

Biljana Daskalova
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According to Article 110 of the Constitution of the Republic of Macedonia and Article 70 of the Rules and Procedures of the Constitutional Court of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 70/92), the Constitutional Court of the Republic of Macedonia on the session held on December 25 1996, brought the following

DECISION

1. Articles 11 and 12 of the Law on Amendments to the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No. 65/95) shall be abolished.
2. This decision becomes effective from the date of its publication in the Official Gazette of the Republic of Macedonia.
3. Based on initiative submitted by Predrag Sapcevski from Skopje, the Constitutional Court of the Republic of Macedonia, initiated a procedure for assessment of the constitutionality of the Articles 11 and 12 of the Law mentioned in item 1 of this decision, since Article 11 is not in compliance with the principle of free market and entrepreneurship, considering that the financial and economic audit is transferred to exclusive authority to the Public Revenue Office and in such a manner it is transferred into regular administrative function, and since Article 12 is not in compliance with Article 33 and 55 of the Constitution because the funds generated by the Payment Operations Bureau are considered as state revenues, and not revenues of the entity that directly generate them.
4. At the session, the Court decided that according to Article 60 of the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No. 80/93) the Bureau shall perform the activities of the economic and financial audit until the laws stipulating the audit are passed, in accordance with the Law on Public Book-keeping Service (Official Gazette of the SFRY No. 70/83, 16/86, 74/87, 37/88, 61/88, 57/89, 79/90, 84/90 and 20/91 and Official Gazette of the SRM No. 44/85).

The disputed Article 11 of the Law on Amendments to the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No.65/95) stipulate that the word "Bureau" under Article 60 line 2 to be substituted for the words "Public Revenue Office".

5. According to Article 8 of the Constitution of the Republic of Macedonia, one of the most fundamental values of the constitutional system is the free market and entrepreneurship, while the Article 55 of the Constitution shall guarantee the freedom of market and the entrepreneurship.

According to Article 95 paragraph 3 of the Constitution, the organization and operations of the government agencies shall be regulated by a law passed by two third of votes of the total number of members of Parliament.

In accordance with the Law on Public Bookkeeping Service (Articles 69-79), the operations of the economic and financial audit shall have professional character, which shall provide independent and expert arbitration of the accounting information. The audit shall be performed upon request of the interested legal entities – users of information with appropriate compensation.

The audit as a requirement for the large and middle enterprises in the legal system is stipulated under Article 76 of the Accounting Law, according to which the annual accounting statements shall be examined and assessed by an institution that according to the law is authorized to perform audit, upon request of the entities.

Taking into account the structure of the audit as a professional activity, according to the opinion of the Court, this activity may not be entrusted to a government administrative agency and become an administrative and financial control performed by a tax service, i.e. the performance of audit exclusively by the tax service is not in compliance with the economic bases stipulated by the Constitution, especially in a market oriented economy, taking into consideration the free market and entrepreneurship guaranteed by the Constitution.

Considering that the audit according to its nature is a professional service, it may not be determined within the scope of the government agencies authority and become government administrative function. The Court has found that Article 11 is not in compliance with the aforementioned constitutional provisions.

6. In addition, the Court determined that Article 12 of the Law on Amendments to the Law on Payment Transactions prescribes that the “excess” generated revenues over expenditures of the Bureau shall be considered as revenue of the Budget of the Republic of Macedonia.
7. According Article 33, each person shall be required to pay tax and other public fees and to participate in the settlement of the public expenditures in a manner stipulated by the law.

Article 55 paragraph 1 of the Constitution shall guarantee the freedom of the market and entrepreneurship. According to paragraph 2 of this Article, the Government shall provide equal legal position of all entities at the market and shall undertake measures against the monopolistic position and monopolistic behavior at the market, while according to paragraph 3 of this Article of the Constitution, the freedom of the market and the entrepreneurship may be limited by the law, solely for defense of the country, protection of the nature and environment or the health of the people.

According to the opinion of the Court, from the content of Article 33 of the Constitution it may be concluded that the compensation for the rendered services in the area of payment transactions may not be considered as a public fee, since this compensation for performance of the activity of the Payment Operations Bureau, as an independent professional institution that has rights and liabilities determined by the law and status of a legal entity, shall be considered as a compensation for each individual service to the participant in the payment transactions as a service rendered by the Bureau. Taking into account that this particular case is about compensation for rendered services and operations related to payment transactions of the participants in such transactions that are carried out by the Bureau based on special tariff and special agreements and that the compensation also includes all the expenses of its operation, the Court has found that the compensation of the services for the operations of the Bureau may not be considered as a tax or other public fee which serves for settlement of the public expenditures, and accordingly may not be considered as a state revenue and to be paid in the State Budget.

