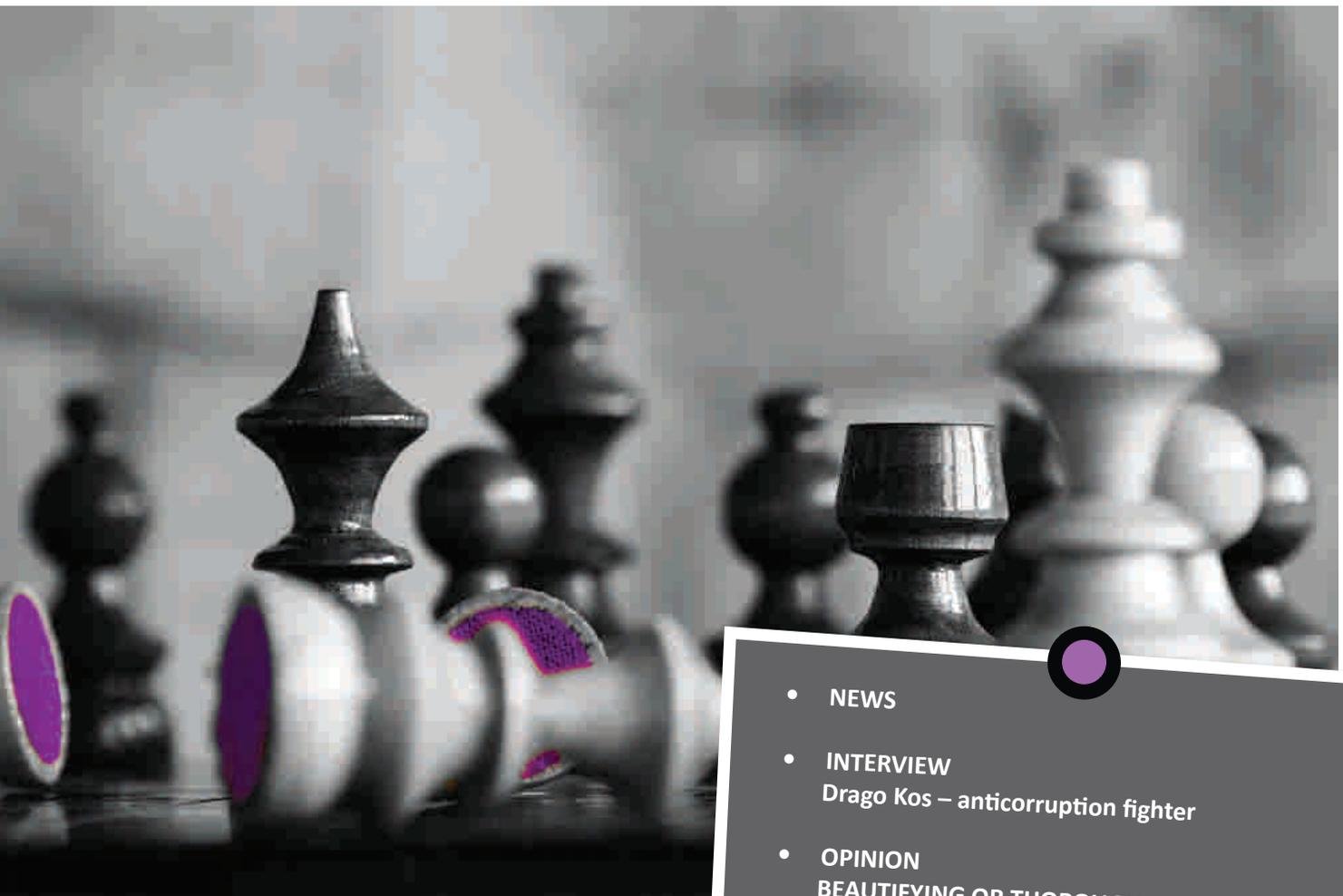


No. 4 year I February 2010

MAK

MONTHLY ANTICORRUPTION MAGAZINE



- NEWS
- INTERVIEW
Drago Kos – anticorruption fighter
- OPINION
BEAUTIFYING OR THOROUGH CHANGES
IN THE ANTI-CORRUPTION LAW
- ANALYSIS
LIBERALIZATION OF PUBLIC PURCHASE
PROCESS IN CEFTA REGION: BENEFITS AND RISKS
- FREEDOM OF MEDIA
SILENCED JOURNALISM

About the monthly edition



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

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

In the course of our everyday work, we and the experts we cooperate with arrive at numerous information regarding corruption and anticorruption practices in our country, as well as the countries in the region and the world. By publishing this monthly newsletter on anticorruption and “good governance” we want to share this information with the wider public, primarily with the representatives of the public administration, whom we consider the most responsible for the fight against corruption and establishing and respecting the principles of “good governance”.

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

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

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

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

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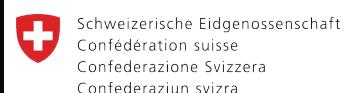
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IN THIS ISSUE

Professionalization of the members of the Anti-Corruption Commission and practical implementation of the anti-corruption practices in Macedonia are some of the suggestions given by Drago Kos, chairman of the Commission for Prevention of Corruption of the Republic of Slovenia and President of the Group of States against Corruption (GREKO) in the exclusive interview for the anti-corruption monthly newsletter. "You should try and find a way even when there is no political will for combating corruption," says Kos, who saved the Slovenian Commission from the attempt of politicians to revoke this body.

Having in mind the few tentative announcements for amendments to the Law on Prevention of Corruption, in this issue we are offering you a number of opinions of relevant factors in this area on the possible directions for these amendments; that is whether the existing law should be only beautified or thoroughly amended.

