HELSINKI COMMITTEE FOR HUMAN RIGHTS
ХЕЛСИНШКИ КОМИТЕТ ЗА ЧОВЕКОВИ ПРАВА НА РЕПУБЛИКА МАКЕДОНИЈА
KOMITETI I HELSINKIT PËR TË DREJTAT E NJERIUT I REPUBLIKËS SË MAKEDONISË
MAKEDONYA CUMHURİYETI'NİN HELSINKI İNSAN HAKLARI KOMİTESİ
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MONTHLY REPORT ON HUMAN RIGHTS IN THE REPUBLIC OF MACEDONIA

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PUBLIC EVENTS AND VIOLATIONS OF DEMOCRATIC PRINCIPLES

ILLEGAL WIRETAPPING

The Helsinki Committee actively follows the political events surrounding the publicly announced illegal wiretapping. The whole project was named by the opposition as "The truth about Macedonia", while the Ministry of Internal Affairs answered with accusation of alleged espionage, calling their operation with the name COUP. The opposition presented before the public conversations held between high Government representatives, including the Prime Minister Nikola Gruevski, and disclosed information that the authorities had been wiretapping over 20 000 citizens, including journalist, human rights activists, and representatives of civil society organizations. We believe that such an act of wiretapping represents flagrant violation of human rights and absolute abuse of the authority to follow communications. In this way the rule of law in the country is considerably endangered. In other words, the unauthorized wiretapping violates Article 18 of the Constitution of the Republic of Macedonia, with which safety and confidentiality of personal data is guaranteed, then Article 25 of the Constitution of the Republic of Macedonia, with which each citizen is guaranteed respect and protection of privacy of his personal and family life, as well as his dignity and reputation. Furthermore, the content of the disclosed conversations makes obvious the abuse of office and authority perpetrated by the state officials, especially in the area of the electoral process, where there are indications of abuse of the entire system and massive violation of the citizens' voting rights, which, according to Article 22 of the Constitution, should be exercised through the possibility for secret voting on free elections. Due to the severity of the political situation in which the country finds itself, the Helsinki Committee prepares a special analysis of all those announced conversations whose content implicates state officials into numerous criminal offences. The analysis will be presented to the public in the upcoming period.

STUDENTS' AND PROFESSORS' PLENUMS

After two months of protests, which were almost completely ignored by the authorities and the executive powerresponsible for drafting the amendments to the Law on Higher Education, the Student's Plenum, supported by the Professors' Plenum, declared autonomous zone on the premises of the Philosophy/Philology Departments of the University in Skopje. In this way the students offered an alternative cultural-educational program, holding fast to the principles of equality, inclusiveness and solidarity. Despite the problems they were facing, the students managed, during a one month period, to hold classes, as well as to coordinated activities beyond the scope of the existent curriculum. In this way they managed to facilitate discussion and exchange of arguments regarding numerous open question in the area of education. The practice of holding regular open meetings, lectures and cultural and entertainment events as part of their daily program made possible for the students to meet the executive authorities, but also to convince them to withdraw completely the draft amendments to the Law on Higher Education. During the

month of February, the Students' Plenum and the autonomous zone spread over several Departments and Colleges in Skopje, but also in other cities, like Bitola and Štip. Through this way of practicing direct democracy within the frames of the University, and, above all, defending the autonomy of the institutions for higher education, the Students' Plenum demonstrated that the young people manifest significant knowledge of their rights and obligations and knowledge how to improve the students' life, standard, education and political culture, as well as that they possess sufficient political maturity to take part in the processes of making decisions that are of special public interest.

INITIATIVE AGAINST THE LEGISLATIVE AMENDMENTS ON REMUNERATIONS

The civil initiative against paying contributions for remunerations, incorporating representatives of the independent trade unions in the so-called Trade Union Charter, civil organizations and private individuals, exercised its right of access to information of public character and filed 134 questionnaires with diverse number of questions to the Ministry of Labor and Social Policy, on account of the obscurities regarding the adopted amendments on paying contributions for remunerations. The citizens insist that the amendments do not reflect nor take in consideration the different categories of remunerations that the citizens receive for their labor, nor provide appropriate health and social security for the new tax payers. Until the day this report was completed, the civil initiative and its representatives have still not received any answer to the submitted request for information, although according to the Law on Access to Information of Public Character, the holder of information is obliged to answer within thirty days. Besides the submitted request for information, a second protest was held, prompted by the demands for full withdrawal/dismissal of the amendments. During this protest, different categories of concerned citizens addressed the assembled, among them cultural workers, actors as well as trade unions and NGO representatives. Namely, the executive power, as claimant of the amendments, remains indifferent to the requests, while the citizens are unable to find their ways through the new bureaucratic changes, which additionally prevent the easy access to the rights, which allegedly, and in accordance with the explanation of the claimant, should provide social and health security. The Committee notes the contrary effect, i.e. the additional obligations only render the tax paying process more difficult, and subjects the freelancers to increased expenses and obligations. The executive authorities cannot define the need for those expenses and obligations, nor answer the controversial questions regarding the adopted amendments.

