



QUARTERLY REPORT FOR JANUARY, FEBRUARY AND MARCH* 2010 ON FIGHTING CORRUPTION AND CRIME AND THE STATE OF TRANSPARENCY IN SOCIETY

In the quarterly report for January, February and March 2010 on fighting corruption and crime and the state of transparency in society TM wants to caution about the following cases:

CONFLICT OF INTERESTS

1. Contrary to the clear provisions of the Constitution of the Republic of Macedonia that envisages incompatibility of the ministerial with any other office or profession (Article 89, Constitution of the Republic of Macedonia) and the Law on Conflict of Interests, which objective is to ensure preventing abuse of power and public competences of the officials for achieving personal goals, **the Vice Prime Minister Vasko Naumovski**, probably utilising his political position managed to get the position of a professor at the Faculty of Law “Justinian Prima” in Skopje. For this act, that clearly incites suspicions about a conflict of interests, even though he was legally bound he failed to request for an opinion from the State Commission for Prevention of Corruption.

Transparency Macedonia would like to point out that the case involving Mr. Naumovski is considered to be one of the corruptive practices that are qualified as “trading in influence” i.e. cases where officials utilise covert forms of influence – even though in this corruption affair the pressure was exerted in an impudent and open manner - for fulfilling personal or group interests in an illegal manner.

This is not an isolated incident, but a serious systematic and political problem since the affair with Mr. Naumovski is one of the many related to the employment of people from the ruling party at the Law Faculty in Skopje. For a number of years now, without following the proper order only the people from the ruling party get an approval to be employed. Hence, VMRO-DPMNE’s MPs

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 remarks 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 society and fighting against crime and corruption. The monthly reports are financed by the Foundation Open Society Institute – Macedonia.

Aleksandar Spasenovski and **Hristina Runceva**, the former secretary of the Prime Minister **Nikola Gruevski**, **Milena Apostolovska** as well as several assistants and collaborators of President **George Ivanov** were employed. In addition the brother of the Vice Prime Minister Naumovski works as a professor at the Law Faculty.

In the past various ruling structures, numerous professors from the Skopje Law Faculty as well as from the Ss. Cyril and Methodius University held various public offices. However, this is the first time for the staff transfers to be done in the opposite and improper corruptive direction, from the government to the University. This goes against the reputation, integrity and autonomy of the Ss. Cyril and Methodius University in Skopje. **TM would like to point out that this shameful and corruptive practice of the Government is approved by the very University authorities and professors, which means that another profession in the Macedonian society – along with judiciary, prosecutors, journalists and doctors, for instance – has suffered a serious blow when it comes to their professional integrity and dignity.**

2. TM would like to warn the public that the decision of Government for the audit body looking into the way the IPA funds are spent to be placed under governmental supervision, instead of being independent, as envisaged with the Special Protocol signed with the EU, drastically reduces the confidence in the way the control will be performed. Having in mind the numerous corruption affairs related to spending of public funds by the government, **TM believes that this decision of the Government creates conditions for stimulating corruption in the case of the European funds.**

JUDICIARY

3. Few weeks ago, finally, the famous survey about the judicial independence was made public according to which 43% of the surveyed judges believe that there are interferences from outside in the work of judges and that such interference has an impact on exercising justice. The respondents consider the executive power and the political parties to be the greatest source of pressure on judiciary. According to 66% of the surveyed judges the Judicial Council does not perform properly its function and it does not act independently.

TM welcomes the recognition by the Government that pressure has really been exerted on the Judicial Council and judiciary by the Ministry of Justice as well as the fact that it showed readiness to propose changes in the Constitution in the area of the election and composition of the Judicial Council. Really, the participation of the Minister of Justice in the Judicial Council was the most criticised point in the functioning of this body, which instead of being a guarantor of judiciary's independence, as provisioned it became an instrument of the executive power to influence judiciary and judges. Namely, Transparency Macedonia recently proposed for the Minister of Justice to participate in the Judicial Council and the Council of Public Prosecutors without a right to vote, which in the case of the Judicial Council is a little bit more modest or

less radical solution than the one, which at this moment is placed on the table by the executive power.

Having in mind the practice so far, **TM believes that this could be a new "political aimless shooting" unless it is an expression of true will of the politics to stop interfering with judiciary.** Both the authorities and, with limited possibilities, the opposition use various forms and methods of influencing judiciary. There are no constitutional changes that could prevent that influence unless there is a real democratic maturity and real political readiness.

