

# HELSINKI COMMITTEE FOR HUMAN RIGHTS

 ХЕЛСИНШКИ  КОМИТЕТИ И МАКЕДОНИЈА  HELSINKI  ХЕЛСИНШКИ   
КОМИТЕТ ЗА ЧОВЕКОВИ ПРАВА НА РЕПУБЛИКА МАКЕДОНИЈА  
PER TEDRETTAT I HERRIUT I REPUBLIKES SE MAKEDONISEE  
CUMHURİYETİ'NİN HELSINKI TI-NDREPTULI-A E MANUSENGERE OMLUIDIREPUBLICA NEJAMIJA KI  
INSAN HAKLARI KOMİTESİ M A S C H E D O N I A REPUBLKA MAKEDONJA M A K E D O N I J E  
Наум Наумовски Борче 83; 1000 Скопје, Р. Македонија; тел/факс: + 389 2 311 9073; +389 2 329 0469  
Naum Naumovski Borche 83; 1000 Skopje; R. Macedonia; tel/fax: + 389 2 311 9073; +389 2 329 0469

## MONTHLY REPORT ON HUMAN RIGHTS IN THE REPUBLIC OF MACEDONIA

---

JANUARY 2015

### CONTENT

#### PUBLIC EVENTS AND VIOLATIONS OF DEMOCRATIC PRINCIPLES

- Protests of the Student's and Professor's Plenums

#### CLOSED INSTITUTIONS

- The Prosecution does not recognize torture

#### ECONOMIC AND SOCIAL RIGHTS

- The case of Tamara Dimovska

#### COURT CASES

- The case of Tomislav Kezarovski

#### FREEDOM OF EXPRESSION AND HATE SPEECH

JANUARY 2015

# PUBLIC EVENTS AND VIOLATIONS OF DEMOCRATIC PRINCIPLES

---

## **PROTESTS OF STUDENTS' AND PROFESSORS' PLENUMS**

---

During the month of January, Professors' and Students' Plenum held two protest events in front of the Assembly of the Republic of Macedonia. After the completion of the events, a certain number of media continued their established practice of labeling the protests' participants, regardless of their role as either organizers or supporters of the cause. Considering that in the past three years such practices have been spotted at almost every protest meant to express dissatisfaction with either particular issue or the overall social situation, it may be safely concluded that they are nothing but attempts to discredit the citizens, and thus defocus the public with regard to the goal of the gatherings. The Committee expresses its concern about the unethical reporting of protests and public gatherings, which is in collision with the public policies of the executive power, and ascertains that its sole purpose is to misinform the public, in defiance of the media's constitutional obligation to transfer and receive information in impartial and objective way.

## CLOSED INSTITUTIONS

---

### **THE PROSECUTION DOES NOT RECOGNIZE TORTURE**

---

The Helsinki Committee for Human Rights of the Republic of Macedonia filed criminal charges to the Primary Public Prosecution Office in Strumica regarding the case of the juvenile L. R., a child with condition of hearing and speech impairment, who was being tied with ropes to his bed by the employees of the PI Protection and Rehabilitation Institute Banja Bansko, where he was accommodated. The criminal charges were filed against unknown perpetrators, the director, and the employees of the PI Protection and Rehabilitation Institute Banja Bansko, as well as against the director of the PI Intermunicipal Social Work Center – Bitola, on account of the following criminal offences: Torture and other cruel, inhumane or degrading handling or punishment (Article 142, Paragraph 1 of the CL of the RM), and Abuse in Office (Article 143 of the CL of the RM).

The Primary Public Prosecution Office in Strumica decided to repudiate the charges, with the argument that the indicated offences are not liable to be prosecuted ex-officio, as well as that the tying down was performed for legitimate, security reasons. After that decision, the Helsinki Committee submitted a request for takeover of criminal prosecution to the Higher Public Prosecution Office in Štip, which also concluded that the child was being tied down for security reasons, and confirmed the decision of the Primary Prosecution. Additionally, the Higher Public Prosecutor points out that Article 3 of the European Convention on Human Rights, which forbids torture, humiliating and degrading treatment under any circumstances, is not absolutely valid, and that in this particular case all circumstances should have been taken in consideration.