Starting from May 1, 2010, a public purchase market in the CEFTA region is to be opened and all the members, including Macedonia, will be able to take an equitable part in mutual public purchase processes. We analyze the possible benefits, but also the imminent problems from the expected strengthening of the competition, transparency and efficiency of public purchase process in the CEFTA region.

The enormous role of media in the fight against corruption and organized crime is again in the spotlight throughout the world. The motivation this time was the World Press Freedom Day. The so-called "Brisbane Declaration," adopted as a final document from the UNESCO conference on freedom of information, reaffirms that the "right to information is critical for... enhancing transparency and accountability, and represents a powerful tool to fight corruption."

Dear readers, this month together with the monthly newsletter we are submitting a short questionnaire. By filling out this questionnaire you can help us to improve the quality and the contents of the newsletter, and together we can contribute for reducing the corruption in Macedonia. Please return the completed questionnaire in the self-addressed envelope either by mail or let your courier department deal with the delivery. We shall be highly grateful.



No. 4 year I

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CONTENT

- NEWS
- INTERVIEW
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- OPINION
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- ANALYSIS
- LIBERALIZATION OF PUBLIC
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BENEFITS AND RISKS
- FREEDOM OF MEDIA
SILENCED JOURNALISM

DEGERT ON FIGHT AGAINST CORRUPTION

BELGRADE, April 23 (B92) - Head of the EU Delegation to Serbia Vincent Degert says that the fight against corruption is of key importance for Serbia on its way to the EU membership.

"Fighting corruption is of key importance for Serbia on its way to the EU, and we are carefully monitoring every progress the state makes in this respect," said Degert during his meeting with Agency Director Zorana Marković.

According to a press release of the EU Delegation, Degert also said that setting up of the Agency was a step forward and expressed full support of the EU to the Agency's work. He added that the Agency now needs funds and institutional support in order to fulfill its mandate.

Degert has invited Markovic to partake in the regular monthly meeting of EU ambassadors in Serbia, in order to present her view of the functioning of the Agency.

"I look forward to cooperating with the EU Delegation and Union member-states," stated Markovic.



MEDVEDEV SIGNS DECREE TO FIGHT AGAINST CORRUPTION IN 2010-2011



MOSCOW, April 14 (Itar - Tass) – Russian President Dmitry Medvedev has signed a decree for national strategy and national plan in 2010-2011 as part of a drive against corruption, the Kremlin press service said Wednesday.

According to the decree, Kremlin chief of staff Sergei Naryshkin should once a year submit a report to the Russian President on the progress made in implementing the National Anti-Corruption Plan 2010-2011 and to process the proposals for promoting the anti-corruption activities.

The National Anti-Corruption Strategy is a general programme document, with an aim to eradicate the roots of corruption in the society. The national plan will specify the detailed activities as well as the plans of the federal, regional and municipal executive bodies. The national plan as a tool for implementing the strategy, includes a list of activities, names of the implementers, types, manners and deadlines for implementation as well as criteria for measuring the expected results.

HUNGARIAN POLITICIAN JAILED FOR 8.5 YEARS IN CORRUPTION CASE



BUDAPEST, April 6 (The Wall Street Journal) – Janos Zuschlag, who has definitely become one of the best-known Hungarian politicians, was sentenced to eight and a half years in prison for embezzling state subsidies, the court said last week. The manifold corruption case, for the first time ever in Hungary, is related to a ruling party—in this case, the Socialists.

The ruling is unprecedentedly strict for a corruption case, fueling questions about the practices of the justice system. In Hungary, criminals sentenced for manslaughter receive such strict a sentence, experts told Hungarian online news agency Index.

Mr. Zuschlag, a former parliamentarian of socialist party MSZP, and more than a dozen associates were accused of creating fictitious non-governmental organizations in the mid-90s to embezzle subsidies totaling 75 million forints (\$356,800). The amount was used to finance political campaigns and party events, and part of it was spent privately.

Although he paid back most of the money after his arrest, the court slapped a heavy sentence on the deputy, ruling that the money had been embezzled in a systematic way by “a criminal organization.” Defending its harsh ruling, the court also said Mr. Zuschlag didn’t cooperate, only confirmed what he couldn’t refute any longer, and remained silent concerning the most controversial issues, such as his police contacts.

The timing of the Zuschlag ruling raises more questions—the three-year case ended just before the April 11 general elections. The court may have wanted to send a message to politicians and the public about corruption, but it may not resonate as strongly as intended—people know anyway that there are far greater white-collar crimes in Hungary that go unpunished.

The prime example that pops into most Hungarians’ mind is the case of former Postabank Chief Executive Gabor Princz, which was about negligence of handling the bank’s assets between 1995 and 1997. The consolidation

of Postabank cost taxpayers not 75 million, but 220 billion forints, boosting the country’s budget deficit by several percentage points at the time. In the 2008 ruling, Princz was given a fine of a mere 3.6 million forints and no time in prison.

However, the Zuschlag ruling may be one of the first steps toward more transparency in Hungary. Experts claim there’s no way for a Hungarian to live a life without ever becoming involved in some form of corruption.

In a country where seeking help from a friend or relative closer to authorities, where sinking a cash-filled envelope into the doctor’s pocket in hope of a more favorable treatment, is a day-to-day practice, change is needed in people’s minds.

The sooner that starts, the better. And Fidesz, the party which is slated to win April’s parliamentary elections, has a chance to prove it can cut down on corruption and negate the saying that “the fish stinks from the head down.”



