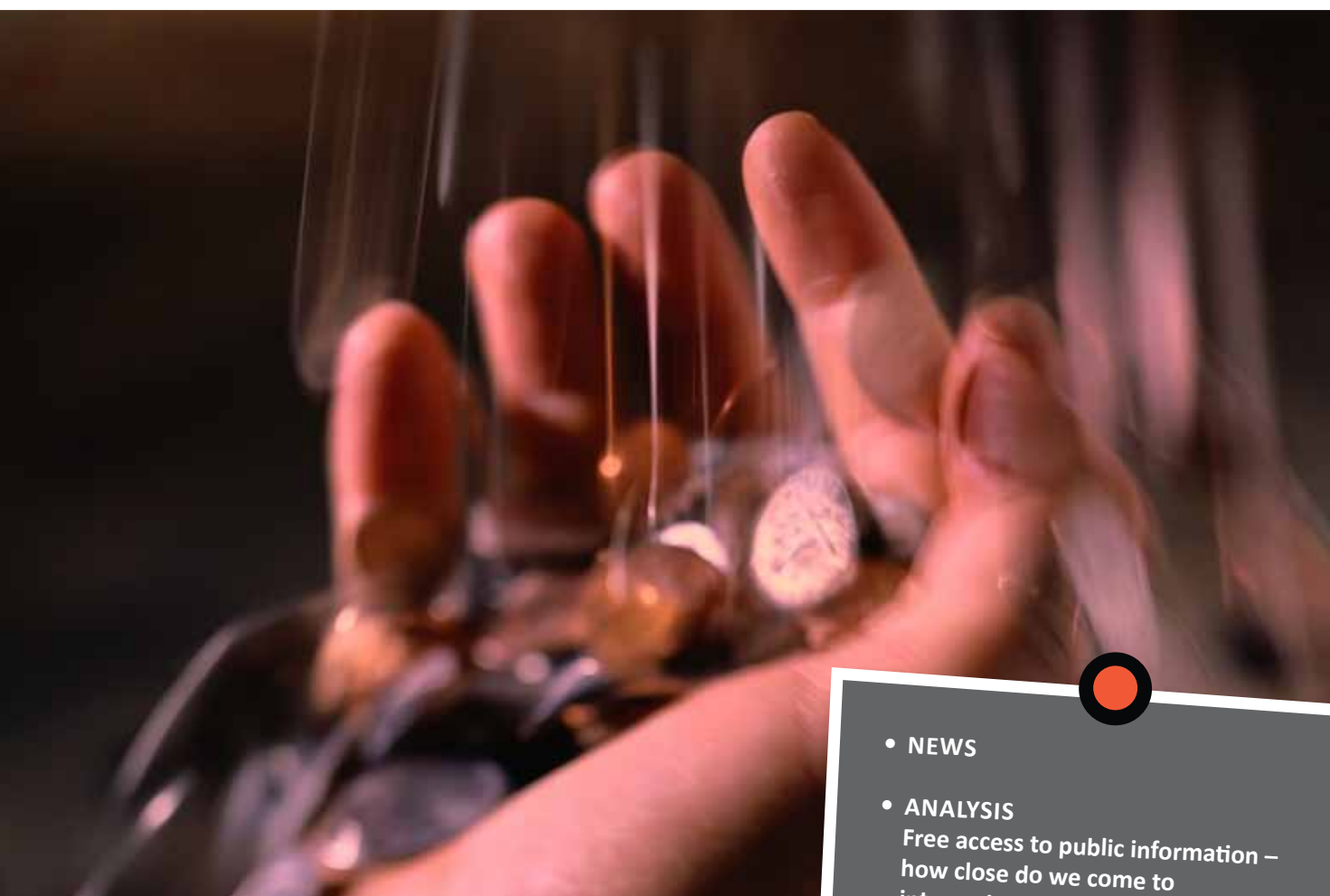


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MONTHLY ANTICORRUPTION MAGAZINE



- NEWS

- ANALYSIS

Free access to public information –
how close do we come to
international standards?

- PUBLIC PROCUREMENT

Higher share of decisions taken by
the State Commission on Public
Procurement Appeals on full
annulment of procurement
procedures

- RECOMMENDATIONS

Prevention of corruption in urbanism
and construction sector

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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ISSN 1857-7075

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Publisher:
Center for Civil Communications

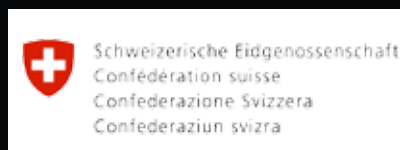
Editorial Board:
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Proof reading:
Tatjana B. Eftimoska, MA

Design, Layout and Print:
Vinsent 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

Corruption in the private sector and its combating is an increasingly debated topic worldwide, a topic that was tackled in one of the prior issues of the monthly newsletter. Faced with a corruption scandal in the United States following a revelation that bribes worth millions of dollars were paid to governments all over the world in order to get public procurement agreements, renowned car company Daimler will now open a special executive post focusing on the company's observance of laws and business ethic in its operations.

