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QUARTERLY REPORT ON HUMAN RIGHTS IN THE REPUBLIC OF MACEDONIA

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PUBLIC EVENTS AND VIOLATIONS OF DEMOCRATIC PRINCIPLES

THE PUBLIC PROSECUTION IN THE REPUBLIC OF MACEDONIA IS NOT INDEPENDENT

Since the beginning of year 2015, the Opposition has started publicly announcing conversations held between high Government representatives, including the Prime Minister Nikola Gruevski, and disclosed the information that the authorities had been wiretapping over 20 000 citizens, including journalist, human rights activists, and representatives of the civil society organizations.

The abovementioned conversations published in the media actually served as a confirmation of the conclusions regarding the partisanship of the Judiciary in the Republic of Macedonia, the disregard of the principle of rule of law, and the nonexistence of division of power, which the Helsinki Committee has been drawing for years now. Part of the publicly announced conversations concerns the Judiciary and discloses the ways in which the executive power influences the election of judges and public prosecutors, but also arranges verdicts for certain court cases. Furthermore, the publicly announced conversations provide strong indications of connections between the Executive power and the Public Prosecutor of the Republic of Macedonia. These conversations are not problematic only from the viewpoint of the status of the Judiciary, but also with regard to the basic rights of the citizens, primarily the right to privacy, provided the allegations that more than 20.000 citizens of the Republic of Macedonia were being unlawfully followed are confirmed.

The abuse of authority by the Administration for Security and Counter Intelligence, and the utilization of the system for monitoring for the ruling party's benefit are also ascertained in the Report of the Expert Group of the European Commission, where serious shortcomings are noted in these five areas: monitoring of communications, external supervision by independent bodies, Judiciary, elections and media. In the field of the Judiciary it has been ascertained that selective approach and political influence are visible in every aspect of the system: starting with election of judges and public prosecutors, and all the way through court procedures, evaluation of judges, deposition of judges, functioning of the Judicial Council, transparency of election and deposition of judges, and functioning of the system for distribution of court cases.

In the field of communications disregard of the professional ethics has been ascertained, as well as disregard of the basic principles of risk management and lack of knowledge of the sensitivity of counterintelligence tasks within the frames of ASCI. A cause for worry is also the obvious deficiency of competent service that will cater for the basic rights and oversee the rules for data protection, but also the failure to inform the public about the development of the procedures. The Public Prosecution, in compliance with Article 8 of the Law on Public Prosecution, is obliged to inform the public about certain cases which are in procedure, especially if their nature is such as to evoke broader general interest of the public,

or if they are of importance with regard to the proper functioning of the Public Prosecution in the area of protection against criminal and other unlawful activities. The fact that the Public Prosecution, even after six months have already elapsed, did not manage to initiate an investigation regarding the content of the publicly announced conversations, confirms the inefficiency of the Public Prosecution when it comes to the protection of the public interest, as well as its inability to demonstrate independence against the influence of the Executive power.

The Public Prosecution approaches the case exclusively unilaterally, i.e. it investigates only the thesis presented by the Government of the Republic of Macedonia, according to which the recordings were illegally acquired and produced by foreign services, with the help of certain individuals employed in the Ministry of Internal Affairs. The Public Prosecution utterly disregards the possibility that the recordings might have been procured through misuse of the authority of the state security services and abuse of the entire security system in the country. What is more, this possibility is not being considered neither by the mechanisms of control over the operation of the state security systems. In the case “RADIO TWIST A.S v. SLOVAKIA”, which was heard by the European Court of Human Rights, the Slovakian authorities also failed to examine that possibility. The Court found this to be “very surprising, considering the fact that the recording is about telephone conversation between two high officials, and that the suspicion that the recording was acquired through misuse of authority should not be rejected in advance.” In other words, the state may investigate in any direction it pleases, but must not in advance and without reserves accept the position of the security services, according to which they act exclusively in accordance with their authorization and that their authorization was not exceeded, in a situation where there are obvious indications that this was exactly the case.

