

No. 11 year I November 2010

MAK

MONTHLY ANTICORRUPTION MAGAZINE



- **NEWS**

- **ANALYSIS**

Good conduct in Western Balkan countries through the prism of the European Commission

- **PUBLIC PROCUREMENT**

transparency of data and documents in public procurements

- **CORRUPTION**

Bulgaria's Anti-Corruption Drive Falls Down in Court

About the monthly edition



The Center for Civil Communications was established in April 2005 as a nongovernmental, nonparty, and nonprofit association of citizens. In the past five years we have been working every day on narrowing the room for corruption in Macedonia and promoting the principles of “good governance”, both on central and local level.

We are focused on implementing two types of mutually related activities: monitoring and revealing corruption practices, and, on the basis of this, recommending measures and policies for narrowing the room for corruption and enhancing the ability of the journalists and the special role of the media in the fight against corruption in the country.

In the course of our everyday work, we and the experts we cooperate with arrive at numerous information regarding corruption and anticorruption practices in our country, as well as the countries in the region and the world.

By publishing this monthly newsletter on anticorruption and “good governance” we want to share this information with the wider public, primarily with the representatives of the public administration, whom we consider the most responsible for the fight against corruption and establishing and respecting the principles of “good governance”.

At the same time, we offer expert analyses, which can serve as sources of ideas and examples for improving the current state with the corruption in Macedonia.

We are open for suggestions and we want you to send us your opinions, ideas, and attitudes on anticorruption topics as well as practices of “good governance”, as well as point to us corruptive practices and generally the existence of a room for corruption. This will serve us as a basis for further articulation of those practices and problems, as well as help in conducting our future anticorruption activities.

Corruption is one of the greatest evils in Macedonia, which degrades the development and the progress of the economy, society, and the people who live in it, disrupts the competition and the free operation of the firms on the market, disables the governance of the true values in life and in the work, forces the young, educated people to leave the country and enables illegal benefits and enrichment of state officials at the expense of impoverishing the other people and destroying and abusing the public goods.

Therefore, by pointing the corruption practices and offering ideas, good examples, and solutions from the country and abroad, we feel that this monthly newsletter will ultimately contribute to decreasing the corruption in the country and enhancing the “good governance”.

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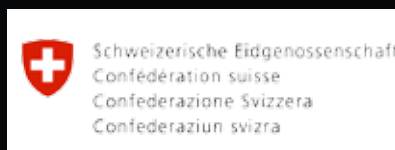
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IN THIS ISSUE

Former minister of defense and deputy of the ruling party in Croatia and ex-US vice president are being investigated in corruption-related cases – the first one for alleged illegal public procurement and the latter for bribing a Nigerian national in business matters linked to natural gas. At the same time, Croatia's president decorated several brave citizens, who were ready to risk their lives in the fight against corruption and organized crime.

On the other hand, there is a different situation in Bulgaria. An analysis prepared by journalist Borjana Dzambazova suggests that, due to police indifference and the fear of judges from those who are being tried, many people are being acquitted in cases related to crime and corruption. As a result, the anti-corruption campaign in Bulgaria has failed in court.

In the previous issue of the monthly report, European Commission's assessments on the anti-corruption policy and public procurement in Macedonia were presented, which were highlighted by the EU in its latest progress report for Macedonia on its road towards EU full-fledged membership. In this issue, our regular associate and one of the most esteemed anti-corruption experts in Macedonia, Vanja Mihajlova, compares the EC assessments of other Western Balkan countries regarding the matter.

Assessments on the scope of corruption and measures aimed at diminishing it are unfavorable for all of the countries. Corruption is still considered a sensitive issue in the region. The general conclusion is that corruption is largely spread and that authorities do not demonstrate real political willingness to deal with it, even through certain counties show better results, especially in processing high-ranking corruption cases. Numerous shortcomings, lack of transparency and inadequate application of laws are also being noted in the field of public procurement.

In continuation, we focus on a vital issue in the sphere of public procurement here – accessibility to documents related to public procurements. Could they become accessible to the public? If this is possible, then who, when and what can be obtained? Could data and documents be made only available for inspection or a document – in its original form or a copy – could be given to interested parties? These and other questions linked to the issue are being analyzed by an expert on public procurement, Darko Janevski.

He concludes that certain bidders, who request to inspect documents included in the offers of applicants, can and should carry out an inspection.

In this issue of the monthly report, we once again hope to deal with issues that are significant in your work and stimulating enough to make you think and act in enabling enhanced transparency and accountability of your actions.



No. 11 year I

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CROAT EX-MINISTER JAILED FOR CORRUPTION

ZAGREB, Croatia - A former Croatian defense minister was convicted of corruption Monday and sentenced to four years in prison for purchasing overpriced military trucks.

Berislav Roncevic, who is now a lawmaker for the ruling party, is one of at least a dozen senior officials and businessmen prosecuted for graft in recent months as the government tries to prove it is serious about combating high-level corruption as it works to earn European Union membership.

At the district court in Zagreb, Judge Jasna Smiljanic ruled that Roncevic worked in the interest of a truck firm -- instead of the state interest -- when he approved the 2004 purchase of the trucks, which were 10.2 million kuna (euro1.4 million) more expensive than others offered in the tender.