LEGISLATION

LAW ON THE COUNCIL FOR DETERMINING FACTS AND INITIATING PROCEDURE FOR DETERMINING LIABILITY OF JUDGES

On the 11th of February 2015, using summary procedure and avoiding any expert and public debate, the Assembly of the Republic of Macedonia adopted the Law on the Council for Determining Facts and Initiating Procedure for Determining Liability of Judges. The Council for Determining Facts was founded as a new judicial body, whose aim is to take over some of the work of the Judicial Council of the Republic of Macedonia. The main competence of the Council for Determining Facts would be related to initiating disciplinary proceedings and proceedings for unprofessional and unethical conduct of judges before the Judicial Council of the Republic of Macedonia. The Council for Determining Facts will be entitled to dismiss initiatives for determining liability, whereby such decision becomes final, i.e. the dismissed initiatives will not be taken in consideration by the Judicial Council of the Republic of Macedonia. The Council for Determining Facts will consist of nine members. It will be compulsory that they come from the ranks of retired jurists, more specifically there have to be three judges, three prosecutors, two professors of law, and one lawyer. Apart from the requirement that all members should be retired, they also must have continuous years of service spanning over fifteen years, outstanding results in their work, and no recorddisciplinary sanctions brought against them.The mandate of the elected members lasts for four years, without the right to re-election. At least one third of the members are planned to be elected from among the members on the non-majority communities in the Republic of Macedonia. The candidates of the Council for Determining Facts are supposed to apply to a public announcement, and are going to be elected by all judges, on direct and secret elections.

The adoption of this Law is disputable on three counts. First, the authority of the Council for Determining Fact to dismiss initiatives whereby such decision becomes final is in collision with Amendment XXIX of the Constitution of the Republic of Macedonia, in which it is established that part of the competences of the Judicial Council of the Republic of Macedonia is to follow and evaluate the work of the judges and decide on their disciplinary liability. In this case, however, the Judicial Council will not be authorized to consider the dismissed initiatives, and thus many of the complaints filed against judges will end up before the Council for Determining Facts. Such a role of the Council for Determining Facts is unconstitutional, taking in consideration that this body, unlike the Judicial Council of the Republic of Macedonia, is not envisaged in the Constitution of the Republic of Macedonia. As a result, this Law will suspend some of the constitutional competences of the Judicial Council. Second, the conditions state that only retired judges, prosecutors, professors of law and lawyers are eligible to become members of the Council for Determining Facts. This proviso amounts to direct age-based discrimination, and stands in opposition to Article 32 of the Constitution, which claims that any job position is available to every single person, under equal conditions. Third, the lawmaker in the interim and final provisions (Article 52) of the Law stipulates that the first election of the Council for Determining Facts' members will conducted by five-member Committee, constituted by the Judicial Council of the Republic of Macedonia. Very much like the previous, these provisions are also unconstitutional, for the reason that in the constitutionally stipulated competences of the Judicial Council of the Republic of Macedonia there is no mention of its electoral function, and even less that such activity may be performed by only one third of its members. In this way new, unconstitutional competences are being imposed on the Judicial Council of the Republic of Macedonia, while the will of all judges whom the members of the Council for Determining of Facts can elect only after its firs make-up, is going to be suspended.

ECONOMIC AND SOCIAL RIGHTS

THE HEALTH INSURANCE FUND DOES NOT PROTECT THE RIGHTS OF INSURANCE POLICY HOLDERS

The individual Žaklina Dimovska filed a complaint to the Helsinki Committee for Human Rights of the Republic of Macedonia, on account of being prevented to exercise her rights prescribed in the Law on Health Insurance. Namely, Žaklina Dimovska, as a holder of insurance policy, 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.