On the other hand, considering the content of Article 55 of the Constitution, and taking into account that according to the disputed provision the revenues of the Bureau generated through the rendered services and operations of the payment transactions, are considered as a direct state revenue and are paid directly to the Budget, and not to the institution that directly generates them, which is not the case with the other institutions responsible for the payment transaction (the National Bank of the Republic of Macedonia, the commercial banks and the public utility for telecommunications), the Court has found that the disputed Article 12 is not in compliance with Article 33 and 55 of the Constitution.

8. Based on the aforementioned, the Court decided as in item 1 of this Decision.
9. This Decision was brought by the Court composed of the President of the Court Jovan Proevski, Ph.D. and the justices Bahri Isljami, Nikola Krleski, Ph.D., Olga Lazova, Stojmen Mihajlovski, Ph.D., Milan Nedkov, Ph.D., Besim Selimi, Josif Talevski, Ph.D. and Todor Djunov, Ph.D.

Biljana Daskalova
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LAW ON AMENDMENTS TO THE LAW ON PAYMENT TRANSACTIONS

Article 1

After paragraph 1 Article 8 of the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No. 80/93 and 9/94), a new article shall be added which reads as follows:

“The control over the performance of the operations in the area of public revenues by the institutions responsible for the payment transactions shall be exerted by the Ministry of Finance – Public Revenue Office.”

Article 2

After the words “payment transactions” under Article 10 paragraph 1 item 1 second line, the words: “except for the accounts of the banks and savings houses and the National Bank of the Republic of Macedonia” shall be added.

Article 3

Article 12 shall be amended and shall read as follows:

“The money of the participants in the payment transactions recorded on the accounts held with the Bureau, shall be included as deposits in the accounts of the depositor on a daily basis, in accordance with the agreement on depositing money, after the final transfer of the funds.

As an exemption from paragraph 1 of this Article, the money of the entities of the public sector and other money stipulated by the law recorded on the accounts with the Bureau, shall be included as deposits in the National Bank of the Republic of Macedonia on a daily basis, after the final transfer of the money.

The participant in the payment transaction shall submit to the Bureau, which hold its account, an agreement on money deposit with particular bank, and in case of changing the money deposit bank and proof for denunciation of the agreement with that bank.

The orders for including the money under paragraph 1 and 2 of this Article, shall be executed the same day when the final transfer of money was executed.”

Article 4

Article 13 shall be amended and shall read as follows:

“The Bureau shall not execute the order of the participant in the payment transaction, if the deposit money bank which the participant in the payment transaction concluded an agreement with, does not have any money on its own giro-account.”

Article 5

Two new item shall be added in Article 17 paragraph 1, which read as follows:

“1. Holds the accounts of banks, savings hoses and the National Bank of the Republic of Macedonia and

2. carries out the payment transaction between banks, savings houses and the National Bank of the Republic of Macedonia”.

Item 5 shall be amended and shall read as follows:

“5. receives money from the accounts of banks and savings houses in form of deposits, deposits from the public sector, as deposits stipulated by the law”.

The items 1, 2, 3, 4, 5 and 6 shall become items 3, 4, 5, 6, 7 and 8.

New paragraph 2 shall be added after paragraph 1, which reads as follows:

“The Council of the National Bank of the Republic of Macedonia shall prescribe the manner of recording the accounts of the banks and savings houses and the National Bank of the Republic of Macedonia and closer regulations for carrying the payment transactions”.

Article 6

New paragraph 2 shall be added after paragraph 1 of Article 30, which reads as follows:

“The institution responsible for the payment transactions shall issue a payment order for the expense of the account holder, if he/she failed to settle the liabilities stipulated by the law in the determined time frame, and shall notify the public revenue office on this issue.”

Paragraph 2 shall become paragraph 3.

Article 7

The word “order” under Article 32 paragraph 1 line 2, shall be replaced with the words “executive orders”.

Article 8

The words “five to fifteen” under Article 50 paragraph 1, shall be replaced with the words “one to three”.

Article 9

The words “20 to 100” under Article 51 paragraph 1, shall be replaced with the words “four to twenty”.

The words “eight to fifteen” under paragraph 2, 3 and 4 shall be replaced with the words “one to three”.

