

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

HELSINKI COMMITTEE FOR HUMAN RIGHTS
OF THE REPUBLIC OF MACEDONIA
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VIOLATION OF THE RIGHT TO DEFENSE OF THE POOR

Over the course of November, during the monitoring of the main hearing in the Basic Court Skopje 1, the Helsinki Committee for Human Rights observed a violation of Article 75 of the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia no.150/2010), i.e. a violation of the right to defense of the poor. Namely, after the defendant invoked Art. 75 of the Law on Criminal Procedure, additionally stating that he had a complete documentation from which it can be established that he is a person without any property in his possession, with a mild intellectual disability, as well as a person who, after becoming 18 years of age and leaving the Orphanage, became homeless, and considering his financial status, he could not bear the expenses of the defense, and thus Judge **Seat Redjepagik** suggested that there was no need to invoke this right, because it would burden and delay the procedure. The aforementioned judge repeatedly stated that he himself advises the defendant to abandon his right, because "he does not have the need for it" and "the court will pass a ruling that will be in his favor, i.e. a suspended sentence". After the judge clearly and unequivocally suggested the person to give up his right to a defender, the defendant eventually did so. Considering that this is an uneducated person, and at the same time, a person with intellectual disability, the observer representing the Helsinki Committee, after the end of the hearing, required the minutes from the judge. Such a request was immediately rejected by the judge, without any explanation and information when the defendant could receive the minutes. Such conduct on part of a judge constitutes a serious violation of the defendant's right to defense as a party participating in the proceedings.

Recommendation: The Helsinki Committee is concerned about the judges' approach to legal provisions, as well as their attitude towards the parties involved in the procedure. We strongly suggest that this kind of violation of the right to defense of defendants in the proceedings not be repeated again, especially when it comes to cases of vulnerable groups of people.

REJECTION OF SPO'S REQUEST FOR A SEARCH WARRANT OF TELECOMMUNICATION SYSTEM OPERATOR

The Public Prosecutor's Office for prosecuting crimes related to and arising from unlawful interception of communications announced that the Criminal Council of Basic Court Skopje 1 Skopje, composed of the judges Vladimir Pancevski as the President of the Council, and the judges Diana Gruevska Ilievska and Ljubinka Basevska as members of the Council, refused to issue a search warrant for the computer system of telecommunications operator yet a second time, confirming the inconsistency expressed by the preliminary procedure judge.

According to SPO, the Court offered the same explanation for the allegedly vague and imprecise request, although the request clearly states that computer data stored in servers is required – data which refers to records from which it can be determined which phone numbers were subject to interception of communications.

The SPO points out that the Court claims that the devices requested for the search "are transferable servers, that is, devices that can change their current location" without specifying the evidence on which such a position is based. They point out that the previous search warrant for computer systems was rejected precisely because of its alleged inaccuracy over the location of the servers that need to be searched, so it is unclear why the Court is changing the position around the need to state the location of the servers.

The Basic Court Skopje 1– Skopje did not deny this decision, nor did it make a public announcement on the official website.

Recommendation: The Helsinki Committee calls upon the Basic Court Skopje – 1 Skopje not to hinder and interfere with the work of the Special Prosecutor's Office.

THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION REFUSES TO RECOGNIZE MILENKO NEDELKOVSKI'S DISCRIMINATORY SPEECH

Within the scope of the Anti-Discrimination Network, the Helsinki Committee strongly reacted to the Opinion of the Commission for Protection against Discrimination upon the complaint of the Agency for Audio and Audiovisual Media Services filed against the journalist Milenko Nedelkovski for discrimination on grounds of sexual orientation and gender identity in his program Milenko Nedelkovski Show on Kanal 5 TV.

The opinion of the Commission for Protection against Discrimination, despite containing formal shortcomings, also shows the lack of basic knowledge of the Law on Prevention of and Protection against Discrimination, as well as the misinterpretation of its provisions by the Commission. In the opinion, the Commission says that the discriminator should have some superior position in order to discriminate against a particular group. The Law on Prevention of and Protection against Discrimination does not contain this provision, nor does it prescribe the special characteristics that one person should possess in order to be considered a discriminator. The law is quite clear in Art. 5, para. 4, which defines discriminatory behavior and has no reference to a "superior position" of the potential discriminator.