The Helsinki Committee believes that such decision-making is incompetent and unprofessional. Highly worrisome is the fact that the Public Prosecutor does not recognize degrading and inhuman treatment as something forbidden and in collision with the guarantees of Article 3 of the European Convention on Human Rights, which is absolutely valid. That was confirmed on several occasions by the European Court of Human Rights. For example, in the case *Arsenov and Others against Bulgaria (90/1997/874/1086)*, the Court points out that even a minimal level of degrading treatment represents a violation of Article 3 of the Convention (Paragraph 94). Furthermore, the circumstances of the case, like the victim's gender, age and health situation have to be taken in consideration, and especially so in the case of the juvenile L. R. The Court accepts that inhumane and degrading treatment have to be recognized even when there is no direct intention to inflict such treatment, although the cases when such intention is present are especially condemnable (like the case *Selmouni against France, 25803/94*, Paragraph 96). The Helsinki Committee holds that the Public Prosecutor failed to consider these circumstances, confirmed by the European Court for Human Rights, and therefore will next approach the Public Prosecutor of the Republic of Macedonia. If the violation of the child's rights fails to be ascertained even on that instance, the next step will be to contact the European Court of Human Rights.

## ECONOMIC AND SOCIAL RIGHTS

---

### THE CASE OF TAMARA DIMOVSKA

---

The individual Žaklina Dimovska filed a complaint to the Helsinki Committee for Human Rights of the Republic of Macedonia, on account of her inability to exercise her rights stipulated in the Law on Health Insurance. Namely, Žaklina Dimovska, as insured person, submitted a request for treatment abroad, to be applied to her juvenile child Tamara Dimovska, with her complete medical documentation enclosed. After that a case was open, but the Health Insurance Fund rejected the request as groundless.

This took place although the first-instance body, starting from the day when the request had been submitted, till the day when the decision was made, through its technical services contacted several specialized medical institutions both in Macedonia and abroad, with intention to obtain bids for treatment. All medical institutions in the Republic of Macedonia rejected to accept the case, claiming that they lacked the necessary technical and medical equipment for performing the required surgical intervention. Despite these conciliar opinions of the competent physicians employed in those medical institutions, the first-instance body reached the conclusion that all possibilities for medical treatment in the Republic of Macedonia were still not exhausted, i.e. that it was possible to perform the suggested intervention on one of the Clinics in Skopje.

Based on the conciliar opinion of the team of physicians given in favor of treatment abroad, as well as on the basis of the urgency of the very intervention, the Helsinki Committee drew the conclusion that the first-instance body did not respect and failed to apply Article 30, Paragraph 1 of the Law on Health Insurance, according to which an insured person is

eligible to use medical treatment abroad, with the approval of the Fund, provided the disease is such that it cannot be successfully treated in Macedonia, while in the country where the patient is sent, there is a possibility for successful treatment of that disease. With this failure the rights of the insured person were violated.

Due to the heavy omission and the unlawful proceeding by the institutions in charge, this case had tragic epilogue, i.e. it ended with the death of the juvenile insured person. Tamara Dimovska passed away on the 9<sup>th</sup> of February 2015. The Helsinki Committee for Human Rights prepares and will file criminal charges against the responsible, due to suspicion that criminal offences have been committed, those related to Article 353, Paragraph 1 and 2 of the CL of the Republic of Macedonia, that is, Abuse of Official Capacity, and to Article 153-b, Paragraph 1 and 2 of the CL of the Republic of Macedonia, that is, Professional Negligence.

