

MONTHLY REPORT ON HUMAN RIGHTS
IN THE REPUBLIC OF MACEDONIA

HELSINKI COMMITTEE FOR HUMAN RIGHTS
IN THE REPUBLIC OF MACEDONIA

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CIVICA MOBILITAS

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sole responsibility of the Helsinki Committee for Human Rights and can
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JUDICIARY

PRIEBE PUBLISHES THE SECOND EXPERT REPORT

By mid-month, the European Commission's expert group, led by Reinhard Priebe, released the second report on the existing systemic problems with the rule of law in the Republic of Macedonia.

This report welcomes the ongoing reforms in the area of judiciary, indicating the need for inclusiveness and transparency in this process. At the same time, it also points out the necessity for proper planning and the need to avoid unnecessarily delaying of the long-awaited reforms.

Experts emphasize, yet once again, that the control and misuse of the justice system by a small number of judges holding powerful positions, who continuously exert pressure on their younger colleagues, has not stopped, and they use their power to name, evaluate, discipline and dismiss colleagues from lower ranks with the purpose of achieving certain political goals.

The report underlines the necessity to change the procedures for disciplining and evaluating the judges, but there is a positive remark as well – despite the abuses noted in a small number of judges, the majority of the judges enforce justice in an honest and rightful manner.

In that sense, it is also pointed out that even though the new authorities are competent and obligated to take appropriate action against those judges who abused their position, the re-election of judges is generally not recommended because judges' behavior should in no way be considered as “standard”, while conducting a “purge” in judiciary could be politically abused.

Hence, experts call for full compliance with the principle of division of power which would subject judges who have been politically influenced to effective ethical and professional rules, and if there are evidence and reasonable doubt for committed crimes on part of judges, appropriate actions shall be taken towards them as to permanently prevent them from practising law.

Experts expressed their doubt over the credibility of AKMIS (or the automated court case management information system) for case allocation with a particular emphasis on its (in)effectiveness in Primary Court Skopje 1. According to them, it might have been manipulated in several ways: 1) reassignment of “non-eligible” judges to other departments before the assignment of sensitive cases; 2) taking a sick leave or another kind of leave during the period of

assignment to such cases by the judges who wanted to escape the pressure; 3) the possibility of using the differences in procedures under the old and new LCP as to manipulate the system more easily; 4) abusing the system through directly approaching authorized persons, such as presidents of courts. Considering that a direct supervision over the functioning of the AKMIS or automated court case management information system has never been conducted, the experts suggest that such supervision should be implemented, without any political involvement, and if necessary, with support from international institutions and representatives. This kind of supervision would be aimed at identifying the supposedly committed illegal acts.

The report extensively covers the Judicial Council, stating that the Council does not fulfill its obligations towards providing an independent judiciary, and at the same time, it is greatly responsible for the inappropriate allocation of cases. Experts are concerned with the fact that the position of a Council Member, as a regular, full-time position, detaches the judges from the reality of the judiciary. Experts also note the Council's failure to take any kind of action aimed at reopening the proceedings for dismissal of some judges as a measure for the execution of the judgments of the European Court of Human Rights due to a violation of Article 6 of the European Convention because of the unjust proceeding.

While the Judicial Council's model is left to be defined by the Judicial Reform Strategy, the expert group proposed, in principle, an in-depth re-examination of its role and consideration of the possibility of responsibility for its members. At the same time, it is once again pointed out that it is necessary for the performance system assessment and the performance output of judges, which is based on quantitative measurements, to be replaced with a new system that will focus on the quality of justice. Thus, the possibility of manipulating would be reduced and the dismissal of judges would be the ultimate measure used only in exceptional cases.¹

RECOMMENDATION: The Helsinki Committee recommends that the Government take the expert report seriously in the next phase of reforms in the judiciary. A significant part of the recommendations has already been included in the Reform Strategy Draft as a result of a joint effort by civic organizations who actively follow the drafting process of the Reform Strategy and

¹https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/2017.09.14_seg_report_on_systemic_rol_issues_for_publication.pdf

have submitted detailed proposals to the Ministry of Defense group on several occasions. Also, in line with the conclusions from the second Priebe Expert Report, the Helsinki Committee suggests taking urgent actions towards defining the future position and role of the Special Public Prosecutor's Office in terms of dealing with the cases arising from the "bombs" in terms of extending the SPP's mandate, or its inclusion as a department in the regular Public Prosecutor's office with the aim of avoiding unjustified delays in enacting justice when it comes to high-profile criminal cases. At the same time, in order for the SPP's Office to more effectively carry out its responsibilities, an adoption of legislative amendments to the Law on Witness Protection is inevitable.

