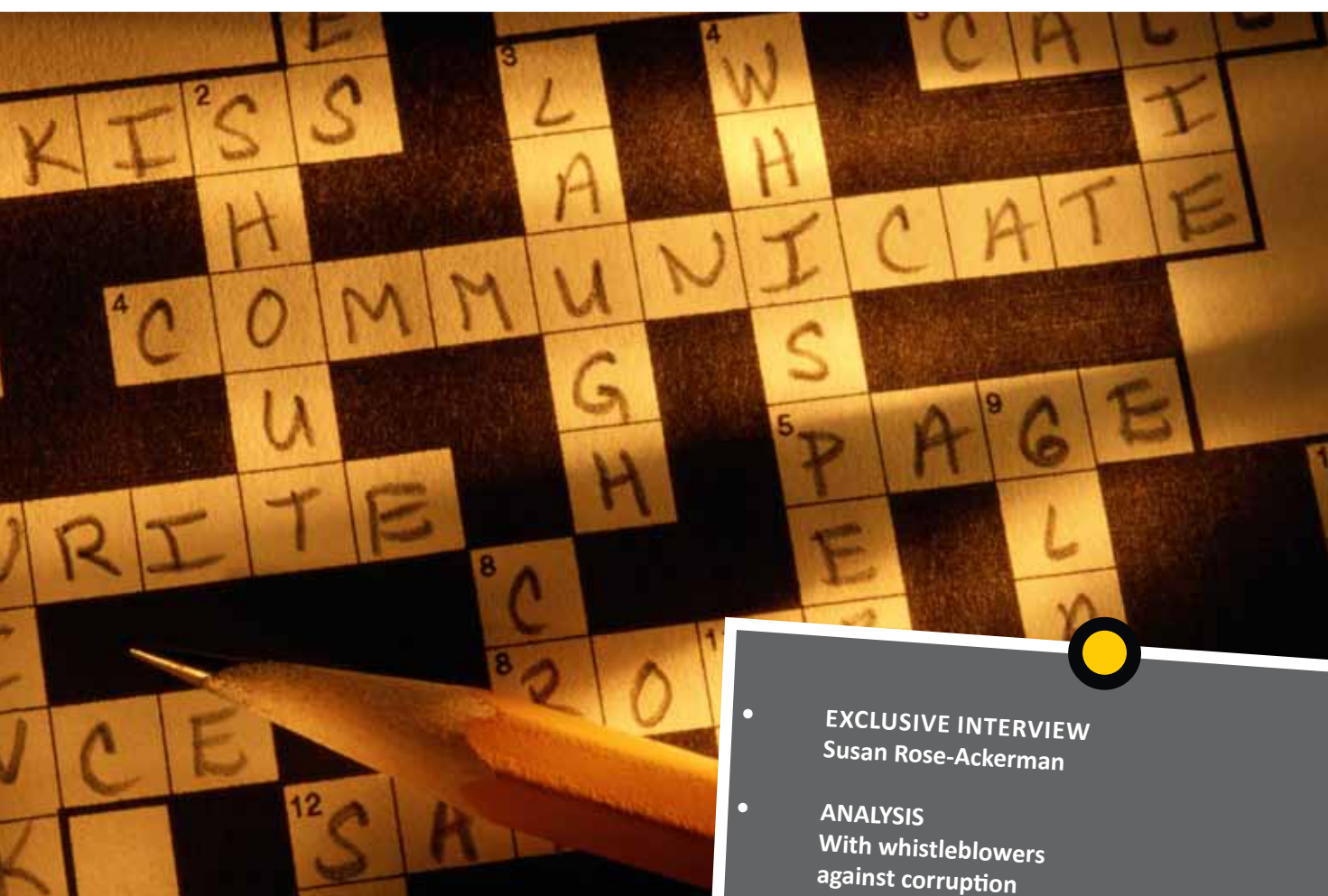


NO. 6 year I june 2010

mak

MONTHLY ANTICORRUPTION MAGAZINE



- **EXCLUSIVE INTERVIEW**
Susan Rose-Ackerman
- **ANALYSIS**
With whistleblowers
against corruption
- **SURVEY**
Companies On Public Procurement
- **FROM JOURNALIST'S POINT OF VIEW**
Public procurements get secret annexes

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”.

center@ccc.org.mk

ISSN 1857-7075

Center for Civil Communications
Str. Kocho Racin 26/1-2, 1000 Skopje
phone (02) 3213 513
www.ccc.org.mk



Publisher:
Center for Civil Communications

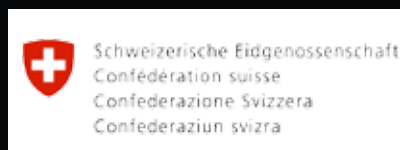
Editorial Board:
German Filkov, Sabina Fakic,
Ana Petrusseva, Elena Ristevska

Proof reading:
Tatjana B. Eftimoska, MA

Design, Layout and Print:
Vincent Grafika

Circulation:
200

“This publication was allowed by Civica Mobilitas Programme – implemented by CIRa and financially supported by SDC. The content of the material represents standings of its author(s) and not necessary reflect the opinion of CIRa and SDC”.



IN THIS ISSUE

Just two months since you have read on these very same pages an exclusive interview with the leading regional anti-corruption expert, the head of Slovene Commission for Preventing Corruption and Chairperson of the Council of Europe's Group of States against Corruption (GRECO), Drago Kos, we present yet another exclusive interview in this issue. Yale University Professor Susan Rose-Ackerman, one of the leading experts in corruption, recommends what one government should do in order to be considered anti-corruptive. PhD Rose-Ackerman, who in particular studies the link between corruption and economic development and having substantial experience with post-communist countries, recommends establishing of an anti-corruption alliance, comprised of the NGO sector, businessmen, administration and politicians.