Smiljanic ruled that Roncevic and his aide, who received a two-year sentence, should return the money.

„Taxpayers expect state officials to act in the interest of the citizens and not to buy more expensive trucks instead of the cheaper ones,” Smiljanic said.

Roncevic denied any fault and said he will appeal the ruling. He previously claimed he was advised that only the more trucks that were bought met NATO standards. Croatia joined the alliance last year.

In 2004, Roncevic and Ivo Bacic, who was his assistant, canceled an international tender to buy 76 trucks for the military because the total price offered by bidders was too high.

The two later approved the out-of-tender purchase of 39 trucks from a Zagreb-based company, Eurokamion. At the trial, an expert witness claimed that another firm offered similar trucks for a lower price.

Judge Smiljanic said Roncevic didn't act for his own gain, but „did it all” to benefit the company.

It remains unclear whether Roncevic or his party eventually profited from the deal.

In Croatia, it is widely believed that when a company is favored in a business deal, it pays a kickback to the official, department or party that enabled it.



PRESIDENT HONOURS THREE CROATIANS FOR FIGHT AGAINST CORRUPTION



Croatian Times - Croatian President Ivo Josipovic has awarded three Croats with the Order of Stjepan Radic for their courage in the fight against corruption. The head of state will honour Dusan Miljus, Igor Radjenovic and Ruza Tomasic during the anti-corruption day ceremony, celebrated worldwide on December 9. All three will be recognized for their efforts that had, at one point, made them targets of criminals.

Miljus was attacked two and a half years ago. The perpetrators of the attack have not yet been caught, the daily writes.

Miljus hopes that the award will give a new momentum to the search for his attackers. In case when they are not brought to justice, „criminals feel stronger and more protected,” he added. The award recognizes all of those who have been ready to put their life on line in their fight against corruption and organized crime, regardless of their professions.

CORRUPTION AGENCY FILES CHARGES AGAINST CHENEY

The Economic and Financial Crime Commission (EFCC) yesterday filed a 16 count charge of corruption against former US Vice President, Dick Cheney, head of oil services firm, Halliburton, and eight others at a Federal Capital Territory High Court in Abuja.

The commissions' spokesperson, Femi Babafemi told NEXT that, "the charges were not filed only against Dick Cheney, but against nine of them in all." He refuse to confirm if the agency will the call for the arrest of those involved by the Interpol.



"I don't want to speculate on that. What I can confirm to you is that we file charges against nine of them today and whatever step we will be taking will be taken whenever the case resumes in court," he said.

Mr. Cheney was charged alongside Halliburton INC, Halliburton Nigeria Limited, Kellogg, Brown & Root Inc (Kbr), Albert "Jack" Stanley (former KBR chief executive), William Utt(KBR Chief Executive Officer), David Lesar (Halliburton Chief Executive), TSKJ Nigeria Limited, and TSKJ Consortium over an alleged scheme to bribe Nigerian officials dating back to the early 1990s. The Houston-based engineering firm KBR, a former Halliburton unit, pleaded guilty last year to U.S. charges that it paid \$180 million in bribes between 1994 and 2004 to Nigerian officials to secure \$6 billion in contracts for the Bonny Island liquefied natural gas (LNG) project in the Niger Delta.

Though the two companies split in 2007, KBR and Halliburton, which was once headed by Mr. Cheney, reached a \$579 million settlement in the United States. Part of the charges against the nine was the that they, sometimes between 1994 and 2005, conspired with Snamprogetti Netherland, Technip S.A. and Japan Gasoline corporation to commit a felony to wit: giving the sum of \$132million to one Jeffrey Tessler (now at large) and others for the purpose of gratification of public officials concerned with the award of the

contract of Nigeria Liquefied Natural Gas Projects in Nigeria (Bonny LNG) and thereby committed an offence under section 96(1)(a) of the penal code CAP LFN (Abuja) 1990. None of the Nigerians implicated in the bribery scandal has been prosecuted.

Operatives of the Economic and Financial Crimes Commission had on November 24, 2010 conducted a raid in which 12 people were arrested on the Victoria Island, Lagos office of Halliburton. Speaking about the raid, Mr Babafemi said the raid was as a result of new discoveries in its investigation of the American oil services firm's alleged corrupt practices.



GOOD CONDUCT IN WESTERN BALKAN COUNTRIES THROUGH THE PRISM OF THE EUROPEAN COMMISSION

In recent weeks, Western Balkan countries mainly debated the reports of the European Commission on their progress in meeting the criteria to join the European family.

Swords were crossed in debates whether the country had made progress or stalled in accessing the Union. Such contradictory assessments were particularly presented in Macedonia. At the same time, the fact is being ignored that assessments in the report (which are carefully and diplomatically packed) are solely guidelines for future steps that need to be made in implementing EU standards and are first and foremost intended for the citizens of EU. Contrary to Macedonia, other countries – especially those more advanced in the region – perceive such signals realistically and instead of euphoric statements by authorities on their successfulness in implementing the requested reforms, focus is directed on shortcomings in order to be improved in the coming period. And here is what the European Commission has concluded in terms of “good conduct”, which is seen as one of the key preconditions for democracy to function and which covers the areas of public administration, anti-corruption policy and public procurements.

