

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

HELSINKI COMMITTEE FOR HUMAN RIGHTS
OF THE REPUBLIC OF MACEDONIA
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JUDICIARY

VIOLATION OF THE PRINCIPLE OF PUBLICITY AND TRANSPARENCY IN COURT PROCEEDINGS

During January, a representative of the Helsinki Committee for Human Rights established a violation of the principle of publicity in court proceedings.

Namely, contrary to the provisions of the Constitution of the Republic of Macedonia (Article 102), the Law on Criminal Procedure (Article 353) and the Law on Courts (Article 10), a representative of the Helsinki Committee was not allowed to attend a court hearing held in Basic Court Gostivar. According to the established practice, the Helsinki Committee informs the courts by sending a fax in advance for the presence of the Committee's representative in the capacity of an observer of court hearings. This manner of informing is not mandatory given that the court proceedings are public and the presence of observers does not require the obtaining of any consent or permission.

At the main hearing on the case no. 145/14, held on 26 January 2017 in the office of the judge Dragoslava Veselinova at the Basic Court Gostivar, the Helsinki Committee representative was not allowed to attend as an observer of the hearing, with an explanation that no documents had been enclosed prior to the hearing, although, according to the Law on Criminal Procedure, no additional documents are required for observers of the public at court hearings.

After the judge was explained that a notification had been sent, in which the Committee announced the attendance of the observer, and that she had attended the last hearing on the case when she submitted a personal ID card and a professional identification card, Judge Veselinova stated that such a notification did not exist in the case files, and according to her, the identity card and the professional card were not an appropriate way of determining the identity, because "the professional identity card contains only the name, surname and seal of the Helsinki Committee, but that is not enough". She refused to allow the representative to attend the hearing and requested a special approval from the President of the Basic Court Gostivar for the next hearing. The representative of the Helsinki Committee explained that this behavior is contrary to the Constitution and the laws of the Republic of Macedonia and that her presence can be entered in the minutes as a public presence, without additional identification.

Again, contrary to the Constitution and laws, the judge asked the defendant and his counsel whether they oppose the presence of the Helsinki Committee representative at the main hearing, to which they responded that they did not. The hearing continued with the examination of an expert witness. According to the methodology for monitoring court proceedings, the observer took notes on her notepad during the hearing. The judge interrupted the examination of the expert, asking the representative why she was taking notes and "if she is so interested in the hearing, she should ask for a copy of the minutes at the end of the hearing". After being explained by the observer that since she was not a party participating in the proceedings and thus did not have a legal right to the minutes, the judge decided to remove her from the office with the words "I do not like this at all, this is spying, you watch me work and then talk about it". She pointed out that she could not allow the Helsinki Committee representative to observe the hearing because it was a violation of official

duty. Yet again, it was explained to the judge that such action violates the principle of publicity in the court proceedings, but nevertheless, the observer was removed from the judge's office.

Recommendations: The Helsinki Committee strongly condemns the judges' disrespect of the constitutional and legal provisions and their unprofessional conduct. We would like to emphasize that according to Art. 354 and Art. 356 of the Law on Criminal Procedure, the public can be excluded from the course of the main hearing only in specific cases, and only by the issuance of a decision, which must be explained and publicly announced. We would also like to point out that the presence of the public in court proceedings is a necessary condition for transparency and accountability of the judiciary, and that this unlawful conduct is a serious violation of the Constitution and the laws of the Republic of Macedonia that must not be tolerated.

SPECIAL PROSECUTOR'S OFFICE

COMPLICATIONS IN SPO'S COOPERATION WITH THE BASIC COURT SKOPJE I - SKOPJE

The Special Prosecutor's Office publicly revealed the difficulties in their cooperation with Basic Court Skopje I – Skopje. For a longer period of time, the SPO has been pointing out to the fact that the Court has been consistently hampering their work ever since SPO's establishment at the Assembly of the Przino Agreement. Namely, this last notification came after the Office had issued several requests for obtaining search warrants to the duty judge of the Department of Organized Crime and Corruption. The requests referred to several preliminary investigations and investigation procedures conducted by the SPO and, in addition, evidence and conversations from the unlawful interception of communications were provided, on the basis of which the Prosecutor's Office requested the search warrants. After the submission of the requests, for reasons unknown to the SPO, the duty judge was replaced and the requests were assigned to other judges. The SPO reported that only one search warrant was issued by the court on 25.01.2016, after which a search was carried out at one location in Skopje for the purposes of the investigation in the case titles "Titanik".

All other requests for issuing search warrants, relating to senior former and current officials, were rejected. The SPO points out that the acting judges on the preliminary procedure to whom these cases had been awarded, Elena Josifovik and Alexandra Pop Stefanija, rejected the requests, and the criminal councils consisting of judges Ljubinka Baseska, Goran Bosevski and Vladimir Pancevski, judges Vladimir Pancevski, Lenka Davitkova and Diana Gruevska Ilievska, and judges Lenka Davitkova, Diana Gruevska Ilievska and Ivica Stefanovski, confirmed the rejections of the judges in the preliminary procedure.

The Special Prosecutor's Office also noted that they still had not received the minutes and recordings of the hearings held on the initiated indictments on the cases of violence in the Municipality of Centar and for the destroyed documentation in the Security and Counterintelligence Directorate.

Recommendation: The Helsinki Committee for Human Rights expresses serious concern over the obstruction of SPO's work and the continued hampering of this body's work by the Basic Court Skopje 1 - Skopje. We urge the Basic Court Skopje I – Skopje to be open for cooperation with the Special Prosecutor's Office, bearing in mind that the enforcement of justice depends on the mutual cooperation between all actors in the criminal proceedings, and the efficiency and effectiveness of the criminal proceedings depends, to a large extent, on the manner of which this kind of cooperation is being accomplished.

