

THE RULE OF LAW PRINCIPLE THROUGH THE PRISM OF THE CORRUPTION PERCEPTION INDEX: NORTH MACEDONIA VS. EU-28

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ABSTRACT

The Rule of Law (RoL) is a condition sine qua non for the democratic capacity of modern states. Specifically, the principle of the Rule of Law is articulated through several elements: constraints on government, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice.

Subject: The subject of this paper is to examine the Rule of Law principle in the Republic of North Macedonia and the member states of the European Union through the analysis of the corruption perception index during the period 2010 - 2019.

Method: The study of this paper's subject will be primarily realized by applying the method of normative analysis, as well as the methods of comparison, analogy, and case law method. Besides, the study employs descriptive statistical analysis, regression analysis, five-number summary statistics, as well as an evaluation of the Weighted Euclidean (statistical) distance.

Aim: The purpose of this paper is, throughout a comparative analysis of CPI data for North Macedonia and EU-28 member states, to determine the tendency of this index in these states over the last decade.

Conclusion: In the conclusion of the study, we provide guidelines and propose mechanisms for improving the CPI ranking and score of North Macedonia, as one of the important preconditions for respecting the Rule of Law in the country.

Keywords: *Rule of Law, CPI, corruption, North Macedonia.*

INTRODUCTION

The concept of the Rule of Law is founded on the idea that governmental decisions should be made by applying known legal principles, and that every citizen is subject to the law and nobody stands above it (Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organized Crime in the Western Balkans – Lot 3 Service Contract Ref. No 2010/ 256 638, Final Main Report, EU, 2003, p.6). The enforcement of the Rule of Law can be measured and observed through three major issues in a certain state:

- a) judicial reform;
- b) fight against corruption, and
- c) fight against organized crime.

These are seen as particularly important challenges across the Western Balkans that need to be successfully addressed for these states to become members of the EU (Thematic Evaluation of Rule of Law, Judicial Reform and Fight against Corruption and Organized Crime in the Western Balkans – Lot 3 Service Contract Ref. No 2010/ 256 638, Final Main Report, EU, 2003, p.6).

The fight against corruption was also a NATO membership and the Council of Europe membership essential requirement for the Western Balkans states.

Corruption is an international phenomenon that has particularly negative implications for the democratic capacity and economic development of modern states.

Specifically, corruption has a destructive impact on the democratic systems, as it distorts the democratic decision-making process and undermines the legitimacy and the credibility of governments. As Heywood has observed, corruption attacks “some of the basic principles on which democracy rests – notably, the equality of citizens before institutions ... and the openness of decision making” as well as “... corruption undermines the democratic rule of law” (Szarek-Mason, 2010, p.20, 137).

On the other hand, the economic costs of corruption can be seen in both individual transactions and their extended consequences (Johnston, 2005, p. 26).

Until the nineties of the last century, corruption was considered a national issue, which did not require international intervention. But, in the 1990s, as Szarek-Mason has pointed out, it attracted considerable attention and turned into a truly global political topic (Szarek-Mason, 2010, p.21). According to her, this can be explained by four key factors:

- a) the end of the Cold War;
- b) globalization;
- c) the rising influence of NGOs and;
- d) a wave of bribery scandals worldwide (Szarek-Mason, 2010, p.21).

When observing corruption as a serious legal, economic, social, political, and moral blight (Argandona, 2006, p.2), the consideration of the term integrity should be taken into account. Integrity and corruption are two opposing phenomena, i.e. any corrupt action implies a violation of integrity (National Strategy for Prevention of Corruption and Conflict of Interests of the Republic of North Macedonia, 2020, p.3). The concept of integrity may be analyzed from the

individual and institutional aspects. Institutionally, “the integrity pillars” of the state are as follows:

- a) political willingness;
- b) administrative reforms;
- c) “watchdog” agencies (Anti-corruption agencies; Ombudsman; Auditor general)
- d) parliaments;
- e) public awareness/involvement;
- f) the judiciary;
- g) the media;
- h) the private sector (Andrei, Matei, Rosca, 2009).