This summer is marked by another significant event related to the global combat against corruption. G-20 tabled the corruption on its last summit in Canada and set up a group that would fight this evil.

In the neighborhood, a poll of the 'Gallup' agency shows that up to 90 percent of respondents consider that business climate has plunged deeply into corruption, while 80 percent believe for the judiciary to be one of the main strongholds of the corruption. In our regular analyses, we refer to the role of whistleblowers in corruption and organized crime. While this instrument is close to non-functional in our country, it has been frequently used in the United States and developed Asian countries. Two moments are considered vital for the functioning of whistle-blowing: institutions to really do something after being informed on corruptive activity and offer serious protection to good-will people who blow the whistle.

From Macedonia this issue brings an article on changes to the Law on Public Procurement, in particular the provisions that stirred up public fury-the possibility for the contracting bodies to delay the payment of public procurements for unlimited period.

Finally, we publish the results of our large poll, conducted in public procurements sectors of 138 companies, asking the employees about their experience with and problems they have been facing in the public procurement process. Unclear tender documentation and technical specification is the main problem for over half of the companies. High 43 percent of the companies have difficulties to collect their money from state institutions for already delivered goods and services. This problem is expected to become more serious in the future as the legal changes will enable state institutions further postponing of their payment.

We hope for these articles to also contribute to better understanding, applying of the principles of good governance and reducing the misdemeanors that derive from dishonest and illegal work.

We also wish to once again extend our gratitude for sending your answers to our poll for advancing this newsletter, giving as additional impetus to offer richer in contents issues in the future.



NO. 6 year I

MAK

MONTHLY ANTICORRUPTION MAGAZINE

CONTENT

- 4 NEWS
- 6 EXCLUSIVE INTERVIEW
Susan Rose-Ackerman
- 8 ANALYSIS
With whistleblowers
against corruption
- 11 SURVEY
Companies On Public Procurement
- 14 FROM JOURNALIST'S POINT OF VIEW
Public procurements get secret annexes

CORRUPTION IS TORMENTING WESTERN BALKANS



June 23 (Tanjug) - Corruption exists in everyday life and, accompanied by high unemployment rate and poor living standard, is the main problem of Western Balkan people, says Robert Manchin, Managing Director of Gallup Europe.

Over 90 percent of the respondents from Serbia, Croatia, and Bosnia/Herzegovina say that the business climate has plunged deeply into corruption and that nothing good may be expected from the judicial system. Only 21 percent consider that the judiciary is doing its job, while the rest believe it to be yet another stronghold of the corruption.

"It is worrying that some key sectors still present a problem, such as the trust that courts will not be biased, the Voice of America cites Manchin.

He says that residents of Western Balkans have great trust in the European Union, believing that it could help them to get rid of corruption. They trust in the Union more than in their own governments.

There are several forms of corruption, says this expert, and adds that people believe that the corruption has entered high political levels, among those who govern the countries.

The latest European Parliament resolution also notifies that the corruption 'has reached top state levels'.

'We are far from victory in the combat against crime and corruption: at many places such combat has not even started. Both government and politics are part of what, in addition to the weak judicial system, is rejecting investors, so that young people in the country have no opportunity to find a job, EP Rapporteur for Bosnia/Herzegovina Doris Pack says.

TADIC: NO ONE TO BE PROTECTED IN FIGHT AGAINST CORRUPTION

BELGRADE, June 17 (Beta) – Serbia's President Boris Tadic has said that no one is to be protected in the fight against corruption and organized crime, regardless of party affiliation, family ties or roles in society.

"No one can be protected in all-out fight against organized crime and corruption, but everyone must be entitled to fair trial," said Tadic at the international gathering on 'Challenges in the Fight against Corruption in Southeastern Europe'.



Serbia's President voiced his full, absolute support of establishing the rule of law and building the capacity of state institutions, as well as of the people engaged in the reform processes. "Corruption and organized crime undermine state institutions. Where corruption, organized crime act the state withdraws, where state acts corruption and organized crime withdraw, Tadic said.

Corruption has been a form of expected and favored behavior into the culture of Western Balkan societies and undermined the work of every institution, Tadic said, pointing out that people and institutions should be convinced that they are doing a historic work – build a state and fight against corruption and organized crime.

CARDINAL IN CORRUPTION PROBE

June 22 (Times) - The personal secretary of the late Pope John Paul II has weighed in on the sweeping corruption scandal that has touched senior Cardinal Cerscenio Sepe, claiming he might have been set up. "It's clear that somebody wants to hurt him, Archbishop of Krakow and Cardinal Stanislaw Dziwisz told Italian newspaper La Repubblica, echoing a defense issued earlier by Sepe himself.

"I forgive, from the bottom of my heart, those that -- in and outside the Church -- wanted to hit me" Sepe, who is also archbishop of Naples, told a press conference, alleging that he was dragged into the investigation by his enemies. Prosecutors in the central town of Perugia are investigating Sepe over kickbacks he allegedly accepted as the head of Propaganda Fide, the body handling the Vatican's vast real estate holdings and financing much of the Catholic Church's missionary work.



"I can't believe it! It is not possible, I have known him for years and he has only helped the Church," said Dziwisz, John Paul II's right-hand man and a friend of Sepe.

The probe is part of a broad corruption investigation that has touched figures close to Prime Minister Silvio Berlusconi, forcing one of his ministers to resign in May.

Sepe, who headed Propaganda Fide from 2001 to 2006, allegedly sold a building at a quarter of its market value to Italy's then infrastructure minister, Pietro Lunardi. Italian media have reported that in exchange for the favorable sale price Propaganda Fide obtained public subsidies worth 2,5 million euros for public works that were never completed.

G-20 FOCUSES ON CORRUPTION

TORONTO, June 27 – At the Summit in Canada the leaders of G-20 have set the fight against corruption on the top of their agenda and agreed to establish a Working Group that will combat bribery.