THE REFUGEES – VICTIMS OF INHUMAN TREATMENT AND HATE CRIMES

On the 19th of August 2015, the Government of the Republic of Macedonia adopted a decision for declaring state of crisis on the southern and northern border of the country, prompted by the huge influx of refugees into the country. The inclusion of ARM without a say of the President Gjorge Ivanov as the Supreme Commander of the armed forces, the silence of the Parliament (which must be informed), and the Crisis Management Center (the competent organ meant to make the assessments for declaring state of crisis), threw a shadow of doubt over the legality of the decision to declare state of crisis.

From the published media materials¹ and the direct experience of the Helsinki Committee representatives present on the southern border, it could be ascertained that the refugees were treated inhumanly by the special police forces, who applied coercive measures, using tear gas and stun grenades.

According to the activists and volunteers on the southern and northern border, those who made the decision for declaring state of crisis never came to the field, and thus lack the necessary insight for making such a decision. More precisely, not a single representative of

¹<http://www.makdenes.org/media/video/27200964.html>

the Crisis Management Center visited the border crossings at Gevgelija and Tabanovce, nor spoke to the activists working in the field. It is important to mention that the Republic of Macedonia is not implementing enough measures for dealing with the refugee crisis, i.e. after the amendments to the Law on asylum, the state procures only a meager facilitation and care for the refugees. In the period June – August 2015 the Helsinki Committee on its portal www.zlostorstvaodomraza.mk noted eight incidents propelled by hate against the refugees. Three of these incidents took place in Kumanovo and the surrounding area, while five in Gevgelija and the surrounding area. In all of the incidents refugees were attacked and robbed in vicinity of the southern and northern border. A vivid example of targeting specifically this marginalized group is the robbery attempt on some Macedonian citizens whom the perpetrators mistook for refugees, but who were given back their stolen backpack as soon as they were heard speaking Macedonian.

Let us reemphasize that these people run away from their hometowns due to the terrible political situations in their countries, in other words, they run for their lives and the lives of their dear and near ones. Their inhuman treatment by the special police forces, but also the xenophobic and the hate speech which is spreading over the social networks while being encouraged by some public figures, contribute to the further endangerment of the refugees' lives, even outside their native countries.

POLICE CONDUCT AND CLOSED INSTITUTIONS

THE PUBLIC PROSECUTION IS NOT INVESTIGATING CASES OF TORTURE

During the month of July 2015, the European Court of Human Rights passed another verdict, *Andonovski v. Macedonia* (Appeal no. 24312/10), through which it was determined that Macedonia had violated the Convention on Human Rights because it did not provide protection from torture, and dealt inadequately and inefficiently with the cases of torture committed on its territory. This has been the third verdict of the same kind against Macedonia since the beginning of 2015. The other two rulings are *Kitanovski v. Macedonia* (Appeal no. 15191/12), passed in January 2015, and *Ilievska v. Macedonia* (Appeal no. 20136/11), passed in May 2015.

The case *Andonovski v. Macedonia* is a case of a surgeon from Kumanovo who got beaten up by the Police. As a result of that beating, he suffered numerous physical injuries. Despite the fact that he had filed criminal charges, the Primary Public Prosecution Office in Kumanovo repudiated the charges due to alleged lack of evidence. And despite the fact that Mr. Andonovski filed a private lawsuit afterwards, the Courts paid little attention to his case, which ended with an alleged withdrawal of the charges, after which he had to pay all the expenses for the procedure. The European Court concluded that the State could not justify the excessive and unwarranted force used by the Police, and considering the fact that the Prosecution declined to prosecute, the European Court found that Article 3 (Protection from Torture) of the European Convention has been violated. In this case Macedonia was penalized to pay an indemnity of 15.000 euros to the plaintiff.

The case *Kitanovski v. Macedonia* is about a victim of police torture. The victim had been fired shots upon, after which he was brutally beaten up because he refused to stop for a traffic control. After the Ministry of Interior had filed criminal charges against Mr. Kitanovski, he was convicted, but his own criminal charges against the Police were not even processed by the General Public Prosecution in Skopje. The European Court concluded that the Prosecution failed to undertake the required investigative measures and made no attempt to interrogate the plaintiff, the policemen or any other subject who could provide relevant information meant to throw additional light on the facts of the case. In this case Macedonia was penalized to pay an indemnity of 10.000 euros to the plaintiff.