Public administration

European Commission's general assessment in terms of the process to harmonize laws with those of EU is that certain measures have been taken, but significant shortcomings in how the administration functions has been detected as well. Remarks are mainly focused on implementation of principles, rules and standards incorporated in the legislation itself.

Croatia – having made the biggest progress and being basically on the threshold of EU – is rebuked for its limited progress and incomplete legal framework in building a modern and professional state administration. The country is urged to adopt and implement legal acts in a bid to establish a system for promotion and awarding of civil servants in line with their results (the so called merit system), accelerate the process of depoliticizing and attract qualified staff. Stronger political will and closer coordination between relevant factors at central, regional and local level is also required.

Given the progress of Kosovo, reforms of the public administration remain a great challenge for the country. The establishment of a professional, responsible, accessible and effective public administration will ensure effective public services to be given. It is recommended to be set as the highest priority for authorities.



Белград, автор Денис Бартхел

The EC has assessed that in Albania the legal framework for the system of state administration is mainly in line with European standards and practices, but inadequate implementation of the legislation is a reason for concern. Its public administration is viewed as highly politicized with lack of transparency when appointing officials at top posts.

In Bosnia-Herzegovina, the EC has noted a slight progress in reforms related to this area, while state administration still remains highly politicized. The

Commission urges transparent procedures in hiring personnel to be made based on the merit system and on modern career development and professionalization. There has been no progress made to limit the role of political ties with the public administration. A small progress in managing state administration has been noted in Republika Srpska. Harmonization of the state administration legislation throughout the country is lacking.

The EC has evaluated that Serbia made a slight headway in terms of reforms in this field. In general, the capacity of its public administration is positively assessed, but the pace of reforms is slow. The country is urged to improve frameworks of the legislation and to enhance its engagement to respect the mandate of independent regulatory bodies.

Unlike all of these countries, the space set aside by the EC in its report to assess reforms in public administration in Macedonia is much greater. This is due to the fact that the country has been a candidate hopeful to join EU for five years and as such it is required to implement more efficient reforms and to harmonize with European standards and also due to the discontent with the deteriorating status quo situation. Hence, it is evaluated that a partial progress has been made, first and foremost from a legislative point of view, while political and functional accountability to manage with public administration remains fragmented. It is noted that the employment procedure in accordance with the Law on Civil Servants does not guarantee that it will be completed in line with the merit system, that there is no training period, while promotion is not clearly associated with staff's assessments. Employment selection of civil servants lacks transparency and is not based on the merit system and enough room has been left for discretion rights in making decision. The EC particularly "voices concern about the state of politicization of state administration, the replacement of trained professionals with persons who have limited experience within several institutions and about the appointment of individuals on high-ranking posts despite lacking adequate qualifications, sometimes even being engaged with a contract for temporary employment." Moreover, some assessments (which cannot be found in other countries) highlight that temporary employments are not in line with legal procedures that guarantee a selection based on transparency and the merit system. Majority of these persons later on have had their employment transformed into an indefinite period, which in most cases doesn't ensure a procedure that is open, transparent and based on the merit system. Remarks are also included with respect to

employments envisaged by the Ohrid Framework Agreement, suggesting that "personnel from non-majority communities have been hired on quantitative basis without meeting the requirements of institutions for trained and qualified staff" and that employments are subjected to inadequate influences.

Anti-corruption policy

Assessments on the level of corruption and measures taken to reduce it are unfavorable in all countries. Corruption is still a sensitive issue in the region. The general conclusion is that corruption is wide spread and that authorities do not show real political will to eradicate it, even though certain countries have demonstrated good results, especially in processing high-ranking corruption cases. Thus, Croatia is praised for making progress in the combat against corruption. In addition to adopting and improving the required legislation and programs against corruption, the overall coordination of anti-corruption efforts has been improved as well. The EC assesses that USKOK (Croatia's Bureau for Combating of Corruption and Organized Crime) continues to act and solve numerous corruption cases, to investigate related cases where top officials and directors of public enterprises are involved. Nevertheless, it is assessed that corruption still prevails in many areas and the country is urged to strengthen administrative capacities of relevant organs in fighting corruption. It is noted that "a culture of political accountability is missing and that a small progress was made in preventing corruption, a limited progress in preventing conflicts of interest and that there is no improvement in applying laws for free access to information." Overall, penalties for violating these regulations are insignificant. The EC is not satisfied with the lack of transparency and control of funds for political activities and election campaigns. In the report for Montenegro, the enactment of legal and functional frameworks needed for fight against corruption is praised, but concern is voiced with the insignificant functioning of persecution organs, especially in the fight against organised crime. The EC assessment is that corruption in Montenegro is also prevailing in many areas, being a serious issue, while anti-corruption laws are being implemented inconsistently. Crucial shortcomings are detected in the legal framework for prevention of conflicts of interest and financing of political parties and election campaigns. There is no consistent internal control to monitor corruption and to ensure accountability in cases of violation of the rule of law within state organs. This is particularly referred to tax and customs

administration, police forces, judiciary and local self-government. The country is urged to show political willingness to combat corruption.