After careful consideration and analysis of the entire documentation, the Helsinki Committee concluded that due to heavy omission and unlawful proceeding by the competent institutionsthis case had tragic epilogue, i.e. it ended with the death of the juvenile insured person. Tamara Dimovska passed away on the 9th of February 2015. The Helsinki Committee for Human Rights prepared and filed criminal charges against the responsible, on account of 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 353-b, Paragraph 1 and 2 of the CL of the Republic of Macedonia, that is, Professional Negligence. Due to the huge media coverage of this case, the Helsinki Committee for Human Rights of the Republic of Macedonia was approached by four other citizens experiencing the same problem with the institutions, namely the Health Insurance Fund and the Ministry of Health of the Republic of Macedonia. Analyzing the documentation submitted to the Helsinki Committee, the legal team of the Committee determined that the concernedpersons are juvenile holders of insurance policy, who are in need of surgical intervention that should be performed abroad, because there are neither possibilities nor necessary conditions to perform the surgery in the Republic of Macedonia.The decisions passed by the medical commissions of the Health Insurance Fund are in collision with Article 3o, Paragraph 1 of the Law on Health Insurance, with which medical treatment of the insurance policy holders abroad is regulated. Namely, Article 30, Paragraph 1 of this Law stipulates that insured person, with approval of the Fund, may make use of medical treatment abroad, provided he or she suffers from illness which cannot be treated in Macedonia, whereas in the country where the insurance policy holder is sent there are possibilities for successful treatment of that particular illness.

After legal analysis of the complete submitted documentation had been carried out, the legal team of the Committee ascertained that the first-instance decisions as well as the appellate decisions of the Health Insurance Fund are identical in the cases of all insured subjects, i.e. they all had their requests rejected. While passing the decisions, the Fund failed to consider the submitted documentation and to follow the instructions and the guidelines contained in

the medical experts' conciliar opinions, and thus directly denied the insurance policy holders' rights guaranteed by Article 30, Paragraph 1 of the Law on Health Insurance.

Some of the persons who have approached the Committee, had tried to seek protection of their right to treatment abroad from the Administrative Court of the Republic of Macedonia, by pressing charges against the appellate decision of the Health Insurance Fund. However, in this instance as well they faced institutional problem, since the Administrative Court failed to make a decision by merit and returned the case to the body which passed the disputed decision, and thus returned the case to the very beginning. With these actions, of better failures to act, of the Administrative Court, the insurance policy holder wastes precious time in the legal labyrinths, and such time-wasting may result in possible aggravations and complications of the health condition.

The Helsinki Committee expresses its concern with the present situation, because the decisions made in the above way represent a systemic problem in the exercise of rights to health protection and health insurance of insurance policy holders. Due to the seriousness and extensiveness of this problem, the Helsinki Committee of the Republic of Macedonia underlines that the competent institutions, i.e. the Health Insurance Fund the Ministry of Health should act in accordance with the positive prescribed legal provisionsand to respect the deadlines stipulated there, with the goal to protect the citizens from future problems with regard to the realization of their rights to health insurance, and to prevent from happening yet another case with tragic epilogue, like the case of Tamara.

RETROACTIVE EFFECT OF A RULEBOOK AT CITIZENS' DISADVANTAGE

In the month of February, the Helsinki Committee received complaints regarding the unfounded cancelation of financial social welfare, with the rationale that the citizens had been receiving cash via fast transfer. Inspecting the received complaints and the enclosed decisions for cancelation of financial social welfare, the Helsinki Committee determined that the Centers for Social Welfare in those decisions refer to Article 4, Paragraph 1 Item 7 of the Rulebook on the way of determining income status, property, and property rights of households, determining the right-holder and the documentation necessary for exercising and utilizing the right to social welfare, which was adopted on 2 February 2015, and entered into force after being published in the Official Gazette of the Republic of Macedonia. In the amendments of the abovementioned Rulebook it is stated that the cash received via fast money transfer which exceeds 50. 000 denars is going to be considered as income. Due to the fact that this Article entered into force after the adoption of the positive decisions by the Centers, while the holders of the right to social welfare were denied the financial aid and it was determined that those persons during 2014 had been unlawfully utilizing the financial aid – because they had received via fast transfer cash in amount over 50. 000 denars – the same Article cannot be applicable in this particular case. Moreover, especially this particular decisions cannot be made on the basis of that Article, because it amounts to retroactive effect of a bylaw.

Namely, in Article 52 of the Constitution of the Republic of Macedonia it is stated that laws and other regulations cannot have retroactive effect, save by exception, when the retroactivity is more beneficial for the citizens, which in this particular instance is not the

case. At the contrary, the retroactivity of the Rulebook further endangered the already bad social status of these citizens. Furthermore, with the application of this Article before its entry into force, not only social security, but also legal security and the constitutional order is endangered. Therefore, we demand that the Ministry of Labor and Social Policy seriously revise these decisions, and to alert the Social Work Centers about this omission which worsens the situation of the socially endangered groups of citizens, especially some members of the Roma ethnic community.

