

TRANSPARENCY VS. CORRUPTION: THE CASE OF REPUBLIC OF MACEDONIA

Suzana DZAMTOVSKA-ZDRAVKOVSKA, Jadranka DENKOVA,

Andon MAJHOSEV

University Goce Delcev in Stip, MACEDONIA

Abstract. Today citizens are increasingly becoming an equal entity with state institutions which have responsibility to ensure protection of their rights, accountability, openness and transparency in its operations - as the basic principles upon which rests the principle of good governance. The traditional model of not transparent administration today disappears step by step. Adoption of a law of free access to public information in many countries in the world which seek to enhance democracy in their societies today is a process that can not stop. Nowadays, countries that do not have such a law can not claim that they have full democracy. One of the reasons for passing this law is reducing corruption. Corruption is based on secrecy. Citizens and institutions become corrupted when the public has no insight into their work. If the work of public institutions is transparent and offered for public inspection, then the chance for them to be corrupt is smaller. This paper analyzes the Law of free access to public information in the Republic of Macedonia and its application; the situation in Macedonia after the adoption of the law; concluding

that despite some inconsistencies, the law has contributed to increasing transparency and reducing corruption.

Keywords: free access, transparency, corruption, information, accountability

Introduction

Transparency is one of the highest qualities of democracy based on ethics and good governance where the interests and needs are focused on the citizens. It is a set of policies, practices and procedures that allow citizens to have access to documents and information in public administration, finance, employment in public administration, etc., as well as to review the operations of government.

“Open government”, as the value of highly developed democratic societies, and extremely important standard in the functioning of the administration, means a high level of transparency. This means that public administration is available for testing from outside and that everyone has a right to know the reasons which led to a particular decision or action of the administration, especially if the citizens are affected by decisions.

In order to establish and implement the principles of the concept of good governance (involvement and participation of the citizens; rule of law; transparency; responsiveness; consensus oriented; equality and inclusiveness; effectiveness and efficiency; accountability) the adoption of the Law on Free Access to Information is a trend in the world today. As a matter of fact, the countries that have not adopted these laws yet are considered to be far from the fundamentals of democracy, especially from the principles of establishing good governance.

Fundamentals

Freedom of information – FOI or the right to access information is defined as a universal right to access information which is owned by the public institutions. The FOI laws reflect the fundamental premises that all of the information that are owned by the governments or the government institutions are public, and only if there are legitimate reasons, such as privacy or safety, should not be given to the public.

The fundamentals of this democratic and human right were set in the year of 1866 in Sweden. This is the first country in the world which has constitutional guarantee of the freedom of information. One of the main benefits of the special *Freedom of information act* (initiated by the Finnish priest and philosopher Anders Chydenius), adopted in 1766, is the access of the public to the governments documents. According to this Act, all of the information and documents created or received by the government, must be available to the entire public. It is very important that this Act obliges the state institutions to do everything in their power to deliver the information to the requestor as fast as possible.

As it was stressed by Björkstrand & Mustonen (2006), Anders Chydenius' legacy has received increased recognition globally.

[W]ith the creation of the United Nations and international standards on human rights, the right to information began to spread. Freedom of information is recognized in international law. Article 19 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights provide that every person shall have the right to seek and impart information. There is growing recognition that the right to seek information includes a right of freedom of information.

During the last 12 years the right to FOI was recognized in a large number of countries, including developed countries, through clear acceptance of this right with its inclusion in Laws. In 1990 only 13 countries had adopted national laws for free access to information, while today, together with the adopted Law on Free Access to Information in Yemen, 96 countries in the world¹⁾ have adopted laws on free access to information or appropriate legal and constitutional provisions with which this area is truly regulated.

Free access in the Republic of Macedonia

The legislative in the Republic of Macedonia emphasizes the principles of legality and transparency in the work of the public administration. According to article 9 from the Law on Organization and Operation of the State Administrative Bodies, the governmental institutions are obliged to “inform the public about its work in accordance with the Constitution and the law”, and "exercise their competencies established by law in accordance with the principles of legality, accountability, efficiency, economy, transparency, equality and predictability“ (article 3).

The Civil Servants Law of 2010, in Article 21 states: "A civil servant is obliged, in accordance with the law, at the request of the citizens, to give information in order to enable them to exercise their rights and interests, except for information referred to in Article 20²⁾ of this Law“.