HATE CRIMES

INCREASED NUMBER OF HATE CRIMES DURING THE PRE-ELECTION PERIOD

From 2013 to date, the Helsinki Committee registers hate crimes, i.e. incidents arising from intolerance or prejudice against particular groups of society through the webpage www.zlostorstvaodomraza.mk. An increase in the number of such incidents is particularly noticeable before and during the election period. An increase in such incidents was registered before and during the time of the Early Parliamentary Elections of 2014, Presidential elections of that same year, and the early Parliamentary elections of 2016. In 2017, this type of hate crimes continued and after the end of the early parliamentary elections as well as after the political party VMRO-DPMNE failed to secure a majority of MPs to form a government. Now, during the local elections campaign, an increase in the number of such incidents has been noted yet again.

Eight hate crimes have been registered during September. Five of those have been committed because of political affiliations or political convictions.

The local elections campaign in Macedonia started on September 25th. The first hate crime incident is registered on that same date, and it was committed on the basis of political affiliation. That incident, as well as four others, involved demolition of party headquarters. By the end of the month, the demolition continued on daily basis, summing up to demolished headquarters of three political parties, i.e. two headquarters of the SDSM political party, two headquarters of the VMRO-DPMNE party and one of the Democratic Party of Serbs in Macedonia.

RECOMMENDATION:

The Helsinki Committee requests that the Ministry of Interior make more effort into identifying the perpetrators and take preventive measures as to prevent these types of incidents in the future considering their frequency and the fact that the election campaign lasts for twenty days. The Committee would like to point out that every violent act and incident in the pre-election period is contrary to the Code for Fair and Democratic Elections.

CLOSED INSTITUTIONS

MAN WITH GANGRENE OF BOTH LEGS PLACED IN THE PSYCHIATRIC HOSPITAL BARDOVCI

The Helsinki Committee for Human Rights expresses serious concern about the health condition of the homeless person Muarem Demirov, who has been diagnosed with gangrene of both legs and for three and a half months has been inadequately placed in the PHI Psychiatric Hospital Skopje in Bardovci.

Today, 21.09.2017, representatives of the Helsinki Committee for Human Rights have visited the person Muarem Demirov and found him in extremely poor health.

Namely, despite the promise of the Minister of Health delivered on June 5, 2017 that the patient Muarem Demirov will be appropriately hospitalized at the PHI Clinic for Thoracic and Vascular Surgery and will be placed in an emergency program for a proper intervention, and after the intervention, will be post-operatively located in the PHI Gerontology Institute "13 November", where it will be possible for him to fully recover. After the issued statement that the patient was in "safe hands", on June 8, 2017, the same was inadequately hospitalized in the PHI Psychiatric Hospital Skopje, without surgery and without any conditions for proper health care.

Given that there is no basis for detaining the person Muarem Demirov in the psychiatric hospital, nor can he be provided with adequate health care, the employees of the PHI Psychiatric Hospital Skopje asked the Center for Social Work Skopje to accommodate the person in another institution where he may be given appropriate care. It is especially important that the same letter emphasizes

that the person Muarem Demirov has no psychological disorders and cannot be further held in the PHI Psychiatric Hospital Skopje.

RECOMMENDATION:

The Helsinki Committee requests an urgent action from the health institutions and immediate hospitalization of the person Muarem Demirov as he could be immediately operated and provided with appropriated health care. We demand that the Minister of Health, Arben Taravari, takes responsibility for the misconduct of the case. Given the fact that the Minister made a statement to the public promising the patient will receive the full medical care, he must have been informed about the outcome of his treatment and treatment itself. We believe that due to negligence by the healthcare institutions, there is a reasonable doubt of the existence of the criminal offenses of Maltreatment of a Patient (Article 207) and Failure to Provide Medical Assistance (Article 208) of the Criminal Code, and thus we require from the Public Prosecutor's Office to initiate a procedure ex officio and conduct an investigation as to identify responsibility on part of the doctors who acted inappropriately in this case.