In Croatia, the country's customs head and, until recently, the ruling party's treasurer has been detained under the suspicion that he made state institutions hire a PR company without conducting a public procurement procedure.

In neighboring Serbia, an Internet news agency has published a so-called corruption pricelist, i.e. a list of public services and bribes paid for their obtaining. Data have been taken from citizens' input at the recently opened e-portal for reporting of corruption cases "Pištaljka" (Whistle). According to this pricelist, completing studies without taking exams costs EUR 16,000 of bribes, to legalise a house – EUR 20,000, to employ a doctor – up to EUR 8,000. The list shows that doctors are most corrupt, with economists claiming the economic crisis increases corruption.

On 28 September the world marked the day for free access to public information, or the so-called "International Right to Know Day". This is an occasion for analysis of how much Macedonia abides by international standards for free access to public information. The analysis also offers several specific suggestions for solutions that can be applied in our country for the purpose of more comprehensive achievement of this civil right, which is one of the most essential.

Let's refer to one more analysis – complaints in the public procurements process. The main remark resulting from this analysis is that decisions of the State Commission for Public Procurements' Complaints regarding complete annulment of proceedings is on the rise, which demonstrates increase of violations and abuses of the Law on Public Procurements by the contracting parties. In almost half of the accepted complaints by economic operators, the State Commission for Public Procurements' Complaints passed decisions for annulment of procedures, which is the case when serious violations of the Law on Public Procurements are established.

Faced with a large number of petitions from citizens in the field of urbanism and construction, the State Commission for Public Procurements' Complaints decided at the beginning of October to arrange a public debate with representatives of all parties concerned, in order to produce conclusions and recommendations for reduction of corruption in this field. These recommendations involve some recommendations that the Center for Civil Communications promoted several years ago.

Finally, we are presenting several cartoons on topic corruption, created for our monthly by two eminent domestic cartoonists, Jordan Pop Iliev and Petar Jankov.



NO. 9 year I

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MONTHLY ANTICORRUPTION MAGAZINE

CONTENT

• 4 NEWS

• 6 ANALYSIS

Free access to public information – how close do we come to international standards?

• 10 ЈАВНИ НАБАВКИ

Higher share of decisions taken by the State Commission on Public Procurement Appeals on full annulment of procurement procedures

• 13 RECOMMENDATIONS

Prevention of corruption in urbanism and construction sector

DAIMLER NAMES ANTI-CORRUPTION DIRECTOR

(AFP) – Sep 28, 2010, FRANKFURT — German auto maker Daimler, which has pleaded guilty to US bribery charges, on Tuesday announced the creation of a director's position responsible for ensuring respect for the law.

The new member of the board, who will be recruited from outside the company, will „manage all legal activities“ as well as issues of business ethics, Daimler said in a statement.

Daimler, maker of the Mercedes Benz, recalled that it has already taken several steps to combat corruption, notably making it possible for any employee to report alleged wrongdoing.

The company last April agreed to pay 185 million dollars to settle US charges following a Foreign Corrupt Practices Act (FCPA) investigation into Daimler's worldwide sales practices.



Daimler admitted to making hundreds of improper payments worth tens of millions of dollars to foreign government officials in at least 22 countries between 1998 and 2008, according to a prosecution agreement filed in a Washington court.

The kickbacks of cash and gifts of luxury armored cars, golf clubs and vacations helped secure government contracts worth millions of dollars in China, Russia, Thailand, Greece, Iraq and other countries, according to the charges.

CROATIAN HEAD OF CUSTOMS DETAINED FOR CORRUPTION

ZAGREB, Croatia (AP) - Croatia's head of customs and former treasurer of the ruling party was detained on Wednesday on suspicion of corruption, police said, as the country intensifies its fight against graft to meet EU demands.

The government promptly fired Marko Barisic hours after his detention, but it hasn't commented on the case. Police spokesman Krunoslav Borovec said Barisic was detained, but declined to give details.

Local media have reported that Barisic in 2007 ordered state firms to hire the Fimi Media company for PR and marketing jobs, ignoring public tenders. Part of the money paid to Fimi Media reportedly went to the Croatian Democratic Union ruling party as a kickback. Barisic previously denied any wrongdoing.

Barisic's lawyer, Ante Madunic, said his client is suspected by the Office for Preventing Corruption and Organized Crime of conspiring to commit crime, illegal mediation and instigating the abuse of position in connection with the affair. Madunic said police also searched Barisic's home.

There have been widespread media reports that Barisic acted on orders from former Prime Minister Ivo Sanader.



The owner of Fimi Media, Nevenka Jurak, was detained in August.

Jadranka Kosor, the new prime minister, fired Barisic as party treasurer in January.