Article 10

The words “20 to 100” under Article 53 paragraph 1, shall be replaced with the words “four to twenty”.

The words “eight to fifteen” under paragraph 2, shall be replaced with the words “one to three”.

Article 11

The word “Bureau” under Article 60 line 2, shall be replaced with the words “Public Revenue Office”.

Article 12

The excess revenues over expenditures of the Bureau, shall be considered as a revenue of the State Budget.

Article 13

The number “1996” under Article 61, shall be replaced with the number “1997”.

Article 14

Two new Articles 61-a and 61-b shall be added after Article 61, which read as follows:

“Article 61-a

The Council of the National Bank of the Republic of Macedonia shall bring the regulations in accordance with Article 17 paragraph 2 of this Law, by December 31, 1996.

Article 61-b

The depositor who hasn't concluded an agreement, in accordance with Article 12 paragraph 3 of this Law shall submit an agreement on money deposit with particular bank within 30 days after this law enters into force."

Article 15

This Law shall become effective the next day after the date of its publication in the Official Gazette of the Republic of Macedonia.

Biljana Daskalova
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LAW ON AMENDMENTS TO THE LAW ON PAYMENT TRANSACTIONS

Article 1

The words "100 to 250 salaries" under Article 49 paragraph 1 of the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No. 80/93, 9/94, 65/95 and 71/96) shall be replaced with the words "Denar 10,000 to Denar 300,000", the words "economic offense" shall be replaced with the word "misdemeanor".

The words "economic offenses" under paragraphs 2 and 3 shall be replaced with the word "minor offense", and the words "eight to ten salaries" shall be replaced with the words "Denar 1,000 to Denar 50,000".

The words "protective measure" under paragraph 4 shall be replaced with the words "security measure".

Article 2

The words "one to three salaries" under Article 50 paragraph 1 shall be replaced with the words "Denar 10,000 to Denar 100,000".

The words "protective measure" under paragraph 2 shall be replaced with the words "security measure".

Article 3

The words "four to twenty salaries" under Article 51 paragraph 1, shall be replaced with the words "Denar 10,000 to Denar 300,000".

The words "one to three salaries" under paragraph 2 and 3 shall be replaced with the words "Denar 1,000 to Denar 50,000", and the words "one to three salaries" under paragraph 4 shall be replaced with the words "Denar 10,000 to Denar 100,000".

Article 4

The words "100 to 250 salaries" under Article 52 paragraph 1 shall be replaced with the words "Denar 10,000 to Denar 300,000", and the words "economic offense" shall be replaced with the word "misdemeanor".

The words “economic offense” under paragraph 2 shall be replaced with the word “misdemeanor”, and the words “eight to ten salaries” shall be replaced with the words “Denar 1,000 to Denar 50,000”.

The words “protective measure” under paragraph 3 shall be replaced with the words “security measure”.

Article 5

The words “four to twenty salaries” under Article 53 paragraph 1, shall be replaced with the words “Denar 10,000 to Denar 300,000”.

The words “one to three salaries” under paragraph 2 shall be replaced with the words “Denar 1,000 to Denar 50,000”.

Article 6

The year “1998” under Article 61, shall be replaced with the number “2000”.

Article 7

This law shall become effective the eight day after the date of publishing in the Official Gazette of the Republic of Macedonia, and Article 6 of this Law shall become effective on January 1, 1998.

Biljana Daskalova
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LAW ON AMENDMENTS TO THE LAW ON PAYMENT TRANSACTIONS

Article 1

New line shall be added after the first line under Article 7 paragraph 1 of the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No. 80/93, 9/94 and 65/95) which reads as follows: “- logical material control of the calculations on a basis of payment of taxes, contributions and other fees introduced by the law”.

Article 2

The full stop (.) under Article 22 paragraph 1 shall be replaced with coma (,) and the words “except for the Budget funds beneficiaries who may also hold an account for own revenues” shall be added.

Article 3

The number “1997” under Article 61 shall be replaced with the number “1998”.

Article 4

This Law shall be enacted on the date of its publication in the Official Gazette of the Republic of Macedonia, and shall come into force on January 1, 1997.

Biljana Daskalova
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**CORRECTION
ON THE LAW ON PAYMENT TRANSACTIONS**

- In Article 18 paragraph 1 the words “carry out accounts” shall be replaced with the words “hold accounts”.
- After Article 23, the words “Article 23” shall be replaced with the words “Article 24”.
- In Article 30 paragraph 1 the words “this account” shall be replaced with the words “that account”.
- In Article 44 line 4 the words “rate” shall be replaced with the words “procedure”.