The Local Government Law of 2002, in Article 8 precisely enumerates the obligations of municipal bodies, committees of councils and public services established by the municipality without compensation to inform citizens of their work, as well as plans and programs that are of importance for the development of the municipality. At the same time, the municipality has the obligation to enable the citizens' access to basic information of the services it provides, in a manner and under conditions regulated by the statute.

Free access to information, the freedom of receiving and transferring information is guaranteed by the Constitution of the Republic of Macedonia

(article 16). To fully implement this constitutional provision, the Parliament of the Republic of Macedonia in January 2006 adopted the Law on Free Access to Public Information, which defines the procedures for the exercise of this right. Application of the law began on 1 September of the same year. The Law has undergone significant amendments at the beginning of 2010. With the amendments, the biggest drawback of the Law on Free Access to Public Information in 2006, regarding the arrangement of the institute "silence of the administration" was solved and fully complied with the provisions of the Law on General Administrative Procedure. According to this amendment as long as the holder of information does not respond in the stated deadline, or in the additional legal deadline, the applicant has the right to appeal without legal deadline limitations. Also, in order to improve the law, an additional obligation was introduced for the holders of information, according to which they need to conduct the "harm test" when they refuse access to the requested information under the exemptions listed in Article 6 of the Law. By conducting the harm test, the holders of information are obliged to estimate which is larger – the harmful consequences that might occur by revealing the classified information or the public interest.

The Law on Free Access to Public Information emphasizes the obligation of the institutions to provide information with precise deadlines, ensuring transparency in the operation of the holders of information, allowing individuals and legal entities to exercise their right of free access to public information, and obliging the holders of information to provide information to the public.

According to the Law, "holders of information³⁾ are governmental institutions and other bodies and institutions set by law, municipal bodies, the City of Skopje and the municipalities of the City of Skopje, public institutions and services, public enterprises and natural persons and legal entities with public authorities and activities of public interest set by law. "Public infor-

mation" is information in any form that was created by and is available to the holder of information.

In general, all information available to the holders of information is public. Access to them may be refused in exceptional cases determined by law (Law on Protection of Personal Data, Law on Classified Information)⁴. Law on Free Access to Information of the Republic of Macedonia guarantees free access to all domestic and foreign legal entities or natural persons. All institutions included in the Law are required to have appointed officials for public information mediation (further in the text: *officials*) to whom the citizens will turn to while exercising their right to access public information.

Implementation of the Law

As of September 1, 2012, exactly six years have passed since the beginning of the implementation of the Law in the Republic of Macedonia. In this time the Commission for Protection of the Right to Free Access to Public Information (KOMSPI)⁵ had an important role in providing information to the citizens regarding the rights they have in accordance with this Law, catalyzing its application with everyday monitoring of the situation regarding the implementation of the Law, reacting on citizens appeals and delivering regular annual reports regarding the application of the Law to the Parliament. What was especially significant was the series of trainings conducted by the Commission aimed at educating officials.

In its latest report (Annual Report on the work of the Commission for Protection of the Right to Free Access to Public Information, from January 1 to December 31, 2011), the Commission notes that this new democratic right not only gets a stable position in the Republic of Macedonia, but speaking comparatively with countries of the wider region and some European countries, it is in an enviable position. Thus, it refers to research carried out by the relevant institute "Centre for Law and Democracy," according to which Macedonia is in the high 14th place on the world ranking list of states that

have the most functional Law on Free Access to Public Information, regardless that this democratic right was transformed into legislation in a relatively recent period.

"The Republic of Macedonia has 108 of the maximum 150 points that are awarded on various criteria, among which the most important are those related to the number of exceptions to the free access, the monitoring mechanisms and awareness raising, or the promotion of the right of free access to public information", emphasized in the Annual report of 2011.

Nevertheless, as the Commission noted in this report, the main problem for the application of the idea "I have the right to know" is the not so small degree of ignorance, apathy and lack of understanding, resulting in its slow acceptance, pointing out thereby the silence of the administration as the basis for filing most complaints from citizens.

According to the records of the Commission in 2011, 70% of complaints (324 of a total of 409 complaints) were filed due to silence of the information holders, which leads to the conclusion that it is still necessary to take a series of activities for raising awareness of public bodies, getting them used to providing information and helping them realize that it is their duty to provide them.