In this context, some authors emphasize the institutional roots of corruption under the presumption that changes in institutional structures will change the incentives for self-dealing (Kornai, Matayas, Roland, 2009, p. 57).

DEFINING THE CORRUPTION

The etymological origin of the term corruption comes from the Latin word “*corrumpere*”, which means mar, bribe, destroy. It is composed of the syllables of the words: “*cor*”(altogether) and “*rumpere*” (to break) (Oxford Learner’s Dictionary).

Defining corruption is a very complex and intriguing task. It is an indisputable fact that corruption has two dimensions: moral and legal. For the purposes of this paper, only the legal dimension of corruption will be subject to normative analyses.

Tiihonen points out that “*corruption is a disease of public power and an indication of bad governance; it undermines the rule of law and weakens the institutional foundation of political stability, social cohesion and economic growth of the country*” (Tiihonen, 2003, p.1).

Grenberg considers that “corruption” and “evil” are words with moralistic overtones, most often equated with the universal attribution to the human species of pride, arrogance, and a crass self-interest (Grenberg, 2005, p.43).

Elliott gives a broad definition for corruption: “...as the abuse of public roles or resources or the use of illegitimate forms of political influence by public or private parties” (Elliott, 1997, p.26). Morris considers that “corruption is the illegitimate use of public power to benefit a private interest” (Morris, 1991).

Kaufmann and Vicente propose a new explicitly micro-founded definition of corruption: “it is viewed as a collusive agreement between a part of the agents of the economy who, as a consequence, are able to swap (over time; we present a repeated game) in terms of positions of power (i.e. are able to capture, together, the allocation process of the economy)” (Kaufmann and Vicente, 2005, p.3). Chen points out that “corruption is dishonest behavior by those in positions of power, such as managers or government officials” and it can include giving or accepting bribes or inappropriate gifts, double-dealing, under-the-table transactions,

manipulating elections, diverting funds, laundering money, and defrauding investors (Chen, 2020, p.1).

The OECD, the Council of Europe, and the UN Conventions do not define “corruption”. Instead, they establish the offenses for a range of corrupt behavior. Hence, the OECD Convention establishes the offense of bribery of foreign public officials, while the Council of Europe Convention establishes offenses such as trading in influence, and bribing domestic and foreign public officials. In addition to these types of conduct, the mandatory provisions of the UN Convention also include embezzlement, misappropriation, or other diversions of property by a public official and obstruction of justice (OECD, A Glossary, 2007, p.19).

The European Parliament (EP) provided its first definition of corruption in 1995 as “*the behavior of persons with public or private responsibilities who fail to fulfill their duties because a financial or other advantage has been granted or directly or indirectly offered to them in return for actions or omissions in the course of their duties*” (Szarek-Mason, 2010, p. 7). On the other hand, when defining corruption for EU policy, the European Commission (EC) distinguished a narrow criminal law definition and a broader concept of corruption used for purposes of prevention policy (Szarek-Mason, 2010, p. 9).

In this regard, Transparency International promotes a frequently-used definition of corruption, with a broad range of activities: “*as the abuse of entrusted power for private gain*” (<https://www.transparency.org/en/what-is-corruption#>).

MEASURING THE CORRUPTION

Generally, the incidence of corruption can be measured in three basic ways: (a) by the number of prosecutions, (b) by the perception, and (c) by the experience. Each way has its shortcomings (Szarek-Mason, 2010, p.12). The literature of specialty uses a series of indices and ratios for corruption levels measuring, each of them expressing a certain aspect of the corruption phenomenon, for a number of selected countries and for different lapses of time. One of the first indices used in corruption measuring was published in the International Country Risk Guide (ICRG). The second index used in measuring the level of corruption is the Corruption Perception Index, published yearly by Transparency International (TI). The third index, Corruption Control (CC), was proposed by Kaufmann, Kraay, and Mastruzzi (2003), and proposes other strategies of aggregating indices measuring corruption, than those used by Transparency International. It should be also notified the fact that other institutions or organizations use some other methods for measuring corruption, rather than those mentioned above (Andrei, Matei, Rosca, 2009).