DISCRIMINATION

MES WITHDRAWS THE CIVIC EDUCATION TEXTBOOK FROM THE CURRICULUM FOR EIGHT GRADE

In the complaint submitted by the Network for Protection against Discrimination regarding the discriminatory contents in the "Civic Education" textbook for 8th grade, it is stated that on page 34 and 35 there is a lesson on women's rights. Among other things, it is said that only respected women and healthy mothers can produce healthy families, and the development of society depends on them. Additionally, the lesson contains two photographs: in one illustration, a woman in an apron is shown as simultaneously cooking and standing in front of the computer, and in the other one, a woman is sitting with crossed legs and a magazine in her hand while a man is vacuuming the room. The following question is given under the illustrations: "Which one of these women has gained her rights?", which seems illogical, since neither of the two illustrations shows the way in which the women have fought for and gained their rights. Further in the same lesson, the authors

review women's roles in terms of Adam and Eve who lived in paradise, which represents favoritism towards the Christian religion as opposed to all other religions existing in the Republic of Macedonia. This content is discriminatory on the basis of religion and religious convictions of women and students who are of different religion or those who are not religious. Trying to explain women's rights through religion, the authors state that "it is believed that the woman committed the first sin in heaven. She tasted the forbidden fruit, tempted Adam and she has been suffering ever since. In the "Genesis" by Moses, God says to the woman: "I will increase your suffering when you will be pregnant, you will suffer pain while you give birth to children, you will be under the authority of your husband and he will be your master".

The attempt to explain women's rights through religion, supported by a quote in which a woman's obedience to her husband is obligatory, apart from representing discrimination on the basis of religion and religious convictions, it also promotes discrimination towards women and gender prejudice. Additionally, it is a violation of the principle of secularity in education, since religious texts are presented as legitimate sources of information on women's rights.

Following the procedure and the identification of discrimination, the Ombudsman submitted a Recommendation to the Ministry of Education in which the existing violations were pointed out and gave specified actions which should be taken by the Ministry. The Ministry of Education and Science (MES) accepted the Ombudsman recommendations and decided to withdraw the textbook from the curriculum.

RECOMMENDATION:

We applaud the Ombudsman's opinion and the Minister of Education's decision to withdraw the textbook, and we hope that this practice will continue in the future for all textbooks with discriminatory content. At the same time, we ask the Ministry of Education and Science to include the Network for Protection against Discrimination in the processes of revision of textbooks and teaching contents as to be included in the process and secure the prohibition of discrimination in education.

SOCIAL PROTECTION

DISSATISFACTION WITH THE WORK OF SOCIAL PROTECTION CENTERS

The Helsinki Committee received several complaints regarding the work conducted in the authorized social protection centers in relation to rights to social work.

One of the cases is about an unemployed client at the age of fifty and without any realistic employment options due to the fact that he/she is on regular chemotherapy and has been denied by the competent center for social work to exercise the right to social financial assistance. The client has been denied on the basis of being an owner of 1/8 ideal part of real estate of 40 m² which actually represents 5 m² of living area on which the execution of a monetary claim is carried out and cannot be alienated. Denial of the request for social financial assistance on the grounds that the plaintiff owns the ideal part of the property that is actually insignificant and subject to enforcement is an unacceptable argument, i.e. the client owns the property and property rights from which he/she can support himself/herself.

In the other case, in the complaint submitted to the Helsinki Committee for Human Right, the client states that the competent social center, acting ex officio, limited the right to social financial assistance with a decision based on the fact that he/she received an income of 1,112.00 MKD for making a picture frame in the residential municipality in 2013, thus according to that fact, the Center established that the client received an illegal payment of 15, 925.00 MKD in the period from 01.01.2014 to 01.02.2015. The given amount can in no way be considered as income as it is lower than the monthly financial assistance, i.e. is lower than 1,200.00 MKD. The received amount of 1,112.00 MKD is lower than the amount that the plaintiff receives as social financial assistance, which is why it cannot be considered an income that changes the client's material and property status. This is a one-time income which, if calculated on an annual basis and divided on a monthly basis, it means the client received 92 MKD per month. Therefore, it cannot be regarded as an income that changes the client's material and property status.

In both cases given above, the competent centers for social assistance rigidly quote the provisions of the Rulebook regarding the manner of determining the state of income and property rights of the household, determination of the right holder and the necessary documentation for exercising and using the right to social assistance, without taking into account all facts and circumstances that are

extremely relevant for correct determination of the factual situation in the administrative procedure in accordance with the principle of objective truth.

RECOMMENDATION:

When it comes to exercising social protection rights, the social work centers are obligated to provide real protection and to respect the principle of objective truth, i.e. *de facto* securing a work practice that results in implementing a system for prevention of and dealing with basic social risks to which citizens are exposed in life, to work towards reducing poverty and social exclusion as well as to strengthen the citizens' capacity for their self-protection.

NON-RESPONSIVENESS DEMONSTRATED BY THE MEDICAL COMMISSION AND SECTOR FOR INSPECTION SUPERVISION AT MOLSP

A client addressed the Helsinki Committee for Human Rights with the request for legal assistance in the field of social protection regarding the right to financial compensation for assistance and care from another person. The case is about a person who is materially insecure, does not have any income and suffers from a serious health condition.