Interior Minister Tomislav Karamarko said the case is a proof that authorities are „persistently“ persecuting corruption. Croatia is trying to prove that it is serious in fighting corruption and the country hopes to enter the EU in 2012.

CORRUPTION PRICELIST IN SERBIA

Belgrade (“Pres”) – Bribery is so widely spread that there are exact pricelists for everything – from childbirth to sick leave, buying documents, enrolment in kindergarten and employment, up to drastic lowering of sentences for murderers. Everything has its price. “Pres” conducted a research over tariffs in healthcare, judiciary, administration and other areas perceived as most corrupt.

The existence of unofficial pricelists is confirmed by Vladimir Radomirovic, editor of portal “Pištaljka” (Whistle), where citizens can report all types of corruption and abuse. He says about 350 reports of taking and giving bribes arrived in less than two months. Judiciary and healthcare, which have long been regarded as the largest corruption nests, are now competing with local self-government bodies, construction bureaus and inspections. Radomirovic tells “Pres” that not every type of corruption is related to money.

Doctors – leaders in corruption

It is symptomatic that several reports from different parts of Serbia overlap in details, as if there is a template for tariffs. Citizens claim that a job in a healthcare institution ‘costs’ between EUR 2,000-3,000, while a full-time employment for a doctor costs EUR 5,000-8,000. Childbirth costs about EUR 300. There was a case when a citizen of Albanian nationality from Presevo reported that he had to pay the police EUR 20 to release him and his family at a pedestrian crossing, where they had been held for half-an-hour, as well as the fact that police officers had always asked for ‘some gift or money’. In a town in Serbia’s south, investors had to go in those planning offices that the building bureau sent them to, with the tariff costing between EUR 1,500-5,000. The police can forget a traffic violation if you give ten euros. A faculty exam costs EUR 1,000. A bribe for an illegally built shed as a housing facility costs EUR 20,000, says Radomirovic.

According to the latest research by “Medium Gallup”, healthcare is among the three most corrupt areas, with one in three respondents saying they have a relative or friend who paid bribes in the past three months, while 16 percent have done it themselves, either personally or through a family member. Of them, 54 percent claim they bribed a doctor, and 19 percent a policeman. The average amount of the ‘award’ for the doctor was between EUR 160-200.

It is a public secret that many mothers pay EUR 300-1,000 for delivery, depending on the type of childbirth and whether the anesthesiologist needs to be bribed (EUR 150-300). The unofficial pricelist for the delivery itself is that the doctor would be given EUR 300-500,

whereas the midwife EUR 50-100. Moreover, money should be allocated for gifts.

Emergency cases are fortunate in a way, since no one is playing with them, but if you find yourselves on the waiting list, things change: you often have to pay to get an operation or receive accommodation in the hospital. Operations cost EUR 1,000-3,000, whereas a hospital bed EUR 300-700.

Corruption is widespread in judiciary, but also at faculties. There are no precise tariffs in judiciary, but each depends from the severity of the crime. Let’s say, lowering of the sentence by one month costs EUR 300-1,000, with enormous amounts taken for reduction of multi-year sentences. In agreement with judges, lawyers can find a way to drastically reduce a 40-year prison sentence for murder for several tens of thousand euros up to EUR 100,000.

Reduced demand

Affair “Index” involved a number of professors from Belgrade, Nis and Novi Sad, as lecturers at the Kragujevac-based Faculty of Law, who were charged with giving students positive grades without appearing at the exam. It has been revealed that one can get a diploma for EUR 12,000-16,000 or a new BMW 320D, whereas a positive grade for an amount between several hundreds to EUR 1,500, a unique bracelet, expensive perfume, whiskey etc.

Prior to the visa annulment, those who wanted to accelerate the procedure and avoid queues could pay for the visa, with sums reaching EUR 1,000. The price for a passport is now approximately EUR 1,000, while getting a driving license without taking the exam costs EUR 300 and more.

Economist Miroslav Zdravkovic says the level of corruption is determined by the ratio between the offer and demand, with the current crisis leading to the corruption getting cheaper, but also expanding and growing, since those who can be subject to corruption become even dirtier and agree easily to taking bribes. On the other hand, demand is shrinking because the population is getting poorer.

“One can say that the current crisis stimulates corruption, since it is known that the higher the salary, the lower the risk of corruption, and the higher the controls and penalties. And we have a situation here where salaries have been frozen for two years, which of course, opens room for corruption”, stresses Zdravkovic.

СЛОБОДНИОТ ПРИСТАП ДО ЈАВНИ ИНФОРМАЦИИ - КОЛКУ СМЕ БЛИСКУ ДО МЕЃУНАРОДНИТЕ СТАНДАРДИ?

“Unveil the secret”, “Light, information, action”, “Tell us what you have done” are just some of the titles of the events to mark 28 September – International Right to Know Day. The objective is to raise the awareness on the importance of the right for free access to public information, thus enabling insight in the work of state institutions and the way in which politicians execute the entrusted office and spend taxpayers’ money.

