



JUNE* 2010 MONTHLY REPORT ON FIGHTING CORRUPTION AND CRIME AND STATE OF TRANSPARENCY IN SOCIETY

In the June 2010 monthly report on fighting corruption and crime and state of transparency in the society TM wants to caution about the following cases:

BUDGET READJUSTMENT

1. Transparency Macedonia in a number of occasions made remarks addressed to the Government of the Republic of Macedonia about its suspicions regarding its clear determination for joining NATO and the EU. With the latest proposed readjustment of the 2010 Budget the Government clearly confirmed our suspicions. It is evident that the two key institutions for the country's Euro-Atlantic aspirations, the Ministry of Defence and the Secretariat for European Affairs in this Government hold a second-rated position.

Namely, the readjustment of the Budget of the Republic of Macedonia marks a decrease of **3.3%**, while the decrease of the Budget of the Ministry of Defence is **7.4%**, and of the Secretariat of European Affairs is staggering **17.8%**! The thing that especially worries us is the big decrease of **19.4%** in the capital expenses of the Ministry of Defence. Within the capital expenses, the greatest decrease is noted in the sub-programme titled **"NATO Integration"**, which budget is cut down for almost a half or more precisely for **46.3%**.

Having in mind these changes in the Budget of the Republic of Macedonia as well as the reduction of the budgets of the abovementioned institutions made in the last two years, **TM asks the Government of the Republic of Macedonia whether it has officially given up the EU and NATO membership as the proclaimed fundamental positions of the state. We urge the Ministry of Defence to explain its position on this issue, having in mind the importance of the decision for substantial alteration of the NATO integration strategy.**

2. The further analysis of the Budget imposes the conclusion that the Government of the Republic of Macedonia instead of strengthening its position for resolute fight against corruption, with the proposed budget readjustment has initiated its evident suffocation.

By reducing the budget of the State Commission for Preventing Corruption, the Government not only hinders its successful functioning, but it also tells us that fighting corruption is not one of its top priorities – or at least not by means of strengthening the independent institutions that are competent for the implementation of the anti-corruption policies in the country. The experiences show that in those countries where the governments try to limit the functioning of

the anti-corruption institutions, they usually begin by reducing their budgets. By depriving them from their financial independence the authorities impose their political and functional control. The budget readjustment goes so far that even the SCPC members' salaries are not certain any more, since it has planned funds for salaries only until September 2010. These activities of the Government cannot be interpreted in any other way than as openly exerting pressure on the SCPC in applying its with law regulated duties and objectives.

TM urges the Government of the Republic of Macedonia to review its actions and to really support the fight against corruption with unambiguous support of SCPC and not with a declarative one.

JUDICIARY

3. The latest proceedings against several judges from the Court of Appeals in Skopje once again have shown the vulnerability of the Macedonian judiciary. Namely, the regulations that are supposed to guarantee its independence and sovereignty obviously leave space for arbitrary interpretation. Thus, the Judicial Council instead of being the fundamental guarantor of judiciary's independence, it abuses these unclear regulations to show servility to the Government, which simply cannot resist the temptation of dealing with the "disobedient judges".

Transparency Macedonia believes that the courts' independence cannot be used as screen hiding their irresponsibility and arbitrariness. Still, the idea of the legal guarantees and the existence and the functioning of the Judicial Council is to prevent any kind of arbitrariness and influence from outside, and the dismissal of the judges to be based only on their performance as judges.

The professionalism of every elected judge is assumed, especially in the higher courts! When one works, one makes mistakes. For that reason there are legal remedies, and the dismissal of judges for incompetence (and poor performance in doing their jobs, more specifically, inefficiency) must be based on objective criteria for incompetence that are evident in more than one case. Hence, to dismiss a judge who for at least two years in a row got an assessment by the Judicial Council that s/he showed unsatisfactory results, especially by using objective criteria such as "postponing the adoption of court decisions, inefficient managing of the court proceedings, a number of confirmed, altered or revoked verdicts" is one thing; but to establish "poor, prolonged and inappropriate performance by the judge in managing the court proceedings in an individual case" for some judges (and even in this case the law requires more than one case) is something completely different. The second, the arbitrary possibility, leaves space for judges to be dismissed even when they have many years of a successful career in judiciary and above the average results in their performance. Hence, for a specific case a judge could be dismissed only if in that case s/he manifested obvious, i.e. proved abuse, malice, etc. That intention by the legislator is also evident in the other grounds for dismissal, such as the "intentional violation of the rules for fair trial; malfeasance in office or

overstepping the official boundaries; violation of the regulations or some other violation of the independence of the judges in the course of the trials, etc.”

The time has shown also that the legal remedy against the decisions of the Judicial Council is simply not efficient. Namely, regardless of all the controversies, no decision for a judge’s dismissal adopted by the Judicial Council has been contested by the Commission of Judges constituted at the Supreme Court.

Transparency Macedonia believes that the reason for the practical uselessness of this legal remedy is simple – the judges are afraid and they do not want to anger the Judicial Council. Thus, they prove that they do not have integrity, something that should be of concern to all of us.

THE STATE COMMISSION FOR PREVENTING CORRUPTION

4. In the past two months, i.e. after the election of the new President of the SCPC certain movement has been evident in work of the Commission. SCPC’s activity is also a reaction to the information that there are many cases of conflict of interest among the holders of public office and officials in general within the central and local authorities.

