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DECEMBER 2009 MONTHLY REPORT ON FIGHTING CORRUPTION AND CRIME AND STATE OF TRANSPARENCY IN THE SOCIETY

In the December 2009 report on fighting corruption and crime and state of transparency in society, TM would like to caution about the following cases:

The case of the State Market Inspectorate

The audio recording that could be seen on YouTube on which the former Director of the State Market Inspectorate allegedly explains how the restaurants and bars are pressured and racketed, as well as the reaction of the Government to this case imposes several important questions.

Firstly, since these are evident indications of organised crime by the representatives of the state, the absence of interest among the competent law enforcement institutions to initiate a procedure for this case and to investigate whether it was a set up or an authentic conversation, who was the collocutor in the phone conversation, which restaurants were subjected to racketing, etc is astonishing. Due to the absence of such an official interest to initiate an investigation there are rumours spreading in the public that the collocutor of the replaced Director of the State Market inspector with whom the racketing is arranged and who recorded the conversation is a representative of a group of bodyguards to one of the most senior state officials in the Republic of Macedonia who have business interests in the night clubs and discos business in Skopje and placing the recording on YouTube is as a matter of fact a revenge against the Director of the State Market Inspectorate for not being efficient in closing some of competition's disco clubs in the city.

* *Transparency Macedonia (TM)* publishes regular monthly reports on fighting corruption and the state of transparency in the Macedonian society in the field of the functioning of the public bodies and other social and political institutions in the Republic of Macedonia. TM with its reports is trying to point out and to warn about irregularities and violations of procedures and good practices in implementing the public policies and spending of public money. The intention is for those involved in Macedonian politics, as well as the citizens to take these words in a constructive manner as a kind of a continued and objective mechanism of observation of the situation in the Republic of Macedonia in the field of transparency of the society and fighting against crime and corruption. Starting from August 2008, the reports are financed by the Foundation Open Society Institute - Macedonia.

This could also be the explanation for the ex-director's statement that "the racketeers should be sought on the other side of the telephone line", but the speed with which both the MOI and Prime Minister Gruevski made efforts to cover it up and to push the dirt under the heavy "carpet" of the MOI and the Prosecutor's Office for Organised Crime for selective dealing with cases in the area of organised crime and corruption in the country.

Secondly, the decision of the Government after the scandal became public to release the State Market Inspectorate's Director from his duty was elaborated personally by the Prime Minister stating that he was released because of political and moral reasons, and not because of serious suspicions and accusations of corruption and organised crime at this important public institution. Does it mean that the prime minister personally took on the responsibility for the criminal context of the affair?

Thirdly, due to the refusal to initiate an investigation in this case, the generally asked question is: *Is the ruling nomenclature imposing organised pressure using certain inspectorates and systematically collects racket from the Macedonian businesses?* This question was rather frequently asked in the public due to the practice of the state inspectorates and the other state institutions that are authorised to fine to frequently visit the companies and the number of fined companies on these or those grounds, often unfounded and unfair, probably is even bigger of the number of enterprises that have not been fined. Quite frequently these fines prove to be unfounded and unjust. There are numerous examples, but as an illustration we will mention the one with the Directorate for Anti-Money Laundering and Combating the Financing of Terrorism. They fined broker companies with a fine of minimum 5,000 EUR for the legal entity and a fine of 1,000 EUR for the official for not reporting the clients that traded with stocks to the Directorate even though this is not an obligation of the broker companies since all the trading with stocks goes through bank accounts, and the banks are the ones that are obligated to submit reports to the Directorate for Anti-Money Laundering and Combating the Financing of Terrorism. Even better illustration is the example with the defeating public testimony of eight young men from Kocani, supported by the owners of bars and restaurants in the town, that the racket suffered for a long time became unbearable and that the police consciously tolerated this situation in the town. All that culminated when they took justice in their own hands and organised a massive fight – which represents a classical defeat of the rule-of-law state.

TM urges the Government of the Republic of Macedonia, since it stimulates a draconic fining policy in the country, to respectfully increase the control over the politicised institutions that apply the fines, helping decrease the practicing of racketing and the pressure on the Macedonian companies and citizens. TM demands from Prime Minister Gruevski to make a public statement whether he would take on himself the responsibility for the criminal

context and suspension of the rule-of-law state that emerge from the scandal with the affair of the replacement of the Director of the State Market Inspectorate and the consequences from that scandal?

NATO and EU through the 2010 Budget Prism

Within the fundamental principles of transparency and accountability in governing, TM would like to express its concern regarding the announced policy of the Government of the Republic of Macedonia for 2010 from concerning the process of NATO and EU integration. This concern is based on the analysis of the last version of the 2010 Budget of the Republic of Macedonia adopted by the Assembly at the end of December 2009.

In the 2010 Budget Analysis the general conclusion is that in 2010 the Government is not planning to intensify, but on the contrary to reduce the activities that lead towards EU integration. This is evident from the fact that the budgets of the key sectors in the Government that are most responsible for the integration of the Republic of Macedonia in the EU have been cut down. For example, in the Secretariat for European Affairs there is a cut down of 28% while at the Ministry of Foreign Affairs the cut down is about 6%.