The day is used to promote legal assistance and support to journalists in the research over the functioning of institutions, public administration and their accountability and transparency. On this day, certain countries promote new legislation for access to information, aimed at improving and facilitating the realization of this right, limiting the exceptions when the right can be denied due to confidentiality of data, as well as reducing timeframes to obtain required information, but at the same time increasing sanctions for violation of this right. This is primarily done for the purpose of harmonizing standards determined in the Council of Europe Convention before its ratification.

Amongst other, Access Info Euro and the Canada-based Center for Rights and Democracy released on this day the new Methodology of Assessment Indicators and comparative analysis of the national law. This tool aims at defining the entire legal framework of access to information, starting from its efficiency for consistent realization of the right by owners of information.

The methodology defines the right of access, volume, application procedure, exceptions and denial of request, sanctions, protection and promotional measures as crucial elements for free access to information. The methodology contains 61 main indicators, each having a special number of allocated points. The largest number of points is



envisaged for the range of free access to information, then volume of information to which access is allowed, required procedure, exceptions and denial of request, followed by points for undertaken promotional measures and sanctions for violation of the right of free access to information.

This day is an occasion to remind ourselves on one of the most essential rights – the right of free access to information and the standards promoted worldwide over its further improvement and strengthening.

Free access to public information reflects the country’s democracy, transparency and accountable execution of operations entrusted by law by institutions and officials. The right of free access to information has a crucial role in creating the possibility for citizens to have insight in the work of the government and other state bodies, control the presence and degree of corruption in public administration, but also in other sectors, as well as highlight mismanagement. Open and proper conduct is of essential significance for the functioning of the principle of democracy and mechanisms of the legal state, leading towards prevention from corruptive practices.

International documents for protection of the right for free access to information

Freedom of the right for access to information is guaranteed by a number of international documents, including Resolution 59(1) of the UN General Assembly, adopted in 1946, according to which “freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated”; through the Universal Declaration of Human Rights, adopted on 10 December 1948; UN Convention on access to information, public participation in decision-making and access to justice in environmental matters; Council of Europe Convention for the Protection of Human Rights and Fundamental Freedom and Protocols 1, 4, 6 and 7; 1982 Council of Europe Declaration on the freedom of expression and information, up to the 2003 UN Convention against corruption, as well as other resolutions and recommendations by international organizations. The latest in the series of documents in this field is the 2009 Council of Europe Convention on Access to Official Documents. The Council of Europe and CoE’s Group of States against Corruption (GRECO) have embedded the legislation on free access to public information in the anti-corruption legislation, whereas member-states are obliged to adopt and apply it.

Council of Europe Convention on Access to Official Documents

This convention foresees strengthening of the right for access to information and increase of responsibility of information holders. According to this document, the following are defined as public bodies and institutions: government and administration at a national, regional and local level; legislative and judicial authorities for administrative affairs (but also their operations), as well as legal entities and individuals authorized to carry out public competencies and allocate public funds.

“Official documents” are all information in any form, developed, obtained or possessed by the abovementioned bodies.

The right of access to information is guaranteed to any individual with no discrimination on any grounds. Limitation of this right must be stipulated by law and in a range that is required for a democratic society, it should be proportional and for the purpose of protecting data referring to: national security,

defense, public safety, prevention, investigation and indictment for criminal activities, privacy and private interest, commercial and other economic interests etc. The convention stipulates that the applicant has no obligation to state the reasons why he/she is asking for access to information. The state is obliged to provide the applicants with the right to remain anonymous, except when the revealing of their identity is necessary due to the request’s processing.

Formalities related to the request should refer only within the framework of what is required for the request’s processing. If the body to which the request is addressed does not have the requested document or is not authorized to give it, it will refer the applicant as soon as possible to the competent body. The request for access to official documents should be processed in the shortest time possible. The convention obliges states to pass a decision, communicate and proceed upon the request as soon as possible, or within reasonable timeframe they should determine by themselves (the European average on proceeding upon requests for information amounts to 15 days, whereas applicants have the right of legal protection due to administration silence within 10 days upon expiry of this deadline). If the body denies the request partially or fully, it is obliged to provide an explanation. When the request for access to information is granted, the applicant has the right to choose whether an insight into the original or the copy of the document would be carried out, as well as receive a copy in any format at disposal.

Insight into official documents at the organ’s premises is exempted from taxes or other contributions. Reasonable costs will be collected only for a copy of an official document, not exceeding the current expenditures for reproduction and delivery of the document. If the request is partially or fully denied, the applicant has the right of insight into the procedure before a competent court or any other independent and impartial body established by law.

According to the Convention, the state is obliged to notify the public on the right of access to official documents and refer them on how to realize this right; train civil servants on their rights and obligations regarding the implementation of this right; provide the requested information, efficiently manage documents so that they are easily accessed, along with establishment of clear rules for protection and damaging of documents. A significant novelty in

the Convention is the establishment of a group of specialists for access to official documents by the Council of Europe, who will meet at least once a year for the purpose of controlling and monitoring the Convention's implementation, as well as notification on undertaken legal measures and their practical application by states. The report by the group of specialists, their findings, recommendations and opinions will be made public.

