



Rule of Law and Inclusion in the Republic of Macedonia

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Abstract

The concept of rule of law implies a legal system that is equal for all citizens, with precise and applied mechanisms for control over its function and institutions that guarantee and implement the rule of law. Respect for the rule of law concept is a key prerequisite for democracy and respect for human rights, as well as main condition to enable institutional and procedural grounds for social inclusion of citizens.

A country is considered to be democratic if it offers equal opportunities for progress for everyone, provided progress is based on just and defined criteria that are strictly applied and not on grounds of somebody's power in society or support by certain person or group. If progress is not based on rules, but rather on affiliation to certain power centres, the percentage of exclusion of others who lack access to such opportunities would be very high. Accordingly, the rule of law would be replaced with the rule of somebody's will. In this paper are presented and elaborated original unpublished results from the public opinion research conducted in 2011.

Keywords: rule of law; inclusion; transparency; conflict of interest.

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1. Introduction

- Public opinion research

The question *How important it is to be well connected to people who have political power in order to achieve progress in your life?*, was answered as follows: *not important at all* was answered by only 18.2%, *exceptionally important* by 54.7% of the respondents and *important* by 24.8% of the respondents. Respondents who consider it as exceptionally important are mostly from the eastern region - 72%, Macedonians - 55.3%, Albanians - 66.8%, respondents aged 25 to 27 - 72.9%, aged + 65 - 42.6%, without primary education - 39%, and respondents with university education - 61%.

Prior to independence from the former Socialist Federal Republic of Yugoslavia, there was a one-party political system headed by the Communist Party in Macedonia. In this period, it was indispensable to be a member of the Party if aspiring to any managerial position, even those in of the lowest levels. In order to make comparison of the current situation, with regard to the importance of 'party or political connections', the following question was asked: For instance, 25 years ago, how important it was to be well connected to people who have political power so that you can achieve progress in your life in Macedonia? The answer *exceptionally important* was given by 24%, *important* by 26%, *it was not important at all* by 31% and *do not know* by 14% of the respondents (primarily, these are respondents who are young, who do not remember this period and were not born at that time). With regard to the answer – *exceptionally important* – highest percentages are in the Polog region - 34%, in men (29%) the percentage is higher compared to women (21%), in Macedonians 19% and considerably more in Albanians 43.5%, respondents aged 45 to 54 - 26%, and + 65 - 13%, 21% in urban areas and 32% in rural areas. The results indicate that Macedonian society is politicized and there is a possibility for exclusion of people who do not have connections to figures with political power. It is a concerning fact that almost two thirds of young people think links with people with power are exceptionally important to succeed in life, which may either imply a realistic perception of the situation on one hand, but also a developed attitude with regards to ways of succeeding in the country on the other hand. In addition, it is obvious that twice as more respondents think political connections are more important now than 25 years ago, taking into account the fact that this was a period of one-political party system when the Party was infiltrated in all segments of social life. However, twice as many Albanians in comparison with Macedonians, have stated that even in the respective period, relations with political centres of power were also exceptionally important, which refers to a conclusion that this ethnic community felt certain exclusion during this period, due to being rejected from the political party or the political centres of power.

In relation to the above-stated, those who abuse their political position to help others in their progress are actually possible perpetrators of a criminal act- corruption. United Nations documents define corruption as "malpractice done for the purpose of gaining private interests". According to national legislation (art.2 of Law on Anti-Corruption, (Consolidated text) "Official Gazette of the Republic of Macedonia" No.83/04 dated 24.11.2004), corruption implies misconduct by abusing the position, public authorisation, official duty or status, for the purpose of generating interest for oneself or others. Corruption in the world has reached enormous figures - \$1 trillion (£494bn) [3]. Macedonia, within the latest the last ranking of countries published in the 2008

Report of the American Global Integrity, had an index of corruption 76 out of possible 100. This fairly good ranking has brought the country in the company of several EU countries, such as Italy, Hungary, as well as Canada and Chile [4].

Close to this criminal act is the criminal act of bribing [1], *defined as giving or promising future hand over of something of value to a person holding a certain position of trust, whereby he/she in return shall abuse his/her position in order to meet the requirements/needs of the briber* [2]. In our legislation, we have different incriminations, so if a civil servant asks for money in order to carry out something that he/she is obligated to do without any compensation, this is called bribe.