The EC says Kosovo has made certain headway in terms of adopting the required legislation, but points out lack of harmonisation of the law on political party financing with European standards. There are serious remarks that the public has no possibility to be provided with an insight into the declarations of assets filed by officials, indicating that “corruption is wide spread” in this country. It is remarked that there are no public debates or probes into corruption by relevant organs due to lack of political will, while the obligation for implementation of anti-corruption strategies and laws is limited. The biggest concern, according to the EC, is caused by the work of the public sector, public procurements, judiciary and persecution organs. There are no mechanisms for investigation, filing charges and reaching verdicts that will ensure transparency about the status of corruption. Cooperation between organs fighting corruption is inefficient and results in inconsistent application of law, strategies and action plans. Shortcomings are also detected in the Law on Prevention of Conflict of Interest in terms of abiding by obligations stemming from this act. The EC noted a small progress in the fight against corruption. However, corruption remains dominant in many areas and still causes serious concern.

In Albania, according to the report, reforms remain incomplete and there are crucial shortcomings with regard to the independence, transparency and responsibility of the judicial system and to the efficient fight against corruption. The country has established legal and administrative frameworks to fight corruption, but despite that corruption prevails in many fields causing serious concern. Corruption in judiciary and the wide spread practice of bribing in the health sector is of particular concern. The lack of transparency in financing political parties is underscored as well as the inadequate influence over policies, thus making it an important issue. The country is urged to demonstrate solid signs for proactive probes and charges as well as verdicts in corruption-related cases.

EC's assessments on Bosnia & Herzegovina are that the country has made limited progress in preventing corruption, which is wide-spread in the public and private sector, judiciary, tax and customs administration and in processes of public procurement and privatisation. Even through the Central Election



Зареб, автор Даниел Николич

Commission has ruled to impose fines to political parties, they submit declaration of assets mostly on voluntary basis. There are no effective probes, charges and verdicts on corruption cases involving high-ranking officials. It is being underlined that the country has started suppressing corruption by adopting an anti-corruption strategy and action plan and that certain measures have been taken for prevention of corruption (campaigns to raise awareness and trainings), but that it dominates in many areas, being a serious issue in the public and private sector.

With regard to Serbia, the EC says that the action plan is being implemented at a slow pace. A small progress has been noted in investigations into and charges in corruption cases, while the number of court verdicts is small, especially in cases where top officials are involved. The absence of new legislation on financing of political parties, enhanced transparency and control is being pointed out. Public procurements, privatisation procedures and public costs still cause serious concern, because the country hasn't yet established an independent control. Corruption still dominates and continues to be a major problem. The anti-corruption agency needs to strengthen its capacities and to make further efforts in probing and bringing charges in top corruption cases.

The EC in its report on Macedonia pinpoints shortcomings in the implementation of a legal framework for anti-corruption and inconsistent judicial practice in cases surrounding corruption. Remarks are also included on the insignificant number of cases involving conflicts of interest, for which certain activities have been conducted. Consistent scrutiny of declaration of assets submitted by officials is lacking,

which are confidential and are not investigated together with the statements of interest. The law on access to public information doesn't contain clear provisions considering the accessibility of public agreements, which contributes to different interpretations within the administration. The absence of results in applying the law on the financing of political parties and election campaigns is noted, as well as in imposing fines when the law is violated by supervisory organs. The spending of public funds lacks transparency as well. The work of DKSK (State Commission for the Prevention of Corruption) is similarly evaluated as in past years. "DKSK's strategic plan for public relations did not give significant results, the public trust in the independence and impartiality of DKSK is still relatively low and the Commission undertakes reactive rather than proactive approach." Shortcomings are detected in the work of the Ministry of Justice for not enabling sufficient capacities for coordination in monitoring anti-corruption policies at technical level. Remarks are focused on the lack of an overall investigation to determine the scope and nature of corruption in the public sector and its well-developed statistical system for monitoring anti-corruption policies. The general assessment is that certain headway has been made in implementing anti-corruption policies, with a conclusion that corruption is widespread in many areas, still posing a major challenge.

Public procurements

Numerous shortcomings, lack of transparency and inadequate implementation of legislation are found in this field as well. In the report, Croatia is commended for making a good progress in terms of general principles and adoption of laws. Breakthrough was noted also in institutional capacities of the Public Procurement Sector with respect to its transparency and exchange of information between relevant organs with the formation of a central body for public procurements in the Government. Capacities of all involved factors have been improved to coordinate and implement the policy on public procurements. The EC concludes that a notable progress has been made in striking deals for public procurements and training of personnel engaged in these procedures, stressing that there has been insufficient accountability and transparency in meeting public procurement agreements. Progress has been highlighted in terms of legal remedies and the adoption of a new law on state commission controlling

procedures for public procurement, even though the system of legal protection by the Administrative Court is marked as being ineffective.

The EC assessing the youngest country in Europe, Kosovo, notes that a limited headway has been made in terms of public procurements. It is said that people involved in the process of public procurements are in unfavourable position, being subjected to threats posed by coordinated mechanisms of the chief factors in these procedures. The country is required to strengthen its capacities and to take effective measures to diminish corruption. The need of taking responsibility is highlighted, not only by people directly involved in the process, but also by their superiors at administrative and political level. In order to improve the situation in this area, the EC urges the country to enhance the control of activities within public procurements, including such activities insuring that recommendations by controlling organs are being implemented and that relevant persons are responsible for their actions.