It is interesting how the Commission interprets the areas of application of the Law on Prevention of and Protection against Discrimination. In the issued opinion, the Commission stated that discrimination in the area of public reporting and media refers to the media as legal persons, but not to journalists working on individual projects (?!). This conclusion seems to be a frivolous and vague interpretation of the laws of the Republic of Macedonia in order to find the right defense arguments for Milenko Nedelkovski. With this decision, the new composition of the Commission sets a clear line for disregarding the decisions of the previous composition, which in two decisions determined discriminatory speech based on sexual orientation and gender identity that contained elements of hate speech as well. Throughout the text of the opinion, the Commission for Protection against Discrimination attempts to categorize the discriminatory speech and the hate speech under the "author's opinion" and freedom of speech, by not distinguishing between these terms.

From the opinion, we can conclude that the author, who is one of the commissioners of the Commission for Protection against Discrimination, has no knowledge of the sources of law, what they stand for, how they are used, and not even how the legal systems function. Even if the author

is not an attorney since not all commissioners are attorneys, the Commission's President, Aleksandar Dastevski, is an actual attorney, and he signed the opinion which should have been corrected. Namely, the Commission claims that "there is no need to quote Article. 14 of the European Convention on Human Rights because it is implemented in our legislation, especially in our Law that is considered to hold higher standards than those provided in international documents". We would like to point out that the Constitution of the Republic of Macedonia stipulates that the international treaties ratified by the Constitution are part of the internal order and cannot be changed by law. From the text of the opinion, the Commission states that citizens cannot invoke the decisions of the European Court of Human Rights, because unlike the Court, the Commission was a quasi-judicial body, which again, speaks of the ignorance of the sources of law.

Perhaps most worrying is the fact that after the [announcement](#) of the Network for Protection against Discrimination in which it expressed concern for the said opinion of the Commission for Protection against Discrimination, prof. Dr. Bekim Kadriu, a member of the CPD, responded to the Network by publicly distancing himself from the opinion. Among other things, prof. Dr. Kadriu emphasized that the "letter" regarding the petition against Milenko Nedelkovski was written and signed by the President of the Commission, Aleksandar Dastevski, that it was not in a form of decision, opinion or conclusion, and it was not adopted at a session of the Commission, but only represents an expression of the President's personal opinion. By concluding the procedure in this way, without adopting an opinion from the Commission as a collective body, the President of the CPD abused his position and usurped the competence of the Commission.

Prof. Dr. Kadriu's reaction only confirms the suspicions that the CPD's President works contrary to the Law on Prevention of and Protection against Discrimination, does not respect the independence guaranteed by the Law and uses his position as president of an institution to defend discriminators close to the government.

Recommendation: We express serious concern about the ignorance, misapplication and misinterpretation of the Law on Prevention of and Protection against Discrimination by the Commission for Protection against Discrimination. We urge the Commission for Protection against Discrimination to start implementing the Law on Prevention of and Protection against Discrimination properly and consistently and to comply with the legal provisions instead of its subjective interpretations when acting upon the submitted complaints.

We call upon the Assembly of the Republic of Macedonia to dismiss Aleksandar Dastevski as president of the CPD, as well as other members who do not meet the criteria of independence and expertise, and to organize a transparent election for a new composition of the Commission in order for this institution to function in accordance with the Law and to provide effective protection against discrimination for the citizens of the Republic of Macedonia.

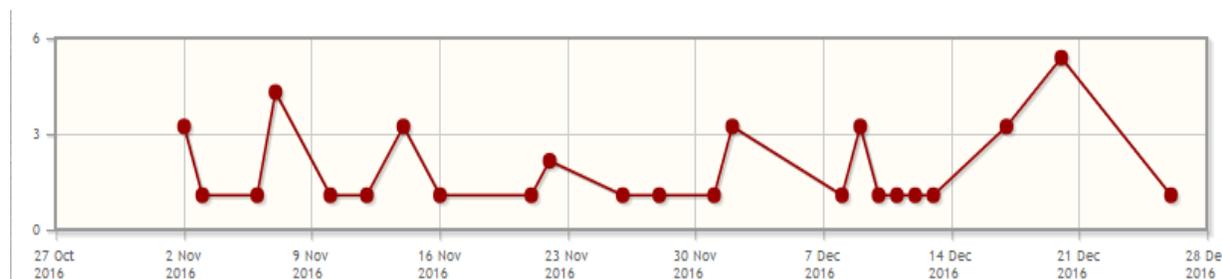
HATE SPEECH IN THE ELECTION PERIOD

Hate speech is one of the key features that have marked the past period. Taking into account the country's prolonged political crisis and the early parliamentary elections held on 11 December 2016, November and December were the most critical months, filled with hate speech on various grounds.