In the Summit's final declaration, the leaders of G-20 say that "corruption threatens the integrity of markets, undermines fair competition, distorts resource allocation, destroys public trust and undermines the rule of law". The declaration is based on the document, issued at the 2009 G-20 Summit in Pittsburg, but sends the message with much harsher words.

In his speech at the Summit, US President Barack Obama qualified the corruption as 'culture of bribe ...a brake on development and prosperity'.

The Working Group is to make comprehensive recommendations for "practical and valuable contributions to the international efforts to combat corruption", which are to be considered by G-20 leaders at the next summit in Seoul, South Korea.



In addition to setting the Working Group, G-20 called all of its members to ratify and fully implement the United Nations Convention against Corruption (UNCAC). However, the Toronto Summit Declaration voices no support for the OECD Anti-Bribery Convention, which some experts consider to be more effective than the UN's one.

REFORM MUST GO BEYOND SACKING OR ARRESTING CORRUPT OFFICIALS TO INCLUDE STRUCTURAL REFORM



Еден од најзначајните светски истражувачи на корупцијата и нејзиното влијание врз економскиот развој, професорката на Универзитетот Јеил, САД, д-р Сјузан Роуз-Ејкерман, во ексклузивно интервју за Месечникот за антикорупција (МАК), препорачува што треба да направи една влада за да се смета за антикорупциска. Според неа, во борбата против корупцијата мора да се преземат структурни реформи кои ќе одат подалеку од разрешување и апсење на корумпирани претставници. Меѓу другото, реформите би требало да се насочат кон поедноставен даночен систем, кон јасни правила за регистрација на земјиште, кон реалистични здравствени реформи кои вклучуваат приватизација, но и кон субвенции за сиромашните...

МАК: One of the areas most vulnerable to corruption is the public procurement. What should we all be aware of in order to narrow the room for corruption in this area?

Susan Rose-Ackerman: I would distinguish between two kinds of procurement: the purchase of standard items sold in world markets and one-of-a-kind projects. In the former case price quotes should be compared with prices on world markets or at least with prices in Western Europe. Public officials could be required essentially to go shopping and to justify prices paid by reference to market benchmarks. This means that where possible the state should favor generic goods and services that are also purchased by private firms rather than specially designed items where the cost of corruption can be hidden in padded contract terms. In the latter case standard provisions for competitive bidding such as the World Bank's International Competitive Bidding Standards are a start, but corruption often enters at a prior stage when the terms of the tender are being written or afterwards when firms submit change orders. Here there ought to be role for civil society monitoring both ex ante and ex post to highlight obviously questionable arrangements. Even here benchmarking can help to isolate extremely overpriced contracts compared to similar projects elsewhere.

МАК: As an outcome of the NGOs monitoring of the public procurements, a list of recommendations for improving both the implementation and regulation of public procurement are being sent to the government. How can we ensure that those recommendations, which are given by experts, are put in practice regardless of the political will or if there is no political will?

Susan Rose-Ackerman: Here, I can't give any practical advice since I do not know the political situation. However, one obvious response is to make the issue into something that ordinary voters care about by publicizing the losses from corrupt procurement.

МАК: The business people are left aside from the anticorruption reforms, given that they choose to be quiet in order to assure their next business. How can these very important stakeholders be more involved in the fight against corruption?

Susan Rose-Ackerman: You ought to have allies among those in the business community who have lost contracts because of the corruption of others or who suffer from shoddy or delayed work on public projects that has been in part caused by corruption. In historical examples in the US reform often occurred when reformers such as yourselves allied with portions of the business community and with those politicians who saw a political benefit in supporting reform. Of course, you need a critical mass of supporters who are willing to speak up--that may involve some hard work to communicate to firm managers and owners that they have allies on this issue.

МАК: How can the international community help more in assuring that governments take deeper anticorruption reforms?

Susan Rose-Ackerman: The international community has many specific reform suggestions ranging from redesign of specific programs to improved transparency and accountability to legal reform. These can help structure a reform program but only if there are people connected with the government, the judiciary and the bureaucracy who are willing to take on the reform task.

Aid and lending can be made condition on reform and that may help push officials to act, but such outside incentives won't have a lasting impact unless some key players inside the state and in the private sector actively support reforms as overall beneficial to the country.

MAK: As a former socialist country, the corruption in Macedonia - at least as a term - is a relatively new phenomenon. Why is it that in this kind of countries the problem is spreading this fast in such a short period of some 15 years?

Susan Rose-Ackerman: One reason seems to be the rapid change in regime to a democratic polity and a market-based economy without the other aspects of the regulatory in place. At least, in the other post-socialist countries that I have studied, one problem in the early transition is the lack of clear legal standards so that officials and firms could collude for private gain. The challenge going forward is to be sure that the rules that do get put in place are viewed as reasonable by the population. Otherwise they may use bribery to get around rules that are seen as too restrictive or meaningless. Furthermore, business leaders may need to take the lead in trying to instill a norm of honesty in dealings with the state with activities to seek the amendment or repeal of those laws that serve little purpose beyond the generation of bribes.

MAK: What are the most important steps a government should take in order to prove itself as an anticorruption one?

Susan Rose-Ackerman: It may need to «fry some big fish» in Rober Klitgaard's words, including some of its own. However, that would be just a way to establish credibility. It can't stop there or else in a little while more «big fish» will arise to take advantage of the opportunities. Rather, it needs to credibly reform one or two key sectors (e.g. tax and customs, land registration and transfers, health care) to demonstrate that reform is possible and credible. Reform must go beyond sacking or arresting corrupt officials to include structural reform, i.e. a simplified tax system, clear rules for property registration, realistic health care reform that includes privatization and subsidies for the poor.

MAK: By talking everyday about it - the corruption got a myth status in the society - like it is something somewhere far away and not among us. How can we bring it back down to earth?

