

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

HELSINKI COMMITTEE FOR HUMAN RIGHTS
OF THE REPUBLIC OF MACEDONIA

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Table of Contents

SPECIAL PROSECUTOR’S OFFICE	2
SPO’S WORK IS CONTINUOUSLY COMPROMISED	2
DISCRIMINATION	3
AFFIRMATIVE MEASURES FOR INCLUSION OF PERSONS WITH DISABILITIES IN CULTURAL LIFE.....	3
UNPROFESSIONAL OPINION ISSUED BY THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION.....	4
UNLAWFUL DETENTION	6
HATE SPEECH	7
POLITICS, THE MAIN INSTIGATOR OF HATE SPEECH.....	7
HATE CRIMES	8
VIOLENCE AT THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA	8
TEXTILE WORKERS	9
VIOLATION OF WORKERS’ RIGHTS CONTINUES.....	9

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SPECIAL PROSECUTOR'S OFFICE

SPO'S WORK IS CONTINUOUSLY COMPROMISED

SPO is Conducting Financial Investigations for a Large Number of Physical and Legal Entities

The SPO has said it has initiated several preliminary investigations with the aim of conducting financial investigations against a large number of physical and legal entities. The purpose of these pre-investigative procedures is to evaluate the real estate property of all persons for whom the procedures are open and to verify their overall financial situation. The property evaluation involves detailed checks for the entire property that the persons may own, both real and movable property. SPO urged state institutions to take appropriate measures as to prevent the data necessary for preliminary investigations to become public, which, in accordance with existing laws and regulations, are private. The Prosecutor's office notes that it is illegal to allow access to documentation for the persons who are subject of the investigations carried out by this Public Prosecutor's Office, in accordance with the legal authorizations and regulations.¹

Meeting Between the Special Public Prosecutors and the "Makedonski Telekom" Managers

SPO informed that a work meeting was held at the premises of "Makedonski Telekom" with representatives of this company in order to find a solution for the cases of interest to this Public Prosecutor's Office. The Prosecutor's Office said they expected the established cooperation to continue in the upcoming period.² In the past period, some media reported that "Makedonski Telekom" did not cooperate with the SPO and that other mobile operators, VIP and ONE (now merged into one operator) cooperated, but Telekom refused to be part of the SPO's investigation. "Makedonski Telekom" controls most of the mobile operator's market in the Republic of Macedonia.

Regarding the "Makedonski Telekom" operator, which according to several media reports refused to cooperate and respond to SPO's requests, we recommend that competent managing staff understand the significance of the cooperation between the operator and SPO, considering the fact that Telekom controls the majority of the country's mobile phone market and its data are

¹ <http://www.jonsk.mk/2017/04/04/>

² <http://www.jonsk.mk/2017/04/24/>

instrumental for effective investigations conducted by the SPO and it is therefore urgent to provide full access to information.

RECOMMENDATION:

Since the beginning of its mandate, the SPECIAL PROSECUTOR'S OFFICE has been facing difficulties regarding the exchange of information with state institutions. The observers repeatedly indicated that the state administrative bodies have to be fully open for communication and made available to the SPO. This time, the Prosecutor's office points out that their reviews and their access to state institutions are being compromised, that is, the persons against which proceedings are initiated are being informed about the type and character of SPO's checks. We recommend that state institutions respect the confidentiality of preliminary investigations and investigative procedures conducted by the SPO and that management officials report cases of violation of the procedure confidentiality by the authorized staff, which is a crime in accordance with the Criminal Code of the Republic of Macedonia.

DISCRIMINATION

AFFIRMATIVE MEASURES FOR INCLUSION OF PERSONS WITH DISABILITIES IN CULTURAL LIFE

A parent of a child with a physical disability, who regularly attended the Macedonian National Theater, addressed the Helsinki Committee for Human Rights. According to the parent, with the renovation of the theater, several orchestra seats have been made accessible to people in wheelchairs. The problem pointed out by the parent refers to the annual ticket price, which he claims to be higher than before, but is also higher for the orchestra section accessible to wheelchairs in comparison to the annual ticket price for the other seats. Following this information, the Helsinki Committee addressed the Macedonian National Theater with a request for free access to public information in order to obtain data on the theater's capacity, on how much of the total capacity is adapted and accessible for wheelchairs, on ticket prices for plays, as well as information on any affirmative measures for persons with disabilities regarding ticket prices.

Since we did not receive a response from the theater, a complaint was submitted to the Ombudsman with the aim of examining the above issue and due to the existence of reasonable suspicion of

discrimination by the theater against people in wheelchairs on grounds of physical disability and social status. Additionally, if the Ombudsman found discrimination, in accordance with his authorization, he was required to give appropriate recommendations for changing the discriminatory practice of the theater.