Besides this international document, which recognizes the right of free access to information as one of the fundamental democratic rights, countries should take into account the Lisbon Treaty on rights in the EU area when adopting legislation in this field, as well as case law of the European Court of Human Rights in this regard.

Which standards need to be contained in the legislation regarding free access to information?

The most essential standards and rules that need to be part of laws for free access to information are:

- Individuals seeking information should not explain the purpose or the reason for the request;
- The request can be submitted in any format, including electronic, whereas the information seekers can determine the format they prefer;
- Exceptions for access to information should be strictly limited and in the function of preventing possible damages that can occur due to their publishing, as well as act as balance between the importance of information availability and protection of their confidentiality. Exceptions are allowed for the purpose of protecting: national security, international relations, public health and safety, prevention, investigation and indictment, privacy, legitimate commercial and other economic interests, economic management, administration of justice and litigation privileges, conservation of human environment and other operations of public administration. Furthermore, it is allowed that the request is denied if information, which has already

been made public in electronic form or published, is sought. These exceptions should apply only when there is a risk that their revelation could harm public interest;

- Personal data that will not harm the private life of individuals and which refer to organization, functioning and activity of competent state bodies should be available;

- Requesting data and documents is exempted from costs for their copying. Other costs that should be paid are limited only to costs for reproduction or copying in other formats;

- State bodies need to inform the public on the right of free access to information, whereas civil servants should help applicants in the realization of their rights, as well as address them if the request is not clear and precise;

- Proactive publication of information is limited and should contain only general information related to the functioning of public institutions, their structure, services, budget and spending of budget funds, as well as certain economic and statistical information that need to be regularly updated;

- Applicants should be granted the right of legal protection by an independent administrative body (ex. commission for free access to information), for which no costs should be collected. The grounds for legal protection beyond the body which the applicant has turned to should be broadly set. Legal protection encompasses a legal remedy due to administration silence and other violations of the law, such as overstepping of deadlines for providing data, collection of costs exceeding the determined amount etc. Clear and precise procedures need to be established with regards to the deadlines for submitting the request, providing a response or denying the request, for the purpose of efficient realization of the right to an appeal;

- Establishment of an independent body for free access to information. States have an obligation to create an independent body having a mandate and competence to carry out insight into classified documents and control in premises of competent state bodies. The decisions of this independent body must be implemented. This body should be authorized to order the provision of appropriate conditions, including declassification of information, entrust information holders with conducting training of competent individuals and strengthen the information management. Members of the competent body for free access to information should be designated in a way that would protect



them from political influence and protection from release prior to the mandate's expiry, as well as enable them with financial independence for the purpose of more efficient execution of the function. They should be appointed by the Parliament, to which they should be accountable;

- Sanctions and protection. The law should stipulate sanctions for violation of the right for access to information, including unfounded limitation in providing the requested information. A system should be established for promotion of the problem with the public administration that systematically refuses to reveal information or does not execute obligations in line with regulations in this field. The independent body and staff in this body should enjoy legal immunity for actions undertaken "in good will". Legal protection should also be foreseen in a case when information (regardless of the limitation for access) are given "in good will", although this is a violation of the law. These are the so-called associates of justice or informers;

- Promotional measures. The Commission for free access to information or another appropriate body should bear full responsibility in promoting the right of access to information. This includes development of a guidebook for free access to information and public awareness raising activities, starting from the schools. The commission should establish a system that guarantees minimum standards regarding the management of data and documents of institutions. Public institutions should be required to create and update lists or register of documents, as well as give them for insight to applicants. Beside the obligation for continual training of individuals competent for management of the access to information, it is necessary to create an obligation for institutions to provide annual reports on undertaken measures and activities related to the implementation of the obligations for revealing of information. This includes statistical data on submitted requests and the outcome of such requests.

Situation in Macedonia

The Republic of Macedonia passed the Law for Free Access to Information in 2006, at the request of the Council of Europe, as part of the anti-corruption legislation, but also as one of the criteria for EU accession. Although the law meets majority of international standards in general, especially with regards to organization, establishment of an independent body and legal protection, analysis

conducted by the NGO sector has shown that its implementation has deficiencies in the preparedness and professionalism of institutions and information holders.

Institutions are not swift and efficient in promoting the right for free access to information and fail to submit the information within a decent timeframe. The most common situation is to provide the applicants with the information on the final day (30th). Quite often, a reason for denial of the request for information is the legal grounds to declare the information as confidential. Moreover, in cases when the body to which the request has been submitted does not possess the information, it chooses to notify the applicant that it does not possess the information instead of forwarding the request to the information holder, which is a violation of the law. Although such action should be penalized, this measure is not applied in practice.

