
PROJECT "THE TRUTH FOR MACEDONIA" IN FUNCTION OF DETECTION AND PROSECUTION OF CRIME OF ABUSE OF POWER IN THE REPUBLIC OF MACEDONIA

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Abstract: Constitution guarantees to citizens of the Republic of Macedonia freedom of association to exercise and protect their political, economic, social, cultural and other rights.

Social Democratic Union of Macedonia (SDUM), with the help of honest people employed in the Security and Intelligence Administration (SCA) came to the recordings of eavesdropping on telephone communications of 20 thousand citizens, which the SCA has performed without an order of a competent court.

The party leadership, by the materials, came to the awareness that there are grounds for suspicion of committing a number of crimes of power abuse, (offenses against freedoms and rights of citizens, against property, against elections and voting, against official duty, etc.) committed by senior government officials: Prime Minister, ministers, heads of state agencies and departments and heads of other state bodies.

In accordance with the constitutional commitment to its membership and to the majority of citizens of the Republic of Macedonia, SDUM has created Project "Truth for Macedonia". Through it, SDUM made public much of the materials.

About the case the bodies of the European Union became interested. The European Commission sent in the Republic an expert team, headed by German Reinhard Priebe, who examine the situation and compile a report.

By the initiative of Union it was established the Public Prosecution for Criminal Offenses Related and which Arise from the Content of the Illegal Interception of Communications, called as Special Public Prosecution.

The Prosecution conducted investigations and brought accusations because of the existence of grounds for suspicion of committing several crimes, against the Prime Minister, ministers and other senior government officials and employees.

The prosecution's work was supported by the majority of Macedonian citizens, directly or organized in Non government organizations and political parties of the opposition.

The system of social control in the fight against crime abuse of power by the governmental officials is fully activated. Results are expected.

Keywords: crime, official, civil servant, prosecution, social control.

ПРОЕКТОТ „ВИСТИНАТА ЗА МАКЕДОНИЈА“ ВО ФУНКЦИЈА НА ОТКРИВАЊЕТО И ГОНЕЊЕТО НА КРИМИНАЛОТ НА ЗЛОУПОТРЕБА НА ВЛАСТА ВО РЕПУБЛИКА МАКЕДОНИЈА

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Абстракт: Уставот на Република Македонија им гарантира на граѓаните на Републиката слобода на здружување заради остварување и заштита на нивните политички, економски, социјални, културни и други права.

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Социјалдемократскиот сојуз на Македонија (СДСМ), со помош на чесни луѓе вработени во Управата за безбедност и контраразузнавање (УБК) дојде до снимените материјали од прислушувањето на телефонските комуникации на 20 илјади граѓани кое УБК го вршела без одлука на надлежен суд.

Од материјалите раководството на партијата дошло до сознание дека постојат основи на сомнение за сторени бројни кривични дела на злоупотребана власта (дела против слободите и правата на граѓаните, против сопственоста, против изборите и гласањето, против службената должност и други) извршени од страна на високи државни функционери: премиер, министри, директори на државни агенции и дирекции и раководители на други државни органи.

Согласно со уставната обврска кон своето членство, а и кон мнозинството граѓани на Република Македонија, СДСМ го креираше проектот „Вистината за Македонија“. Преку него на јавноста и беа објавени голем број разговори на високите државни функционери.

За случајот се заинтересираа и органите на Европската унија. Од страна на Европската комисија во Републиката беше испратен, со екипа стручњаци, Германецот Рајнхард Прибе кој ја испита состојбата и состави извештај.

Потоа, на иницијатива на Унијата, со закон беше формирано Јавното обвинителство за гонење на кривичните дела поврзани и кои произлегуваат од содржината на незаконското следење на комуникациите, наречено Специјално јавно обвинителство.

Обвинителството спроведе истраги и поднесе обвиненија поради постоење на основи на сомнение за сторени повеќе кривични дела, против претседателот на Владата, неколку министри и други високи државни функционери и службеници.

Работата на обвинителството беше поддржана од мнозинството граѓани на Република Македонија, непосредно или организирани во здруженија на граѓани и политички партии од опозицијата.

Системот на општествената контрола во борбата против криминалот на власта во целост се активира. Резултатите се очекуваат.

Клучни зборови: криминал, функционер, државен службеник, обвинителство, општествена контрола.

INTRODUCTION

Constitution of the Republic of Macedonia guarantees to citizens of the Republic freedom of association to exercise and protect their political, economic, social, cultural and other rights.¹³⁹

According to Constitution, citizens may freely establish political parties and associations of citizens, join them or resign from them. In order to exercise the authority and protect their political rights, citizens should be informed about the situation in the country. Therefore, the constitutional obligation of political parties is to inform their membership, their sympathizers and other citizens about the events and processes in the country. Only a well-informed citizen can participate effectively in democratic processes in the society and can participate in the exercise of power. There is no democracy without well-informed citizens. No well-informed citizens without the existence of independent and objective system of public information.