YOU SHOULD TRY AND FIND A WAY EVEN WHEN THERE IS NO POLITICAL WILL FOR COMBATING CORRUPTION

Drago Kos, the head of the Slovenian Commission for the Prevention of Corruption and chairman of the Group of States against Corruption – GRECO, in an exclusive interview for the Anti-Corruption Newsletter recommends professionalization and increased authorizations of the members of the Macedonian Commission as well as practical implementation of the anti-corruption regulations in the country. According to him, the civil society sector must take part in the election of leadership of anti-corruption bodies, to be able to assess their work and to have influence on the contents and the implementation of anti-corruption measures. The anti-corruption commissions should find a way even when there is no political will in the country for fighting against corruption, says Kos.

Anti-Corruption Newsletter: *Your term of office as chairman of the Anti-Corruption Commission expires this year. Do you consider yourself to be a winner in the fight against corruption? What did you succeed to change in the past six years?*

Drago Kos: There can be no winners in the fight against corruption, but everyone, even me, can do something about combating corruption. In these six years, our commission first had to survive because some of the Slovenian politicians were doing everything within their power to ban its work and this is our greatest success. Few other achievements followed, such as the fact that no one in Slovenia ever talked about the conflict of interest six years ago; for the people the fight against corruption included only repressive measures, but now they understand the concept of prevention, ethics and integrity. Furthermore, they realized that the holders of power should have more and not less restrictions...

Anti-Corruption Newsletter: *Having in mind that your Commission is considered to be one of the most successful not only in the region, but also wider, which in your opinion are the key preconditions for efficient fight against corruption in a country?*

Drago Kos: The bodies such as our Commission should unconditionally insist on respect of legality, objectivity



and impartiality. It is not important which person is subject of our interest, but why it became a subject of interest. There should not be a single obstacle in front of which the Commission would retreat and not a single price that the commission would not pay to complete its work. Of course the precondition of all this is to have true political will in place for fighting against corruption, but you should also try to find a way even when this will does not exist (anymore)...

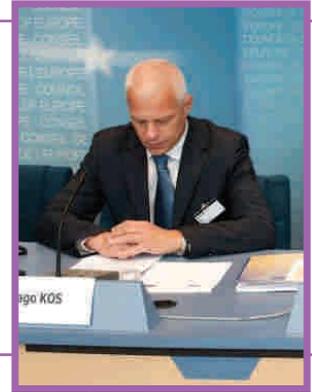
Anti-Corruption Newsletter: *Which areas are the most affected by corruption in the region?*

Drago Kos: The greatest problem of our region is that some holders of power still feel they are beyond the law and behave like that, while the competent institutions either fail to respond or are not allowed to respond. Then, there are problems such as giving the key positions in the state apparatus on the basis of political affiliation, nepotism... The greatest material damage in the countries in the region is inflicted by the cases of corruption in which there is a relation between the public finances and private interests – for instance in the public procurement. Unfortunately, there are countries where the corruption is a tool without which people and their families cannot survive, but luckily, this is changing.

Anti-Corruption Newsletter: *Considering the omnipresent political influence on the work of anti-corruption bodies, in your opinion what should be done on the path towards real and not only formal independence?*

Drago Kos: The formal independence is still a precondition for everything; it is an independence prescribed by law, which defines the status and position of the bodies. Based on this, the independence is practically achieved by installing proper election procedures (in which politics does not have the decisive role), with limited and apolitical reasons for their replacement, as well as financial independence (the decision making on the budget and how this money will be spent to be within the institution).

Drago Kos, 49, is a Chairman of the Commission for the Prevention of Corruption, Republic of Slovenia since 2004 and is the first elected president of this Commission. He is a Chairman of the Group of States against Corruption – GRECO since 2002 and used to be Vice-Chairman of the Group from 1999 to 2002. He represents Slovenia in the OECD Working Group on Bribery in the International Business Transactions and the Stability Pact Anti-Corruption Initiative. Since obtaining the Law degree at the University of Ljubljana, Slovenia in 1983 he has assumed different responsible positions in the Ministry of Interior and the Government of the Republic of Slovenia in the fight against corruption and organized crime.



Anti-Corruption Newsletter: *In your opinion, which are the risks of the existence of anti-corruption commission on one hand and the inefficient fight against the corruption on the other?*

Drago Kos: Anti-corruption commissions, at least in our region, are preventive bodies. As a result of the long tradition, unfortunately as a proof for the efficiency of state bodies in the fight against corruption, the people still consider only the results of the work of repressive bodies (police, prosecutor's office and courts). So we come to a paradox – as a result of their inefficiency, even the most functional preventive bodies are considered to be inefficient. Certainly, this does not mean that attention should not be paid to all segments in the fight against corruption, because otherwise problems will emerge that could not be solved by the preventive bodies alone or the repressive bodies alone.

Anti-Corruption Newsletter: *Did your full-time engagement affect the successful work of your commission? The members and the chairman of the Macedonian Commission are only working part-time and additional constraint is the fact that most of them are working in the state institutions.*

Drago Kos: Without having a full-time engagement I cannot imagine that anyone can efficiently work in a commission like ours or the Macedonian one. Simply, this must be a 'full-time job'. As far as I know, the Commission in Macedonia is the only one in which the members are not its staff.

Anti-Corruption Newsletter: *Which would be your advice for the Macedonian colleagues – what should be done in a country in which on one hand all relevant institutions say there is a problem of corruption, while on the other hand the country has weak anti-corruption institutions?*

Drago Kos: First of all, their positions should be professional and their term of office should be prolonged (in one year the chairman of the Commission is unable to do anything serious or long-term). In addition, the number of people reporting their property should be reduced (80.000 reports cannot be seriously analyzed) and to give new authorizations in order to be able to sanction each violation of the prescribed code of conduct for the holders of power in the state.