Susan Rose-Ackerman: This is a common problem. One response is to show in a concrete set of cases both how it imposes costs on ordinary people and how it has enriched some participants. The Clean Hands investigations in Italy did just that--revealing to people the costs of corruption that they had previously accepted as normal. Of course, such revelations have to go along with practical proposals for reform, or everyone will just get more and more cynical.

MAK: Given that our center, among other activities, is training journalists in investigating and reporting corruption, as well, what do you think - how can the media find their way to play a more important role in curbing corruption in a country where the media are rated 'partly free' by the international organizations?

Susan Rose-Ackerman: The training that you are providing is a good strategy, but, in addition, citizens and the media need to push the government to be more open and both to provide more information about their activities and to open up more opportunities for people and organizations to participate in policymaking. These changes would not only be beneficial in themselves but would also give the media better information on what is happening. Furthermore, take a look at Macedonia's libel laws. Is there an anti-insult law that makes it easy to libel a public figure? If so, that can have a chilling effect and is just the reverse of what seems appropriate to me. Public figures should expect to be criticized and should have more difficulty in bringing a libel suit compared to an ordinary person. Such a public figure defense to a libel claim is the law in the US, and seems to strike the right balance.

MAK: The role of the NGOs is important - yet, it is not enough because of the weakness of the sector and the pressure from the government. How can NGOs impose better as a factor?

Susan Rose-Ackerman: NGOs need to seek allies in the business and financial community, in international aid and lending organizations and other international bodies such as GRECO, and in government--both elected officials and career bureaucrats and judges. As I suggested earlier, obvious allies are those who have been harmed by past corruption and who believe they would benefit from a more honest state.

Susan Rose-Ackerman is the Henry R. Luce Professor of Jurisprudence (Law and Political Science) with joint appointments between Yale Law School and the Yale Department of Political Science. She has taught and written widely on corruption, law and development, administrative law, law and regulatory policy, the nonprofit sector, and federalism. Her recent books are *Corruption and Government: Causes, Consequences and Reform*, which has been translated into 13 languages, and *From Elections to Democracy: Building Accountable Government in Hungary and Poland*. Professor Rose-Ackerman has been a fellow at the Center for Advanced Study in the Behavioral Sciences and at Collegium Budapest, where she co-directs a project on Honesty and Trust in Post-Socialist Societies. She has also been a visiting research scholar at the World Bank. She holds a Ph.D. in Economics from Yale University and has held Guggenheim and Fulbright Fellowships. She has a B.A. from Wellesley College.



WITH WHISTLEBLOWERS AGAINST CORRUPTION



Although incorporated in several laws, denouncing corruption doesn't function in Macedonia's practice. It is believed that possible informants have poor confidence in institutions and their commitment to really do something. Fear of whistle-blowing consequences is also present in spite of the fact that law provides protection for these informants.

The process of globalization and rapid growth of the so-called economic crime, which includes organized crime, money laundering, financial frauds, financing of terrorism and similar crimes, have forced the international community to get organized, coordinated and to propose new measures for more efficient fight against this form of crime. In addition to standard methods, citizens, public servants and institutions are being asked to cooperate. Thus, the UN Convention – as most significant document on fighting corruption – calls on states to incorporate appropriate measures in their legislation against unjust treatment of person, who 'well-intentionally' and relaying on reasonable grounds, presents facts to institutions that point to criminal act.

Under the Convention's obligations, Macedonia enacted a Witness Protection Law on 19 May, 2005. The law regulates the procedure and conditions for providing protection, assistance to witnesses and defines the protection measures. The provisions of this law are also applied to collaborators of justice and to victims appearing as witnesses, who offer information important for the disclosing of the criminal act and its perpetrator.

Legal frame that directs to reporting (suspicious transactions)

The Law on Money Laundering Prevention and other Proceeds from Crime, including financing terrorism, sets an obligation to concrete legal and natural entities to take measures and actions to prevent such crimes.

The entities include: financial institutions and their affiliate and branch offices; legal and natural entities that

perform activities of real-estate trading, audit, accounting consulting, notaries, attorney and other legal services related to: purchase and sale of movable items, real-estate, shares; trading in securities, opening and disposal of bank accounts; financial consulting; organizing games of chance; civic associations and foundations and others. Under the law, these entities are to set a procedure and inform the Directorate for Money Laundry Prevention about transactions of over EUR 15,000; the entities shall also report any transaction regardless of the amount if there is a suspicion of laundering money and financing terrorism; credibility of data about the client's identity; unusually large transactions, performed in unusual manner; and similar doubtful transactions.

The entities shall submit to the Directorate collected data, information and documents when they suspect or have grounds to suspect that acts of laundering money or financing terrorism are committed, or an attempt for such act was/is being made.

The law stipulates fines for violation of these obligations. It should be notified that the obligation for reporting suspicious transaction derives from the law and is not an act of good faith or 'bona fide'.

The Law on Preventing Corruption also incorporates provisions that promote cooperation with relevant bodies for fighting corruption and grants protection to persons that reported such activities or work on their eradication. The law says that 'a prosecution may not be initiated against a person who revealed data indicating the existence of corruption. Such person may not be called upon any responsibility. A person who has given a statement or testified in a procedure for corruption offence shall be

protected. The person is entitled to a compensation for damage, which he or member of his family may suffer due to the given statement of appearance as a witness’.

The law also grants full protection to persons working in the bodies for detection and eradication of corruption in favor of efficient execution of their authority and duty, and no pressure whatsoever may be exerted on them in their work and undertaking of concrete actions. Persons inform the State Commission for Prevention of Corruption (DKSK) about acts of exerting pressure.

What’s happening in Macedonia’s practice?