Opposition in a democratic society is a powerful controller of government. It closely monitor the government and point to errors and omissions in its governance. An effective method of correcting the work of the government is critics. Fair and open criticism is always welcome for the government which is the true service to the citizens. The government should and must be such as that. The constitutional principle of the sovereignty of citizens obliges it to be such as that.

In parliamentary elections held in 2008, the right's political party VMRO – DPMNE¹⁴⁰, in coalition with the Democratic Union of Albanians (DUI) and other smaller parties, won an absolute majority in Parliament. The ruling coalition began to exploit political power stemming from that majority, to strengthen their positions in society. In ruling grouping emerge a feeling of too much power. Blinded by excessive power, it secede from citizens and rather than to be service of them, it turn to be service of itself.¹⁴¹

¹³⁹ Citizens are guaranteed freedom of association to exercise and protect their political, economic, social, cultural and other rights and convictions (Article 2, paragraph 1 of the Constitution of Republic of Macedonia).

¹⁴⁰ Internal Macedonian Revolutionary Organization - Democratic Party for Macedonian National Unity. The party took the name of the Macedonian Revolutionary Organization founded in 1893 in Thessaloniki, which was the organizer of the revolutionary struggle of the Macedonian people to form an independent Macedonian state. Suffix DPMNE (Democratic Party for Macedonian National Unity) was added during the formation of the Party, in 1990.

¹⁴¹ Citizens of the Republic of Macedonia exercise their authority through democratically elected representatives, through referendum and other forms of direct expression (Article 2, paragraph 2 of the Constitution of the Republic of Macedonia).

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The absolute majority allowed government to adopt undisturbedly so-called systemic laws and parliamentary decisions for the adoption of which two-thirds majority of the total number of members of Parliament is necessary. The opposition practically became meaningless factor in the political life of the country. Its role comes down to criticism the moves of the ruling coalition, without significant effects on the situation changing. Left without an effective social control, the ruling government began abusing power for its interest.

1. THE TRUTH IN MACEDONIA BEFORE THE “TRUTH FOR MACEDONIA”

The work of the government for its interest is contrary to the Constitution and laws. The work contrary constitution is crime. So that partitioned government was criminalized. Criminalization means a new quality of government, understood in a negative sense. Government which is criminalized has the need to work hidden, mysterious. Public that knows does not correspond him. The public, therefore informed citizens, can only interfere in the exercise of its criminal aims. There is a need for them to be as possible fewer informed about the criminal acting of authorities. This need of authorities will be realised by the exercising maximum control over the media. By the achievement of these control are created agitpropopely oriented mass media that convey to citizens only the information that correspond to the authorities, regularly filled with epithets of great achievements and victories of government in service of the people, citizens, working people, the proletariat, etc. depending on which, or whose government is questioned.

The Government of the Republic of Macedonia, a few years ago, completely detached from the citizens. As executive authority, it has established full control over the legislative and judicial authority. Under its control were placed Constitutional Court of the Republic, President of the Republic and "to some extent" People's Attorney - Ombudsman.

So was created a situation in which it can do whatever want and how it want, without taking into account the wishes, needs and motivations of citizens. Such a situation does not correspond free mass media. This is why in parallel with the process of placing under the control of other authorities and organs, the government has put under his control and the media. The result is a situation in which about 85% of the media were under the absolute control of the government. The truth about the situation in the Republic became almost inaccessible to citizens.

2. START AND PROGRESSION OF THE PROJECT "TRUTH FOR MACEDONIA"

In February 2015, the Social Democratic Union, the biggest opposition party in Republic of Macedonia, announced that government, without authorization, eavesdropped 20 thousand citizens of the Republic and that it has audio recordings of eavesdropped conversations. Shortly thereafter, he began to publish the audiorecordings in the project called “The Truth for Macedonia”. By the published audiorecordings the citizens of the Republic were informed about the grounds of suspicion for numerous committed offenses of abuse of power by senior state officials.

Soon, after the opposition SDUM started the implementation of a project called "The Truth for Macedonia" by announcing that the Security and Counterintelligence Administration (SCA) in the Ministry of Interior, headed by close relative of the Prime Minister, unauthorisedly eavesdrops phone conversations of 20 thousand macedonian citizens, including talks on government ministers, other senior government officials and foreign diplomats accredited in Skopje. Only conversations between the prime minister and the director of SCA was not eavesdropped. After the disclosure of this data, SDUM started to publish, publicly, eavesdropped phone calls.

The announcement of talks before the eyes of the Macedonian public appeared to expose the grounds of suspicion of committing a number of crimes of abuse of power by senior government functioners. It fundamentally shookened up the position of power and deepened the political crisis in the country. In resolving the political crisis the international factor was involved: the European Union and the United States.