Corruption or criminal acts of receiving and giving bribe (Articles 357 and 358 of the Criminal Code of the Republic of Macedonia) belong to a group of criminal offences in violation of official duty. However, some foreign legislations have classified such criminal acts as sub-types of extortion, which in our law is classified under property crimes. In our legislation, incriminations are a bit different, so if a civil servant asks for money in order to carry out something that he/she is obligated to do without compensation, we call it bribing.

By definition, conflict of interests, is a state where private interest of an official is contrary to public interest or may influence his/her impartiality when performing duties of public interest. In other words, conflict of interest is a conflict between personal interest and official duty, or assumed, possible or actual malpractice for purposes of gaining personal interest. Problems related to conflict of interest can be grouped into nine risky areas as the following:

- Accumulation of positions and gaining interest;
- Influencing for purpose of financial gain or other gain;
- Discretionary powers;
- Acting ex officio for private interests;
- Gifts;
- Nepotism in employment, public procurements, contracts conclusion, issuance of different licenses etc;
- Utilization of public assets for private purposes (personal, political party's etc);
- Employment following the expiry of the official position;
- Use and abuse of information unavailable to the public.

In 2008, the State Anti-Corruption Commission established 44 cases and finalized the remaining 5 cases initiated in 2007. In 2008, the State Anti-Corruption Commission filed 27 initiatives for criminal prosecution, 24 of which for criminal act - misuse of official status and authorisations, 2 for misuse and serving

unconscientiously and 1 for serving unconscientiously, to the Public Prosecution Office of the Republic of Macedonia and to the First Instance Public Prosecution Office for Organized Crime and Corruption - Skopje. 50 complaints have been received in the period between 1. 10 2008 and 1.08 2009 related to conflict of interest, while between the period January and 23 December 2009, the State Anti-Corruption Commission was processing 471 corruption cases. In the course of 2009, there have been 109 verdicts reached with regard to misuse of official duties and authorisations.

According to a public opinion poll from 2006, conducted by the Institute for Sociological, Political and Legal Research [3] in general respondents evaluated the efficiency of the fight against corruption in Macedonia with 1.91 points on average. Main instigators of corruption are citizens' inability to legally satisfy their needs (40%) and non-functioning of the judicial system in the country (35%). Each fifth respondent (21%) would offer bribe, while the same number of respondents (21%) 'do not know' what to do in a similar situation. A larger number of respondents do not believe (43%) in certain results in case they report corruption.

In the Macedonian political system, the Office of the Ombudsman is a particularly powerful institution for protection of civil rights and it "protects the Constitutional and legal rights of citizens and all others whose rights have been denied with acts, actions and malpractice of the State Administration Bodies and other bodies and organizations tasked with public responsibilities, undertaking measures and actions for protecting the principles of non-discrimination and due and equitable representation of members of communities in the State Administration, local government bodies and public institutions..." (Article 2 of the Law on the Ombudsman, published in the "Official Gazette of the Republic of Macedonia, No. 60/03").

The 2009 Annual Report of the Office of the Ombudsman concludes that this institution has received 4456 complaints, out of which 3672 have been processed, out of which 944 cases have noted some sort of refusal or denial of rights and in 787 cases proposed interventions of the Ombudsman have been accepted and in 157 cases all legal remedies have been exhausted.

Most of the complaints have been filed in the area of legislation 744 or 20.48%, conducting business 389 or 10.71%; real estate 361 or 9.94%; penitentiary system 347 or 9.55%; consumer rights (utility or other fees) 2777 or 7.63; police investigation procedures 252 or 6.94%, receipt of retirement or disablement benefits 181 or 4.98%, spatial planning or building construction disputes 170 cases or 4.68%; protection of children's rights 157 cases or 4.32%; citizen situations or other interior affairs 154 or 4.24%, receipt of social benefits 95 cases (2.62%); receipt of health care benefits 72 cases (1.98%); housing 57 cases or 1.57%, funding or financial operations 50 cases (1.38%); education, science, culture and sports 49 cases (1.35%); environmental issues 21 cases (0.58%); non-discrimination and due and equitable representation of different minority groups 20 cases or 0.55%; as well as other miscellaneous areas totalling to 234 cases or 6.44% of complaints [4].