Data and methodology

Transparency International is a global independent and politically non-partisan movement created in 1993 with a single vision to set the world free of corruption (<https://www.transparency.org/en/what-is-corruption#>). By giving voice to the victims and witnesses of corruption, its members work together with

governments, businesses, and civil society to stop the abuse of power, bribery, and secret deals. Now present in more than 100 countries worldwide, Transparency International has achieved much to stop corruption, including:

- a) The creation of international anti-corruption conventions;
- b) The prosecution of corrupt leaders and seizures of their illicitly gained riches;
- c) National elections won and lost on tackling corruption;
- d) Companies are held accountable for their behavior both at home and abroad.

First launched in 1995 by Transparency International, the Corruption Perceptions Index (CPI) has been widely credited with putting the issue of corruption on the international policy agenda. Each year, Transparency International assesses countries and territories on how corrupt their public sectors are seen to be. As the Corruption Perceptions Index sends a powerful message throughout the world, national governments have been forced to take notice and act correspondingly. CPI represents a powerful, yet effective framework intended to provide direction for national policymakers on the factors they need to consider in their national strategies for building up societies free of corruption.

Besides the fact that the Corruption Perceptions Index is an integer value, it is a composite measure calculated based on a number of surveys that assess a specific country's performance vis-à-vis the corruption issues. A country/territory's CPI score relates to perceptions of the degree of corruption as seen by business people and country analysts. It indicates the perceived level of public sector corruption on a scale of 0 to 100, where 0 means that a country is perceived as highly corrupt and a 100 means that a country is perceived as very clean¹. On the other hand, a country/territory's CPI rank indicates its position relative to the other countries/territories included in the index. Ranks can change merely if the number of countries included in the index changes.

This paper uses the relevant data sets² provided by the Transparency International annual reports (Transparency.org, 2019b) as a secondary data source, referring to the last decade (i.e. the period from 2010 to 2019). The aim is to carry out two types of analyses utilizing the CPI ranks and scores. The first one refers to an analysis of the CPI ranks for North Macedonia to assess the country's overall position and performance relative to those of the EU-28 countries. The second type of analysis estimates the performance of North Macedonia's CPI scores vis-à-vis the EU-28 member states.

The analysis of the CPI ranks is based on the utilization of descriptive statistical methods, including visualization of the Macedonian CPI rankings over time, along with the minimum and maximum ranks (EU-28 + MKD), and visualization of the absolute changes in global rankings of EU-28 member states, including North Macedonia (2019 v.s. 2018).

¹It should be notified that starting from 1995 to 2011 the CPI score has been measured on a scale from 0 (highly corruptive country) to 10 (very clean country).

²The full set of datasets, encompassing annual CPI ranks and scores from 1995 on, are publicly available, and can be freely accessed at <https://www.transparency.org/research/cpi/overview>.

The analysis of the CPI scores starts with the best fit line regression analysis. To visualize the best and worst performers and the inter-quartile range (from the 75th down to the 25th percentile) by particular years, the paper further implements a five-number summary statistics accompanied by a corresponding Box & Whisker plot. Moreover, the article also includes the evaluation of the Weighted Euclidean (Statistical) distance to measure the country's CPI score 'distance' from each EU-28 member state within the temporal dataspace.

Results

1. Analysis of country rankings

Based on the individual CPI scores, Transparency International provides information about countries' global rankings on an annual basis.

The analysis of North Macedonia's global ranking in the last decade (2010 - 2019) shows that, after the period of relatively stable rankings (2010 - 2015), belonging to a range from #62 to #66, North Macedonia's global ranking becomes worst among the EU-28 members starting from 2016 on (ranks #90, #107, #93, and #106 respectively), as depicted in *Figure 1*.