Portion of responsibility for the inefficient implementation of the law also lies in the insufficient transparency of the Commission for protection of the right for access to information and larger promotion of this right. For the purpose of increasing the efficiency of this right, the deadline for provision of information should be reduced (according to the law, it can be extended up to 40 days), thus fully harmonizing the law with international standards and ones established through the Council of Europe Convention. Furthermore, the range of information holders should be increased by involving the legislative and judicial authorities.



HIGHER SHARE OF DECISIONS TAKEN BY THE STATE COMMISSION ON PUBLIC PROCUREMENT APPEALS ON FULL ANNULMENT OF PROCUREMENT PROCEDURES

In addition to the monitoring findings, for each quarter, the report on public procurement issued by the Center for Civil Communications, also includes an analysis of other public procurement-related issues. Thus, the present quarterly report also incorporates the findings from the analysis of the appeal process led in front of the State Commission on Public Procurement Appeals.

The analysis of decisions taken by SCPPA in the first half of 2010 showed that 29.4% of appeals lodged by companies were approved and the SCPPA adopted decisions to revoke 69 selection decisions taken by contracting authorities and has fully annulled 68 public procurement procedures. Thus, in the first six months of 2010 the procedures annulled accounted for 49.6% of the approved appeals, whereas in 2009 they accounted for 39.8%. Considering the fact that decisions to revoke the procedure are taken in cases when the contracting authorities failed to provide proper bid-evaluation, and decisions to annul the procedure are taken in cases when other serious violations to the PPL have been determined, it seems that the contracting authorities are ignorant of the relevant regulations or purposefully engage in illegal operations.

Вид на одлуките	Број на одлуките	Во %
Прекин/запирање на жалбената постапка	69	13,7
Одбиени жалби	206	41,0
Отфрлени жалби	70	13,9
Уважени жалби	148 ²	29,4
Отфрлени барања за продолжување на постапката	4	0,8
Одбиени барања за продолжување на постапката	6	1,2
Вкупно	503	100

The present analysis targeted SCPPA decisions to terminate/discontinue the appeal procedure, SCPPA decision to reject or approve appeals lodged by the economic operators, SCPPA decisions to deny the appeals, as well as the decisions by means of which SCPPA denied or rejected the applications to continue the procedure.

A total of 2,453 contracts were signed in the monitoring period. This figure does not imply that the same number of public procurement procedures were initiated/published, but serves the purpose of providing comparative background for the number of appeal procedures initiated compared to the number of contracts signed in the said period.

Decisions to terminate/discontinue the appeal procedure

Pursuant to provisions of Article 220, paragraph 1, line 1 from the PPL, SCPPA took decisions to terminate the appeal procedure on the grounds of appeals withdrawn by the plaintiff.

Although PPL does not explicitly provide that the appeal procedure can be terminated on other grounds as well, in reality SCPPA took decisions by means of which it terminated the appeal procedure in cases when upon the appeal's receipt the contracting authority, pursuant to the provisions of Article 221 from the PPL, has found that the appeal in question is partly or fully grounded.

Paragraph 1 of the said Article stipulates that in such cases the contracting authorities could:

- > waive the existing decision;
- > take a new decision;
- > annul the procedure;
- > correct the action;
- > take the action that was omitted; and
- > implement a new procedure.

Regardless of the possibilities given to the contracting authorities in compliance with paragraph 1 of Article 221 from the PPL, in fact such cases indicate that the contracting authorities have corrected their "mistakes" by means of taking a new decision and have forwarded it to the SCPPA, pursuant to paragraph 3 of the same Article. Decisions to terminate or discontinue the appeal procedure were taken in 13.7% of the total number of appeals lodged in the first half of this year.

Decisions to deny appeals

As regards these decisions, a thorough analysis was made aimed to identify the mistakes made by the economic operators in regard to lodging appeals, and on the grounds of which SCPPA did not endeavour material or essence reconsideration of appeal allegations, but denied the appeals on the grounds of formal shortcomings, as stipulated under the PPL. The analysis also aimed to identify the most common mistakes made by the economic operators when lodging appeals, i.e., to indicate the fact that economic operators are entitled to legal remedies (appeals) under all stages of public procurement procedures, starting from the announcement of the call for bids.

The incompleteness of appeals is the main reason for their denial. This means that although the economic operator lodged an appeal, it failed to



comply with the obligation set forth in Article 212, paragraph 2 from the PPL, which stipulates that the economic operators must present evidence that they have settled the fee for the initiation of appeal procedure whose amount, depending on the value of the public procurement contract in question, is stipulated under Article 229 from the PPL. Moreover, certain appeals that were denied on the grounds of incompleteness, were actually not developed in compliance with the PPL, which means that they did not contain data stipulated and were not amended even after the expiration of the deadline granted by SCPPA. The fact that a number of appeals were denied on the grounds of incompleteness that implied unsettled fee for initiation of the appeal procedure cannot be considered "ignorance" on behalf of economic operators concerned, but rather implies their change of mind and decision not to initiate the appeal procedure. On the contrary, denial of appeals on the grounds of being inadmissible indicates the fact that some economic operators are not well informed on their rights related to legal remedies (appeals) available under all procedure stages and concerning the reasons set forth in Article 216 from the PPL. Ignorance of these rights, as stipulated in paragraph 4 of the said Article, provides grounds to deny the appeal's submission as being inadmissible. In the first six months of this year, a total of 70 appeals were denied, which account for 13.9%.