Anti-Corruption Newsletter: *Are there any attempts for more serious cooperation between the Macedonian and Slovenian commission?*

Drago Kos: Except several visits from both parts, where we introduced ourselves, no.

Anti-Corruption Newsletter: *What can and what should be done for increased participation of citizens and civil society sector in the fight against corruption so that it does not depend only on the will of authorities?*

Drago Kos: Citizens and civil sector must become formal and legal part of every segment of the fight against corruption – both in the preparation of regulations or anti-corruption strategies and in their implementation. This definitely means that the civic sector, for instance, must participate in the election of leadership of the preventive anti-corruption bodies, to be able to assess their work and to have real opportunity to affect the contents of anti-corruption measures and the types of their realization.

Anti-Corruption Newsletter: *You are the chairman of the Group of States against Corruption – GRECO. To what extent, does Macedonia meet GRECO's recommendations?*

Drago Kos: Macedonia fulfils the GRECO's recommendations to a high extent. This means that it understands these recommendations as an attempt of GRECO to assist the country in establishing the best possible conditions for fight against corruption. These conditions, particularly in the area of legislation and institutions, exist and now it is Macedonia's turn to start implementing them and to yield practical results. The amendment of regulations and creation of new institutions is not GRECO's objective per se, but the purpose is to really change the conditions in which the people live. This means that in the next stage, GRECO will conduct an evaluation to see whether the fulfilled recommendations have brought to practical breakthrough for the better.



BEAUTIFYING OR THOROUGH CHANGES IN THE ANTI-CORRUPTION LAW

When something squeaks in the implementation of widely accepted state policies in practices, the one to blame is the law. The not so good assessments in the European Commission's report on the anti-corruption practices in Macedonia are again attributed to the law on prevention of corruption. It was outdated, they say. Even though they know that the bad laws are the least problem in Macedonia; the weak results are consequence of their bad implementation and this is why the international organizations recommend amendments to this law. They probably believe that something will change. Or they just make efforts to follow the world trends at least on paper.



One of the major amendments recommended by the internationals to the Law on Prevention of Corruption, which has already been amended and supplemented for so many times, is the professionalization of the office "member of the State Commission for Prevention of Corruption". They believe that by doing this the Commission's members will have more time to dedicate themselves to the fight against this metastasized malady, which ravages the social tissue and the state capital i.e. the people's money, money of the taxpayers. However, does the problem lie in the time that members of anti-corruption commission have to fight against the corruption? Or the professionalization of their offices in the Commission, when they will be paid by the government and budget money will make them even more dependent on the ruling parties? Even now, when the members of the Commission have other jobs and their bread does not depend on the honorarium they receive for their part in combating the corruption, the Anti-Corruption commission is strongly criticized to be under the influence of the government.

The Minister of Justice Mihajlo Manevski admits that there will be amendments to this law. They were foreseen in the governmental programme and should incorporate the recommendations of the European Commission on the anti-corruptive practices and on the State Commission for Prevention of Corruption.

One of the recommendations of the European Commission is to examine the performance of the function by the members of the Anti-Corruption Commission. For now, they receive honorarium. We should explore the options for changing their status, Manevski says.

The amendments in this respect were also foreseen in the National Programme for Adopting the EU's Acqui (NPAA). The chairman of the Anti-corruption Commission Ilmi Selmani explains that one of the tasks in the programme is to change the status of the Commission's members in order to be hired professionally, with full-time job and the previous job to be on stand-by during their term of office.

The idea for professionalization of this office is not new. It has been already discussed and was proposed as one of the amendments to the law. However, the prevailing position at that time was that the existing status of the Commission's members is a guarantee for their independence. The members of the Commission say they are not against this change if this is considered as harmonization of our legislation with the EU's one.

However, I believe that one should take into consideration the specifics of our system, society and state. This is a subtle matter and this is about a specialized body and based on my experience as a member of the Commission I still believe that the specifics of the

fight against corruption requires solution regarding the engagement of its members that resembles the existing one. I believe that by having members of the Commission that will be dependent only on the engagement in this body, we shall not provide increased independence of their work. On contrary, it will make them more dependant because their job will depend on how they work. I think that we shall accept this approach in the Commission, but I am afraid that the future experience will justify our doubts and then will continue to go into circles with new amendments and supplements to the law, Selami says.

The chairperson of the first composition of the Anti-Corruption Commission, Professor Slagjana Taseva says it is normal ten years after the adoption of the first anti-corruption law, to be reexamined and to be adjusted to the changes accepted by the international community in this sphere.

The idea was to establish a special independent body for prevention and examination of certain situations regarding corruption. But, I have not heard of any analysis on what we have gained with this law, with this commission and with such status of their members. I personally believe we have gained a lot. In other states, such as Serbia and Slovenia, the commissions were part of the government. I doubt we are ready for professionalization of the Commission's members. We know that the state administration in Macedonia is under strong influence and if the Commission becomes a part of this administration, it will share the same destiny. I am afraid that we shall make a mistake and we shall destroy what we have built unless we have clear idea of what we want with the Commission, says Taseva.

The new chairman of the Commission believes that current law should "go into history" and completely new law to be adopted.