The case *Ilievska v. Macedonia* is again about a victim of police brutality. The violence was suffered by Mrs. Ilievska while she was being transported from Kriva Palanka to the Psychiatric Clinic in Bardovci. Like in the previous cases, the plaintiff had filed criminal charges against the policemen, which were repudiated by the Primary Public Prosecution in Kriva Palanka. Then the plaintiff filed a private lawsuit, but the Court answered that there was not enough evidence against the policemen. In this case Macedonia was penalized to pay an indemnity of 5.000 euros to the plaintiff.

Despite the fact that these events took place between 2004 and 2009, the Helsinki Committee, during the last three years, has noted dozen of cases which are similar to the described ones, and which are not being adequately investigated by the Prosecution. Such examples include the torture executed against three detainees from Albania who were handcuffed to a radiator,² the beaten up detainee who was ordered to strip naked in the toilet of the Detention House,³ the citizen who was brutally attacked by the police on a street in Ohrid,⁴ a convicted person who, after the attack of a prison policeman lost a kidney and the spleen,⁵ the attack of numerous police forces on citizens from the Roma community in the Topana settlement,⁶ the beating up of an innocent boy in the Police Station of Demir Hisar,⁷ the beating of juvenile Roma kids by the Police Unit “Alfa”,⁸ the tying up the juvenile Leon with a rope, who was by mistake placed in a psychiatric institution,⁹ the distribution of polluted water in Kumanovo Penitentiary,¹⁰ etc.

Especially worrisome is the fact that the Public Prosecution did not initiate a procedure after received rumors concerning abuse of police powers and use of excessive force against the demonstrators who participated in the protest held on the 5th of May in front of the Government of the Republic of Macedonia. According to the information available to the public, the Public Prosecution is for the time being investigating only the criminal charges

²Helsinki Committee, Quarterly Report (October – December 2012):

<http://www.mhc.org.mk/reports/99>

³ Helsinki Committee, Monthly Report – March 2013: <http://www.mhc.org.mk/reports/124>

⁴ Helsinki Committee, Quarterly Report (April – June 2013):

<http://www.mhc.org.mk/reports/145>

⁵*Ibid.*

⁶*Ibid.*

⁷ Helsinki Committee, Bimonthly Report (July – August 2013):

<http://www.mhc.org.mk/reports/149>

⁸ Helsinki Committee, Bimonthly Report (April – May 2014): <http://www.mhc.org.mk/reports/219>

⁹ Helsinki Committee, Monthly Report – June 2014:

<http://www.mhc.org.mk/reports/237>

¹⁰<http://www.mhc.org.mk/reports/237>

filed by the Liberal-Democratic Party with regard to the events which took place in the library “Braka Miladinovci” in Skopje, when armed individuals, employees of the Ministry of Interior – Rapid Deployment Unit, entered the library “Braka Miladinovci” in Skopje and for no apparent reason and cause attacked the students present there verbally, while some of them also physically, coercing them to admit that they had taken part in the protest.

The Helsinki Committee sends a message to the authorities that they should implement a policy of zero tolerance of the acts of torture executed by public officials. The passivity of the Public Prosecution with regard to the cases of torture, especially when exercised by police officers, gives rise of distrust in the legal system among the citizens and discourages them from reporting such cases to the authorities. It is high time to face the phenomenon of being above the law as well as the false solidarity of the Public Prosecution and the Judiciary with the Police. The main focus has to be directed toward the victims of torture for whom the state has not as of yet provided appropriate legal, medical, psychological and social support. In order to accomplish this goal, the Committee requests most urgent implementation of the EU Directive 2012/29, so that the basic standards regarding the rights, support and protection of the victims of crimes may be established.