With similar chances for success and for the same reasons the second proposal was made for changes in the composition of the Judicial Council. Really, theoretically the increase in the number of judges to the disadvantage of the other members of the Council should ensure greater influence by the judicial profession on this body and judiciary as a whole. On the other hand in practice, if we take into consideration the strong desire for political interference in judiciary, this could cause an opposite impact and that would be a race who will infiltrate more of "their people" in the Judicial Council that will only additionally camouflage and not reduce the political involvement in judiciary.

At the same time **TM expresses its astonishment why, when corrections are proposed, exact or similar corrections are not proposed for the public prosecutor's office, which remains somewhere between the executive and judicial power. The Constitution of the Republic of Macedonia guarantees its autonomy, but not its independence – it seems that the autonomy is achieved as a partial dependence from the executive power?!** Even more since with the reform in the penal-legal system the public prosecutor's office should take over part of the duties that until recently were in the hands of the judicial authorities, as a new guarantor of legality and protection of human rights in the criminal proceedings.

The experts with great concern accepted the view of the Public Prosecutor's Office of the Republic of Macedonia about the Draft of the new Law on Criminal Procedure. Namely, the Public Prosecutor's Office of the Republic of Macedonia obviously does not show any ambition or readiness to accept an active and leading role in the investigation. It is surprising how the Public Prosecutor's Office in principle accepts the concept of prosecutorial investigation, but it does not want to have its own capacities, but it wants to remain a body that works only from the office and depends completely on the Ministry of Interior!

Maybe with this leadership at the Public Prosecutor's Office and the MOI the reforms should be postponed for some better times. Otherwise the prosecutorial investigation may become police investigation threatening the human rights and freedoms.

4. TM welcomes the initiative of the oppositional SDSM for constitutional amendments regarding the statute of limitations for crimes and acts of corruption in the course of the Macedonian privatisation. At the same time, TM believes that this initiative is more of a political move than legally substantiated proposal since this is not a constitutional issue, but more of a matter related to the implementation of the criminal policy.

Namely, the legality of the acts and the sanctions from Article 52 in the Constitution cannot be interpreted as some kind of fundamental human right for not punishing the criminals who had not been disclosed or caught on time. Moreover, according to the current Constitution there is no statute of limitations for certain crimes such as crimes against humanity and international law, etc.

5. The results from the work of the Constitutional Court of the Republic of Macedonia represent a good indicator of the quality and efficiency of the Macedonian legislative institution. They impose the conclusion that the Assembly is turned into an obedient and non-critical executor of hasty and populist governmental policies, especially since the autumn of 2008, immediately after the ruling party took over the entire power. Two years later we feel the negative results of the improvised legislative policy of the Macedonian populism.

In the first trimester of 2010 entire projects of the Government in the area of health insurance and social welfare were repealed by the Constitutional Court or withdrawn by the Government that proposed them in 2008. We are referring to the “Baby Boom” project that was promoted by the Government of the Republic of Macedonia as a recipe for increasing the birth-rate in the municipalities in Macedonia with low birth-rate (with majority Macedonian population). This discriminating provision was repealed by the Constitutional Court putting all women in the Republic of Macedonia who decide to become mothers once or more than once to be in the same position. After this decision the Government decided to leave the idea of having monetary stimulations for increasing the birth-rate in the country.

The Law on Health Insurance had a similar provision that was “withdrawn” i.e. changed before suffering the same destiny at the Constitutional Court for being unconstitutional by the Ministry of Health - the same ministry that two years before drafted and proposed. The Assembly, certainly, in an express manner changes the provision that never got a chance to be implemented.

The last debacle of the numerous hasty governmental policies motivated by the desire for strengthening the monopolistic position of the Health Insurance Fund happened with the decision of the Constitutional Court according to which the insured will be able to use their health insurance in all the institutions around the country, both public and private. As it was envisaged by the Macedonian Constitution, where there is no separation between the public and the private health institutions.

Still, the Law on Smoking probably illustrates the tragically comical situation at the Macedonian Assembly: after, as usual, the law was hastily adopted and they faced harsh opposing among the public, soon after the law went into effect it was amended upon a proposal by MPs from the ruling party, the same ones that fiercely defended and voted for its initial adoption!