The law should be even named differently. In some states, these are laws on integrity or good governance and one term covers everything – corruption, conflict of interests, good governance and everything else. The provisions of the current law are outdated. For instance, the current definition of corruption does not provide us with a ground to monitor the corruption in the private sector, which is a trend in the developed democracies. This is foreseen in the UN Convention ratified back in 2007. However, it seems we are used to do everything the hardest way, not utilizing the options to make good laws. Furthermore, there are number of provisions in the existing law that should be cleared, harmonized and coordinated with the other laws. But we as a Commission have had bitter experience with the legal amendments. Several times when the laws on prevention of corruption and conflict of interests were amended, we worked really hard taking into consideration the experience and the insights. But the politics always shortened and distorted our draft laws. The most recent example is the Law on prevention of conflict of interests, when the Commission concluded that it might have been better if new changes



were not initiated, because we received even worse text than the previous one – in terms of its quality and applicability, Selmani says.

Sharing the position of the Commission, he says that unless new law is not to be adopted, then the law should be thoroughly changed and not only beautified; the law should be cleared and few provisions should be updated, particularly in the section on corruption in policy.

It would be good to delete the tricky punctuation and wording such as "unless". The ambiguities in the law should be avoided, because they allow certain actions, which put even us as a Commission in uncomfortable position. This also weakens the institutional capacity of the Commission and blunts our tools, says Selami.

The amendments to the law on prevention of corruption are imminent. But for now this is only initiative and part of the program of the government and the Ministry of Justice. The working group, which will deal with the amendments is not been established yet. However, Minister Manevski indicated the main points, including the one that allowed the government at the last elections to use public money during the election period. Making advantage of only one word in the law, they legally did what is strictly prohibited by law – to start investment projects with budget money.

We will intervene in the section referring to election campaigns. Upon the OSCE's recommendations also the provisions of the Electoral Code will be amended, he says. Manevski also announced changes in the provisions on the reporting the property.

For now, only the Anti-Corruption Commission and the Public Revenue Office have an opportunity to start initiatives on probing the property status of the holders of public office, if there is reasonable doubt that they have acquired the property illegally. The amendments would expand the circle of subject able to start such initiatives. This is extremely important in case when the property status has changed after the termination of public office, Manevski explains.

LIBERALIZATION OF PUBLIC PURCHASE PROCESS IN CEFTA REGION: BENEFITS AND RISKS

The opportunity given to the companies from CEFTA region to participate equally in the public procurement process is expected to stimulate competitiveness, increase the offer, quality and transparency of procedures and reduce corruption in this vulnerable area. However, one should not be too optimistic. There is doubt that some countries will find ways to favor the domestic companies.

The Central European Free Trade Agreement (CEFTA) was signed in December 2006 and entered into force in November 2007. Besides its main objectives to liberalize trade of goods and services and create single zone of economic cooperation, it also covers the area of public purchases. Starting from May 1, 2010, conditions are created for the companies from the signatory parties to have equal and non-discriminatory treatment within the public procurement in any of these countries, thus increasing the competitiveness in the public purchase process in the entire region.

Namely, the signatory parties, Macedonia, Albania, Bosnia and Herzegovina, Croatia, Serbia, Moldova, Montenegro, and the United Nations Interim Administration Mission in Kosovo (UNMIK) on behalf of Kosovo pursuant to the Agreement, Article 34, Annex 1, on the day of enforcement of the Agreement will be obliged "to ensure that procurement takes place in a transparent and reasonable manner, treats all suppliers of the other Parties equally, and is based on the principle of open and effective competition. In addition, the Parties agreed that by 1 May 2010 to ensure that the goods, services and suppliers of the other Parties are granted a treatment no less favorable than that accorded to domestic goods, services and suppliers."



Current public procurement legislation in CEFTA region from the aspect of equal treatment of the suppliers

The public procurement laws in CEFTA parties are almost fully based on the EU Directives, whose key principles are the equal treatment and non-discrimination of the subjects participating in the public procurement process and liberalization in providing services and goods, irrespective of whether these are domestic or foreign suppliers. The legislation in these countries, although not specifying the ban of discrimination between domestic and foreign suppliers, contains provisions under which the suppliers are not allowed in the tender documentation to define technical specifications, such as specific production, trade mark, specific origin of the goods with an aim of favoring or eliminating certain bidders or certain goods.

The laws on public procurement in all these countries offer solutions, according to which if the estimated value of the procurement is above certain amount (specified in the law or by-laws), the advertisement should be published in the official gazette of the country, the website of the public procurement agency, but also in the official journal of the EU, thus providing opportunity to all interested bidders outside the country to participate in the tender process equally.

In some countries, (Serbia) the Law on public procurement contains specific provisions banning the territorial discrimination and rejecting the offer merely because the tenderer's seat is located in a state with whom Serbia has not concluded an agreement on equal treatment of domestic and foreign bidders", which in fact indicates equal treatment of domestic and foreign bidders. In addition, "the offer cannot be rejected if the tenderers having submitted tenders offering services from the country with which Serbia has not concluded an agreement on equal treatment of domestic and foreign tenderers, if an equal treatment has been established by the ministry in charge of the economic relations with foreign countries" thus conditioning the equal treatment with the existence of special agreement between the competent bodies.

Pursuant to the Croatian Public Procurement Act, "in the implementation of public procurement procedures in relations to all economic operators, contracting authorities shall be subject to the respect of the principle of freedom of movement of goods, the principle of freedom of establishment and the principle of freedom to provide services and to the principles deriving therefrom, such as the principle of competition, the principle of efficiency, the principle of equal treatment, the principle of nondiscrimination, the principle of mutual recognition, the principle of proportionality and the principle of transparency. These principles shall apply to all procedures and all values of procurement." It is also clearly defined that "an economic operator who is entitled to provide the relevant service under the law of the state in which it is established, shall not be excluded from the public procurement procedure solely on the grounds that under the regulations of the Republic of Croatia it would be required to be either a natural or a legal person."