Hence, the public was informed about a number of cases, which ended up with imposing some of the measures regulated in the Law on Preventing Conflict of Interests (warning, public reprimand and initiative for dismissal). One of the most prominent cases of accumulation of power is the case of the Manager of MEPSO SA, **Mr. Vladimir Zdravev**, who is also the Chairperson of the Council of the Municipality of Centar. However, not less important are the examples where municipal councilmen are appointed to managerial positions at the public enterprises and institutions that are under the competence of the same local government. It means that these persons appoint and control themselves.

The reaction of those who were named is a reflection of the absence of elemental sense of accountability to the public and the institution where they perform their function, and certainly the SCPC. Their public attacks that the SCPC allegedly does not know how to implement the law and that their status does not imply conflict of interests, etc., openly shows that they have no intention of respecting the recommendations of the SCPC.

This attitude of ignoring the SCPC has been promoted by the Government of the Republic of Macedonia for a long time, and it is evident from its tendency of ignoring their requests for data and information that they need for adopting proper decisions. However, now the government for the first time is also faced with a specific initiative for dismissal of an official. Even though more than a month has passed since the initiative for the dismissal of the Head of the Office for Preventing Money Laundering, **Mr. Vane Cvetanov** was submitted, the public still has no information about the plans of the Government with this official. This example, as well as all the other initiatives to the state institutions, to which there are no reactions, impose the question about the justifiability of SCPC's existence.

Consequently, the SCPC will have to deal with the treatment it has been receiving and to energetically demand accountability for this situation.

TM urges the SCPC to inform the Assembly of the Republic of Macedonia and the public about the number and the type of initiatives for dismissal and for undertaking other measures submitted to the Government of the Republic of Macedonia and the initiatives for criminal charges to the Public Prosecutor's Office, on which no concrete steps have been undertaken.

5. Even though the public welcomed the initiative of SCPC for dismissal of the Head of the Office for Preventing Money Laundering, still this decision contains a compromise. Namely, that decision is more than justified, but it is proper to ask whether this case should stop there. From the elaboration of the initiative as well as from the content of the final report by the State Audit Office, one could come to a conclusion that there are serious indications that **Mr. Vane Cvetanov** seriously abused the office and his authorities with the illegal employment of staff at the Office as well as with the public procurements proceedings. The consequences from his behaviour are evident from the inappropriate personnel structure in the Office, and even more from the damages to its budget.

TM believes that the dismissal of Mr. Cvetanov from his position without having him criminally charged for what he has done is an act of amnestying and rewarding him, and not a sanction. In compliance with **Article 353 Paragraph 5** from the Criminal Code, the malfeasance of office when performing public procurements or to the detriment of the Budget of the Republic of Macedonia, is the most serious form of this act and it envisages the strictest punishment.

TM urges the SCPC to once again open this case and to consistently apply the Law on Preventing Corruption, filing at the Public Prosecutor's Office an initiative for criminal charges against the Head of the Office for Preventing Money Laundering for malfeasance of office in performing public procurements.

LAW ON ENFORCEMENT

6. For the first time in the history of the Macedonian Assembly there was an intrusion by the President of the Government of the Republic of Macedonia in the work of the Assembly of the Republic of Macedonia. After the numerous discussions at the Assembly upon the adoption of the Amendments to the Law on Enforcement, after the written opinion and the points made by the Chamber of Enforcement Agents as well as the advices by the experts that the amendments to the Law on Enforcement were inappropriate and that the enforcement activities were limited by the Minister of Justice, even though it was a delegated competence by the courts, still the amendments to the Law on Enforcement were adopted.

Immediately after their adoption, it was quite clear that the citizens were not satisfied and they expressed their dissatisfaction publicly in all the media pointing out the possibility for it to grow into social unrest, if the provisions from the new Law on Enforcement were rigorously implemented. After those announcements, the Prime Minister of the Republic of Macedonia, **Mr. Nikola Gruevski** made a statement for the media saying that he would postpone the application of this law!?

Transparency Macedonia asks: in what kind of a states a law is adopted under severe pressure by the parliamentary majority, and only a week late the Prime Minister goes public with a statement that implementation of the adopted law will be postponed?

OFFICES FOR REPORTING CORRUPTION

7. In June 2010 the Ministry of Education announced the opening of the offices for reporting corruption in the higher education. TM welcomes this step of the Ministry, but it would also like to point out certain tendentiousness in it. Namely, the first office of this kind was opened at the Ss. Cyril and Methodius University, and more specifically at the Faculty of Economics – Skopje, that was reported by all the media, so the public was under the impression that corruption is concentrated at that university and specifically at that faculty, and by doing that it significantly damaged the image of these 60 years old institutions.

TM asks the Ministry of Education whether it would have been cleverer if such offices were also opened at the same time at the other state universities (Stip and Bitola) and at all the faculties with no exception. Since it has not been done, isn't this another tendentious move aimed at the Ss. Cyril and Methodius University and few of its faculties, against which this government has manifested openly intolerance and animosity?

TM urges the Government of the Republic of Macedonia and the Ministry of Education to reinforce the fight against corruption in higher education, however they should do that equally at all state universities, instead of focusing tendentiously only on the Ss. Cyril and Methodius University and some of its faculties.

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