PERPETUAL INEFFICIENCY IN PROTECTION OF VICTIMS OF DOMESTIC VIOLENCE

During the month of February the Helsinki Committee was approached by three victims of domestic violence, requesting free legal assistance. These are all cases of victims which have been exposed to physical and/or psychological violence in their homes for extended period of time. The violence was being committed by their spouses, and consequently they were forced to leave their homes at the moment when the situation became unbearable. Additional difficulties in undertaking protective measures are visible in the cases of victims of domestic violence who are also parents of minors, who often witness the violence taking place within their homes. One of the victims was forced by the unbearable situation to walk away from her home and leave her child there. Since then, in cooperation with the Social Work Center, she is trying to find a way to come in contact with her child. The victims point out that their spouses, i.e. the abusers, while exercising violence, were often under the influence of alcohol.

All victims who approached the Helsinki Committee had already reported their ordeal both to the Police and the Social Work Center.In two of the cases the victims were appropriately received and heard, while in one case records were not taken. In that particular case, since the victim was a woman belonging to the Roma ethnic community, the Helsinki committee notes discriminatory behavior in the Police's proceeding. While reporting to the Social Work Centers, all three victims were granted interview with social worker and were offered psycho-social assistance.

In all three cases, the Helsinki Committee advised the victims to approach the Court, and helped them to request passing of interim measures of protection, stipulated in the new Law on Prevention, Checking and Protection against Domestic Violence (*Official Gazette* of the Republic of Macedonia, no. 138, 17 September 2014), which entered into force at the beginning of this year. It is worth noting that in none of the cases did the Social Work Centers offered or explained to the victims the interim measures of protection stipulated in the new Law.

While processing the cases, the Helsinki Committee took notice of two problems with regard to the implementation of the Law on Prevention, Checking and Protection against Domestic Violence. First, there is perceivable lack of coordination and effective cooperation between the Social Work Centers and the Police. These are the institutions which establish first contact with the victims of domestic violence, and they are expected, according to the Law, to remain in constant communication and to act in coordination. Second, the principle of urgency was not observed, although the Courts are legally bound to act in accordance

with it while passing interim measures of protection. Namely, the victims should be urgently, at most within one week, summoned to the Court for hearing, during which decision concerning the interim measures is supposed to be made. On the contrary, the Court asked the victim for regulation of the proposal after two weeks had elapsed, because the abuser was not available at the specified address. The Court should have instead, in coordination with the Social Work Center or the Police, located and dutifully summoned him to a hearing.Such adjournments and inconsistencies only aggravate the victims' situation, do not lessen their suffering, and under no circumstances help in providing better protection.

HATE SPEECH

Immediately before and shortly after the declaration of the autonomous zone by the Students' Plenum – the legitimate representative of the demands for withdrawal of the amendments to the Law on Higher Education – two representatives of the Plenum, whose role was more prominent due to their being involved in communication with the public and the media, were subjected to labeling and hate speech on the Internet by few pro-Government media. In the course of this public lynch, the Committee noted two threads of hate. The Committee considers them to be yet another attempt to discredit and minimize the influence of the Students' Plenum,and to diminish the public support which it used to receive, by spreading hate based upon ethnicity and sexual orientation. Namely, the Committee had been following trends of labeling the students on the basis of their party affiliation from the very beginning of their activities. This trend was later kept alive in the form of hate speech through the social networks and the Internet-based media. Hate speech based upon ethnicity and sexual orientation causes great negative turmoil in the society, and is often used to prevent expressions of critical thinking or well-argued demands expressed to the executive authority. This practice has been appliedon almost every civil movement in the last three years, which indicates utilization of several successful techniques for defocusing the public, and especially so in the case of the students, who enjoyed massive support of the citizens. The organized sharing of messages filled with hate on account of ethnicity or sexual orientation, as well as the spreading of hate through Milenko Nedelkovski's show and the failure to sanction such phenomena, clearly indicates unequal treatment of citizens due to their being different, and consequently democratic deficit of the institutions of the system, in close connection with the media and the control which the executive power exerts over them. Hate speech and acts of hate have being ignored during the last three years, especially by the Public Prosecution Officeand other competent institutions, although the Committee had already noted that speech, acts and incidents propelled by hate are constantly on the rise (www.govornaomraza.mk; www.zlostorstvaodomraza.mk). This negative phenomenon seriously impairs the citizens' sense of safety and security.