So, the laws in these countries directly and clearly refer to non-discrimination of foreign companies as bidders in the tender.

The public procurement laws in the other countries emphasize that "the contracting authority may not restrict competition among tenderers, particularly potential tenderers, through the unjustified use of restricted procedure or measures favouring individual tenderers." (Montenegro)

In some countries (Albania) there are clear rules according to which "the contracting authorities shall

establish no criterion, requirement or procedure with respect to the qualification of economic operators that discriminates against or among suppliers or contractors or against categories", without further specifying whether this disqualification refers to the foreign or domestic bidders – but it can apply equally to all bidders.

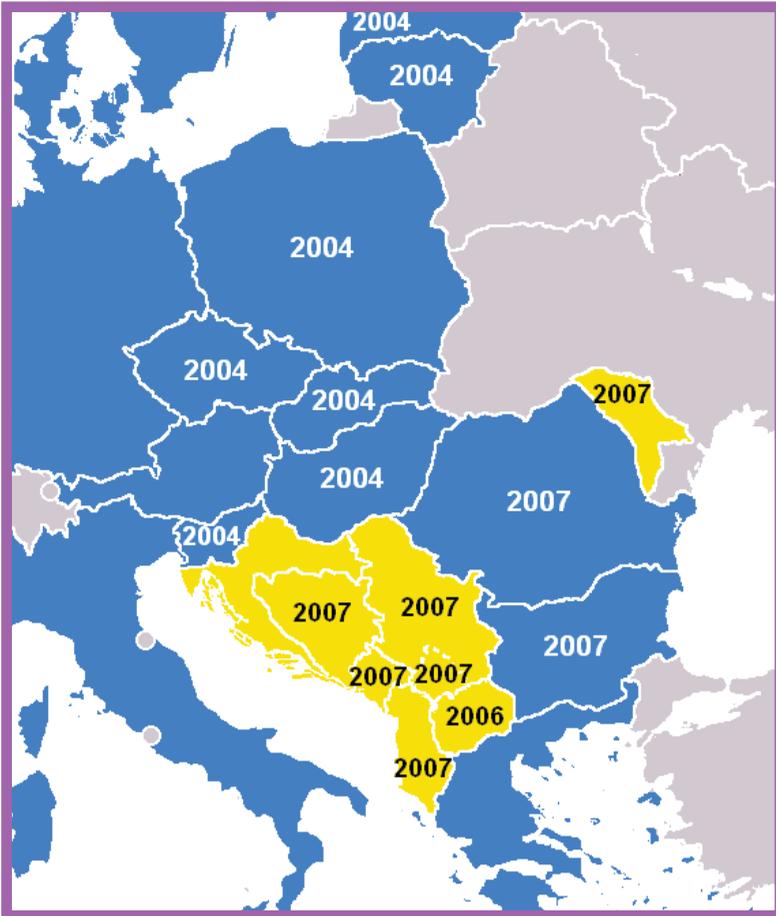
The law on public procurement of Kosovo contains similar provisions. "A contracting authority shall not conduct any aspect of a procurement activity in a manner that reduces or eliminates competition among economic operators. A contracting authority shall not conduct any stage or element of a procurement activity in a manner that discriminates against or in favour of one or more economic operators. A contracting authority shall not create or impose, and shall take all necessary measures to prevent the creation or imposition of, circumstances or requirements resulting in territorial, physical, material, personal or organizational discrimination among economic operators."

The law on public procurement of the Republic of Macedonia, which is fully based on the EU Directives, stipulates that "any economic operator shall have the right to participate in the contract award procedure, individually or as a member in a group of economic operators", without specifying whether it is a domestic or foreign tenderer. If the estimated value of the public contract, excluding VAT, exceeds EUR 500,000 for supplies and services, and EUR 2,000,000 for works, the contract notice shall also be published in the Official Journal of the European Union or in a respective business publication or technical or specialized magazine available to the broad international expert and other public, thus providing opportunity to the foreign tenderers to take part in the tender.

The public procurement law of Bosnia and Herzegovina stipulates that "tender is open for international competition for international contracts" and "estimated value may be expressed in foreign currency", while "tender documents may also be prepared in the English language."

According to the law on public procurement of Montenegro "the supplier may prepare tender documents and individual parts of them in a foreign language that is commonly used in international trade". Similar provisions are contained in the laws of other countries, according to which if the value of the offer exceeds certain amount, the advertisements for public procurements are published in the language commonly used in the international trade, while the value of the offer may be in foreign currency, which also indicates equal treatment of bidders, regardless of the country of their origin. Similar provision is contained in the Serbian law.

According to Kosovo legislation, all tender dossiers, notices, invitations and other documents published or provided to economic operators shall be published in



the Albanian and the Serbian languages which shall be equally authentic, but may be also prepared in English language.

Despite these provisions stipulating equal treatment of domestic and foreign bidders, certain public procurement laws (Serbia) contain preferential rules giving a privileged position to domestic companies in comparison to the foreign ones, referring to the rule of reciprocity. So, if the bidder offers goods originating from a state with which Serbia has not concluded an agreement allowing to the domestic bidders equal treatment on the market of that state, the offer may be rejected if the share of goods originating from that state exceeds 50% of the total value of goods in the offer. It should be expected for these restrictions to be lifted for the CEFTA parties.