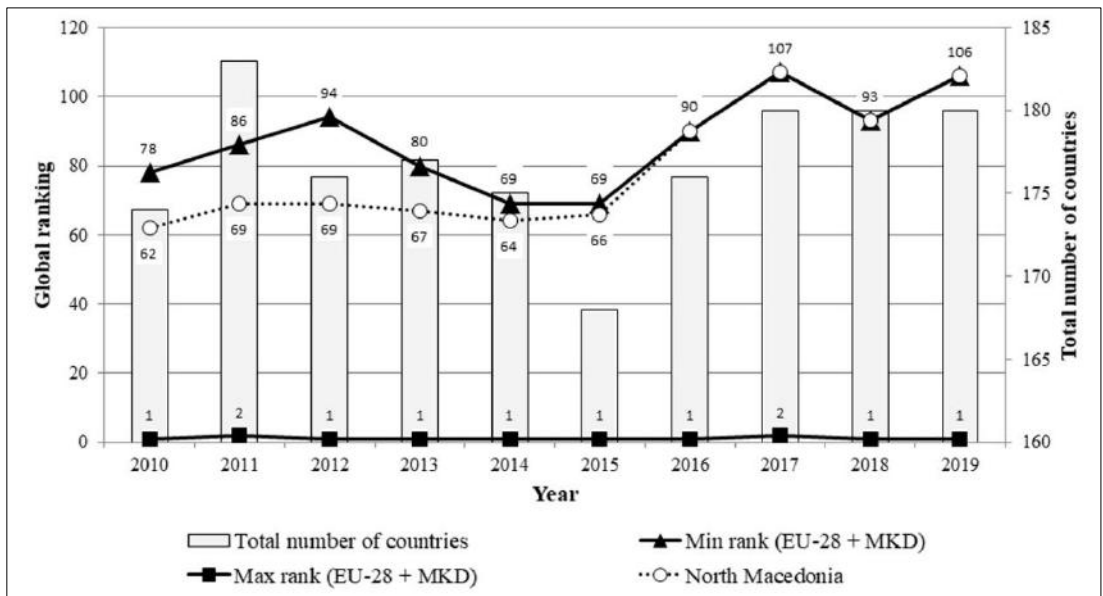


Figure 1: Global rankings of EU-28 countries, including North Macedonia during the last 10 years (2010 - 2019) (Source: Transparency International CPI Dataset, 2010-2019; Authors' calculations and representation)

The last three annual reports take into account an equal number of countries (180), which is a fair base for making comparisons. In 2017, North Macedonia was ranked #107, whilst EU-28 countries' rankings were dispersed from rank #2 (Denmark) to rank #71 (Bulgaria). In 2018, North Macedonia has exhibited great progress of 14 rank points and was ranked #93, whereas EU-28 countries' ranks

range from #1 (Denmark) to rank #77 (Bulgaria). In 2019, North Macedonia's ranking sharply declined from rank #93 to rank #106, while Denmark and Bulgaria persisted to be the best (rank #1) and worst (rank #74) ranked countries among EU-28 members (Figure 2). Such a decrease of 13 ranking points in 2019 is the biggest one among the observed countries. However, it should be notified that such a decrease, despite its high absolute value, is not statistically significant.

