political opponents.⁶¹⁹ In the parliamentary elections, each of the coalition parties now in government promised to abolish the court, and they have now made good on that promise.⁶²⁰

As for the sustainability of the reforms, **Ukraine** is a good example of well thought through reform, that has a lot of backing, but that is not very sustainable in the long term. Although there is a relatively positive performance in terms of backlog and duration of cases since the HACC of **Ukraine** started activity in September 2019, public trust in the specialised court is at the same low level as the rest of the judiciary⁶²¹.

The overall process of conceiving and establishing a specialised anti-corruption court in Ukraine seems to have been well designed, either structurally or in the concrete selection and appointment of judges and staff. It showed, however, the serious resistances that the creation of such a body has to face, be it from politicians or from inside the judiciary itself.

Another aspect to be considered when analysing the Ukrainian experience is that one of the main factors that led to its initial success – the intervention of a body of international experts in the process of appointment of judges – is not sustainable in the long run, either for budgetary reasons (it involves very high administrative costs, only affordable through international donors' cooperation that cannot be permanent) or for risk of neglect of reforms to domestic institutions⁶²².

⁶¹⁷ <https://verfassungsblog.de/>

⁶¹⁸ <https://verfassungsblog.de/>

⁶¹⁹ <https://sofiaglobe.com/>

⁶²⁰ <https://sofiaglobe.com/>

⁶²¹ Batory Agnes (2010), *Post-accession malaise? EU conditionality, domestic politics and anti-corruption policy in Hungary*, cit.

⁶²² Kuz Yvanna, *Ukraine's Bold Experiment: The Role of Foreign Experts in Selecting Judges for the New Anticorruption Court*, cit.



6 CONCLUSIONS

The analysis shows that most countries that have opted for the creation of specialised anti-corruption courts usually have high levels of perception of corruption, combined with systematic problems with the domestic judiciaries. Although other reasons may have been publicly invoked by lawmakers, in these countries it was mainly reasons of integrity that were at the base of the creation of such bodies: there is low or no trust in the judiciary and its ability to act impartially and independently, especially when facing the most powerful and influential.

The authors have found that the real motivation in the cases in this study is external: international institutions such as the EU demand the creation of specialised structures to investigate and prosecute and adjudicate corruption cases as a precondition to accession or cooperation, or international donors such as USAID or the IMF make the same imposition in order to keep the funding flowing into these countries. The mistrust of local populations towards the judiciary is therefore transmitted to international actors that, in turn, impose on local governments what the society is not able to do via the normal democratic procedures and this is also due to reasons connected with the concentration of political and economic power – financing of political parties, lack of independent media, control of supposedly independent regulators, etc.

6.1 Restructuring and strengthening the judiciary

Where there is a lack of judicial integrity and overall mistrust in the judiciary, the main question is to what extent that mistrust is seen as the problem that can be fixed by simply creating an anti-corruption court. Is the establishment of such court a sign of a real and committed will to change and combat the corruption phenomenon or is it an apparently straightforward “quick fix” solution to an intractable problem?

On the other hand, encouragement by international actors necessarily has important consequences, such as:

- Lack of underlying dialogue and consensus between local political parties on the reforms to be undertaken; and
- Low or undesirable motivation of those who will be in charge of the establishment of the specialised body.

Corruption involves people in a position of power (be it political or economic, when not both combined). Therefore, only in situations of political rupture or complete change in power (as it was the case of Ukraine after the 2014 Maidan revolution) we may in some way assume the existence of a true will of combatting corruption. In other circumstances, those in power have no apparent motives to change a system of which they take advantage, if not directly, at least by giving them conditions to remain in power.

The analysis made in this paper suggests that the weaknesses underpinning the process of creation of specialised courts and sections may undermine what could be seen as their main advantages or possible positive outcomes:

- A decrease in the public perception of impunity of corruption;
- Higher integrity of judges, prosecutors and court staff;
- Independence of the court from political actors;
- Increase of foreign investment and change in the structure of foreign investors.

In countries where there are not major structural issues with the judiciary and the answer may be found inside the existing judicial system, the introduction of management tools that could allow judges and prosecutors to achieve better performance when dealing with corruption cases must be considered as follows:

- Providing expert help to prosecutors and judges, in order to allow them to process and understand complex financial information;
- Establishing mechanisms to temporarily release prosecutors and judges from other cases, when allocated complex files of corruption;
- Providing adequate continuous training to prosecutors and judges in corruption matters.