However it should be admitted that very rarely citizens or persons working on disclosure, eradication of corruption inform DSKS that they have been subjected to pressure because of revealing of or having serious doubts in corruptive practices. The main reason for such attitude should be sought in the informants’ lack of trust in the institutions, namely that any measure will be applied against the perpetrators. There is also fear that they will suffer consequences from disclosing data on corruption despite the existing legal protection.

This is also confirmed by the fact that although the Code of Ethics for Public Servants urges the employees to report to their superior or relevant bodies any unethical, unprofessional behavior, abuse of position or involvement in corruptive activity of their colleagues, no such case has been registered in practice up to date.

Experiences of other countries

When analyzing certain situations usually a comparison is being made with neighboring and EU countries. Regarding the legislation, the countries of the region and beyond have in general harmonized theirs with the European standards (although there are serious differences in the practical application) and international documents.

The situation in this sphere is particularly interesting in some of most powerful Asian economies, which on annual basis attract foreign investments of billions of dollars or invest large amounts in other regions. In order to offer a real picture of the business climate, which inter alia encompasses legal security and measures against corruption, laundering of money and financing of terrorism as most serious threats to legal business transactions, they offer special guidelines and booklets for potential investors that incorporate the measures against such illegal activities, including reporting

(informing) of citizens and public servants and their protection from possible threat or consequences.

In China, the law on criminal procedure obligates legal and physical persons to report on each suspicion of crime or criminal activity. The law on preventing money laundering imposes numerous obligations to relevant financial institutions for fighting these illegal acts, including the obligation to report on any suspicious transaction. Every director, other person holding a responsible post or an employee who will violate this obligation shall be a subject not only of fine but also of disciplinary measures and losing of the job. If the person who denounces corruption wishes to keep as confidential the names and activities of witnesses, the bodies of prosecution and the court shall respect his will and preserve these data as secret.

In Hong Kong, the Anti-Corruption Commission and other bodies of prosecution have not foreseen reporting obligation. The legislation of this country however obliges each and every person who knows or doubts that certain property is a result, was or will be used for some criminal activity, to denounce this fact to the police or the Customs and Excise Administration. In practice, such reporting is usually made via the Joint Financial Intelligence Unit – an institution jointly run by the Hong Kong Police Force and Customs & Excise Department, set up to receive reports on suspicious transactions. In addition, if certain person doubts or knows that some property is obtained by drug trafficking proceeds, he is under the law obliged to share his findings with the relevant institutions. If he fails to report on the suspicions or facts, he shall be fined and got a prison sentence of up to three months. The obligation for reporting a suspicious transaction, terrorist financing or corruption is also valid for accountants and relevant financial institutions, defined by the law.

India, in order to encourage its citizens to report corruptive practices, enacted a law of public interest that refers to the entire procedure from revealing data to protection of informants. The Central Vigilance Commission is to undertake an inquiry or investigation



into any transaction in which public servant working in any organization is suspected or alleged to have acted for an improper purpose or in a corrupt manner. There is also a law on protecting informants, enacted in 2006. The Law on Money Laundering Prevention clearly defines companies and institutions that have to report suspicious financial transactions. An agreement, concluded by these institutions, recommends setting of procedures for employees to report unethical behavior, ongoing or suspicious frauds and violations of the code of conduct or ethical management policies.

Under Malaysia's anti-corruption legislation, transactions in which persons give, promise or offer bribe, as well as those from whom any gratification has been solicited or obtained, or an attempt has been made to that effect shall be reported to the anti-corruption commission. It is interesting to note that the laws on preventing money laundering and financing terrorism obliges certain institutions to report suspicious transactions, such as banks, brokering houses, lawyers, betting, racing clubs, money borrowers, pawnbrokers' shops, real-estate agents, management companies, foreign stock market dealers etc.

Indonesia's legislation gives right and responsibility to citizens to report acts of corruption. The regulations for preventing money laundering, as in other countries, oblige financial institutions to report on suspicious transactions over certain amount, defined by the law. Violation of this obligation is a subject of fine.

In Japan the reporting obligation is limited to the business sector, which includes traders in precious stones and metals, real-estate agencies, credit card, leasing companies, agencies for renting post-office boxes and phone companies. The authorized agency may issue an administrative order, demanding from institutions to report suspicious transactions. A violation of the order draws a penalty for criminal act. Under a special law on protecting informants, employees who will report on certain illegal activities or suspicious transactions of their employers shall

not be a subject of any measures. Nevertheless, this law doesn't stipulate disciplinary or any other penalty for employees who fail to fulfill this obligation.

The anti-corruption of South Korea obliges public servants and encourages citizens to report every corruptive conduct of a public servant. Each person who will report an act of corruption should do it in a written form and notify his personal data, the purpose and reason for submitting the report. The report should specify the names of the public servants, involved in corruption, and enclose evidence for the claims. The persons reporting corruption shall suffer no consequences and may be awarded depending on the outcome of the investigation. Under the very same law, financial institutions have to inform the Financial Investigation Division about transactions over the legally set amount of (US\$ 20,000). Special measures shall be applied if the financial institution has given false information on a suspicious transaction intentionally or due to serious error. Different from other countries, the maximum fine for violation of this legal obligation is US\$ 10,000 or a two-year imprisonment.

Under the legislation of Singapore, each person who knows or based on serious grounds suspects that some property is obtained by proceeds from criminal act, and has come to these findings in the course of making a trade deal, profession, business or employment, must disclose this information to an authorized person in charge of suspicious transaction reports. The monetary power of Singapore released a Code of Corporate Governance, which should be applied by strictly defined companies. Acting in line with this Code is not obligatory, but the companies must explain every deviation from its principles in their annual reports. The Code urges companies to establish an Audit Committee (AC) that should review arrangements by which staff of the company may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The AC's objective should be to ensure that arrangements are in place for an independent investigation of such matters and for appropriate follow up action.