The European Commission sent into Macedonia expert group headed by the retired director at the European Commission, Germany's Reinhard Pribe which, during the months of April and May, several times visited Macedonia. The Expert Group on base on discussions with representatives of the Ministry of Interior, the Public Prosecution Office, the courts and other state bodies, as well as with representatives of civil associations and based on direct insight into the situation on the ground, compiled a report on the situation in the country. The report said: "The range of illegal recording of conversations, the concentration of power within the SCA, the wide powers in the mandate of SCA (which despite the wide range was exceeded) and disfunction of the external oversight mechanism resulted in numerous violations: violations of fundamental rights of the individuals; serious violation of legislation on protection of personal data; violation of the Convention on Diplomatic Relations of 1961 (the Vienna Convention) given that diplomats were also illegally tapped; apparent direct involvement of senior government and party officials in illegal activities, including election fraud, corruption, abuse of power and authority, conflicts of

interest, blackmail, extortion (pressure on public employees to vote for a particular party by threatening to dismiss them)- crime; serious violations of public procurement procedures in order to obtain illegal profits, nepotism and cronyism; indications of unacceptable political interference in the nomination / appointment of judges and interference with other supposedly independent institutions for personal or partisan benefit".¹⁴² This excerpt from the expert group report clearly indicates the fact that it is a severe crime, which in criminological theory is covered by the term "crime of abuse of power."¹⁴³

3.THE ESTABLISHMENT OF THE SPECIAL PUBLIC PROSECUTION IN FUNCTION OF THE PROJECT "TRUTH FOR MACEDONIA"

One of the imperatives for the crisis solving was an investigation and prosecution of crimes related to and arisen from the contents of unauthorized eavesdropping of communications. Due to the high degree of partisanship and failure of professional capacities, it was assessed that the Macedonian judicial organs, primarily the public prosecution, are not able to process these crimes. There was a need for establishing a special public prosecutor for that purpose. To create a legal framework for its establishment, the Parliament of the Republic adopted the Law on Public Prosecution for Crimes Related and which Arise from the Content of the Illegal Eavesdropping of Communications (Special Public Prosecution). Immediately afterwards, by the proposal of the Parliament of the Republic, the Council of Public Prosecutors, elected Special Public Prosecutor, at by his suggestion, with some ado, and prosecutors within the Prosecution.

Special Public Prosecutor is empowered to investigate and prosecute crimes related to and arisen from the contents of unauthorized eavesdropping of communications in the period from 2008 to 2015. Within this, Special Public Prosecutor is empowered to take actions and to advocate courses in basic courts, appellate court and the Supreme Court of the Republic of Macedonia, and independently perform all investigative and prosecutorial functions.

After numerous obstructions by the government, during the organizational preparations for work, the Special Public Prosecutor, in the middle of September 2015, started work. About 150 objects of pre-investigation and investigation procedures for a number of crimes of abuse of power, were formed.¹⁴⁴ Most of them are the offenses of misuse of official position.

The Prosecution conducted investigations and brought accusations because of the existence of grounds for suspicion of committing crimes, against the Prime Minister, ministers and other senior government officials and employees.

In the work on criminal cases Prosecution faces a series of obstacles by state authorities of the Republic of Macedonia, by the Ministry of interior, its SCA and the courts. Among them, certainly, the most characteristic are: refusal by the SCA to surrender to Prosecution recorded and written materials, under the pretext they are classified, the refusal of the request to inspect the equipment for interception of communications under the pretext that it would jeopardize national security, refusal of viable proposals for the detention, deprivation of passports, rejecting proposals to be heard as witnesses prominent public figures (prime minister, some ministers), request the Prosecution to provide approval from SCA, to use in the evidentiary proceeding documents classified as secret etc.

Despite the obstructions were completed investigations and prosecutions have been submitted in few cases of that, there are ongoing court proceedings.¹⁴⁵

¹⁴² See: "Report of Priebe", www.vesti.mk

¹⁴³ Kambovski V.: Organized crime, Skopje, 2005, p. 69.