In this context, the creation of specialised courts or sections of courts could be useful and effective, as the negative aspects mentioned below would not be felt – there would be less resistance from within the judiciary or from political parties, thus minimising the risks of public perception of political manipulation of courts. The dangers of personalisation of justice or narrowing the perspective of judges would still be present, but they could easily be tackled within the framework of the judiciary (increasing the number of judges in the court or giving extended competences to the specialised court).

On the other hand, when the main reason behind it is lack of integrity and independence of the judiciary, it may be concluded that the establishment of anti-corruption specialised courts or sections is not a solution. The focus of national and international institutions should instead be the complete restructuring and strengthening of the judiciaries of the countries in need.

Nevertheless, in case the authorities of a specific country are determined to establish anti-corruption courts or sections, some conclusions and possible lines of action may be drawn from the analysis made in this paper.

6.2 No standardised solution

The analysis of the different systems adopted by countries that have established anti-corruption courts/divisions shows that there is no "one-size-fits-all" solution. The vast array of systems put in place in the last three decades reveals that it is impossible to define one single universal model as apt to tackle the reality of corruption all around the world.

The establishment of specialist anti-corruption judicial mechanisms is always the attempt to give an answer to a problem – and it is the question/problem that must determine the answer and not the opposite.

The present analysis shows that the *reasons* for setting up a specialised anti-corruption court or division have an impact on the success or otherwise of the enterprise. Each country must consider which solution suits best its own reality, and for doing so, it is mandatory and essential to first define what problem is that particular country facing and willing to answer when it comes to the judicial response to corruption.

6.3 The need to identify the reasons and define goals

It is essential to identify the reasons and underlying goals of the anti-corruption court. Possible reasons might be:

- Increasing the integrity in the judiciary.
- Meeting the requirements of foreign or international entities.



- Building trust by changing the structure of foreign investors.
- Increasing the efficiency of the judiciary.

This paper has noted that most countries that have opted for the creation of specialised anti-corruption courts usually have high levels of perceptions of corruption, combined with systematic problems with the local judiciaries. Although other reasons may have been publicly invoked by lawmakers, in these countries it was mainly reasons of integrity that underpinned the creation of such bodies: there is no trust in the judiciary and its ability to act impartially and independently, especially when facing the most powerful and influential.

This study also finds that the motivation is often external: international institutions encourage the creation of specialised structures to investigate and try corruption as a precondition to accession or cooperation, or international donors such as USAID or the IMF make the same suggestion in order to keep the funding flowing into these countries.

Another reason which may be on the basis of the political decision to create a specialised judicial body to handle corruption cases is the need to attract foreign direct investment, either reinforcing the trust among potential foreign investors or trying to attract investors from different sources.

A fourth main reason invoked is the need to increase the efficiency of the judicial system when dealing with corruption cases. Public perception of corruption is frequently not met by the number of cases tried and conviction decisions rendered by the justice system in corruption cases. This reality has direct consequences in the public trust towards the State in general and the judiciary in particular. The establishment of specialised judicial bodies is often an attempt to render the judiciary more efficient when dealing with corruption.

Individual States may base their decision to create specialised anti-corruption judicial bodies in just one of these reasons, in all of them or a combination of some (even if in variable degrees). A country may have a strong public trust in the judiciary and want to simply increase its efficiency when dealing with corruption, but it may also be driven by the need to give to foreign investors the impression of the existence of a safe environment for doing business or by the need to comply with the demands of an international monetary institution (during assistance in a financial crisis, e.g.). In other cases, a determined state may be answering to those same demands from foreign institutions or donors and at the same time having to address low trust in its judiciary and the need to improve the integrity of its actors.

As mentioned above, it is of crucial importance that the authorities of the country have a clear image of the underlying rationale/goals they want to achieve when deciding to establish a specialised anti-corruption judicial body, as that is vital to determine if that is the adequate solution and, if so, which model is the most apt to reach the envisaged goals.

6.4 Choosing the model according to the underlying rationale

As seen in this paper, models of specialised anti-corruption judicial bodies range from totally separate court systems (Comprehensive Parallel Court) to mere specialist anti-corruption divisions within existing courts (Specialised Division or Divisions), with mixed systems in between - first instance and appellate anti-corruption courts embedded within the existing systems (Embedded Specialised First and Second Instance Courts) or just a first instance specialised court, with appeals being decided by regular appeal courts (Specialised First Instance Court).