National Whistleblowers Center

The National Whistleblowers Center (NWC) is one of the world's most prominent organizations that protect the right of individuals to speak about wrongdoing in workplace without fear of retaliation. Established in 1988 in Washington, DC as a non-partisan, non-profit organization, NWC has achieved significant results. On its website www.whistleblowers.org, the organization publishes the names, photos of all of its collaborators, including the success that resulted from their reporting and whom if necessary NWC is representing in the courts. The website also offers an online form for confidential report on corruption. However, the NWC main activity is to represent whistleblowers, i.e. encourage them to report wrongdoings they are aware of and for which they have information.

SURVEY OF COMPANIES CONCERNING THEIR EXPERIENCE IN PUBLIC PROCUREMENT PROCEDURES

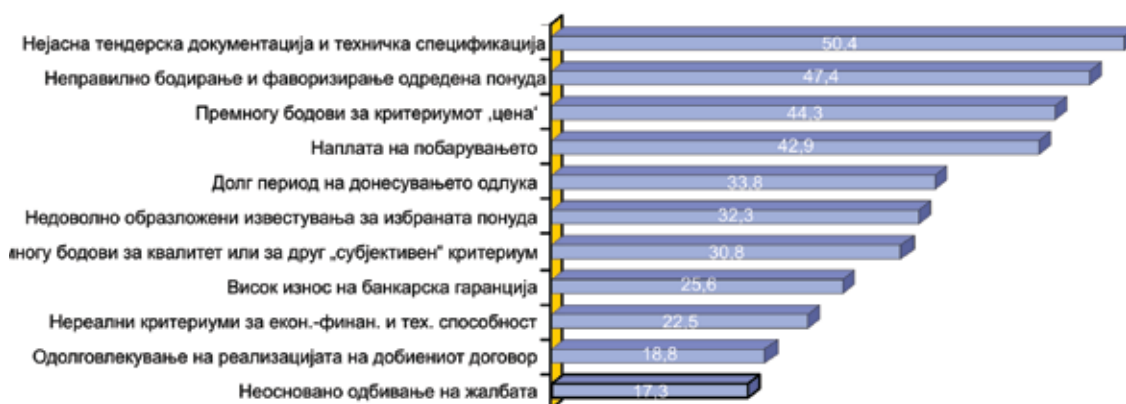
In an attempt to obtain more detailed information on the actual enforcement of the Public Procurement Law, the Center for Civil Communications in addition to its regular monitoring of selected sample of public procurement procedures, surveyed the companies that regularly participate in public procurement procedures. The survey, carried out in the course of March and April 2010, targeted 138 companies – members of the Chamber of Commerce of the Republic of Macedonia and the Association of Chambers of Commerce. The relevance of information obtained by means of the survey is even higher knowing that it included companies that regularly participate in public procurements and thereby hold great experience in the relevant field, while the survey questionnaires were filled-in by people from public procurement departments at surveyed companies. Notably, as high as 38.5% of surveyed companies participate in more than 24 public procurements annually. 25.3% participate in 13-24 procedures, 19.5% in 6-12 procedures, while 16.7% of companies participate in 5 procedures per year.

Main problems faced by companies as part of public procurement procedures

On the question concerning the main problems they face as part of public procurement procedures – half of companies or 50.4% stated that it would be the poorly developed tender documents and technical specifications. The survey section requesting the companies to list specific violations of the Law provided answers that indicate several cases where the bid specification was developed with too many details thereby favouring a particular commodity, or the conditions were set so as to favour a particular bidder, and even included cases where the documents indicated the specific trade mark, as well as those where the public procurement was announced and accompanied with deadline for opening of bids although the technical documents had not been developed yet. Such examples provide for flagrant violation of the Law, in particular the provision under Article 210, where it is stipulated that cases where the tender documents in the procedure to award the public procurement contract are contrary to the law and have led or could lead to discrimination of economic operators or restriction of market competition represent an essential violation of the provisions contained in this Law.

Second major problem companies face in public procurement procedures is the irregular point-allocation to bids and favouring particular bids, which was indicated as problem by 47.4% of interviewees. In the clarification provided for their

Кои се главните проблеми со кои се соочувате во постапките за јавни набавки?



answers companies refer to “winner of the procedure was known in advance”, “arrangements have already been made prior to the tender announcement”, or they indicate cases where point-based evaluation has been tailored to favour a particular bidder. Companies also gave examples where certain criteria were manipulated, such as for example the payment deadline, where most often it has been listed that “payment deadline is up to 365 days”, but also inappropriate evaluation of bid components.

Third most common problem faced by companies as regards public procurements are the inappropriate criteria on contract-awarding – i.e., too many points have been

allocated to the criterion “price” (as indicated by 44.3% of companies). In conjunction with the 30.8% of surveyed companies that have complained on the too many points allocated to the criterion “quality” or any other “subjective” criterion, obvious becomes the seriousness of the problem related to inappropriate selection of public procurement contract-awarding criteria. In the same directions are also remarks provided by surveyed companies as concerns their experience in public procurement procedures they have participated in and related to the non-enforcement of provisions contained in the law. Namely, they indicate inappropriate definition of the price-

quality ratio, manipulation of the criterion “quality”, which is often accompanied with subjective evaluation thereof, awarding contracts to bidders that have offered unrealistically low prices or unrealistically long payment deadlines, as well as the existence of criterion “quality” in procedures where it cannot be determined under the defined conditions for procurement participation.

Furthermore, the survey indicated the increasing problem of companies in terms of payment of receivables by state institutions for good and services delivered. This problem was indicated by high 42.9% of surveyed companies. In comparison, as part of the survey carried out last year such answers were provided by 30.2% of surveyed companies. This problem is especially serious knowing that by means of unduly settlement of payments state bodies directly impact the companies' liquidity, thereby preventing them to plan and organize their relevant business processes. High amount of unsettled receivables, unfortunately, can only enhance pressures among companies to resort to illegal actions so as to become part of “list of priority settlements” developed by contracting authorities. Moreover, it can result in “tolerance” exercised by certain companies led by the idea that it would enable them “success” in their future participation in public procurement procedures organized by the same contracting authority. Anyhow, although the law does not regulate this segment of contractual relations between the contracting authority and the economic operator, it is necessary for this issue to receive due attention.