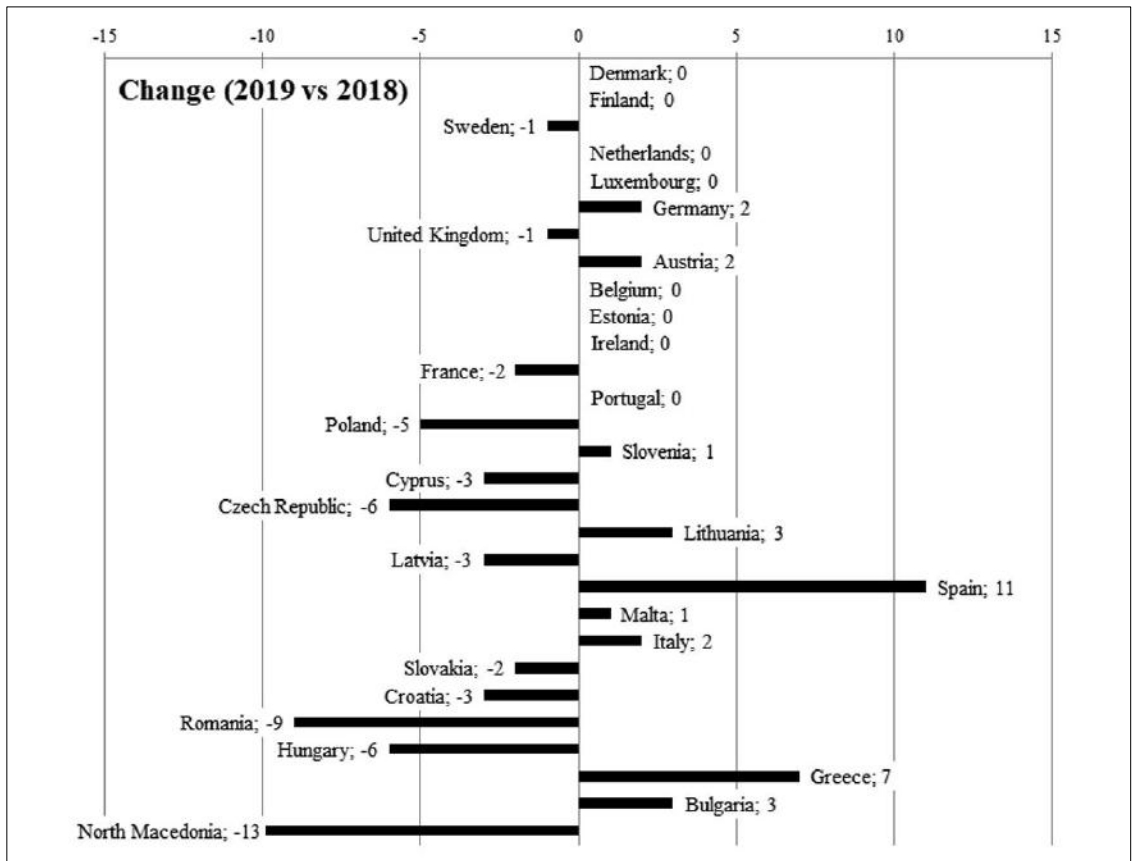


Figure 2: Absolute change in global rankings of EU-28 member states, including North Macedonia (2019 vs 2018) (Source: Transparency International CPI Dataset, 2018-2019; Authors' calculations and representation)

2. Analysis of CPI scores

The visual inspection of North Macedonia's performance vis-à-vis the CPI scores over the period 2010 – 2019 reveals a dispersion that can be best approximated by a polynomial trendline of a second degree ($y = -0.2311x^2 + 3.3417x + 30.317$)³, thus presenting a regression model with a highest R-squared

³In this equation, the y-axis measures the CPI score, whilst the x-axis measures particular time instances, ranging from $x = 1$ (refers to 2010) to $x = 10$ (refers to 2019).

value (65.53%) among all others (e.g. exponential, linear, logarithmic, power, moving average). This means that this model takes into account 65.53% of the variations of CPI scores, which is a relatively high percentage. After reaching the peak CPI score of 45 (on a scale from 0 to 100) in 2014, the country's CPI scores go downwards in the following years, reaching the minimum value of 35 in 2017 and again in 2019 (*Figure 3*).