Within the survey conducted for this Report, respondents were asked the following question – In your opinion, how frequently is for people like you to have to bribe/offer gift (*in some ordinary situations*)? Do you consider this as acceptable or unacceptable?

Regarding *contacts with traffic police*, 86.4% answered that it is *unacceptable*, however when they were questioned how often, 66% gave the answer *never*.

It is acceptable for 6.8% of the respondents, 2.3% respondents from the eastern region, 10% respondents from the northern-eastern region, men- 8%, women - 5.3% Macedonians - 7.2%, Albanians - 5.8%, respondents aged 15 to 18 - 5.7%, respondents aged 25 to 27 - 9.5%. About 4% of the respondents *are usually forced to bribe*, whereas there is a larger percentage in Macedonian respondents (5.1%) compared to Albanian respondents (1.3%), who share this position, whereas for young people aged 19 to 24 the percentage is 5.7%. Only 3% stated they have to do it *always* and this is a dominant position of respondents from the Vardar region (8.5%),

When *requesting official documents (visa, passport) from officials*, it is *acceptable* for 7.7%, however the highest are the percentages for respondents from the eastern region - 15%, in Macedonians - 8.7%, whereas for the Albanian respondents -10.8% and the respondents aged from 25 to 27 - 12%. There are no significant differences with regard to respondents' educational background and their employment. 67% of the respondents answered they *never* needed to give bribe. There is a considerable difference regarding the answer - *sometimes* in Macedonians - 8.8% and Albanians 2%, and also with regard to the answer – *always* by Macedonians- 2.6% and Albanians - 5% (CHART ABOUT THE FREQUENCY)

Regarding the *contacts with the police* about issues that do not refer to traffic and documents, it is acceptable for 5.6% of the respondents, mostly in the Vardar region and the north-eastern region (around 10%), and more in Albanians (8%) compared to Macedonians (5%), in respondents aged 25 to 27 (10%), and the least in respondents aged + 65 (1%), whereby there are no considerable differences with regard to educational background of respondents. Regarding respondents who are *always forced to bribe*, this is mostly present in respondents from the Vardar region (11.3%); young people aged 25 and 27 (3.8%), respondents who live in urban settlements (3.2%) and respondents who live in rural settlements (0.7%). (CHART ABOUT THE FREQUENCY)

In *using regular services ('bribing' the administrative system)*, it is *acceptable* for 6.2% of the respondents, the highest percentages being in respondents from the Vardar region (14.2%) and north-eastern region (10.7), in Macedonians- 5.6%, Albanians - 7.8%, in young people aged 25 to 27- 10% in comparison with the respondents aged + 65 -only 2%. 67.8% stated they were *never* forced to bribe, and 3.4% stated they were always forced to bribe, where for respondents from the Vardar region the percentage is very high- 16%. This percentage is higher for Macedonians (3.9%) compared to Albanians (2.2%), larger in respondents from the urban settlements (4.3%) than the rural settlements (1.5'), and in employed respondents (5.2%) compared to unemployed respondents (3.6%). (CHART ABOUT THE FREQUENCY)

In *civil lawsuits*, it is acceptable for 7.8% of respondents, and acceptable for approximately double percentage of respondents from the Vardar and north-eastern region. 66.4% were *never* forced to bribe, while 4.5% of the respondents were *always* forced to bribe, but mostly in the Vardar region (18%), more in Macedonians (5.3%) compared to Albanians (2.4%), more in respondents from urban settlements (6%) than respondents from rural settlements (1%), (CHART ABOUT THE FREQUENCY)

When *obtaining health services it is acceptable* for 9.3% of the respondents, or in 26% of the respondents that live in the north-eastern region and 11.7% in respondents aged 19 to 24. 65.5% of respondents *were never forced to bribe*; the respondents who were *sometimes* forced to bribe (6.5%) are significantly more in Macedonians (8%) compared to Albanians (2.1%). 52%, have *always* been forced to bribe, yet this is mostly emphasised in young people aged 19 to 24 (7.2%), and more in respondents who live in urban settlements (6.4%) in comparison with respondents who live in rural settlements (2.5%) (CHART ABOUT THE FREQUENCY)