Worrying is also the information that 33.8% of companies face the problem of delayed decision-taking on the selection of the most favourable bid. This provides addition evidence in support of the previous findings presented by the CCC and concerning the fact that the failure of the law to stipulate a deadline on decision-taking for the selection of the bid is abused by contracting authorities in practice, as they often delay the adoption of the selection decision.

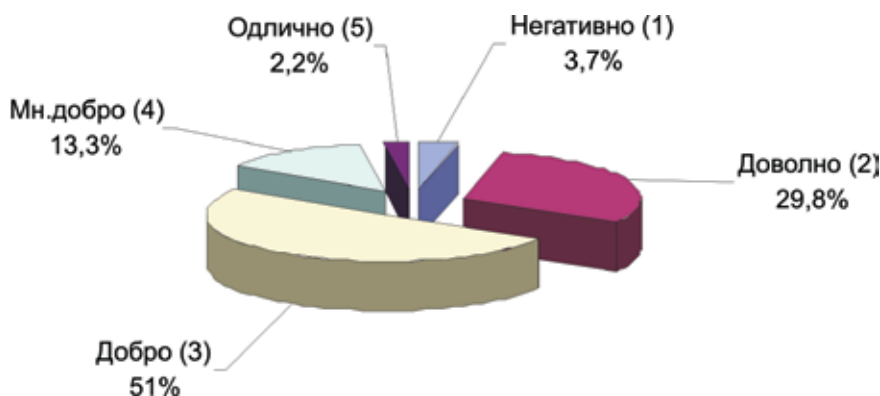
32.3% of companies complained on insufficiently rationalized notifications on the selected bid issued by the contracting authorities, although the Public Procurement Law provides an explicit obligation for contracting authorities to submit all participants in the procedure not only the notification on the bid selected as most favourable, but also the report on the manner and reasons behind their selection decision. Due to insufficient rationales on the selection of the most favourable bid in practice, economic operators are unable to obtain a clear and obvious overview on the manner in which the decision was reached and are therefore unable to prepare well-justified and reasonably grounded appeal allegations, should they decide to appeal the decision taken by the contracting authority.

25.6 % of companies indicated the high amount of bank guarantees as the main problem in the public procurement procedures. Although the Public Procurement Law stipulates that the amount of the guarantee should be set at up to 3% of the bid's value, in practice they are often witnesses to bank guarantees being set at the highest amount, i.e., 3%, which puts most economic operators in unfavourable position, in particular those that participate in several tenders. Therefore, most comments provided by economic operators concern the need to set the bank guarantee at a lower percentage.

Other problems affecting companies in the public procurement procedures concern the unrealistic and hardly achievable eligibility criteria aimed to determine the economic, financial and technical eligibility of economic operators (as indicated by 22.5% of companies), the prolonged realization of public procurement contracts awarded (as indicated by 18.8% of companies) and the unjustified rejection of appeals (as indicated by 17.3% of companies).

In their answers to the question on indicating most frequent law violations, some companies complain on purposeful annulment of first public procurement call aimed to inquire about prices and bidders, followed by a second public procurement call when a particular company is favoured.

Како го оценувате вкупниот процес на јавни набавки, според постапките на кои сте учествувале?



Average assessment of public procurements 2.8

Under the survey, companies have decreased the assessment made on the total public procurement process in the Republic of Macedonia. Contrary to the last year's assessment of 2.93, the last survey provided the average assessment of 2.80 (on the scale of 1 to 5) for the public procurement process, which undoubtedly indicates the deepening of problems affecting the public procurement system, but also the need to undertake corrective measures in the light of its improvement.

Proposals made by companies in the light of amending the Law on Public Procurement

Asked on what they would change under the applicable Public Procurement Law, in general, companies required simplification of procedures and proceedings, reduction of documents required for participation or at least facilitation of obtaining certain documents, but also specification of legal provisions where in practice the companies are frequently dissatisfied with the subjective and frequently manipulation-prone evaluation made by public procurement committees. Also, they have proposed the introduction of several deadlines that are not addressed under current legal provisions and that create problems for companies (deadline on selection decision-taking, deadline on proceeding upon the decision taken by the Appeal Commission, etc.). Following are some answers provided by companies:

- Specification and clarification of certain sections from the Law;
- Stipulation of the right to insight in the tender documents, as up to this moment contracting authorities do not provide such insight;
- Mandatory introduction of deadlines on selection decision-taking and on proceeding upon the decision taken by the Appeal Commission;
- Harmonization of criteria on the selection of the most favourable bid;
- Repealing the bank guarantee requirements;
- Abolishing charges for tender documents issuance;
- Possibility for electronic documents required for participation in public procurements, such as receipts on bankruptcy, settled taxes, company's liquidity, etc.;
- Regulation and decrease of appeal charges;
- Simplification and reduction of scope of documents required for participation in public procurements;
- Introducing supervisory body on public procurements that would properly operate;
- Establishing criteria on determining the quality;
- Simplification of public procurement procedures;
- Precise definition of ISO standards as requirement for participation in public procurements;
- Legal stipulation the contracting authorities' obligation to have secured funds for the procurement made, as precondition for the implementation of public procurements;
- Introducing precise methodology on point allocation to certain criteria (quality, price, delivery deadline, etc.);
- Setting the lowest threshold for bid prices in order to prevent selection of bids under unrealistic prices (up to 70% lower than market prices);
- Introduction of rigid criteria on behaviour of public procurement committee members.