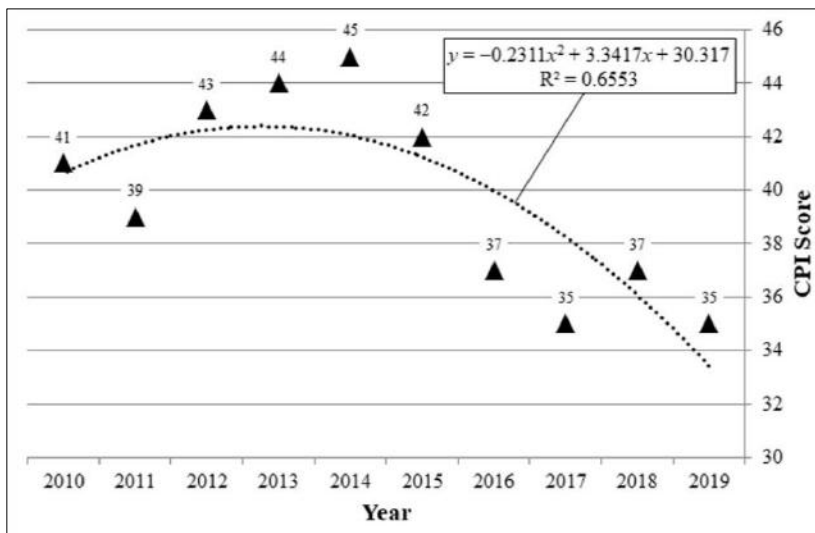


Figure 3: North Macedonia's achieved CPI scores (2010 - 2019) (Source: Transparency International CPI Dataset, 2010-2019; Authors' calculations and representation)

To identify the worst and best performers (i.e. the countries with the minimum and the maximum PCI score, respectively), as well as to identify the inter-quartile ranges, we provide a five-number summary statistics of the distribution of PCI scores regarding EU-28 member countries including North Macedonia, by particular years (2010 – 2019). The Box-and-Whisker plot, shown in *Figure 4*, suggests that both North Macedonia and the rest of EU-28 countries are always outperformed by the Nordics (Denmark, Finland, and Sweden), West European countries (Netherlands, Luxembourg, Germany, United Kingdom, Austria, Belgium, Ireland, and France), and Estonia, which all belong to the fourth (Q4) and the third (Q3) quartile in the observed period. Contrary to these, the first quartile (Q1) is mainly comprised of the East European countries (Bulgaria, Hungary, Romania, and Slovakia) and South European countries (Greece, Croatia, and Italy). Besides, it can be noticed that North Macedonia is the worst performer among the group of observed countries during the last four years, i.e. from 2016 onwards.

Yet another Box-and-Whisker plot, depicted in *Figure 5*, shows the unparalleled discrepancy in the performance between the group of EU-28 member states and North Macedonia regarding the CPI score during the period from 2010 to

2019. Even North Macedonia's best achieved CPI score (CPI = 45) is far below the value of the first quartile (Q1 = 51) corresponding to the EU-28 member states.