In EC's report on Albania, public procurements are not emphasised. In assessments and recommendations aiming at improving the economic criteria, the need of making additional efforts is highlighted in harmonising legislation and in effective implementing in the field of public procurements, amongst other things.

The EC in its report on Montenegro only voices concern surrounding the control of public procurements, without making an in-depth analysis on ongoing situations in this area.

With respect to Bosnia & Herzegovina, the EC pinpointed a limited progress. Legislation is harmonised, however the absence of systematic publishing of public procurement advertisements in electronic form on the web site of the Public Procurement Agency is criticized. The system for obtaining concessions is



Тирана, автор Нбумбиц

vulnerable because of different laws in the country. It is being noted that many concessions and agreements for public-private partnership are still being inked, lacking transparency and without competitiveness. Moreover, there are no procedures for conducting independent control. Capacities of contractual organs to act in line with the law are insufficient and the insignificant support by central institutions for public procurements and economic operators unfavourably affects the effective implementation of laws. Seen through the prism of the EC, in general preparations in the field of public procurements are still in their initial phase. Similarly with other countries, it is assessed that the Law on Public Procurements meets standards in terms of transparency in procedures, but consistent practical application of provisions on prevention and identification of irregularities in the process lacks.

The EC says that Serbia has made an insignificant progress. A positive signal is that members of the commission for protection of bidders' rights were appointed in October 2010; however administrative capacities of organs for public procurements, especially those of the Finance Ministry's Public Procurement Department, have been considered to be weak. Mechanisms for coordination of main factors in the system of public procurement are seen as ineffective and weak, especially in terms of reducing the scope of corruption in this area. The strategy modernising the system of public procurement is said to be at its initial level, resulting in inefficiency while using public funds. Essential efforts to strengthen capacities for implementation of EU standards in this field are necessary.

Considering Macedonia, the EC concludes that a slight progress has been made with respect to general principles and that statistical data for corruption cases surrounding public procurements in court proceedings is still lacking. Findings by the NGO sector are affirmed in terms of the annulment of public procurement procedures, assessing that "the trend tenders to be cancelled and even to fail resumes." There is still insufficient awareness regarding the conflict of interests, ethics and anti-corruption in public procurement procedures. In this context, the insufficient capacity of the sector in charge of giving concessions within the Ministry of Economy to tackle elaborate projects is noted. Furthermore, cooperation with other institutions involved in the system of public procurements is considered to be insufficient. Certain headway has been marked in awarding public contracts in a transparent manner. Still, the awareness of contractual organs in relation to the criterion "the most favourable offer economically" is small. An



Сарајево, автор Асим Лед

assessment that causes concern is that "oftentimes things have been launched, even completed before a tender is issued." Other serious remarks are that "the State Audit Bureau identifies serious irregularities in public procurement procedures, but the Public Prosecutor's Office in most of the cases has detected only small omissions" and that the law on concessions and other types of public-private partnership are not harmonised with European standards according to the EC. The work of the state commission for appeals involving public procurements is praised. The country is urged to significantly improve the system of legal remedies.

Based on the above-mentioned findings, it can be concluded that Western Balkan countries have a lot of work to do and to demonstrate true political will for practical implementation of good conduct in every sense of the word and in compliance with European standards.

Darko Janevski, Public Procurement Expert

TRANSPARENCY OF DATA AND DOCUMENTS IN PUBLIC PROCUREMENTS



Could documents and data from public procurements become accessible to the public? If so, then who, when and what can be obtained? Could data and documents be made only available for inspection or a document – in its original form or a copy – should be given to interested parties? We have submitted an official request for inspection into offers of other bidders, however the request was rejected on account of having no such right.

These are some of the numerous questions and comments who are oftentimes posed by participants in public procurement processes. Questions are not only raised by people who have just started to work in the field of public procurement, but also by people who are involved in the matter and are familiar with and implement the rules of public procurement on daily basis. If they know the law, then where's the problem? As it is the case with many other laws, the problem is caused by their different interpretation.

Clarifying advertisements for new procedures and notifications for concluded agreements or annulled procedures

The issue of publishing data related to an advertisement and reporting about a concluded agreement or annulled procedure seems to be fully resolved, both legally and in practice. The law on public procurements regarding this matter is very clear, defining precise rules and deadlines on when and how advertisements and notifications should be published. Unfortunately, oftentimes in practice, these clear provisions and obligations were not being implemented by contractual organs and this violation was not subjected to sanctions, since the law doesn't envisage penalties. A procedure to amend the law would have been launched, but this takes time without guaranteeing that the provisions will be adequately implemented.

But, if a law misses the mark, then technology succeeds. Namely, the Public Procurement Bureau adjusted its electronic system for public procurements in such a way that it prevented those contractual parties which have fell short of fulfilling their obligations and deadlines to publish notifications for concluded agreement or annulled procedure from publishing new advertisements. What was the result from this high-tech measure – the urgency to publish new advertisements for public procurement prompted contractual parties in just a few hours to publish all notifications for concluded agreements and annulled procedures, which took the parties months, even years to publish. Thus, these basic data became available to the public.

Due to these reasons, in the text I will try to analyze several articles from the law focused on the possibility of economic operators to access documents and data of offers, which are considered to be vague, but very significant.