Through correspondence with the Ombudsman, the Helsinki Committee was informed that based on the submitted complaint, a procedure had been initiated investigating the allegations of the complaint. During the procedure, the Ombudsman addressed the Director of the Macedonian National Theater, from whom he received a written response containing the requested information. The response stated that the theater has a capacity of 724 seats on the grand stage and 213 seats on the small stage. Each of the two stages has an estimated number of 20 seats for a wheelchair and they are found from the 1st to the 10th row in the section, two on the left and two on the right side of the row, one for the disabled person and one for their companion. Regarding ticket prices, the theater does not offer monthly or yearly tickets and that tickets for wheelchairs are not charged, while the ticket price for the companions of these people is on a 50% discount. According to the provided information, the Ombudsman did not identify discrimination on grounds of physical disability and social status.

RECOMMENDATION:

The Helsinki Committee for Human Rights applauds the Macedonian National Theater's policy and the undertaken affirmative measures with the aim of reducing the inequality and protecting this group of people. The positive example set by this theater should be an encouragement for other institutions to implement this or another type of affirmative measures with the purpose of inclusion of people with disabilities in the cultural life and towards a general improvement of the quality of their life.

UNPROFESSIONAL OPINION ISSUED BY THE COMMISSION FOR PROTECTION AGAINST DISCRIMINATION

In April, the Commission for Protection against Discrimination identified the occurrence of indirect discrimination based on a state of health committed by the PHI General Hospital Ohrid when providing health services to a person with HIV. In the opinion, the Commission argues that it has established indirect discrimination by the PHI General Hospital Ohrid because the employees did not respect the patient's privacy in relation to his HIV status. Privacy was violated contrary to

the legal provisions for the protection of patient's privacy evident in the patient's discharge letter, where it was stated that he was HIV positive. According to the Commission, in the present case, it was an indirect discrimination because there was no unequal treatment of the patient, i.e. he received the same treatment as the other patients, and the neutral practice failed in protecting the anonymity of his HIV status, which is identified as indirect discrimination.

It is concerning that the Commission for Protection against Discrimination in the above complaint did not consider all of the allegations that indicate a direct and prolonged discrimination, which have a deep impact on the discriminated person. These allegations refer to the patient's isolation in a separate room marked with a the protective tape with the inscription "NO ENTRY", the hospital staff's behavior by referring to the patient as "the one with AIDS", placing a table in front of the patient's room where several protective suits, solvents for disinfection, protective goggles and gloves, leaving the patient's hospital clothes and linen in a disinfectant for 24 hours, refusing to clean the patient's room, etc. What's even more contradictory is that the Commission notes that the stated violations were found in the opinion of the Ombudsman, which determines discrimination, but in the Commission's opinion on the analysis of the facts and evidence, the above allegations are not mentioned.

We must point out that direct discrimination constitutes unfavorable treatment, differentiation, exclusion or restriction which as a consequence could have elimination, violation or restriction of equal recognition or enjoyment of human rights and freedoms as compared to the treatment that another person has or may have in identical or similar conditions. Indirect discrimination, on the other hand, is any placing of a person or group at a disadvantage in comparison to other persons through adopting apparently neutral provisions or criteria, or by implementing certain practices, except where such provisions, criteria or practices arise from a justified objective, and the means of achieving that objective are appropriate and necessary. From the allegations in the complaint, and from the very reasoning of the Commission, it is clear that the discrimination in question is the result of unfavorable and different treatment, which as a consequence resulted in a violation of the equal enjoyment of human rights in comparison with the treatment that another hospitalized person with no HIV infection would have received. In other words, the specific case indicates direct and prolonged discrimination which deeply affects the discriminated person.

RECOMMENDATION:

The Helsinki Committee applauds the opinion issued by the Commission for Protection against Discrimination. However, in spite of the fact that such an opinion sets a positive example, we have to point out that the practice of the Commission for Protection against Discrimination to adopt opinions that contain formal and substantial shortcomings, still continues. We urge the Commission, in the future, to consider the factual situation in its entirety in order to properly determine the type and form of discrimination upon taking actions and issuing decisions.

UNLAWFUL DETENTION

The Helsinki Committee for Human Rights of the Republic of Macedonia was addressed by a client on behalf of his extramarital partner who was unlawfully detained in hospital after giving birth due to lack of identification documents. Namely, the client's extramarital partner gave birth at the State Hospital – Gynecology Department in Skopje, with spontaneous delivery without complications. Due to the fact that she did not possess any documents for personal identification, and consequently, did not have health insurance, she was not allowed to leave the hospital before paying the health and hospital services invoice. Subjected to an extremely discriminating and degrading treatment, she was not allowed to see her baby because of the unreasonable fear of hospital staff that she would escape with the baby. For this conduct and for the illegal detention in the hospital, a complaint was submitted to the State Sanitary and Health Inspectorate. Representatives from the Helsinki Committee and the non-government organization IRIZ held a meeting with representatives of the hospital's management, but they did not come up with a favorable solution since the hospital management representatives insisted on detaining the patient until the invoice was paid.