As a result of the political crisis and the extremely sharp rhetoric among all political parties, political affiliation was among the most prevalent bases for reported cases of the hate speech that were being spread and promoted in public spaces. Dictated by political propaganda, the hate speech based on political affiliation was most commonly found on social networks (Facebook and Twitter) and came as a reaction to sensational and provocative media announcements. Ethnicity was the second most common ground, following the nationalist election campaign promoted by certain political parties, and the intentional imposition of inter-ethnic relations as the main topic in the election period. Hence, the media titles associated with "federalization of Macedonia" and "the implementation of bilingual language policy" were some of the texts that provoked most of the hate speech.

One of the more specific examples of spreading and promoting hate speech was the posting of death posters (obituaries) of international representatives and ambassadors, insinuating their deaths. There were also references to the death of political leaders in public presentations of funeral wreaths with their names and pictures –actions for which the Helsinki Committee filed appropriate charges to the competent institutions. Shortly after the elections and the announcement of the disputed election results, hate speech was used at protests held before the State Election Commission, for which the Helsinki Committee reacted publicly.¹ At the same time, a significant amount of offensive and disrespectful language was used towards representatives of civil society, which often crossed the line and transformed into hate speech.

According to data of the Helsinki Committee generated through the www.govornaomraza.mk platform, 51 cases of hate speech were registered in November and December on the following bases: 25 reports of hate speech on the basis of political affiliation, 23 reports were based ethnicity, and 5 reports of hate speech were based on sexual orientation.



¹ <http://mhc.org.mk/announcements/505#.WJifLRsrLIU>

CASE: DEMOLISHED MUSEUM OF ALBANIAN ALPHABET IN BITOLA

In November, there was an event whose initial and obvious aim was to degrade the Albanian ethnic community. Thus, on the day of the Albanian alphabet (22 November), the Museum of the Albanian Alphabet in Bitola was attacked in the late evening hours, when unknown perpetrators vandalized the Museum, writing a text containing hate speech on the basis of ethnicity, i.e. offensive and humiliating messages to the Albanian ethnic community. This was the fourth such attack on the Museum. The previous incident occurred around 10 November, when a swastika was drawn on the front door of the Museum, and the first and second incidents occurred in May and July 2013.

The Hate Speech Platform called upon the authorities to take urgent measures to prosecute and punish the perpetrators, and also urged the Ministry of the Interior, the public prosecutor's offices and the courts which should take immediate measures to prosecute hate speech. We would like to point out that the impunity of spreading and promoting hate speech in the public is tolerance and justification of hate speech.²

CASE: HATE SPEECH ON SITEL TELEVISION PROGRAM

At the end of December 2016, the Agency for Audio and Audiovisual Media Services conducted an extraordinary supervision over the work of Sitel TV, the subject of which was the television broadcasting in the pre-election campaign. The period covered by the supervision is from 2 December to 5 December, 2016 and refers to the editions of the daily news (Dnevnik) which is broadcast at 19.00 and 23.00. Therefore, in its [report](#), the Agency reported that a specific subject of the conducted supervision represents a violation of Article 48 of the Law on Audio and Audiovisual Media Services, which explicitly prohibits programs that encourage or spread discrimination, intolerance or hatred based on race, gender, religion or nationality.

What is most important about the conducted supervision is that the Agency established that TV Sitel spread and promoted hate speech by broadcasting a series of subsequent issues of daily news program "Dnevnik", entitled "Bilingualism Has a Price". Namely, the content and language used in the program, according to the Agency, is "intended to impose an opinion, manipulate information and intimidate people with loss of jobs, loss of the state, with tension and war, using the tactic of listing professions, cities/municipalities and ethnic communities that need to feel threatened". The Agency concluded that the program contained explicit hate speech, encouraged and spread intolerance, discrimination, and hatred based on nationality/ethnicity. The Agency submitted its report and findings to the Commission for Protection against Discrimination and the Public Prosecutor's Office in order to take appropriate measures and to punish the spread and promotion of hate speech. The Helsinki Committee encourages this kind of action and applauds the conducted supervision, as well as the established findings of the Agency for Audio and Audiovisual Media Services.

² <http://mhc.org.mk/announcements/488#.WFzwDfkrLIU>

NEW PRE-ELECTION INCITEMENT OF ETHNIC AND POLITICAL TENSIONS

The Helsinki Committee, through the www.zlostorstvaodomraza.mk portal, has been registering hate crime since 2013, that is, incidents motivated by intolerance or prejudice towards members of a particular group in the society. The increase in the number of such incidents is particularly noticeable before and during elections. In November and December, before, during, and after the election campaign, 25 crimes were committed due to the different ethnic and political affiliation of the victims. After the end of the elections, that is, after December 14, there was a dramatic drop in the hate crime rates.