Access to documents after the procedure is appealed

I will start with less disputable issues. Article 223 entitles a right to every party in the appeal proceedings to review papers from the case. Clearly, only if the procedure is appealed. What is considered by papers from the case and what are they consisted of? The law entails all of the documents from the appeal proceedings, also including offers, to be submitted to the State Appeals Commission in order to create a case. Papers from the case include all of the documents derived from the file of the procedure and the entire further correspondence (an appeal, response to the appeal...)

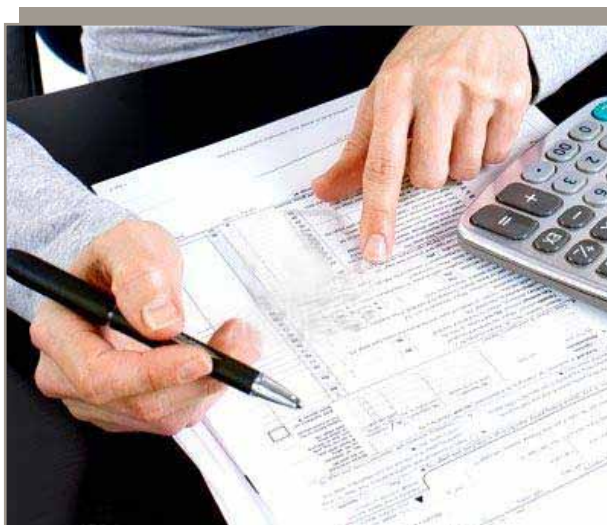
Conclusion: the bidder who filed an appeal must be given a chance to inspect the documents from the selected offer and from other offers as well as the report of the procedure. But what is the use for bidders, who secured access to offers and the report for the first time in this stage? In a situation when the notification of an adopted decision and the decision itself are often vague, not providing an in-depth insight into how the offers have been evaluated and scored, the bidder who is not selected is not able to compile and submit an elaborated appeal with arguments. The bidder needs data that are included in the offers and report, but has no access to them while constructing and submitting the appeal. Despite being delayed, the access to documents during the

appeal proceedings is not free! A solid sum between 100 and 400 euros are charged depending on the values of the offer.

Whether confidentiality of offers hinders inspection into documents?

We have come to the key question – does the law allow documents from the offer of other bidders to be inspected before the deadline for filing appeals is expired? This is quite vague and in practice it is resolved by rejecting every request for inspection.

Why are requests rejected and on what basis? Article 25 of the law suggests that data marked by the bidder as confidential (business secrets or intellectual property rights) should be treated as such and thus be adequately protected. No one, except the Public Procurements Commission in charge of evaluating the offers and possibly the State Appeals Commission and other organs that have a legal jurisdiction to audit and control operations of the contractual organ, can have access to them. However, this doesn't mean that the entire content of the offer and its accompanying documents is confidential! Moreover, several articles from the law regulating particular types of procedures envisage the confidentiality of the offer throughout the procedure to be preserved. To be more exact, in the course of the negotiations (a procedure with negotiations and competing dialogue) and until a decision is reached. By analogy, a conclusion can be made that offers are not required to be secret and confidential after a decision is reached! Conclusion: if a certain bidder seeks inspection into documents that are included in the offers of competitors, then s/he can and should be enabled to do so.



Application of legal transparency principle in public procurements

Finally, there is another, almost fully neglected approach in interpreting the law – if applied, then the above-mentioned conclusion would be reached once again. A modern style of writing laws implies that law's goals or the basic principles on which the regulating area is founded must be included. Usually, these goals and principles are seen as declarative provisions, without any force and application in practice. Or as something that should take up space in law textbooks and that should be studied at universities, rather than as having practical value. However, this is not the case in other legal systems, for example the legal system of the European Union with which Macedonian laws should be harmonized.

Namely, EU's regulations and directives mandatorily contain recitals (a type of a preamble) and usually contain basic principles and goals of the act as well. In practice, when certain disputes are brought before the European Court of Justice with respect to violation of EU ordinances, judges oftentimes cannot find a solution to the dispute in ordinance's provision, which in fact regulates the issue. In such situations, they start reviewing/analyzing recitals (why was it necessary for the provision to be reached), the goals that should be met by the ordinance and basic principles on which the field is founded. In a nutshell, if provisions are vague, then a verdict is reached based on the goals and principles that need to be promoted and fulfilled.

One of the fundamental principles in the field of public procurements is the principle of transparency (Article 2 of the Law on Public Procurement). If there are doubts whether an interested party (another bidder in the competitive procedure) should be allowed to access and inspect a document, then the principle of transparency should be applied. Consequently, a document should be allowed to be inspected by the party. Laws shouldn't be always amended or criticized as being vague, incomplete... there are no perfect laws here or in many legal systems with well-established traditions. Laws should be implemented in compliance with the spirit prevailing in them. It doesn't mean that transparency should be always and everywhere applied in procedures for public procurements.

It should be taken into consideration whether the application of the principle of transparency can cause any damage. In this case, a question is raised about a possible damage for other participants in the procedure (for bidders or the organ itself) and for the society as a whole? There is no damage, on



the contrary, all involved parties can benefit from this principle.