DISCRIMINATION

DIRECT DISCRIMINATION BASED ON SKIN COLOR IN LIMITING ACCESS TO SERVICES AT THE "BISER" SWIMMING POOL IN AERODROM

On 11.11.2016, the Commission for Protection against Discrimination on adopted the Opinion no. 0802-1744/4, which establishes direct discrimination based on skin color. It is a case in which a Roma family member was denied the right to access to the "Biser" Swimming Pool in the municipality of Aerodrom.

Namely, on 20.06.2016, the person S.H. together with his wife and their two children had a negative experience in trying to enter the "Biser" Swimming Pool facilities. They were stopped from entering the pool by pool staff because of their skin color. On 22.06.2016, the person went to the same pool again with his family. His wife and his daughter were allowed entry to the pool facilities because they have a lighter skin tan, while S.H. and his son were not allowed. The reason why they were not allowed to enter, according to the ticket office at the pool, was because they did not have a pass, although all other visitors entered without a pass, including the wife and daughter of S.H.

This case is the best indicator of the negative practice of continuously obstructing the access of Roma to the pools. Although it is stated in the opinion of the Commission for Protection of Discrimination that the established discrimination is based on skin color, the Roma are often denied access to the pools because of their ethnicity. The Commission for Protection against Discrimination has previously found direct discrimination against Roma in access to the pools¹, which further emphasizes the need for taking state measures in the direction of raising the awareness among the citizens and eliminating this negative phenomenon.

After receiving the Opinion and consulting with the Helsinki Committee, the victim, as a damaged party, decided to seek judicial protection against discrimination.

Recommendation: The Helsinki Committee welcomes the adopted Opinion of the Commission and urges its members to continue in this direction in the future, as to protect all citizens as effectively as possible within their respective competence.

¹ http://www.kzd.mk/sites/default/files/dokumenti/mislenja/2013/etn_pripadnost/07-778%20snupi%20bazen.pdf

HATE SPEECH

HATE SPEECH AT GORGI SUGAREV PS IN BITOLA

During January, the Helsinki Committee registered a reduced number hate speech reports on the www.govornaomraza.mk platform. The uncertainty of the political scene and the anticipation to resolve the political crisis has passed spontaneously, compared with the previous election period which was filled with hate speech.

The Helsinki Committee singles out the following case of registered hate speech in the public, which was positively resolved by the competent institutions.

Case: Hate speech graffiti at "Gorgi Sugarev" Primary School in Bitola

On 21.01.2017, a group of citizens – representatives of the Roma community in Bitola, reported to the Helsinki Committee that graffiti with hate speech, i.e. drawings of swastikas and inscribed insulting messages to Roma, such as “Death to Gypsies” and “Die Gypsies” , were noticed at the "Gorgi Sugarev" Primary School in Bitola. Such messages are particularly troubling given the fact that the majority of pupils at the school are Roma.

Following the expressed concerns of numerous stakeholders and civic associations in the public and calls for immediate removal of the graffiti, it was done at the earliest possible time. Namely, in just a few days, the school removed the graffiti. The Helsinki Committee applauds the prompt action, which, to a certain extent, reduces the negative consequences caused by the hate speech.

Recommendation: The Helsinki Committee recommends that this positive example of the rapid removal of graffiti with hate speech be followed so as to contribute to reducing the negative consequences, especially when it comes to sensitive environments such as primary schools. The obligation to remove such messages belongs to state institutions must be respected in every isolated case.

REFUGEE CRISIS

THE REFUGEE SITUATION AT BORDER CROSSINGS IN GEVGELIJA AND KUMANOVO

The number of refugees at Reception and Transit Center in Gevgelija at the beginning of the second week of January was 92, but decreased on two occasions after families decided to return to Greece on their own choice, leaving the number of refugees at the end of the month down to 67. A total of 25 refugees from Syria who had been staying at the camp for more than 10 months were voluntarily "deported" to Greece. According to them, the reasons for this decision were the poor conditions, the feeling of being a prisoners and the lack of freedom, as well as the hopeless situation in which they had been trapped for a longer period of time. The center in Gevgelija is a closed type, and leaving the center is allowed only with prior announcement and escort by the

Macedonian Red Cross. Due to low temperatures, despite attempts to heat, water pipes in the toilets froze. The hygiene in the toilets and the camp is generally poor, with occasional improvements.

The official number of refugees in the Reception and Transit Center Tabanovce in Kumanovo is 48, but the unofficial number is higher. In January, the number varied around 100, but due to the constant movement of refugees, it was changing constantly. Following the decision of the Crisis Management Center's Headquarters to accept refugees arriving from the surrounding villages in the camp, the number of refugees in the camp is increasing every day. The refugees in the camp come from different countries: Syria, Iraq, Palestine, Afghanistan, Morocco, Algeria, Pakistan, Iran and Libya. All refugees who arrive are issued cards so that they can get food.

This Center is of open type and the refugees who stay in it can freely go out and come back. Refugees and migrants who travel to Serbia or are in the surrounding villages (Lojane and Vaksince) occasionally come to the Center where they receive humanitarian and medical assistance. Due to low temperatures, the camp faces problems with the water installation because of the frozen pipes. The hygiene in the camp has worsened, and refugees are given new, clean blankets.

Recommendation: The Reception and Transit Center in Gevgelija should be changed to an open, one in which registered refugees can freely leave and return. Hygiene conditions should be improved in both centers.