EMPLOYMENT OF ADDITIONAL 600 POLICE OFFICERS IN THE MINISTRY OF INTERNAL AFFAIRS

On 10th of July 2015, the Ministry of Internal Affairs posted a job opening ad for 652 enforcement agents, 600 of which for the position “Police officer”. This ad comes after the employment ads for 300 police officers in 2012 and 400 police officers in 2013. Accordingly, in the span of three years the Ministry of Internal Affairs assumed the role of employer of 1.300 new police officers. In November 2013, the Helsinki Committee sent to the MIA a request for information concerning the overall number of employees in the Ministry. According to their answer, the figure stands at 10.755, out of which 6.579 are uniformed police officers, while the rest of the employees are non-uniformed, authorized individuals, civil servants and technical personnel.

Taking in consideration that this data refer to the number of employees before the signing of the employment agreements with the cadets employed after the ads posted in 2012 and 2013, the maximum number of uniformed police officers in the Republic of Macedonia is 7.297 (although the real figure is probably a bit lower, considering that some of the police officers have fulfilled the requirements for retirement). When the newly assigned 600 police officers are added to this figure, the cumulative number of employees in the Ministry of Internal Affairs peaks to over 11.000, while the number of uniformed police officers will settle at about 7.900.

These figures lead to the conclusion that the Ministry of Internal Affairs is the largest employer in Macedonia, and that there are approximately 395 policemen hired per 100.000 citizen (according to the 2002 census). According to the surveys of the United Nations, the average ratio in this regard worldwide is 300.¹¹ As far as the overall number of employees in the MIA is concerned, according to the statistics of the Eurostat, when the criterion of

¹¹UN: Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Salvador, Brazil, 12-19 April 2010, State of crime and criminal justice worldwide, p. 19.

ranking is taken to be the number of employees, the Macedonian MIA is occupying the third place on the scale.¹² The statistics refer to 38 European states, and a larger number of employees is to be found only on Cyprus and in the Montenegro.

Especially worrisome is the fact that while advertising the ads the Ministry of Internal Affairs offers no explanation as to the need for the increase of the already overblown number of employees. Additionally, the citizens are not informed about the financial implications of these employments, which significantly burden the national budget. Besides avoiding to discuss the issue with the community, the MIA also does not act in accordance with the Strategy for Police Reform of the Government of the Republic of Macedonia from 2003, and its Annex from 2004, where a decrease of the number of employees to 7.200 persons was projected, out of whom 6.000 were expected to be uniformed police officers.

All of this, together with the unsatisfactory twelve-month training of the cadets, which is insufficient and mainly directed toward amassing theoretical knowledge, clearly indicates the utter politicalization and partisanship of the MIA. Due to the aforesaid reasons, the Helsinki Committee appealed to the MIA to revoke the advertised ad, and to focus on the professionalization of the police force instead on the quantity and the employment of party cadre, and to adjust the number of employees with the figures envisaged in the Strategy for Police Reform. Despite the appeal, the MIA announced that over 2.600 candidates applied for the advertised positions, and thus initiated the beginning of the official selection process for the new police officers.

JUDICIARY

THE “ROVER” CASE

The Helsinki Committee was repeatedly informing the public about the omissions in the court procedure of the “Rover” case, especially on the issues of the protected witness, exceeding the deadlines for drawing up court decisions, the duration of the detention. The “Rover” case commenced in December 2012, and is still not closed, especially because of the fact that the Court of Appeal has already twice repelled the first instance verdict, and returned the case for a repeated trial at the Primary Court I in Skopje. In the rulings with which the first instance verdict was repelled it was stated that the pronouncement of the verdict was not clear and understandable enough, and that in the rationale does not contain enough reasons for the decisive facts.

The Court of Appeal also abolished the detention for four of the defendants, pursuant to Act 207, Paragraph, Point 2 of the Law on Criminal Procedure, where it is stated that after the charges are brought, the detention period for criminal offences that may lead to lifetime imprisonment is at most two year. Considering that the defendants have been in detention

¹²EUROSTAT: File:Police officers, average per year, 2007–09 and 2010–12 (per 100 000 inhabitants).

for longer than two years, the Court abolished the detention and obligated the defendants to report to the Court once a week, as a preventive security measure.