Namely, before submitting an application to the competent Center for Social Affairs, she obtained an opinion from three specialists in neurosurgery, who concluded that the person needs help and care from another person. After the submission of the client's request to the Expert Commission for providing a finding, evaluation, and opinion on the needs for assistance and care from another person, it was established that the client does not need help and care from another person.

Due to the contradicting opinions, the Helsinki Committee for Human Rights sent a request for information to the Expert Commission in order to establish the criterion on which the Expert Commission issued their opinion. Up to date, the Commission has not responded to the request.

Due to the unresponsiveness demonstrated by the Commission, the Helsinki Committee submitted a request for conducting surveillance to the competent Ministry of Labor and Social Policy in order to determine any irregularities in the work of the Commission. Since the Ministry of Labor and Social Policy has not responded to the complaint for more than 30 days, the Helsinki Committee will turn to the Ombudsman in order to protect the person's rights.

TEXTILE WORKERS

PIECE-RATE PAY REMAINS AN OBSTACLE IN EARNING MINIMUM WAGE

The Helsinki Committee for Human Rights expresses concern about the amendments to the Law on Minimum Wage in the Republic of Macedonia, which was adopted at the 12th session of the Assembly of the Republic of Macedonia after a shortened procedure. Although the mentioned nominal amount of the minimum wage in the Republic of Macedonia for the period from September 2017 to February 2018 is increased to 12,000 denars, the provisions for fulfilling the piece-rate pay (sometimes referred to as “standardized performance”) as a condition for earning a minimum wage still remain. Because of this, the Law does not yet offer a guarantee that workers from all sectors will receive the legally prescribed minimum wage and it leaves room for manipulations, pressures and abuses by employers.

Article 1 of the Law provides that the piece-rate pay will be determined by the employer on annual basis in February, based on criteria of efficiency in the manufacturing process specified by the employer in collaboration with the workers. The piece-rate pay should be achieved by at least 80% of the number of employees for each technical unit. Sectors where the piece-rate pay needs to be determined and with the largest percentage of workers earning a minimum salary, such as textile, leather, shoe, and mining industry, are actually the ones with the most common occurrence of violations of workers' rights. The constant mobbing, violation of workers' rights regarding working hours, the use of days of rest, working during non-working days and holidays, the non-payment of salary and benefit, the payment of salaries in cash, the worker's obligations to return part of the salary, signing blank documents by workers, working in poor hygienic, sanitary and safety conditions, the ineffectiveness of inspection supervision, etc. are only part of the problems that workers face in these sectors. In such an environment, it is difficult to believe that employers and workers will have a fair and constructive dialogue about the determination of the efficiency criteria in the production process and that they will make a joint, consensual and objective decision.

The amendments to the law do not specify the meaning of the phrase “collaboration between workers and employers” upon determining the piece-rate pay. It is unclear whether these criteria are determined through a consensus among all workers, or with a majority of workers, whether the negotiations for determining the piece-rate pay will include all employees or a representative chosen by the employees, or a syndicate representative in those companies which have established

a syndicate. Also concerning are the claims by the Industry, Energy and Mining Syndicate that the text of the amendments to the law which was consolidated in a public hearing and endorsed by the Economic and Social Council on 18.07.2017 by the three social partners, did not contain any provisions that stipulate and define the piece-rate pay.

RECOMMENDATION:

The Helsinki Committee believes that the adoption of such a law will not substantially increase the minimum wage in the sectors where piece-rate pay is required and demands an urgent change to the Minimum Wage Law in order to remove the piece-rate pay as a condition to minimum wage.

STATE LABOR INSPECTORATE ORDERS ANNUAL LEAVE PAY IN A TEXTILE FACTORY IN STIP

On September 19, 2017, the State Labor Inspectorate – Regional Unit Stip issued a decision ordering the manager of the Company for Production and Trade ZOGORI import-export LLC, Stip, to issue annual leave payments for employees. Upon a complaint submitted by the Helsinki Committee, the State Labor Inspectorate from the regional unit of the inspectorate conducted an extraordinary inspection in the aforementioned textile company and established that the employer did not pay the workers a compensation for paid annual leave for 2016. In the decision that obligates the employer to correct the irregularities, the State Labor Inspector has given him 30 days to settle the payments.

RECOMMENDATION:

We applaud this decision by the State Labor Inspectorate – Regional Unit Stip and the proactive attitude of the State Inspector who dealt with the issue. The Helsinki Committee will continue to monitor this case, i.e. will observe whether the employer acts accordingly to the State Labor Inspectorate’s decision and pays the annual leave allowance for 2016 to the company’s employees.