There are cases, when despite the obligation that “A procuring entity is obliged to provide equal treatment of all tenderers in all stages of the procurement procedure and may not impose conditions that would constitute territorial, subject or personal discrimination among tenderers, or discrimination arising out of the classification of the business performed by the tenderers” certain restrictions still apply such as “determination of the origin of goods or services is permitted in the cases and for the purposes stipulated by special regulations”,

which somehow may be associated with concealed favoring of domestic tenderers.

However, this restriction should not apply to the CEFTA parties, because the agreement that entered into force at the beginning of May should remove this barrier and making all legal entities equally eligible to take part in the tenders on this market. In addition, in some of these country there is hidden favoring of domestic companies under the veil of providing reserved right of the tenderers in accordance with the protected program for hiring disabled persons or the agreements referring to projects and designs within the subsidized programs for building apartments, when special procedure may be opened for selection of best offer.

Although the regulation should provide equal treatment of domestic and foreign tenderers from formally-legal aspect under the CEFTA Agreement, which may initiate amendments and supplements to the legislation in some countries, in practice it is not excluded to have more sophisticated favoring of domestic companies by prescribing or evaluating certain criteria that can be met

only by the domestic tenderers and will put the foreign ones in unequal position. This can be justified with the economic crisis and the difficult financial situation of certain companies, which can be alleviated by winning the tender. This will also earn some points in the domestic public, because this is money of the local taxpayers so it is expected for the money to go to the domestic companies participating in the tender. These cases are familiar in the world, when with an aim of stimulating the employment in certain regions and helping certain industrial branches which are in unfavorable financial situation, the domestic companies are openly favored and in some instances this is also stipulated by law.

What can be expected?

To what extent will the liberalization of public procurement in CEFTA region contribute for increased transparency, competition and efficiency as well as narrowing the possibilities for corruption in this vulnerable sphere and getting a better offer for less money? What can be expected at least in the initial period of the implementation of this agreement?

From the aspect of harmonizing the public procurement legislation, major changes should not be expected because the laws in the signatory parties, with some exceptions, do not contain discriminatory provisions that

would put the domestic companies in privileged position in comparison with the foreign ones. This is result of the harmonization of the public procurement laws with the EU Directives, which clearly and unambiguously refer to equal treatment and non-discrimination of participants in public procurement procedures.

Furthermore, one should expect more companies from the region to participate in the tender, which may positively affect the competition. It should be noted that the interest of foreign companies, particularly the well-known brands for participation in the tenders, will mostly depend on the legal security, efficiency of administration, independence of judiciary, level of corruption in the country, but also the past experience of companies already present in these countries.

The free movement of goods and services should increase the offer of goods and services in the tenders, to offer better quality of goods and services as a result of increased and fair competition among the companies in the signatory parties. It is expected that by lifting the barriers and restrictions in this area from May 1, due to the increased number of companies in the tenders, the quality will be improved (of works, goods and services) and the prices will be lowered.

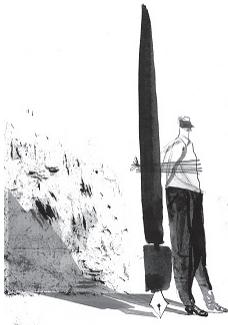
Liberalization of public purchases is expected to reduce the corruption in this area, which as a result of increased

competition will require increased transparency. But taking into consideration the high level of corruption in all countries signatories of CEFTA and the large corruption affairs in some of them related to public supplies, involving high governmental officials, one should not be too optimistic that by removing the restrictions in this area would significantly reduce the corruption.

Although the liberalization in public procurement was welcomed in the CEFTA region, some countries are already reserved and doubt that article 34 from Annex 1 of this Agreement will not be respected in all countries. These doubts emerged from the bad experience with inappropriate and incomplete implementation of CEFTA Agreement, regarding the free trade of goods and services.

Even now it is pointed out that certain countries (that failed to observe the agreement) will favor the domestic companies or goods of domestic origin, by defining special technical characteristics that can be met only by the domestic companies or products with an aim of providing support to the economic operators for alleviating the economic crisis.





SILENCED JOURNALISM

Instead of the language of objectivity, the journalists seem to prefer the language of politics and business. Since 1992, as many as 808 journalists lost their life in a bid to reveal a criminal or corruption case. Macedonian journalists are apolitical, pressured by the politics and business interest, they only cover the current affairs.

With five minutes of “thundering silence” the journalists throughout the world have observed May 3 – World Press Freedom Day. They complained to increasingly stronger pressures from the government, which does not stand critics, to the strong business influences to which it is easy to succumb, to complete devaluation of the profession and fear of criminal prosecution and lawsuits, which as sword of Damocles hangs over every written word. The self-criticism is not lacking, so some of the journalists called for unity and courage in this sphere as the journalists should fight for their own right to freedom of information, as no one will give us the freedom on silver platter. The government always tends to put the media under its rule, but the dilemma is how the journalists should find their own place under the sun and enhance their role as watchdogs of the transparent and accountable work of institutions and mercilessly reveal the corruption, where ever they feel its “scent”.

Apart from the few dark TV screens and silenced radio stations, what changed this year in comparison with last year? At first glance, there are no changes, but the facts show the opposite. The things have moved, but downwards. Every year Macedonia goes down on the Freedom House list and now it is occupying the 94 place labeled as country with partially free media. From the countries in the region, we are followed only by Bosnia and Herzegovina and Kosovo. Serbia is on the 78th place, Montenegro, 80th while Croatia on 85th.