Decisions to reject appeals

Decisions to reject appeals account for 41% of decisions taken by the SCPPA. Most common reason for appeal rejection is that the second-instance commission believed that the contracting authority in question has performed the bid-evaluation in an appropriate manner and that the appeal allegations

that dispute the bid-selection decision or procedure annulment decision are not reasonably grounded. In that, appeals often concern shortcomings made by the contracting authority in the bid-evaluation process, or that the selected bid was not the most favourable or was deemed unacceptable.

Decisions to approve appeals

As was the case with denied appeals, this type of decisions was also subjected to in-depth analysis in order to inform the contracting authorities on the most common reasons for approval of appeals lodged by economic operators, but also because of the high share of approved appeals. When approving the appeals, SCPPA takes decisions by means of which:

- > it revokes the decision taken by the contracting authority and orders re-evaluation of bids; and
- > it annuls the decision for selection of the most favourable bid and thereby annuls the procurement procedure.

The provisions (Article 220, paragraph 1, line 4) from the PPL that govern the types of decision that SCPPA can take in regard to appeals lodged do not stipulate in detail the cases when decisions on the selection of the most favourable bid can be revoked. The “revoking” of public procurement procedures is not clearly stipulated under the Law on General Administrative Procedure, which in addition to the PPL also governs the procedures led by SCPPA. Due to lack of specific explanation in the relevant legislation, there is no clear distinction between cases when the decisions can be revoked and cases when they can be annulled. Nevertheless, the analysis of decisions to approve appeals lodged by economic operators shows that SCPPA takes decisions to revoke the selection decision of the contracting authorities in cases when no significant violations to the PPL have been determined. In other words, decisions to revoke the decision of the contracting authorities are taken when the repeated bid-evaluation on behalf of the contracting authority can result in elimination of the shortcomings made in the course of first decision-taking by the contracting authority.

Reasons for revoking decisions taken by the contracting authorities are various, and include the following:

- > the contracting authority has performed improper bid-evaluation;
- > the contracting authority has made a procedure violation by excluding the entity that lodged the

appeal from the bid-evaluation on unjustified grounds;

- > the selected bidder has inappropriately filled the bid application;

- > the selected bidder has not submitted evidence on the technical and professional eligibility as requested in the tender documents;

- > the bid selected as the most favourable was deemed unacceptable, by means of which the contracting authority has violated the PPL; or

- > the contracting authority has erroneously applied the material law, i.e., the PPL.

Decisions taken and procedures implemented by the contracting authorities are annulled in cases when it has been determined that the contracting authority in question violated the PPL, i.e., when it has been determined that the shortcomings identified in the procedure could not be eliminated in the second round of bid-evaluation. Decisions to annul procurement procedure and/or selection decisions are taken in cases when major violations of the rules governing the public procurement procedure implementation have been determined, when the actual situation was improperly and incompletely determined, and when the relevant material law was not applied properly. In general, these cases represent major violations of the law, as stipulated under Article 210 from the PPL. It is interesting to note that, although Article 231 from the PPL stipulates that the procedures led by SCPC will also apply the provisions from the Law on General Administrative Procedure, SCPPA has never taken a decision to annul the decision appealed and thereby resolve the matter itself. This is particularly true in cases when the actual situation was improperly determined, for example the contracting authority performed an improper bid-evaluation.

Decisions to reject/deny applications to continue the procedure

As for applications to continue the procedure, which implies signing the public procurement contract despite the fact that the procurement procedure in question has been appealed, SCPPA has denied or rejected them.



PREVENTION OF CORRUPTION IN URBANISM AND CONSTRUCTION SECTOR

Taking into consideration that one in three petitions obtained refer to the field of urbanism and construction, the State Commission for Prevention of Corruption held a public debate on this topic, for the purpose of bringing forward the current state and provide an incentive to the continual combat against corruption in the area of urbanism and construction. Debate “Corruption in Proceedings of State Bodies and Local Self-Government Units in the Field of Urbanism and Construction”, held in Skopje on 8 October, included 21 representatives of central authorities, local self-government units and bodies, NGOs and media.