Both ends of that spectrum can be linked to two of the different reasons identified above:

- Need to improve integrity/comprehensive parallel court;
- Need to improve efficiency/specialised division or divisions.

In fact, there is a direct link between the degree of mistrust in the judiciary and the degree of insulation of the specialised judicial body to be created: the more a country feels its judicial system is susceptible to undue influence or corruption, the higher degree of separation will be needed. This means that if the reason to create such a body is (mainly or exclusively) the lack of or the low perception of integrity of existing judges, the solution is necessarily the creation of a comprehensive parallel court, completely apart from the existing judiciary.

On the other hand, if there is a high degree of trust in the judiciary and the problem to be tackled with the creation of the specialised judicial body is lack of efficiency, the solution may be found within the existing judiciary – a specialised, non-insulated, division within existing courts.

Between these two ends, the other reasons pointed out above may contribute to decide in favour of autonomy of the specialised body. As shown by Kuvvet⁶²³, a more comprehensive parallel court seems to attract more foreign investment, so even if a country has no special integrity issues, if foreign investment is a strong motivation, it may be useful to give a higher degree of autonomy to the anti-corruption judicial organs (opting for one of the “intermediate” models). Additionally, the higher or lower degree of encouragement from international institutions (and the consequences for the country of complying or not complying with it) may also play a decisive role in the option for a more or less insulated model of specialised body.

As already noted, there is no standardised solution and it must be the assessment of all the reasons and the relative importance of each of them that must determine the overall design of the system to be put in place.

Any solution will have different consequences and advantages and disadvantages, that must be carefully considered.

6.5 Consequences of each option

6.5.1 *Comprehensive parallel court*

6.5.1.1 *Advantages*

(a) Insulation from judiciary

A comprehensive parallel court has the advantage of insulating completely the new body from the existing judiciary, thus rendering it immune to the problems affecting the latter. It allows the selection of completely new and fully vetted judges, prosecutors and court staff, as seen in Ukraine, and may contribute to improve the level of public trust in the newly created organ (regardless of the negative consequences to the existing judiciary, that will be mentioned below).

(b) Higher integrity

⁶²³ Kuvvet E. (2021), Anti-corruption courts and foreign direct investments



Directly linked to the advantage previously mentioned is the higher integrity of the magistrates and clerks that can be achieved through the possible vetting process conducted when establishing an *ex novo* court.

(c) Incentive to foreign investment

As discussed in this paper, robust anti-corruption measures which include anti-corruption courts may attract foreign investment and change the structure of existing foreign investors. It remains to be seen, however, if the positive impact on investors deriving from the establishment of comprehensive models of specialised anticorruption courts noted by Kuvvet is a long-term result⁶²⁴. It is possible that an initial positive outcome on foreign direct investment may be jeopardised in the mid/long-term results of such bodies.

6.5.1.2 Disadvantages

(a) Resistance from within the judiciary or from politicians/opposition

The need to create an *ex novo* court transmits to the public the notion of total discredit towards the existing judiciary. In countries where the judiciary already has serious problems of credibility, the setting up of specialised courts brings further distrust in the existing judicial system, deepening what is already a serious structural problem.

This leads to a phenomenon seen in Albania, Bulgaria, Croatia, Ukraine, Slovak Republic, and Latvia: strong resistance from national institutional actors, such as the judiciary or political parties – the former fearing to lose privileges or be underrated and the latter fearing the use of the new formed bodies as a tool of political harassment.

The political struggle between pro-government and opposition political parties derived from the lack of consensus (or, as seen in the EU accession candidate countries, the end of the initial consensus, after accession) leads to the perception of the court as captured by one of the political sides and its misuse by the ruling faction to harass the opponents, inflicting a serious blow to the image of integrity and independence from politics of either the court and its individual judges, prosecutors and even staff. The public perception of impunity of corruption, is replaced by the perception of selective impunity, depending on the faction in power.

This may explain – or at least be one of the reasons behind – the fact that, as seen above, the perception of overall corruption in countries that have created anti-corruption courts has remain unchanged.

(b) Easier control by politicians/ruling parties

The concentration of competence for trying corruption cases in one single court and in the hands of few judges makes it easier to exert political control or undue influence over the court. The more concentrated the power to try corruption cases is, the easier it will be for the ruling party to try to influence decisions.