Silence of the administration

One of the reasons for the silence of the administration and thus hindering the implementation of the Law is the internal exchange of information within the institutions themselves. Namely, the officials often encounter so-called internal resistance to receive the required information and deliver it to the applicant. The complaints that were voiced by the officials during the trainings organized by the Commission have confirmed this. In the period 2008 – 2009, the Commission for the Protection of Free Access to Public Information and the Macedonian Institute for the Media in the framework of a joint project organized a series of trainings for officials to free access to in-

formation. During these trainings it was stated that one of the problems they faced was when the requested information is not within their department or sector, it was more difficult to receive it from another department or sector. It also happened that they were unable to receive or provide the requested information when the persons in charge might have considered by their own subjective reasons that the information should not be shared with the employees, and even less be given to the public, even if the information is not classified with the appropriate level of secrecy in accordance with the Law on Classified Information and provisions arising from it.

The results of research done in the period 2008 - 2010, which included 130 civil servants from the Ministry of Education and Science, Ministry of Environment and Physical Planning and the Ministry of Economy of the Republic of Macedonia also confirm this. The emphasis of the research was placed on the internal exchange of information related to the activities and programs of the departments/sectors in governmental institutions. According to the results: The majority of respondents are not or are only partially informed about the work of other departments and divisions; they do not receive information about the work of other departments and divisions on regular basis; almost all believe that they need to be more informed about the work of other sectors and departments and that the (dis)information about the activities of other sectors/departments affect their activities; most respondents say they are not sufficiently familiar with the activities of the institution in which they work (Communication in Public Administration, 2012).

Obviously the employees, and therefore the officials, due to the lack of an internal system for regular exchange of information, face difficulties to obtain the necessary information within the institution in which they work. Among officials this is reflected on the timely submission of the requested information to the citizens who have submitted a request on the basis of free access to public information.

“I have a right to know” in the battle against corruption

On the importance of free access to information the United Nations Secretary-General Ban Ki-moon during the World Press Freedom Day in 2008 said: "When information flows freely, people are equipped with the tools to take control of their lives."⁶⁾ Montinola & Jackman (2002), for instance, argue that 'the freedom of information and association characteristic of democracies helps monitoring of public officials, thereby limiting their opportunities for corrupt behavior' (Lindstedt & Naurin, 2005).

In this regard, one of the main objectives of the Law on Free Access to Public Information is increasing transparency of the public administration and reducing the corruption in a society. It is generally known that corruption is based on secrecy. It takes place behind closed doors, away from the public eye. Citizens and public institutions become corrupt when the public has no access to their work. If the work of public institutions is offered to the public, then the chance for them to be corrupt is reduced.

Free access to information is a powerful tool in the fight against corruption and wrong conduct of public authorities, because the citizens through free access actually control and evaluate the work of the public bodies they fund. But it is not enough just passing a law on free access to information. It is also necessary to implement it thoroughly and monitor its implementation. Along with the adoption of such a law the full engagement of governmental and non-governmental institutions is necessary for raising citizens' awareness of the possibility they receive by this law and their right to request information. At the same time, it is necessary to raise the awareness of the public administration for their duty of accountability to the citizens and timely provision of requested information, with the exception of those that are protected under this or any other law.

There are many other factors that affect the level of free access to information, such as the level of education of the population, the relationship

between the government and the business community, but above all the cultural and psychological environment in which it occurs and implements such a law. The countries in transition which were stuck in a system of a traditionally closed administration and closed government naturally have a much greater challenge in the development of this democratic right.

The example of the Republic of Macedonia is on the way of proving the claims that countries which have adopted the law on free access to information and have greater transparency, have less corruption.