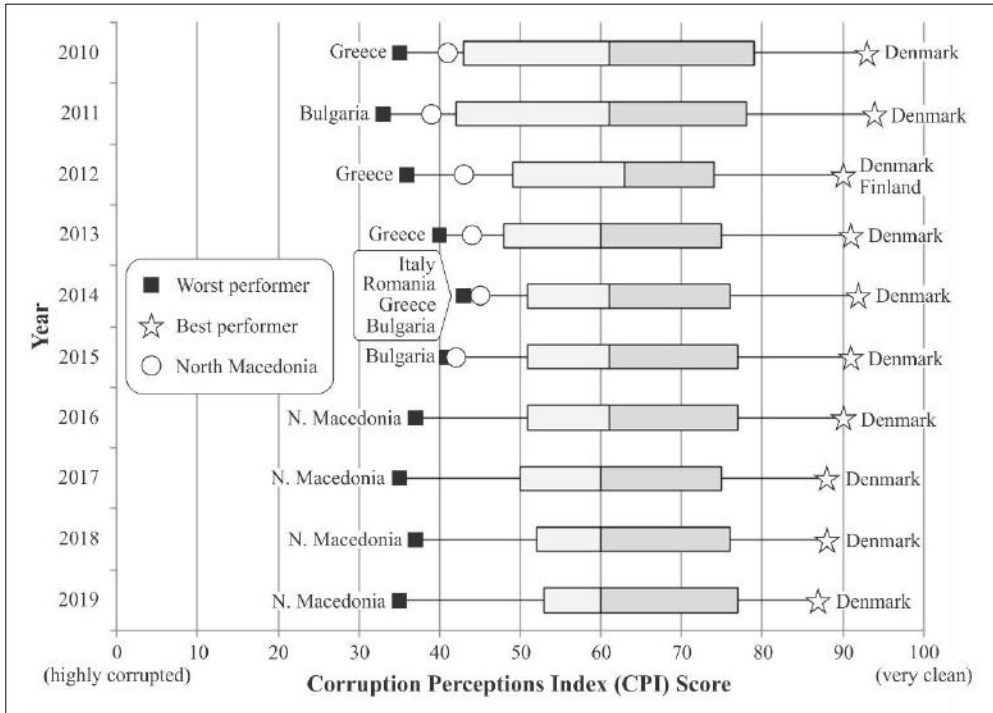


Figure 4: Box and Whisker plot resembling the five-number summary of the EU-28 member states and North Macedonia, by particular years (2010 – 2019) (Source: Transparency International CPI Dataset, 2010-2019; Authors' calculations and representation)

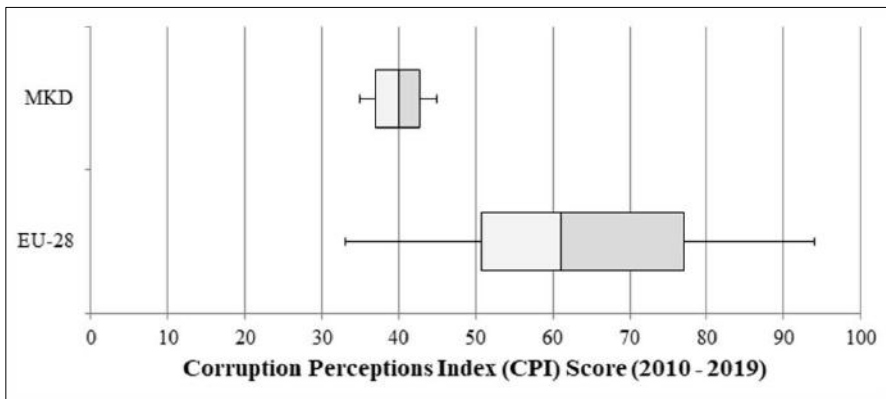


Figure 5: Box and Whisker plot resembling the five-number summary of the CPI scores all over the period 2010 – 2019 (Source: Transparency International CPI Dataset, 2010-2019; Authors' calculations and representation)

To investigate how ‘far’ is North Macedonia’s CPI score performance from each of the EU-28 member states in the observed period, the Weighted (Standardized) Euclidean distance, also known as a Statistical distance, has been used (Figure 6).

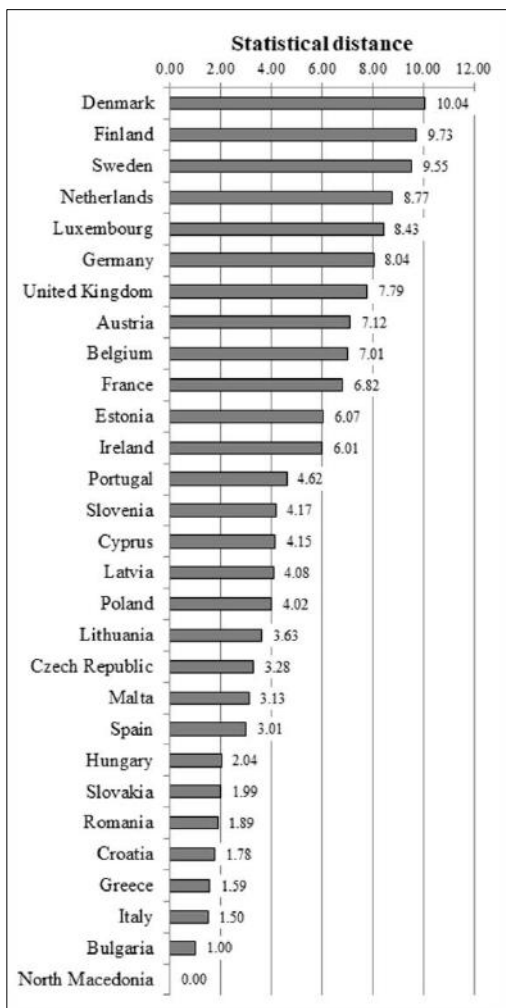


Figure 6: Statistical distance between North Macedonia and each EU-28 country regarding CPI scores (2010 - 2019) (Source: Transparency International CPI Dataset, 2010-2019; Authors’ calculations and representation)