Public procurements get secret ANNEXES

Despite the serious remarks of businessmen, experts and opposition parties, changes to the Law on Public Procurement entered into force on July 28, enabling the government under annex agreements to postpone the payment of its debts to unlimited period of time for already concluded deals with the private sector. Naturally on this occasion the usual explanation that the changes derive from 'harmonizing the national with the EU legislation' has not been heard. These purposeful changes to the law arrive with the budget rebalance, as a result of the government's realization that companies have no capacity to fill the state treasury in a pace it is planning to spend the money, hence it has chosen the 'most painless' option - to amend the law.

Scandalous, unconstitutional are some of the comments on the changes to the Law on Public Procurement, under which one quarter of the budget (about EUR 600 million) of citizens' money is being spend annually.

The changes introduce new article under which the government, in line with previous opinion of the Ministry of Finance, is to give an approval for changing the dynamic of paying the debts, deriving from agreements on public procurement – part of the budget projections that allocate funds for development purposes. The amending of already signed deal requires prior approval of the other contracting party (companies). Therefore a new article is being incorporated, saying that in case of budget rebalance that cuts the approved funds, its users may reschedule the servicing of their debts under the concluded one-year contracts by signing an annex to the contract for postponing the term for one or more years if prior approval is granted by the other contracting party.

The changes to the law also apply for the already signed deals and are to be in effect by the end of 2011. But the government has forgotten that laws may not be applied retroactively (*ex post facto*). It is clearly stipulated in the Constitution.

Slagjana Taseva, former member of the State Anti-Corruption Commission, says the changes to the law are unconstitutional and will not pass neither before the Constitutional nor other courts if the companies decide to file a motion.

- These provisions are not in line with the constitutional principles on market economy and will get no approval by the Constitutional Court as they retroactively impose changes to already signed agreements. Hence the companies are deprived of the right of handling their money – something they are entitled to under the public procurement agreement. Now somebody usurps that right, taking the liberty to manage their money. Accordingly the companies are placed in a subordinate position to the government. I believe that such disputes will not pass before any other court, Taseva says.

At the parliamentary debate on the new law, opposition parties said this was one of the most scandalous bills that would be enacted at the Macedonian Parliament and announced their intention to challenge it before the Constitutional Court.

The most affected –businessmen –remained silent. First they accused the government that instead of contractors it makes them investors of its project. Now, as businessmen say, they are trying to pull 'certain' strings to avoid being among the 'chosen ones', who will not get their money from the government this year for the job done.

Nikola Velkovski, Chairman of the Association of Civil Construction within Macedonia's Economic Chamber, says this sector is most seriously affected by the legislative novelties – companies feel powerless to fight for their rights.

- The companies' reaction is silence and bewilderment. The silence I believe is a sign of the companies' powerlessness to fight for their rights. The changes are unilaterally adopted, and nobody consulted us on the matter. We reacted, they (the changes) passed, and now each company is coping with the new situation in own way. They look for connections they hope will help them. Over 50 percent of the companies still believe it will not happen to them, Velkovski says. He expects that the companies will wake up in September when they will personally feel the legal changes. The companies are presented with an accomplished act, he says.

- Considering the poor inflow of foreign investments and the fact that the government is the only investor at the moment, it has an exclusive control and changes the conditions unilaterally. In such case, a contractor will have to take the role of an investor. About 30 other subcontractors are behind us, waiting for their money – something that depends on the timely payment of the investor, Velkovski says.

Experts hold firmly to their position, namely that the legal changes put the state in a monopoly position to blackmail companies, offering them to get their money under public procurement agreement when the budget will have sufficient funds for that purpose. Other even qualify the changes as serious government's racketeering of the companies, putting them in a no-choice situation, as very few of them will dare to reject an agreement with the government, which may lead them to disaster.

- The state says it will amend the public procurement contract if both parties give their consent. But in this case the two parties are not in an equal position. By this law the state is taking the role of powerful racketeer. All mechanisms and funds are at its disposal. It may make miserable the life of any company and bring it to bankruptcy, says Saso Ordanovski of 'Transparency Macedonia'.

Public procurement experts are bewildered by this law, saying they have never seen such example in the legislation of any country they studied about.

- The public procurement rules are clear – efficiency and effectiveness. By this measure they (the government) are hindering the realization of the business plans and keep the companies in suspense. The annexes of postponed payment will affect the companies' liquidity, forcing them

to ask for bank loans in order to be able to provide for the workers' salaries. If planned funds do not see their realization soon, it will affect on the number of employees in these companies, says Vanja Mihajlova, former member of the Anti-Corruption Commission and expert in the field.

Elaborating the move, ministers say that the economic crisis has made them to decide on such legal changes. The measures are rather solid and the business community should support them, ministers say, as they offer security to companies for their projects and money that will be paid to them.

- In this manner the companies' liquidity will be improved, as by better planning of the dynamic, realization of the projects, as well as the payment, all of these processes will be conducted in more realistic manner, Finance Minister Zoran Stavreski says. It is better than cancelling the projects, leaving the companies and their employees jobless.

The only bright moment in the entire story is that along with the 'purposeful changes' other provisions, experts urged for long time ago, have been also adopted. Namely, the new law calls for public opening of bids – part of the public procurement procedure that is being completed by an e-auction. The bill also stipulates a deadline for the contracting body to make a decision whether it will make a choice or cancel the public procurement competition – something that up-to date has not been determined by the law and has been a subject of serious complaints of companies, as they have been waiting reports on the public procurement procedures outcome for months.

However, many details failed to enter the new bill. For example 'legal terms' – when and how state institutions will pay to the companies, which under contracts, have purchased something for them and now refuse to sign the annexes for postponed payment? What criteria will be applied to decide which contracts are 'urgent' – i.e. the ones that will get their money from this year budget, and which will be awarded with 'postponed payment' – in the next or some other year?



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.