On one hand, economic operators will benefit by securing a foundation for a well-prepared appeal and thus an illegitimate selection of a bidder or annulment of the procedure would be prevented. On the other, an inspection may cause them to hesitate in filing an appeal and in determining whether the evaluation and scoring have been properly carried out. The final reason is also in the interest of the contractual organ in order to allow an inspection. Hence, the organ itself will be made sure that the whole procedure for procurement will not be delayed with unnecessary submitting of appeals. Moreover, "an external verification" will be given that it acted appropriately. Finally, the social interest will be satisfied, because the entire procedure was transparent and the right decisions were made in spending budgetary funds.

By Boryana Dzhambazova Sofia

BULGARIA'S ANTI-CORRUPTION DRIVE FALLS DOWN IN COURT

Careless work by the police - and judges' fear of the men they are trying – are some of the reasons why some many alleged criminals go to court but then walk free.

Bulgaria's former defence minister walked out of court on November 17 looking pleased.

Prosecutors had wanted to put Nikolay Tsonev behind bars for four and a half years for having allegedly deprived the country of 8 million lev [€4 million] by signing unfavourable deals for the delivery of military equipment. The Sofia City Court decided otherwise and found him not guilty. Welcoming the ruling, Tsonev urged all Bulgarians to keep faith with the country's judiciary.

On the same day, Asen Drumev, another former senior official, also had reasons to celebrate.

Sofia's Court of Appeals had just quashed a four-year sentence issued by Sofia City Court in March for abuse of EU funds while he was head of the State Agriculture Fund.

The two judgments were only the latest examples of a wave of acquittals of officials accused of serious crimes and taken to court as part of Bulgaria's drive against official corruption.

Earlier this month, a district court in Kyustendil found two local businessmen Plamen Galev and Angel Hristov, known as the Galev Brothers, not guilty of charges of leading an organized criminal gang involved in blackmail and racketeering.

While the centre-right government - with one eye on Brussels - claims it is winning the fight against graft and sleaze, local observers say otherwise.

They see the series of acquittals in several high-profile cases as proof that Bulgaria is still struggling to get to grips with a problem that has tarred its reputation in the European Union.

Tihomir Bezlov, from the Sofia-based Centre for Study of Democracy, is not surprised by the



Бугарија, автор Каладан

outcomes of the trials. "Problems were always expected with most of these cases," he told Balkan Insight, noting how few corruption cases over the last 20 years had ever ended in prison sentences.

Bezlov blames the lack of convictions on the chronic problems that have beset police, investigators, prosecutors and courts in Bulgaria for decades.

On the one hand, he says, too few police and prosecutors are doing their jobs properly. On the other hand, judges use every legal loophole to spare high-profile criminals from prison because they fear for their own safety.

Statistics unveiled by the Interior Minister, Tsvetan Tsvetanov, on Tuesday, make depressing reading.

Only 14 of a named list of 223 underworld bosses had been convicted, he admitted. Another 50 have been arrested, 12 are under home custody and four are at large.

Despite the unimpressive-looking data, Tsvetanov boasted that the government was making headway. “We have dealt with and are heading in the right direction in the fight against organized crime,” he said.

Joining the European Union in 2007 has not proved a sufficient stimulus for the authorities to clamp down on the problem.

Two years ago, Brussels suspended hundreds of millions of euros in EU aid. It is currently closely monitoring Sofia’s efforts to improve the work of the judiciary and police and bring them up to European standards.

But a culture of graft remains endemic in a country now deemed one of the bloc’s worst corruption black spots.

Facing pressure from Brussels, to turn matters round, Boyko Borisov’s government pledged to get tough on corruption and organized crime when it took office almost 18 months ago.

Brussels praised Sofia’s renewed drive against corruption and organized crime in its last report released in July, but in the report the European Commission expressed concerns about the lack of court convictions.

Vladimir Shopov, a political analyst, sees lack of expertise as one of the main factors undermining Bulgaria’s efforts to send criminals and corrupt officials to jail.

“The authorities lack the expertise to deal with high-profile cases, which are usually very complex,” he told Balkan Insight. “Investigations are carried out hastily and conducted poorly, so that many of these trials then collapse in court,” he added.



България, автор Тодор Божинов

But Shopov also holds the graft-prone judiciary responsible for the anti-graft campaign’s scant results.

“While police and prosecutors fail to gather enough evidence that can stand up in court, in Bulgaria you can never eliminate the possibility of corruption within the judicial system as well,” he noted.

Experts argue that high-profile police dragnets and movie-style arrests, which have become the signature tune of the government’s clean-up campaign, are not enough to bring criminals and corrupt officials to justice.

“If the idea is to show how active the government is, they only have a temporary effect because they’re [seen as] little more than theatre,” Iva Pushkarova, a lecturer in criminal law at Sofia University, said.

“The image of this government is over-dependent on [success in] the fight against organized crime and corruption, so they can’t plan and execute operations carefully enough because they’re under immense pressure to show immediate results,” Shopov warned.

In the meantime, trials against alleged criminal bosses and high-level officials have become a source of constant conflict between the government and the judiciary.

The government has accused the judiciary of undermining its efforts to curb organized crime and corruption. For their part, judges complain that police and prosecutors too often fail to prove their cases in court.

While Iva Pushkarova sees such public pressure on the judiciary as “dangerous”, as it can affect the court’s work on high-profile cases, Bezlov sees public opinion more positively, as a tool that has the potential to change the work of the courts for the better.