Visual inspection of the distances confirms previous findings obtained by the five-number summary statistics. The EU-28 countries with the shortest statistical distance from Macedonia are Bulgaria, Italy, Greece, Croatia, Romania, and Slovakia. Quite the opposite, the Nordics (Denmark, Finland, and Sweden) and Western Europe (Netherlands, Luxembourg, Germany, and the UK) are the most ‘distant’ countries from North Macedonia.

CONCLUSION

There is increasing evidence that corruption, defined in general terms as “*abuse of public or private office for personal gain*” (OECD, A Glossary, p.10) undermines the Rule of Law, democratic institutions, and economic development.

The above analyses clearly show that the problems of corruption appeared to be seriously acute in the Republic of North Macedonia, comparing to the EU Member States. At the same time, it can be concluded that the “old” EU Member State have more effective anti-corruption standards and policies as compared to the “new” EU Member States, where corruption remains an ongoing challenge. Namely, the analysis of North Macedonia’s global ranking in the last decade (2010 - 2019) shows that, after the period of relatively stable rankings (2010 - 2015), belonging to a range from #62 to #66, North Macedonia’s global ranking becomes worst among the EU-28 members starting from 2016 on (ranks #90, #107, #93, and #106 respectively), as depicted in Figure 1. In 2019, North Macedonia’s ranking sharply declined from rank #93 to rank #106, while Denmark and Bulgaria persisted to be the best (rank #1) and worst (rank #74) ranked countries among EU-28 members (Figure 2). Such a decrease of 13 ranking points in 2019 is the biggest one among the observed countries. However, it should be notified that such a decrease, despite its high absolute value, is not statistically significant.

The EU’s founding values include the rule of law and respect for human rights. An effective (independent, quality, and efficient) judicial system and an effective fight against corruption are of paramount importance, as is the respect for fundamental rights in law and practice (EU Progress Report, p.16).

According to the 2020 EU Progress Report, “*North Macedonia has some level of preparation/is moderately prepared in the prevention and fight against corruption. Good progress has been made as the country consolidated its track record on investigating, prosecuting and trying high-level corruption cases*” (p.21). So, respectively, “*the country has some level of preparation / is moderately prepared to apply the EU acquis and European standards in this area*” (p.16).

In this context, the State Commission for the Prevention of Corruption in its National Strategy for Prevention of Corruption and Conflict of Interests of the Republic of North Macedonia points out the following: “*The risk assessment covered several horizontal areas where strong corruption risks are generated, and at the same time, an assessment was made within several sectors. The assessment covered the following horizontal areas:*

- a) *Public procurement;*
- b) *Employment in the public sector;*
- c) *Inspection;*
- d) *Issuance of various approvals, decisions, licenses, and permits;*
- e) *Awarding grants, subsidies, and other state aid.*

In addition to these five horizontal areas that are elaborated in the assessment, the working group discussed the following areas that have an impact on the emergence and practice of corruption:

- a) *Financing of political parties;*

b) *Political influence on the process of drafting and adopting legal regulations; and*

c) *Financing of media and civil society organizations.*”(p.6).

In the upcoming period, North Macedonia should undertake serious, complex, and multidimensional anti-corruption reforms to reduce the level of corruption and ensure public confidence in the exercise of power by strengthening integrity, transparency, and accountability in all sectors of society, such as strengthening the integrity and accountability in the public sector, strengthening the supervisory and control mechanisms and digitalization in all sectors of public services.

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