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LAW ON AMENDMENTS TO THE LAW ON PAYMENT TRANSACTIONS

Article 1

The year "2000" under Article 61 of the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No. 80/93, 9/94, 65/95 71/96 and 7/98) shall be replaced with the year "2001".

Article 2

This Law shall be enacted on the date of its publication in the Official Gazette of the Republic of Macedonia, and shall come into force on January 1, 2000.

Biljana Daskalova
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According to Article 110 line 1 of the Constitution of the Republic of Macedonia and Article 70 line 1 of the Rules and Procedures of the Constitutional Court of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 70/92), the Constitutional Court of the Republic of Macedonia on the session of October 25 1994, brought the following

DECISION

1. Article 47 paragraph 4 of the Law on Payment Transactions (Official Gazette of the Republic of Macedonia No. 80/93 and 9/94) shall be abolished.
2. This decision shall be published in the Official Gazette of the Republic of Macedonia.
3. Based on initiative submitted by Todor Petrov, member of Parliament of the Republic of Macedonia and Predrag Sapceviski from Skopje, the Constitutional Court of the Republic of Macedonia, by a Decision U.No. 8/94 from July 13 1994, initiated a procedure for assessment of the constitutionality of the provision of Article 47 paragraph 4 of the Law pertaining to item 1 of this decision, since its compliance with Article 33 and 55 of the Constitution was put in question.
4. At the session, the Court found that according to Article 47 paragraph 1 of the Law, for performing the activities and tasks within its authority, the Bureau shall charge the participants in the payment transactions a compensation for carrying out the payment transactions in the Republic, which are being charged from their accounts and compensations for operations conducted based on contractual activities.

According to the disputed paragraph 4 of this Article, the compensations charged by the Bureau pertaining to paragraph 1 of this Article shall be considered as revenues of the Republic and shall be paid in the Budget of the Republic of Macedonia.

5. According Article 33, each person shall be required to pay tax and other public fees and to participate in the settlement of the public expenditures in a manner stipulated by the law.

Article 55 paragraph 1 of the Constitution shall guarantee the freedom of the market and entrepreneurship. According to paragraph 2 of this Article, the Government shall provide equal legal position of all entities at the market and shall take measures against the monopolistic position and monopolistic

behavior at the market, while according to paragraph 3 of this Article of the Constitution, the freedom of the market and the entrepreneurship may be limited by the law, only for defense of the country, protection of the nature and environment or the health of the people.

According to the opinion of the Court, from the content of Article 33 of the Constitution it may be concluded that the compensation for the rendered services in the area of payment transactions may not be considered as a public fee, since this compensation for performance of the activity of the Payment Operations Bureau, as an independent professional institution that has rights and liabilities determined by the law and status of a legal entity, shall be considered as a compensation for each service to the participant in the payment transactions as a service rendered by the Bureau. Taking into account that this particular case is about compensation for rendered services and operations related to payment transactions of the participants in such transactions that are carried out by the Bureau based on special tariff and special agreements and that the compensation also covers all the expenses of its operation, the Court has found that the compensation of the services for the operations of the Bureau may not be considered as a tax or other public fee which serves for settlement of the public expenditures, and accordingly may not be considered as a state revenue and be paid in the Budget of the Republic of Macedonia, and thereon has found that the disputed provision of Article 47 paragraph 4 of the Law is not in compliance with the provision of Article 33 of the Constitution.

Furthermore, considering the content of Article 55 of the Constitution, and taking into account that according to the disputed provision the revenues of the Bureau generated through the rendered services and operations of the payment transactions, are considered as a direct state revenue and are paid in the Budget, and not to the institution that directly generates them, which is not the case with the other institutions responsible for the payment transaction (the National Bank of the Republic of Macedonia, the commercial banks and the public utility for postal services and telecommunications), the Court has found that this provision is not in compliance with Article 55 of the Constitution.

6. Based on the aforementioned, the Court decided as in item 1 of this Decision.
7. This Decision was brought by the Court composed of the President of the Court Jovan Proevski, Ph.D. and the justices Bahri Isljami, Nikola Krleski, Ph.D., Olga Lazova, Stojmen Mihajlovski, Ph.D., Milan Nedkov, Ph.D., Besim Selimi, Josif Talevski, Ph.D. and Todor Djunov, Ph.D.