“The problem with the lack of convictions is so acute and unbearable that very soon public pressure – both here and internationally – will force them to deliver convictions,” he said.

“That’s what is happening in Italy where for a long time there were no convictions against mafia bosses,” he added. “Then, at one point the courts just started delivering convictions because of the public pressure.”

About the Center for Civil Communications

The Center for Civil Communications is a non-governmental, non-profit and non-partisan association of citizens, with a mission to improve and develop the communication among all factors in the society of the Republic of Macedonia about the processes of wider societal importance as well as to monitor, analyze and promote the social-political and economic processes in the country, mostly in the field of anti-corruption, local government and economic development.

The Center for Civil Communications fulfills its mission through organization and implementation of surveys, analyses, monitoring, training, seminars, roundtables as well as publishing of reports, publications and manuals.

In the past five years, the Center for Civil Communications has focused its work on two sets of interrelated activities: monitoring and discovering the corruption practices and based on this providing recommendations on the measures and policies for reducing the corruption and capacity building of journalists and media for fulfilling their special role in the fight against corruption in the country.

The most significant activities that have been implemented include the following:

Project on Transparent Local Governance (2009-2012)

The project develops mechanisms for increasing the transparency, accountability and responsibility of local governments in Macedonia, encouraging the participation of citizens and local business community in the decision making process in the local government and sharing the best practices and experiences among the municipalities in the country and the region. The project activities will contribute for reducing the level of corruption in the local community and increasing the trust of the citizens and business representatives in the local authorities. The project is implemented in partnership with the non-governmental organizations: EHO from Stip and NGO Info Center from Skopje and is funded by the USAID Macedonia.

Monitoring of Public Procurement on Central and Local Level (2008-2010)

The project analyses the implementation of public procurement procedures and system in the country in light of the new Law on Public Procurement, from the aspect of transparency, competitiveness, equal treatment of economic operators, non-discrimination, legal, economic, efficient, effective and rational use of budget funds, getting the best offer under the most favorable conditions and accountability for the funds spent during the public procurement process. Total of 160 randomly selected public procurement procedures are monitored and analyzed on annual level, through direct monitoring of opening the offers, in-depth interviews with the bidders and the institutions that open the tenders, gathering information from the Public Procurement Bureau and other involved institutions. The results of the monitoring include recommendations for promoting the public procurement process. The project is funded by FOSIM.

Enhancing the Role of Media in Fight against Corruption (2008-2009)

The project promotes the journalistic standards on researching and reporting corruption and builds the capacity of media on fulfilling their role in the fight against corruption. The starting point is an in-depth analysis of the way in which the Macedonian media report on corruption and identifying the main weaknesses in this reporting. Based on this, recommendations are developed for promoting the journalistic standards. The implementation is through training of 12 investigative reporters from leading media in the country. These activities will contribute for overcoming one of the main problems detected in the National Strategy on Reducing Corruption – inappropriate media coverage of corruption. The project is funded by USAID Macedonia.

Measures for Reducing Corruption in Macedonia (2007-2008)

After the first phase of the project identified the most vulnerable areas of corruption in Macedonia, this project has developed and recommended total of 156 specific measures that should be undertaken in order to narrow the space for corruption. The project included comparison of the best practices in the other countries, series of workshops where experts and representatives of the stakeholders discussed and proposed ways to narrow the room for corruption, prioritize the measures and sending them to the competent institutions and media for monitoring their implementation. Most of the measures were implemented, particularly those for granting higher independence to the second instance National Commission for Complaints on Public Procurement, which was transferred from the auspices of the government to the Parliament, the independent legal status of the Public Procurement Bureau, which is no longer under the Ministry of Finance, etc. The project was funded by the Balkan Trust for Democracy.

Reduction of Corruption: Exchange of Experience and Good Practices in Investigative Reporting between the Journalists from Macedonia and Romania (2008-2009)

In partnership with the Romanian Center for Investigative Reporting, 10 investigative researchers from Macedonia were trained from the leading Romanian trainers in investigative reporting about the advanced techniques of investigating journalism. After the training, the journalists had an opportunity to be in the Romanian media where together with their colleagues from Romania worked on investigative stories, which were published in the Macedonian media. As a result of the project, a network of investigative reporters was established within the Center for Civil Communications. The project was funded by the East-East program.

Series of trainings for journalists from local media on investigative reporting and reporting on the local government (2008)

The Center delivered 4 regional trainings for 30 journalists from the local media on strengthening their capacities and abilities for researching and reporting on the work of the local government in light of the increased competences of the local authorities, which also increased the role of local media in reporting on the issues of the interest of local citizens. The project resulted in developing a Manual on Journalist Reporting for the representatives of the local media in Macedonia. The project was funded by the USAID Macedonia local government activity.

In addition, the Center for Civil Communications in the past period has published a series of Corruption Reports in Macedonia (2005 and 2006), supported by the Balkan Trust for Democracy, trained the members of entire newsrooms from 16 local TV stations from throughout the country on reporting the issues of local interest, through the support of the US Embassy to Macedonia, participated in the expert team that developed the three-year National Strategy on Combating Corruption, and was a member of the Committee that granted the good governance award in Macedonia, etc.