Freedom of the Press 2010: A Global Survey of Media Independence, a study conducted by Freedom House, an independent watchdog organization, registered declines in press freedoms in nearly all corners of the world. This is the eighth consecutive year such declines were recorded by Freedom House, where a only one out of six persons is considered to be living in a country that can claim a free press.

If it is for consolation, according to Freedom House’s Freedom of the Press index, after two decades of progress, press freedom is now in decline in almost every part of the world, which is only a confirmation that all red lights should be tuned on to alarm and remind the media of their role as watchdog, vigil monitor of all important developments in the society. But, they should go even one step further, to explore and enhance the control role over the work of institution and to pressure for more transparent work and eliminate the different types of corruption, to which not a single country is immune.

Who and why restricts the freedom of press is among few of the widespread dilemmas in the public. Too bad that these crucial questions on the existence of journalistic profession are considered only several times a year. But even this is sufficient to come to a conclusion that the situation within the lines of journalism is more than worrying. Not only it is stalling, but even more obvious is the deterioration in a sphere that should have been a driving force of the democratic processes in the country.

Divided between “we” and “they”, unable to say “no” to the absolutism of the bosses, under strong influence of the politics and business interests, economically fragile, which makes them subject to manipulation, it is increasingly hard for the journalists to fight for their place as fourth estate in the society. The public trust in media is lower and lower, the institutions shut their doors, offering only well-dozed information from “unanimous, but well-informed sources”, the courts are flooded with lawsuits on libel and defamation against journalists and the judges easily pronounce sentences, making them fearful and fragile while performing their everyday assignments.

“The government should understand that the critical views of the journalists are not attacks, but an attempt to make the politicians work better”, was one of the cries of the journalists this year, sending a clear message to be left alone in doing their business.

That things in journalism are not rosy is proved by the fact that transparency, accountability and fight against corruption are again on UNESCO's agenda. This institution sent a clear message that the freedom to information may contribute for openness and accountability of the government and may help preventing and fighting against corruption as well as enhance the good governance.

However, the freedom of information guaranteed by law is not sufficient to achieve these goals. The existence of democratic media, independent of the ruling government and powerful business interests, able to offer information with which they will provide transparent work of the government seems a science fiction even globally. The developed countries, faced with the absolute erosion of journalism as profession and declined trust in the media, increasingly point out that instead of the language of objectivity, we frequently hear the language of business.

Even more symptomatic is that journalists opt to be silent, instead of exploring the corruptive deals of the government. Not accidentally, the media are constantly reminded of not forgetting that their vital role is exactly that – to seek transparent, accountable work of institutions, to point their finger towards and to reveal all types of corruption. By doing this they will exercise their role in the society.

The corruption is consuming the democracy, threatening the free functioning of the society, discrediting the fundamental pillars of democracy – including the media themselves. Only investigative reporting may save the media from the abyss in which they are stuck and where for decade they only see a ray of light.

However, the investigative reporting is not only expensive, but also a risky business, confirmed by the journalistic accounts around the world. The journalists in the “risky countries” know that the investigative reporting may be fatal. And the group of risky countries in which journalism is a “lethal” profession, unfortunately grows bigger with every new day.

Journalists prosecuted for revealing a corruption scandal in the government, pursuit against media writing about the detrimental deals of the government, beaten journalists for trying to scratch underneath the unscrupulous work of the institutions, are only few of the headlines of the global media.

As many as 36 journalists were killed since the start of this year and according to the numbers of the New York-based non-governmental organization, Committee to Protect Journalists, 808 journalists lost their lives since 1992 by trying to reveal a criminal or corruption case. “Executors” are rarely brought to justice, so the secretary general of the United Nations Ban Ki Mun appealed that “all Governments have a duty to protect those who work in the media. This protection must include investigating and prosecuting those who commit crimes against journalists.”

The threats and the fear have made the Macedonian journalists an apolitical crowd, whose work pressed by the

politics and business interests is played down to covering the daily events, which have been already heard and seen via the electronic media. The corruption scandals are only opened by the parties, state institutions or anti-corruption bodies, but they are short-timed without final verdict. No matter how cruel it may sound, but the media stories resemble fresh milk, which expires after three days. A corruption scandal is covered by another one, giving us a feeling that the institutions work at full speed, but the summary of results shows that many of the cases are gone with the wind!

Not accidentally the monitoring of five printed media in the country (Dnevnik, Utrinski vesnik, Vecer, Vreme and Fakti) conducted by the Center for Civic Communications showed that the reporting on corruption scandals is a hot potato for the media and is played down to short news and information released by the official institutions. Most of the articles, according to the survey, are based on arbitrary information, without quoting any source, without sufficient evidence and buttressing facts. This is why the media not only fail to perform their duty in the society, but also create wrong and distorted image in the public on the state of corruption. The readers expect fair, objective and accurate information, the same as the journalists expect from their sources. This is why it is unallowable to have self-censorship in journalism, to take sides, to publicize someone's interests, to sow intolerance and discrimination, to be silent before the truth and to conceal corruption, while the most painful topic is still the so-called “envelope journalism”, when the journalist is bribed to do a story. With these weaknesses, the media are not only unable to contribute towards resolving the problems in the state, but often they become part of the problem.

But the media have another particularly important battle to win, as individuals and as a profession – to fight against corruption within their own lines, against self-censorship and against placing themselves in position to abide someone's political and business interests, which cannot and should not be above the interests of common people and the need to be objectively informed in a timely manner.

The journalists must learn to say NO to all types of pressure and bribery, and for this to be possible, the profession must be elevated to the necessary level – with good salaries and dignified working conditions for journalists which will have more investigative assignments instead of only digesting the information released by the institutions, whose reliability is often hard to prove.



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.