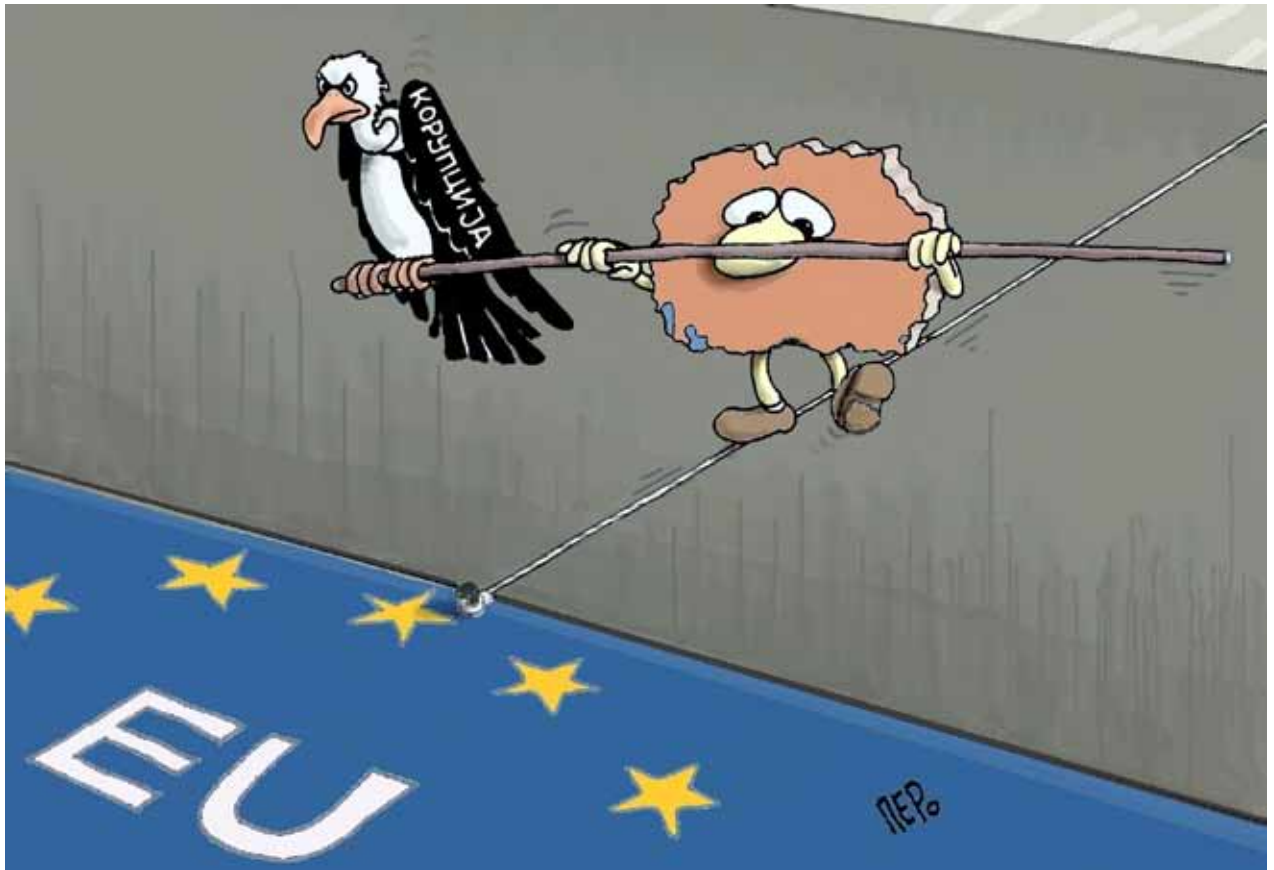
The State Commission for Prevention of Corruption says petitions obtained in this field point to series of irregularities and abuses when implementing procedures regulated in the Law on Building, Law on Spatial and Urban Planning and the Law on General Administration Procedure.

On the basis of the positions presented by debate participants, the State Commission for Prevention of Corruption drew the following conclusions and positions:

1. Through their active involvement, public debate participants provided contribution for real perception of the reasons, problems and challenges present in the field of urbanism and construction, at the same time giving proposals on the ways to overcome the problem with corruption in this area;
2. The necessity for continual monitoring of the situation in this field exists, as well as permanent fight against abuse and illegal actions through an efficient system of control and supervision in the observance of regulations by all competent bodies, including local and national authorities;
3. The State Commission for Prevention of Corruption points out that transfer of competencies to the local self-government between the State Inspectorate for Urbanism and Construction and the local inspection in municipalities leaves room for manipulation and corruption, as well as transfer of responsibilities from one to the other side, thus reducing the possibility for sanctioning and preventing cases of illegality, abuse and self-interest in most cases. This hotspot should be eliminated, whereas competent bodies should be required to do so;
4. Frequent changes of regulations and urban plans, as well as announcement for their change leaves room and possibility for emergence of corruption;
5. In order to reduce the extent of corruption in this field, it is necessary to locate and seek for personal accountability from all stakeholders in the process – from the idea up to the construction of facilities.
6. Building inspections should act from the very beginning of the construction process, i.e. when complete documentation has not been secured, thus preventing illegal construction, which multiplies problems in the latter stages.







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.