Since the adoption of the Law in the Republic of Macedonia, the country has ascended on Transparency International Corruption Perception Index. According to the corruption index of Transparency International, in 2005 Macedonia was on the 103rd place. In 2009 and 2010, three to four years ago after the implementation of the Law, there has been a significant improvement of the situation: in 2009, the Republic of Macedonia has climbed on the 71st place, in 2010, it climbed on the 62nd place. In 2011 the country shared the 69th place, and in 2013 - 67th place on the Transparency International Corruption Perception Index which surveyed 183 countries worldwide.⁷⁾

Application of the new democratic right

The number of applications submitted by citizens can be taken as a kind of an indicator of the acceptance of the right to be informed, i.e. of the rising awareness of their right to seek information. Based on an analysis of the Annual Report on the work of the Commission for Protection of the Right to Free Access to Public Information, from January 1 to December 31, 2011 and Annual Report on the work of the Commission for Protection of the Right to Free Access to Public Information, from January 1 to December 31, 2012 it can be concluded that the situation in the Republic of Macedonia in 2011 is much better than in 2006 when implementation of the Law began. Namely, the record number of 4.865 requests submitted in 2012 indicates that applicants used the new democratic right to a much greater extent than ever before.

By comparison, the number of requests in 2006 was 513. In 2007 there were 1.476 requests. In 2008, 1.876 applications were filed; in 2009 their number was 2106. In 2010, the number of requests was 2.379, and in 2011 - 3.496.

In 2011 from the total number of requests, there were 1728 requests that were filed to the governmental institutions regarding all areas of their operations. In addition, 212 complaints were filed against the governmental institutions and 124 complaints against political parties. This represents a move towards in the way of breaking taboos for the inviolability of governmental institutions and political parties, and overcoming of the psychological fear of going into the "privacy" of "government authority". In 2012, 1995 applications were submitted to the state institutions, which is the largest number of requests since the beginning of the implementation of the law, and local governments have received a record 1229 applications.

Moreover, the role of the Commission in order to support the right of the citizens who request public information is very important. Thus, in the six years since the implementation of the Law 2320 complaints have been submitted due to disabling of access to public information and the Commission has positively responded to 1591 appeals, i.e. it has obligated the holders to allow access to the requested public documents. In 2011, 409 complaints were filed to the Commission, which is a significantly reduced number compared to the previous year when 540 complaints were filed. According to the statement in the Commission's Annual Report for 2011, "this is satisfactory data, because in the year when the number of requests for free access to information has increased (according to data from the annual reports of the information holders - total 3496), the number of complaints has decreased, which means that holders of information are slowly but surely realizing the seriousness of the law and are opening to applicants" (Annual Report - 2011).

As the number of requests increases, so does the number of received answers. Thus, in 2011 the officials have positively responded to 3283 re-

quests, while the access to 172 requests has been denied according to the exemptions included in the Law, or according to other regulations. In 2012 the officials have positively responded to 4522 requests.

Table 1. Comparative view since the initial application of the law (source: Annual Report on the work of the Commission for Protection of the Right to Free Access to Public Information, from January 1 to December 31, 2011)

	2006	2007	2008	2009	2010	2011	2012
Submitted requests	513	1476	1876	2106	2379	3496	4865
Answered requests	482	1330	1765	1890	2208	3283	4522

But despite all these information, the following data indicates the need for greater affirmation of the law and raising awareness about the possibilities it offers and for the acceptance of the idea "I have a right to know." Namely, according to the Report of the Commission, the highest percentage of applicants, i.e. complainers, are citizens' associations and foundations. In 2012, 87% of the requests come from non-governmental organizations and associations.

Citizens participate as requestors in 13% of submitted cases. Furthermore, the total numbers of complaints, 151 were submitted by individuals, and the remaining 1074 from citizens' associations and foundations. "These figures confirm that in this reporting period complaints submitted by citizens' associations and foundations dominate in comparison to individuals, who do not yet use this right that is ensured by the law and the Constitution" (Annual Report 2012).

The free access to information in order to prevent corruption could not survive on its own and develop in its implementation, unless all of the society's stakeholders actively engage in its affirmation. In affirming the right of

citizens to request and access information, the media can and should play a significant role. However, before that they need to use the benefits provided by this law themselves. So far, in the Republic of Macedonia the Law on Free Access to Information of Public Character is still not widely applied by journalists.

In April 2012 there was a panel debate organized by the Center for Civil Communications⁸⁾ on which it was concluded that a very small number of journalists within their profession obtain information exercising the Law on free access. Even fewer are informed of the opportunities offered by the law. As noted in the panel debate, their role and their participation in the consumption of the access to information is extremely important particularly given the extensive experience of the journalists in Bulgaria, who have managed to reveal a series of corruption scandals in the country through these instruments, among others the misuse of money from European funds.