## COURT CASES

---

### THE KEŽAROVSKI CASE

---

After the announcement of the Court of Appeals' verdict in January 2015, with which the 4,5 year sentence of the journalist Kežarovski was reduced to 2 year sentence, the very same day the Ministry of Internal Affairs, acting upon the adoption of referral act by a sanction enforcement judge, escorted Mr. Kežarovskito serve the jail sentence, despite the fact that the verdict was not even delivered to him. Although the verdict, after its adoption by the Court of Appeals becomes final (Article 127, Paragraph 1 of the previous Code of Criminal Procedure, according to which the procedure was conducted), it is not considered to be effective until delivered to the defendant (Article 127, Pragraph 2 CCP). In other words, in this case the sanction enforcement judge was not authorized to adopt the referral act for serving jail sentence. With this disregard of the legislation by the sanction enforcement judge, in essence the criminal offence „Unlawful Deprivation of Liberty“ was committed, which, according to Article 140, Paragraph 4 of the Criminal Law is punishable with six months to five year jail sentence, in the cases when it is committed by an official who is abusing his official capacity or authority.

One day after he had been escorted to Skopje Penitentiary, the director of the Penitentiary suggested to the director of the Directorate for Enforcement of Sanctions a 30 day suspension of the sentence (till the 18<sup>th</sup> of February 2014), due to Mr. Kežarovski's aggravated health condition. The suggestion was accepted despite the fact that he was present on the protests organized on account of his imprisonment, when it was obvious that his health condition is sound. In the meantime, the Penitentiary's director suggested Mr. Kežarovski's release on parole, and the Primary Court Skopje I accepted the suggestion and made a positive ruling. The ruling was appealed by the Primary Public Prosecution Office in Skopje, and on the 17<sup>th</sup> of January 2014, the appeal was repudiated, and the parole confirmed. Despite the positive ruling of the Court of Appeals in Skopje, by which the parole was once again confirmed, we want to emphasize that this ruling was adopted on the last day before the final deadline for its adoption. Such proceeding by the Prosecution and

the Courts resulted with heavy psychological pressure exerted upon the journalist Kežarovski, lasting for almost two years. The journalist will be noted in the criminal records as a perpetrator of criminal offence, while his claims of Police influence on protected witness and affidavit fabrication will obviously remain uninvestigated.

## FREEDOM OF EXPRESSION AND HATE SPEECH

---

### FREEDOM OF EXPRESSION

---

As most of the European countries, in the month of January the Committee expressed concern with regard to the recent events and the freedom of expression in the French Republic. The attack on the satirical magazine “Charlie Hebdo” is a solemn reminder of the fact that not only freedom of expression can be endangered, but also the lives of those who are active in that particular area – like the twelve cartoonist working for the magazine. Although the Republic of Macedonia has not experienced a similar event, it still needs to face the fact that the freedom of expression is threatened through the censorship and self-censorship of the media workers. The case of the convicted journalist Kežarovski escalated in the month of January. The final verdict was delivered and with it he was sentenced to two years in jail, due to written word in 2008. On this occasion the media workers organized peaceful protest, at which they expressed their concern regarding the freedom of media, which, when compromised, represents a direct blow to the freedom of expression and freedom of information. Similarly, in the present circumstances of shortage of independence of the regulatory body, domination of the executive power over the media, and decrease in freedom of media, the Committee does not expect improvement in this sphere, nor facilitation of atmosphere for improvement of the present state of affairs.

---

### HATE SPEECH

---

The Helsinki Committee expresses its concern regarding the symbols placed upon the bust and the monument of Josip Broz Tito on the premises of the eponymous high school in Skopje. Namely, on the 9<sup>th</sup> of January photographs with symbols of “swastika” and “cross” were found on the base of the monument, taken and put there by unknown perpetrators. This is not the first case of wrecking public property with neo-nazi content, or hate symbols directed against certain group or individual. The Committee reminds that in Bitola, almost every year right before a memorial day important for the Jewish community, appear symbols with similar content. We also remind of the not-less-present graffiti throughout the city of Skopje. Similarly, the social networks are often burdened with uncanny comments regarding ethnicity or sexual orientation. Their targets are often members of the Albanian ethnic community and the LGBTI community. The Committee notifies and registers the claims of hate speech through the platform [www.govornaomraza.mk](http://www.govornaomraza.mk).