Another legal obligation that they improvised with when adopting it and then they fiercely defended and afterwards hastily withdrew was the one about the obligatory possession of certain fire extinguishers in the private vehicles – that caused confusion and legal uncertainty among the citizens, and caused

serious damages in the business sector among those who import fire protection equipment.

The same refers to the "drama" about the firm fee in Skopje: when one should start paying for it, how much it should be, whether the fines apply retroactively, whether interests should be paid, etc. The mayors as executive bodies of the local self-government units have no right to introduce taxes and other public duties since that is a competence of the Assembly of the Republic of Macedonia. The abovementioned tax was introduced a long time ago with the Law on Communal Taxes, but it is the mayor who is obligated to implement every law that falls under his/her competence without a right to a selective approach when it comes to the implementation of the legal provisions based on the level of populism s/he wants to use in his/her governing.

TM demands from the authorities to urgently stop playing the role of the main factor for legal insecurity in the country. The Government should act in an accountable, real and legal manner adapting its policies to the provisions of the Constitution, the laws and according to international standards, instead of persistently and in a stubborn manner using the ruling party's agenda for rebirth as its "legal" grounds when drafting the legislation.

STATE AUDIT OFFICE

6. In its regular reports in 2009 TM urged with all the competent institutions to react accordingly to the reports of the State Audit Office (SAO), which pointed out several irregularities in the work of a number of state institutions among which the Government of the Republic of Macedonia, the Secretariat for European Affairs, the Agency for Money Laundering and Terrorism Financing Prevention, the Ministry of Transport and Communications, the Ministry of Interior, the Ministry of Foreign Affairs, the Youth and Sport Agency, the Agency for Foreign Direct Investments, etc. Even though it is a rather long list of institutions that obviously spent public funds improperly till this very day there has not been any epilogue for anything that was pointed out by the state audit.

On the other hand the public suspects that the Government is exerting pressure on SAO in regard to its programme of activities for 2010 so that they would avoid the bigger ministries and state institutions, especially those managed by people from the ruling VMRO-DPMNE, where improper and irrational spending of public funds could be expected.

TM once again encourages the Government and all the competent institutions not to be afraid and to act based on the findings of the SAO that point out improper and inefficient spending of public funds. TM warns that the possible pressures on the work of the SAO will only encourage criminal and corruptive activities in 2010, as well to the disadvantage of the Macedonian citizens.

7. The published final report of the State Audit Office on the work of the Agency for Foreign Investments (AFI) for 2008 fully confirmed the suspicions that

had already existed among the public and which referred to the justification of the projects that were realised by this institution. The data presented in this report are so defeating that make the future existence of this Agency questionable, bearing in mind its profile, agenda and budget. AFI has no in advance defined criteria for successful performance, failing to provide equal treatment to the potential foreign investors. The auditor expresses open doubt that MKD 74,740,000, i.e. more than 1.2 million Euros in a form of state assistance to foreign investors were spent. The “system” of management of these funds opens space for subjective approach when deciding, which is also the main precondition for corruptive behaviour.

The same goes for the money spent for the so-called economic promoters of the Republic of Macedonia abroad. For their mission MKD 35,950,000 i.e. EUR 600,000 was spent and there is no measurable effect.

The situation at AFI is defeating also from the aspect of the functioning of its bodies and the illegitimate actions when performing public procurements. Hence, in the audit report it was stated that the AFI's Board of Director for some time had been working without the required quorum which means that its sessions and decisions are illegitimate. The Agency does not have the necessary procedures and accounting standards for approving and paying the presented bills. All that is brought down to good will of the Director who autonomously and without any established system decides who should be paid, how much and whether should be paid.

Consequently, in such chaotic circumstances serious abuses are detected in the process of the public procurements. We are pointing out only two of them:

- without implementing a public procurements procedure, AFI spent MKD 7,340,000 for printing promotional materials, organising fair presentations, transport and other kinds of services; and
- for making a TV video the least favourable offer was chosen for which MKD 5,472,000 were paid.

TM is asking the Prime Minister Nikola Gruevski what is the idea of having AFI and what is the effect of its operation and whether the detected squandering in the course of its activities is part of the promotional strategy for attracting foreign investments?

TM urges the Public Prosecutor of the Republic of Macedonia and the State Commission for Prevention of Corruption to present their views in regard to the MKD 12.812.000 spent by AFI in a manner contrary to the provisions of the Law on Public Procurements and the responsibility of the Director Viktor Mizo about the way the Agency functions.