Conclusions

The contemporary democratic pillars emphasize that the individuals are prepared to effectively participate in decision making and evaluating the work of their governments. The level of participation depends on the level of access to different information, which is owned by governmental and public institutions. The legal grounds for free access to information enables active participation of the citizens. However, their implementation and the level of participation depends on the competence of the resources, the dynamic of the civil society, the activities of non-government organization that ensure transparency, the level of professional investigative journalism, as well as the capacity of the citizens to use the benefits of the Law.

The legal basis for free access to public information in the Republic of Macedonia has been well placed. The government has articulated its commitment for transparency and combat against corruption, all in order to achieve

the EU criteria, among which the criteria for good governance and an open government. Although the corruption is still not on a satisfactory level, yet the Law has influenced its reduction.

In order to ensure a more successful application of the Law in the following period it is necessary to concentrate on: (A) Educating citizens through the mass media regarding their "I have Right to Know"; (B) Educating the journalists to ensure greater participation from them in the application of the access to information, especially in the area of investigative journalism; (C) Establishing a system for exchange of information within the institutions in order to ensure that the officials receive the requested information in a timely manner, and provide it to the requestors.

All of this will strengthen the implementation of the Law, as one of the mechanisms that ensures removal of comfortable positions behind closed doors and with its constant presence is a powerful tool in the fight against corruption and misconduct of governments and public authorities.

NOTES

1. <http://www.right2info.org/>

2. Article 20: (1) The civil servant is obliged to keep the public and classified information with the degree of protection specified in accordance with the law in a manner and under conditions determined by law or other regulation; (2) The obligation to keep classified information with the degree of protection specified in accordance with the law lasts up to three years after termination of service.

3. At the moment the Republic of Macedonia has 1 247 holders of public information, placed in the Commission's list, for which there are precise records and which is constantly updated.

4. Any classified information needs to be marked with a visible sign that indicates that the information is: (i) top secret; (ii) highly classified; (iii) classified; (iv) internal.

5. The Commission is independent in its operations and decision-making in accordance with the legal responsibilities. The Commission is accountable for its activities to the Assembly of the Republic of Macedonia, and submits annual reports for its work.

6. <http://www.un.org/apps/news/story.asp?NewsID=26553&Cr=press>

7. <http://www.transparency.org>

8. http://www.ccc.org.mk/index.php?option=com_content&view=article&id=165%3A2012-05-13-12-51-16&catid=4%3A2012-02-07-21-14-33&Itemid=75&lang=mk

REFERENCES

- Björkstrand, G. & Mustonen, J. (2006). Introduction: Anders Chydenius' legacy today (pp. 4-7). In: Mustonen, J. (Ed.). *The world's first freedom of information act: Anders Chydenius' legacy today*. Kokkola: Art-Print Ltd.
- Lindstedt, C. & Naurim, D. (2005). Transparency vs. corruption; the conditional significance of a free press. *QOG Working Papers*. Ser. 5.
- Montinola, G.R. & Jackman, R.W. (2002). Sources of corruption: a cross-country study. *British J. Polit. Sci.*, 32, 147-170.

OFFICIAL PUBLICATIONS

- Amendments of the Law on Free Access to Public Information (Official Gazette of the Republic of Macedonia No. 6/2010).
- Civil Servants Law (Official Gazette of the Republic of Macedonia No. 76/2010).
- Law on Free Access to Public Information (Official Gazette of the Republic of Macedonia No.13/2006).
- Law on Organization and Operation of the State Administrative Bodies (Official Gazette of the Republic of Macedonia No. 58/2000).

Law on Classified Information (Official Gazette of the Republic of Macedonia
No. 9/2004).

Local Government Law (Official Gazette of the Republic of Macedonia No.
5/2002).

✉ Dr. Suzana Dzamtovska-Zdravkovska (corresponding author)
Faculty of Law
University Goce Delcev – Stip, Macedonia
E-Mail: suzana.dzamtoska@ugd.edu.mk

Dr. Jadranka Denkova
University Goce Delcev – Stip, Macedonia
E-Mail: jadranka.denkova@ugd.edu.mk

Dr. Andon Majhosev
Faculty of Law
University Goce Delcev – Stip, Macedonia
E-Mail: andon.mjhosev@ugd.edu.mk

© 2014 BJSEP: Authors