Regarding *provision of public education it is acceptable* for 5.1% of the respondents, however the frequency of this answer was highest among respondents from the north-eastern region (9.3%), larger in Albanians (9.1%) in comparison with Macedonians (4%), mostly in young people aged 19 to 24 (7.3%) and in respondents with higher educational background (6.4%). 70.6% of respondents have *never* been forced to bribe, and in those who have *always* been forced to bribe (3.6%), the highest is the percentage in the Vardar region, more in Macedonians (4.2%) than in Albanians (2.45), mostly in young people aged 19 to 24 (5.3%), more in those that live in urban settlements (4.3%) than the ones who live in rural settlements (1.3%),

Regarding the *request for unemployment compensation, it is acceptable* for 7.1% of the respondents, where the highest percentage is for respondents from the north-eastern region and Vardar region (10%), and in young people aged 19 to 23 (9.3%). 67.7% *have never been forced to bribe*, where regarding those who have sometimes been forced, more such answers were given by Macedonians (7.5%) in comparison with Albanians (2.2%). With regard to respondents who have always been forced to bribe, as well as other structures, this is mostly visible in young people aged 19 to 24, and more in respondents from urban settlements (4.4%) in comparison with respondents from rural settlements (1.7%) (CHART ON THE FREQUENCY)

With regard to the *request for social insurance, it is acceptable* for 6.6% of the respondents, however the percentage is extremely high (11.6%) in the north-eastern region, higher in Albanians (9.5%) in comparison with Macedonians (5.7%), in respondents aged from 19 to 24 (8.8%). 68.7% of the respondents have never been forced to bribe, 6.9% of the Macedonians and 11.5% of the Albanians have sometimes been forced to bribe; 3.5% have always been forced to bribe, which is most emphasized in Albanians 4.5%, young people aged from 19 to 24 - 5.3%, and in respondents from urban settlements- 4.3%.

Rule of law is strictly preconditioned by the quality function of the judiciary system and passing fair decisions. Citizens were asked To which extent do you trust that the judicial system passes fair decisions?, *extreme trust* was expressed by 5.7% of the respondents, with largest trust expressed by respondents from the eastern region (12%), and lowest trust by respondents from the Polog region (4%), more in Macedonians (6%) in comparison with Albanians (3%). *Trust to a certain extent* was expressed by 34% of the respondents, and again this percentage is highest in the eastern region (48%), and lowest in the Polog region (23%), with higher percentage in the Macedonian respondents (39%) in comparison with Albanian (18%). 20% of the respondents *almost have no trust in the system* and 30% of the respondents *have no trust it at all*. This answer was given more by Albanians (48%) than Macedonians (20%). Results lead to a conclusion that there is an exceptionally high percentage of respondents who have no trust in the system passing fair decisions, in particular Albanians and

citizens from the Polog region. This refers to the necessity for taking serious measures on the part of the state, regarding the reform of the judicial system.

2. Conclusions and Recommendations

The percentage of those citizens, who think highly of having some connection with politically powerful people in order to succeed in life, is significantly high. The fact that approximately two thirds of young people feel it is exceptionally important to know politically powerful people, is raising a concern. It is also apparent that twice as many respondents said that having connections in politics is more important now than it was 25 years ago. The different forms of bribery were rejected by most respondents; however, in 10% of respondents paying bribe was described as most acceptable in the health care sector. The result showing that a half of all respondents distrust the judiciary or they fail to recognize just course of action while reaching the decisions, is defeating, and clearly signals a need for conducting powerful reforms in this domain.

Introducing models for greater transparency of the work of public enterprises and the State Administration and strengthening the measures for preventing and sanctioning corruption. Reports of international organizations relevant to the work of preventing corruption, as well as their results, point to a high percentage of corruptive actions in the country. Therefore, institutional and normative capacities must be strengthened, along with the control over operations in the public sector, creating conditions for the citizens to report on corruption more effectively. Such activities need to be undertaken by each state administration body.

Raising the awareness of citizens with regard to different forms of bribery resulting in criminal investigations, in which both the providers and recipients of bribe are being investigated. Although citizens, according to the survey, are able to recognize and condemn different forms of bribery, nevertheless, according to their statements, very often they experience situations in which they had to bribe someone. The Government must continue its ongoing awareness raising campaigns against corruption, however it must 'get the message through' to the level of the State Administration Bodies and Public Institutions, i.e. it must initiate such internal campaign among the ranks of its own staff. In addition to this, the NGOs and international organizations must assist the Government in the awareness raising process in this domain.

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