PUBLIC PROCUREMENTS

8. The Skopje Primary School “Rajko Zinzifov” has 1,200 pupils that for a year have been using only two toilets. The other toilets are in a shameful state and cannot be used. The Ministry of Education had a public bidding for reconstruction of these toilets. The company chosen at the public bidding made a statement that for a year they had not started with the reconstruction of the toilets

because the Government owed them money not only for this one but also for other tenders they won. To all that the comment of the Minister of Education and Science was that the money was paid out, but probably they got lost somewhere along the way.

TM's question is: If more than ten thousand Euros personal money of the Minister of Education and Science got lost wouldn't he tried to check the possible movement of the "lost" money?

THE SITUATION WITH THE SCPC

9. In the past few weeks the public witnessed the internal turmoil and intrigues at the SCPC. This situation was not a surprise, but a logical consequence of the three year agony of this institution.

The situation at the SCPC is not at all naïve and it requires urgent acknowledgement of the real dimension and undertaking adequate measures. If during the first composition of the SCPC there was an institutional problem in the SCPC-Public Prosecutor relation, today the problem is internal. Today the SCPC is a problem on its own, so in such a situation the SCPC cannot operate properly or create some kind of a position regarding the current corruption developments. This resulted in its complete passivisation and drifting away from the legal competences that it is obligated to perform.

Today the SCPC has a new Chairperson, so the question now is whether it could change anything in the way it functions? TM is asking isn't it naïve to believe that the problem with the Commission was only the previous Chairwoman, bearing in mind that for three years nobody heard from the SCPC an opinion diferent and separate from the other members on any of the issues in the area of competence of the SCPC? The only novelty is the knowledge that SCPC is divided into 2-3 groups with deeply undermined foundations.

TM once again urges the Assembly of the Republic of Macedonia to seriously review the situation at the SCPC and to urgently undertake measures for re-establishing the reputation of this institution, even if it means recalling this composition of the Commission.

THE CASE OF "SKOPJE 2014"

10. In February 2010 the project "Skopje 2014" was promoted under the auspices of the Municipality Centar, the City of Skopje and the Government of the Republic of Macedonia. The project attracted the attention of the public because it has been accompanied by numerous controversies and irregularities that label this project as a "shady deal" and "money laundering".

The project drew the attention of TM because of the mystery of the financial construction for its realisation. Namely, is it possible for the Municipality of Centar, the City of Skopje and the Government of the Republic of Macedonia to initiate such a capital project without knowing what would be at least the approximate cost of its realisation? The mayors of the Municipality of Centar and

the City of Skopje keep avoiding answering this question even though the rumours in the public are that it will cost between 80 and 240 million Euros!

This is only another episode of the “soap opera series” with many corruption elements related to the number, the look, the price, the delivery deadlines and the way in which the monuments in the centre of Skopje are ordered and executed. The indications for improper and criminal spending of public money are huge.

TM would like in this occasion once again to urge the Municipality of Centar, the City of Skopje and the Government of the Republic of Macedonia to urgently and comprehensively inform the public about the financial details of this mega project. Otherwise, the impression that it is a case of huge and well organised state “money laundry” will be justified.

THE CASE OF THE “HOTEL BEHIND THE RAMSTOR CITY MALL”

11. The suspicions and the warnings by TM from few years back have been confirmed that the entire procedure and the result from the selection of the best bidder for the construction of a hotel on the plot behind “Ramstor” were utterly controversial and suspicious. Namely, based on the facts presented before the Macedonian public there are indications that the HLH Company that bought the plot behind “Ramstor” in Skopje for a construction of a hotel and that was founded in July 2007 was a phantom company with no activities in the course of 2008 and 2009. From the London Central Register certificate one could see that the company “HLH Macedonia LLP” was registered on 12 July 2007, but except for the address of its headquarters there were no other data that would show any activity of this company. The company’s background shows several changes of its headquarters location, as well as new board members, changes in the name, etc, but no information about current managers and other employees.

TM urges the Government of the Republic of Macedonia and the Ministry of Transport and Communications to explain who the HLH Company is and whether this company was at all qualified to participate in the tender? The Government should inform the public also when the new opening date for the planned hotel is scheduled and whether that will happen in the course of this decade?

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