But the intention of the Government to put the process of NATO integration in the background is even more evident. When analysing the 2010 budget of the Ministry of Defence one could easily come to a conclusion that the Government in 2010 has given up any kind of activities for intensifying the process of Republic of Macedonia's accession to NATO. The Government has also given up most of the capital expenditures for equipping and modernising the Military of the Republic of Macedonia and its approximation to the NATO standards. Namely, from the 2009 budget (the second rebalance) it is evident that in the 2010 budget of the Ministry of Defence a total of 1.98 billion Denars were planned for capital expenditures. The 2010 Budget of this Ministry as adopted by the Assembly shows capital expenditures in the amount of 787 million Denars, which is a 60% cut down.

The ministry of the Veles Smeltery Plant

Who is the real owner of the Veles Smeltery? What are his plans and will this plant start working again? What will be the impact on the health of the Veles citizens? These are the questions that have been posed by the citizens of Veles for a month now, but there have been no answers so far. Not even the local authorities have received answers to these same questions. A complete silence from all the competent institutions, ministries and state officials. It is incomprehensible for a problem that is of vital significance for the citizens of Veles to keep an information silence, depriving them from their fundamental right to have a say when their future is at stake. Where are the spokespersons of the ministries, what happened to the transparency of the institutions and the Law for free access to information?

TM urges the Municipality of Veles and the Ministry of Environment to urgently inform the citizens who is behind the Smeltery and whether there is a plan to be restarted.

Particised adoption of laws

The number of submitted initiatives for evaluation of the constitutionality and legality of general legal acts before the Constitutional Court of the Republic of Macedonia in the last ten years is in a constant rise, and in 2009 the biggest number of disputed cases before the Court was recorded – 280, out of which 190 were about legal provisions. The number of repealed and annulled decisions by the Constitutional Court also shows a rising trend, and in 2009 a record number of intervening decisions by the court was recorded – 65 out of which as many as 40 refer to repealed or annulled legal provisions. If we know that the same number of (40) laws were repealed/annulled in 2008, one could come to a worrying conclusion about an extremely low professional and nomo-technical capacity of those drafting the laws in this state (ministries, the Government and its institutions, the Legislation Secretariat), but also of those adopting the laws - the Assembly of the Republic of Macedonia, i.e. its ruling majority. These data as well as the fact that we have a trend of disputing the laws before the Constitutional Court immediately or right after their adoption, shows a bad and insufficient realisation of the fundamental constitutional principle – the rule of law. One of the consequences of the partisanship of the administration in Macedonia is the fall in its efficiency, which definitely brings about worse quality of the legal acts that stem from this segment of the state authorities.

Certain decisions of the Constitutional Court only confirmed the claims of the experts, as well as of the broader public about the non-constitutionality of certain legal provisions when they were still in the draft phase, but the Government usually having the VMRO-DPMNE's party agenda as its priority, refused to listen to any of the expert criticisms and suggestions. Hence, there has been a huge inflow of new initiatives for disputing the constitutionality and legality of the arrogantly and hastily drafted and adopted laws that ended up with decision by the Constitutional Court for repealing and annulments.

In the coming period the Constitutional Court is expected to finalise the initiated procedures and to adopt proper decisions on numerous cases that were not finalised in 2009 as well as in the completely new initiatives for evaluation of the constitutionality and legality of the legal acts that will probably follow with the same intensity in 2010. The public is also interested in the expropriation, but this time of the multi-level parking buildings; the special rights of the peace missions participants; the confiscation of land on which a building is built without proper building permits, which is a total invasion of the right to private property as the fundamental constitutional value; certain provisions from the amendments to the Law on Working Relations that deprive the workers from some of their previous rights; the

Law on Broadcasting, which provisions were abused by the public broadcaster, MRTV.

These facts as well as the publicly stated conclusion by the President of the Constitutional Court about the attempts for imposing political pressures on the Court in the course of the past year, will have no effect on the future conduct of the authorities in the direction of strengthening the staff in the public administration that draft the legal regulations. The government not only that has not announced any measures for professionalisation and de-partisation of the administration, but on the contrary, the Prime Minister with a surprising arrogance and absence of any sense of respect for the principles of division of power and rule of law as the pillars of democracy stated that the decisions of the Constitutional Court were politically motivated and that the judges of this Court were partised. With this imprudent and politically damaging statement the Prime Minister told the Macedonian public that his Government has no intention in the future to foster respect of constitutionality, legality and rule of law in the country, as well as that the programme of his party and the Government will be placed above the principles and the provisions of the highest legal act in the country – the Constitution.

After this political incident, TM urges the Prime Minister to give a more comprehensive explanation and interpretation of his statement, as well as of the intentions for the future actions of the Government. Does this position of the Prime Minister mean that in the future he will propose amendments to the Constitution and possible revocation of the Constitutional Court? Will the Government maybe propose a new way of electing judges to the Constitutional Court, who will be more "suitable" for the ruling party? Or maybe the Government with various word games will try to get the same legal provisions that were already (even in more than one occasion) repealed or annulled by the Constitutional Court? The Prime Minister is also obligated to tell us whether he is planning to undertake any measures for the "de-partisation" of, according to him, the partised judges of the Constitutional Court?

State Commission for Corruption Prevention

The question of the year 2009: Has anyone seen the State Commission for Corruption Prevention or at least heard anything about it?

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