(c) Human and financial resources needed not sustainable in the long run

Another negative impact of the creation of specialised courts is the diversion of resources and political will to restructure and reform the judiciary. As the Ukrainian experience has clearly

⁶²⁴ Kuvvet E. (2021), *Anti-corruption courts and foreign direct investments*, cit. Kuvvet leaves a caveat at the end of his paper, saying that the sample is reduced and courts analysed were created recently.



shown, establishing a specialised court involves the mobilisation of large human and especially financial resources, posing problems to countries that usually already have budgetary constraints. Moreover, focusing the political will on the foreign-imposed goal of creating a specialised court, totally different and apart from the existing regular courts that the public see only in a negative light, leads to what amounts to neglect of the judiciary, further deepening its crisis.

One could be tempted to look at the establishment of an *ex novo* court as an example that could be later followed by the rest of the judiciary. The Ukrainian experience, however, clearly shows that a well-designed and comprehensive structure for the implementation of a totally new court is unsustainable in the long run, mainly in what it implies the involvement of financial and administrative-costly intervention of foreign experts.

6.5.2 *Embedded Multifunctional Court*

6.5.2.1 *Advantages*

In theory, an embedded multifunctional court such as the Sandiganbayan in the Philippines should be more efficient, and it should be more streamlined. One potential advantage, identified by Stephenson, is that it might be easier for a special court like this to innovate.⁶²⁵

6.5.2.2 *Disadvantages*

In practice, however, without parallel reforms in the rest of the judiciary too there are concerns around:

- (a) Case management and trial procedure – the rules for criminal trials in the Philippines slow case down;
- (b) A poor relationship with prosecutors can slow the progress of cases however efficient the court might be;
- (c) If there are not enough judges, perhaps because the court is designed with a small number of judges allocated to hear cases, or because there are concerns about taking judges away from other areas, there will be a backlog;
- (d) The court cannot hear cases beyond its jurisdiction, so if this is limited, as in the case of the Sandiganbayan the court will have limited effectiveness.

6.5.3 *Embedded Specialised Court*

6.5.3.1 *Advantages*

The design can be tailored to the specific needs of the domestic environment – variable factors include the number of courts, the location(s), the status of the court in the appellate system, including raising the status to speed up appeals.

6.5.3.2 *Disadvantages*

However, the flexibility of this model also means that there is scope for concerns around process and procedure such as in Senegal, where the ability to appeal was limited, or in Sri Lanka where the Chief Justice has the discretion to decide whether or not a case is heard by the Permanent High Court at Bar.

⁶²⁵ Stephenson M. C. (2016), *Specialised Anti-Corruption Courts: Philippines*.



6.5.4 *Specialist division/specialised judges*

6.5.4.1 *Advantages*

(a) Solution found within the existing judiciary

The fact that the solution is found within the judiciary avoids the problems of damaging the image of the latter and is less likely to generate reactions either from within the judiciary or from political actors, as in the case of comprehensive parallel courts.

(b) Bigger efficiency leading to increase of public trust in the whole judiciary

Proper training of judges, prosecutors and court clerks and new and more efficient case-management mechanisms may lead to bigger efficiency, which in turn can have externalities such as an increase of public trust in the whole judiciary (not only in the specialised section).

6.5.4.2 *Disadvantages*

(a) Personalisation of justice

While less subject to pressure or attempted political control, specialised divisions/sections may see their public image negatively affected by the personalisation of justice, as we have seen happening in Portugal.

(b) Narrowing of perspective of judges/prosecutors

As mentioned in this study, any specialisation has the risk of narrowing of perspective of judges and prosecutors working in the specialised court, with consequences at the level of evidence assessment or even independence, as the public pressure to convict those indicted of corruption may lead them to adopt a more punitive attitude.

6.6 **The role of international institutions**

As stated above, before considering the creation of specialised bodies to deal with corruption cases, the focus of national and international institutions should be the restructuring and strengthening of the judiciaries of the countries in need.

The Council of Europe, namely through the CCJE, has always - and rightly so - cautioned against the serious risks of processes of vetting of judges, namely the potential political use of those kinds of processes. There are cases, however, where public trust in the judiciary and in the independence of justice is at such a low level that it requires drastic measures such as that. In those specific cases, the Council of Europe could adopt a more proactive stand and provide countries with the expertise and knowledge it has accumulated over the years, through analysis and comparison of different judicial models and systems.

That would allow, as a second step, countries to eventually create specialised courts or sections to deal with corruption, but for reasons of efficiency or expertise, not integrity or independence.



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