¹⁴⁴ From the establishment of the Prosecution (15. 09 2015) until 03.15.2016 in the registry NSK-KO were enrolled a total of 30 cases against 80 persons. The structure in crimes against 80 persons is as follows: 10 people for the crime of "Violation of the right to vote" under Article 159 of the Criminal Code (CC), 37 persons for the crime of "Misuse of official position and authority" under Article 353 of the CC, 12 persons crime "Violation of the freedom of voters' under Article 160 of the CC, 1 person for the crime of "Violation of the secrecy of voting" under Article 163 of the CC, 3 persons for the crime of "Abuse of funds for financing the election campaign" under Article 165-a of the CC, 1 person for the crime of "Abuse of personal data" under Article 149 of the CC, 2 people for the crime of "Coercion" under Article 139 of the CC, 6 persons for the crime of "Unauthorized wiretapping and audio recording" under Article 151 of CC, 1 person for the crime of "Espionage" under Article 316 of the CC, 1 person for the crime of "Violence against representatives of the highest state authorities" under Article 311 of the CC, 2 people for the crime of "Violation of equality of citizens "under Article 137 of the CC, 3 persons for the crime of "Electoral fraud "under Article 165 of the CC and one person for the crime of "Destruction of election material " under Article 164 of the CC. Besides for these crimes, 10 people as a procedure for the crime of "Criminal association" under Article 394 of the CC. In the registry NSK-RO for the reporting period were registered a total of 120 cases.

¹⁴⁵ According to the report for the second reporting period (March 15th, Sept. 15, 2016) Special Public Prosecutor submitted to the court prosecution proposals against 21 people and instituted investigations against 40 persons.

4. CONCLUSION

Viewed from the legal and gnoseological perspective, Special Public Prosecution contribute grounds of suspicion of committing a number of crimes of abuse of power that existed in the talks between government officials and others people, to be presented to the Macedonian public, to grow into reasonable doubt. It comes until that after completing public prosecutorial investigations and filing of charges against offenders. The reasonable suspicion certainly will be strengthened with the adoption of the first-instance judgments. Finally, with the validity of such judgments, reasonable doubt will become a court verified truth. It is proven truth. That is truth for which any honest man can not say that is based on "cut, glued and mounted" facts. The citizens of Macedonia, as holders of sovereignty, need such truth. They should know how their government works which, according to the letter of the Constitution, is their service. They as a holders for the sovereignty, should actively participate in democratic processes. They should be active.

Active can be only a citizen who knows the truth, because on the base of the knowledge of truth born ideas, and the ideas tend to realization. Active citizens who are interested in social events and who wish to participate in them and of course, too take part in them, are a precondition for democracy in society.

The project "Truth for Macedonia" irritated citizens of the Republic. It awakens their democratic awareness and responsibility for the situation in the society. They were interested in the work of the government. Hard hit by the knowledge of her crime, they supported the establishment of the Special Public Prosecution. The authority concerned of his findings, launched against him intense negative propaganda. Some citizens came under its influence. But most of them support the work of the Special Public Prosecution.

To support the Special Public Prosecutor, citizens staged numerous protests against the criminalized government. The protests were organized and led by NGOs united in civic movement called "Colorful Revolution".The "Colourful Revolution" throw out the fore the citizen as controller over the government. There is no effective control over the government without the participation of citizens. The government is of them and for them. They are best qualified to control it. The mass participation of citizens in control of the government means a high degree of socialization of control. That means developed control over the government by the society. The society consists of citizens. The establishing developed control over the government by citizens means having a high degree of social control.

As a result of the project "Truth for Macedonia" the system of social control in the fight against the crime of the government is fully activated. Results are expected.

REFERENCES

- [1] Constitution of the Republic of Macedonia, Official Gazette of RM, No. 52/91.
- [2] Djordjevic J., Open Society Radnička Štampa, Belgrade, 1985.
- [3] Kambovski V., Organized Crime, Skopje, 2005.
- [4] Law on Public Prosecution for Criminal Prosecution of Criminal Offenses Related to and Arising from the Contents of Illegal Tracking of Communications, Official Gazette of RM, No. 159/2015.
- [5] Report Priebe (Republic of Macedonia: Recommendations of the Group of Experienced Experts on Systemic Issues of Rule of Law Related to the Interception of Communications Discovered in Spring 2015. www.lokalno.mk.
- [6] Risteski T. and oth. The Role of New Media in the Exercise of the Right to Information of Citizens in Terms of Government Control over the Media in the Republic of Macedonia, The Power of Communication, 4 - th International Conference, Belgrade organized, by High Professional School of Market Communications, Pan-European University, Apejron from Banja Luka, 2015, Proceedings p. 155-167.
- [7] Risteski T., Vesna S., Possibilities and perspectives of the Special Public Prosecution of the Republic of Macedonia, Proceedings, International Scientific Conference "Archibald Reiss Days", Belgrade 2016, page 89-102.
- [8] Special Public Prosecution, Report on the activities of the Public Prosecutor's Office for criminal offenses related and which arise from the content of the illegal interception of communications for a period of six months (for the period from 15/09/2015 to 15/03/2016), www.jonsk.mk.
- [9] Special Public Prosecution, Report on the activities of the Public Prosecutor's Office for criminal offenses related and which arise from the content of the illegal interception of communications for a period of six months (for the period from 15/03/2016 to 15/09/2016), www.jonsk.mk.