The Primary Court I in Skopje follows a practice different from this ruling of the Court of Appeals, passed pursuant to the old Law on Criminal Procedure. According to the Primary Court I in Skopje, the period between the passing of the first instance verdict and its potential abolishment by the Court of Appeal, as it happened in the “Rover” case, is not considered as detention. According to the Court, after the completion of the court hearings and the passing of the first instance non-final verdict, the detention period is determined on different basis, i.e. pursuant to Act 371, paragraphs 6 and 7, where it is stated that it can last till the commencement of the serving of the sentence, that is until the decision becomes final. Still, such argumentation and practice is not followed by the Primary Court in Shtip. Namely, in the case K.no. 224/12, in which the defendant had been set on trial for a criminal offence for which a lifetime imprisonment is not projected, the defendant was freed after one year had elapsed, with an explanation that the maximum period during which a person may be held in detentions has passed. As in the Rover case, also in the case K.no. 224/12, the Primary Court in Shtip pronounced a verdict which was later repelled by the Court of Appeal in Shtip.

We remind the public that the European Convention on Human Rights guarantees the minimal standards for protection of human rights which the member-states of the Council of Europe are obliged to fulfill. This in no way prevents the member-states to ensure, via the domestic legislation, the implementation of even higher standards for protection of human rights. Indeed, the higher standard for human rights protection is through our Law on Criminal Procedure, which clearly and precisely determines that the duration of the detention after the charges are brought must not exceed the maximum two-year period. Therefore, we appeal to the Primary Court I in Skopje to reexamine its practice and to respect the decision of the legislator, namely to restrict the duration of the detention to the maximum one, or two years, in accordance with the nature of the criminal offence.

VIOLATIONS OF RIGHTS IN THE HEALTH CARE AREA

STILL NO JUSTICE FOR TAMARA

The Helsinki Committee for Human Rights of the Republic of Macedonia is continuously reporting on the case of Tamara Dimovska, who, due to the failure of the institutions to ensure proper health care for her, passed away on the 9th of February 2015. The Helsinki Committee for Human Rights drafted and filed criminal charges against the responsible, on the basis of the suspicion that two kinds of criminal offences were committed, the first one referring to Article 353, Paragraph 1 and 2 of the Criminal Code of the Republic of the Republic of Macedonia, i.e. abuse of official capacity, the second referring to Act 353-b, Paragraph 1 and 2 of the Criminal Code of the Republic of Macedonia, i.e. professional negligence.

Due to the fact that from the day when the criminal charges were filed more than three months have passed, and we still have not received a notification from the Primary Public Prosecution in Skopje regarding the reasons for the delayed procedure, which is contrary to Act 275 of the Law on Criminal Procedure, the Helsinki Committee and Tamara's mother, Zaklina Dimovska, filed a motion to the High Public Prosecution in Skopje. This institution was requested to implement supervisory measures on the operation of the PPP and the proceedings regarding the aforementioned case, in order to determine the reasons for the delaying of the procedure. Moreover, the HPP was requested to take over the criminal prosecution of this case, in accordance with the Act 26 Paragraph 1 of the same Code, provided it believes that the Primary Public Prosecution is delaying the procedure.

On the 20th of August 2015, the High Public Prosecution in Skopje gave a reply to the motion to implement supervisory measures on the operation of the Primary Public Prosecution in Skopje, from which a conclusion may be drawn that the procedure has been delayed because the Institute of Forensic Medicine, Criminology and Medical Deontology Skopje has not as of yet acted upon the issued order of the Public Prosecutor to provide forensic expertise for determining the causal relations between the bronchopneumonia, as the determined cause of death of the little Tamara Dimovska, and the ailment of the child manifested in a form of severe deformity of the spinal column.

The Helsinki Committee holds that the Primary Public Prosecution in Skopje should undertake measures, within the frame of its competencies, and to instruct the Institute of Forensic Medicine, Criminology and Medical Deontology Skopje to proceed in accordance with the order for forensic expertise issued by the authorized Public Prosecutor, so that the investigation may continue without interruptions.