

To: OSCE PA Members

**From: Igor Janushev, Member of Parliament,
Assembly of the Republic of N. Macedonia**

**Head of the Delegation of the Assembly of the Republic of N.
Macedonia to the OSCE Parliamentary Assembly**

**Chairman of the Committee for Oversight of the Implementation of
the Measures for Interception of Communication;**

Date: 27 July 2021

**Subject: Notice regarding the political persecution and the charges brought
against me in the "Design" case**

Dear all,

First of all, let me express my disappointment and disbelief that I am forced to address you this way. I believe you would agree with me that it is an imperative for the Republic of N. Macedonia, as a candidate country for EU membership, to ensure full compliance with the Copenhagen criteria as a requirement for full EU membership. This implies the existence of institutions that will guarantee the rule of law and the respect for human rights. The reason I am writing to you is to draw attention to the serious violations of these principles that the Primary Public Prosecutor's Office for Organized Crime and Corruption has committed by filing an indictment against me and 3 other people in the case codenamed "Design".

1. Indictment filed after the expiration of the deadline

The indictment has been filed after 3 years of conducting an investigation, which is contrary to the legal opinion of the Supreme Court and to the provisions of the Public Prosecution Law.

Namely, the investigation regarding the "Design" case was opened on 11 October 2018, however, according to the principle legal opinion of the Supreme Court, after the expiration of a period of 18 months, the Special Prosecution Office (Macedonian: SJO) is no longer the prosecutor authorized to take pre-investigative and investigative public prosecution actions, as provided for in the Criminal Procedure Law. In this case, the Primary Public Prosecutor's Office has filed the indictment on the basis of criminal proceedings initiated by the SJO, who is an unauthorized prosecutor, and this constitutes a violation of the basic principle of the Criminal Procedure Law protected by Article 17. There are no so-called "Bombs" attached to the indictment, and so the question arises: what are the indications on the basis of which the SJO conducted the procedure?

2. Indictment contrary to the principles of the Criminal Procedure Law without stating specific co-perpetrator actions

The crime that is the subject of the Indictment does not contain any description arising from the legal specification of the crime "Abuse of office and authority" as referred to in Article 353 paragraph 5 in conjunction with paragraph 1 and Article 22 of the Criminal Code, i.e. it does not

contain any description of the manner in which the crime was committed, i.e. any description of the subject of the crime and the manner in which it was committed, or any description of the means used to commit such crime, nor it contains a description of any other circumstances necessary to precisely determine the crime alleged to have been committed, and therefore the Primary Public Prosecutor's Office for Prosecution of Organized Crime and Corruption Skopje has acted contrary to Article 321 paragraph 1 item 2 of the Criminal Procedure Law.

The Indictment alleges that the crime has been committed by the defendants in the period "from 15 February 2010 to 14 April 2010". The time period which, according to the indictment, started on 15 February 2010 and lasted until 14 April 2010, does not specify the time of committing this crime, in which the separate criminal actions should be distinguished separately i.e. individually for all defendants, and so the question legitimately arises: which specific co-perpetrator actions have I committed, with a description of the elements of the Criminal Code?

3. The description of the offences I am charged with are abstract, contradictory and reduced to insinuation

The indictment regarding the crime under Article 353 of the Criminal Code does not contain any description of what my participation in the crime consists of. There is not a single word describing what the abuse of my office and authority consists of. There is not a single word or description of how I, as a member of the Commission, colluded with Mr. Janakievski to act contrary to the law when opening and reviewing the bids.

The question also arises as to what the accusation refers to - what have I done as a co-perpetrator?!?

4. Putting forward such indictment is contrary to the Constitution

The alleged form of abuse of office is applicable when the official is authorized to make decisions based on his/her own assessment, when he/she is authorized to assess the expediency of the specific situation and to make a decision based on that. This form of a crime is committed if the type of decision is motivated by self-interest and selfishness, and not by the interests of the office, which is not applicable in the specific case and it does not arise from the description of the actions in the indictment (Constitutional Court 40/2009-0-0 of 22 April 2009).

5. Specific offences I am charged with in the Indictment

"The economic operator Yutong, acting contrary to the provisions of Article 47 of the Public Procurement Law (hereinafter: PPL), failed to submit a bid guarantee in a sealed envelope and in original together with the Bid, and instead it submitted a guarantee issued by Ohridska banka AD Skopje which does not have a "B credit rating", as required by the tender documentation, in an envelope with all the general documents"

Article 47 of the PPL (no longer valid) does not regulate the manner of submission of the guarantee in a "sealed envelope" or "envelope with general documents", however Article 47 paragraph 3 specifies as follows, and I quote: "(3) The bid guarantee shall be submitted together with the Bid in original."

Yutong's Bid was also secured with a bank guarantee issued by Société Générale Paris, which has the required credit rating. In the indictment, the prosecution ignores the fact that the primary bank guarantee that secures the Yutong's Bid under public call 81/2009 was issued by Société Générale Paris as counter-guarantee number MT760 under the reference 17002-0013187ETR at the request of Yutong, and contains all terms of payment and other requirements from the tender documentation. When evaluating the bid, the Commission considered the guarantee no. 48-2010 issued by Ohridska Banka, the primary guarantee (issued as a counter-guarantee) issued by Société

Générale Paris no. 17002-0013187ETR and Notice no. 46/48-10 which confirms the credit rating of Société Générale Paris.

Furthermore, the Indictment states as follows: "... and in addition to the Bid, the economic operator Yutong failed to submit a quality certificate ISO 9001:2000 as required by the tender documentation but instead it submitted certificate ISO/TS 16949:2002 ... and although we, as the Commission, did not request an opinion from a competent authority regarding the certificate submitted by the Chinese operator, it was accepted as appropriate without further explanation.....". The submitted certificate according to the ISO/TS 16949:2002 standard fully contains the ISO 9001:2000 standard, as well as additional requirements relating to the automotive industry. In this case, there is a direct legal obligation (as provided for in Article 156 of the PPL) to accept the submitted certificate ISO/TS 16949:2002 as equivalent and compatible with the required ISO 9001:2000 standard, otherwise the economic operator would be improperly and illegally discriminated against.

6. The Second Instance Commission confirmed the Commission's findings and any failure to continue the procedure would also constitute a crime on my part

By adopting the decision to dismiss King Long's appeal as unfounded, the Commission acting on public procurement appeals also confirmed that the entire public procurement procedure conducted by the Public Procurement Commission was in accordance with the provisions of the Public Procurement Law, stating the following in its decision, and I quote: "the Contracting Authority conducted the procedure in accordance with the Law on Public Procurement ...", seeing that this Commission is the only competent authority, in accordance with Article 200 paragraph 2 of the Law, to decide on the legality of any action or failure to act, or any decisions adopted within the public procurement procedure as individual legal acts.

Yours sincerely,



Igor Janushev