During these two months, the incidents were registered in Skopje (15), Kavadarci (4), Bitola and Kumanovo (2) and Tetovo and Kocani (1). 15 of the incidents were committed due to different political affiliation or persuasion, and 10 because of the different ethnicity of the victim and the perpetrator. Most of the first type of incidents involved burning billboards with a political advertising campaign and destroying local headquarters of political parties. Ethnic-related incidents occurred among young people, including minors, in the buses of the Public Transport Company Skopje (JSP), or near bus stops. 3 of the incidents happened on bus no. 65. The incidents include the stoning of a bus, group fights, and serious attacks with cold weapons.

The most serious incident occurred on 6 November, at 1:00 am, on Bitpazarska Street, near the "Stop" café. After a verbal argument, two 14-year-olds heavily injured the 18-year-old with initials K.S. The children intentionally attacked the injured person, kicked him with fists in the head and chest area, from which his injured face fell to the ground, thus gaining severe bodily injuries expressed in the form of head contusions with brain injuries, bleeding and lungs filled with liquid. The inflicted injuries were a threat to his life. Because of the seriousness of the crime, the Public Prosecutor requested detention for both children, but the court did not determine this measure, but took away their passports and ordered them not to leave their place of residence.

Recommendation: The Ministry of Interior should use the map on the Helsinki Committee portal which shows "black dots" –locations where hate crimes are usually committed – and to act preventively in order to stop such incidents from happening and detect the perpetrators.

THE INTER-MUNICIPAL CENTER FOR SOCIAL WORK ACTS CONTRARY TO THE PROVISIONS OF THE FAMILY LAW AND THE CONVENTION ON THE RIGHTS OF THE CHILD

The Helsinki Committee for Human Rights of the Republic of Macedonia was addressed by a party, a mother of a minor, who was taken away from her upon enactment of the Decision by PI Inter-Municipal Center for Social Work and put into temporary protective custody with his father in order to protect the health, rights and interests of the child. This decision is temporary and will be valid until the occurrence of new circumstances.

Two criminal proceedings were initiated against the father for committing a crime from Art. 202, para.1 of the Criminal Code – Non-payment of child support, one of which was completed with a final court ruling with which the father was sentenced to probation, so that he was sentenced to 3 months of prison time, and at the same time, it was determined that the imprisonment will not be carried out if, within a year of the enactment of the ruling, the defendant does not commit a new criminal offense within a period of one year and within 10 months of the enactment of the ruling pays the due obligations for the alimony. This ruling, in light of the new circumstances, was submitted to the PI Inter-municipal Center for Social Work of the City of Skopje, which acted contrary to Art. 84, Art. 87, Art. 90 and Art. 91 of the Family Law. The Center did not take measures for the protection of the person, the interests and the rights of the child – it took the child from the one and entrusted it to the other parent, despite the fact that the parent who was obliged to pay child support – the father – had not paid support for three months while the child was entrusted to the mother, that is, he did not respect the decision of the Inter-municipal Center for Social Work. With the decision to entrust the child with custody to his father, the Center encouraged the father not to pay child support in the future.

In accordance with Article 79, paragraph 2 of the Law on Family, in determining the personal relations and direct contacts of the child with the parent, the Center for Social Work informs the child and takes into account his/her views and opinions depending on the age and level of development, and informs the child on the possible consequences of the decisions. According to Art. 12 of the Convention on the Rights of the Child, a child who is able to form his/her own opinion has the right to a personal opinion and the right to freely express that opinion on all matters concerning the child, and such an opinion is taken into consideration in accordance with the child's age and maturity. When representatives of the Center talked with the child, the child said that he did not want to stay with his father because the father had formed a new family with another wife and 5 children, 4 of which are in pre-school age, and therefore, in their house and in those conditions, Filip would not have the necessary peace for studying because he is 15. The Center brought this Decision in spite of the child's opinion.

From the above, it can be easily concluded that the Inter-municipal Center for Social Work Skopje acted contrary to the provisions of the Family Law and the Convention on the Rights of the Child, and thus the Helsinki Committee on behalf of the party submitted a request for extraordinary inspection to the Sector for Inspection Supervision in Social Protection within the Ministry of

Labor and Social Policy, for determining irregularities in the implementation of the Law on Family by the Inter-municipal Center for Social Work of the City of Skopje.

Recommendation: We urge the Inter-Municipal Center for Social Work of the City of Skopje to effectively, consistently and correctly apply the Family Law and the Convention on the Rights of the Child in their work, especially in passing decisions for entrusting children to partial care and upbringing to one of the parents, in order to provide the best possible protection of the rights and interests of the children.