The woman in child-bed was detained at the hospital until 21.03.2017, i.e. she was released after her mother signed an agreement for payment of the invoice in installments.

In accordance with the Law on the Protection of Patients' Rights, the personality and dignity of each patient must be respected. In this case, it is undeniable that there is an invoice for health and hospital services, but in no case is the measure of detention of the patient until he/she pays for the services is justified. There are appropriate measures for settling payments for services in terms of judicial protection and forced payment through an enforcement agent if the patient does not voluntarily settle the financial obligations. With the aforementioned hospital treatment, the person

and dignity of the woman in child-bed were violated. The fact that she did not have personal identification documents does not justify the hospital's measures for detention due to unpaid invoice. Moreover, the hospital is obliged to foresee rules and protocol for acting in such cases, and in the absence of such rules, the implementation of the provisions of the Law on the Protection of Patients' Rights is indisputable.

RECOMMENDATION:

Pursuant to Article 27 of the Law on Protection of Patients' Rights, the patient has the right to leave the healthcare institution willingly, except in the cases prescribed by another law, as well as in cases where such action would be harmful to his/her health or the health or safety to others. Therefore, detaining the patient due to unsettled financial debt is undoubtedly illegal. It is necessary to amend the general act of the hospital for the appropriate measures in such or similar cases and in order to prevent future violations of patients' rights. The illegal detention of patients can in no way be justified by the fact that they do not possess identification documents.

HATE SPEECH

POLITICS, THE MAIN INSTIGATOR OF HATE SPEECH

Political developments in the Republic of Macedonia were the main provocateur and instigator of hate speech during the month of April. In fact, the rhetoric resulting from the political crisis consists of frequent calls for violence against political opponents and members of the Albanian ethnic community. Even more terrifying are the messages of violence on political and ethnic bases shared at public gatherings and protests, before greater groups of people. In an effort to manipulate public opinion, an indirect hate speech was also noted in speeches by public figures and politicians who directly called for violence throughout the entire period. Hate speech was also represented by the day-to-day calls by protesters for "clean and unitary Macedonia" that is demeaning to the ethnic communities in the country. In isolated cases, direct hate speech was aimed at political representatives, in the form of calls for their death or lynching. Everyday events broadcasted by media and internet portals significantly increased the use of hate speech on social networks.

RECOMMENDATION:

At the end of the month, the indirect hate speech which had been used daily during ongoing protests under the slogan “For a united Macedonia” (Mac. “За заедничка Македонија”) resulted in the continuously instigated violence towards Members of Parliament at the Assembly of the Republic of Macedonia. The events directly indicate that if hate speech is not prevented in time, it will result in inevitably negative consequences, that is, in violence.

HATE CRIMES

VIOLENCE AT THE ASSEMBLY OF THE REPUBLIC OF MACEDONIA

On 27 April, immediately after the election of the new President of the Assembly of RM by the parliamentary majority, the organizers and participants of the protest group known as "For a United Macedonia" (Mac. “За заедничка Македонија”) forcibly entered the parliament building. According to the numerous video recordings, police officers in charge of keeping the public order and safety of the participants in the parliamentary halls allowed the protesters to enter the building unhindered. Persons who were wearing face masks and carried hard and sharp objects intended to endanger the physical integrity of those present in the Assembly were allowed to enter as well.

Shortly afterward, around ten Member of Parliament were injured (of which at least one suffered severe injuries), including over 70 citizens and over 20 police officers. The Ministry of Interior in coordination with the Public Prosecutor's Office Skopje identified around twenty perpetrators of crimes. Some of them have been taken for questioning, while others were placed in detention, house arrest or faced other precautionary measures. For the time being, the identified perpetrators are suspected of committing three types of crimes: participation in a crowd which prevents an official person from performing an official action, participation in a crowd which commits a crime and causing a general danger.

In reference to the incorrect qualification of crimes by the Public Prosecutor’s Office, the Helsinki Committee prepared a Special Report that covers the committed crimes identified through photos, audio-visual recordings, and testimonies as well as the suspected crimes for which it has not been yet investigated whether they have been actually committed or by whom.³ The report addresses the violations of rights and freedoms guaranteed by the Constitution and sanctioned under the

³ <http://www.mhc.org.mk/analysis/578#.WhCMPEqnHIU>

Criminal Code. The Report contains a total of 28 crimes, 18 of which are already provable with considerable evidence, and 10 suspected crimes. The possible perpetrators are divided into four groups: 1) organizers, 2) perpetrators, 3) police officers and 4) their superiors. The crimes are established as such in 8 chapters of the Criminal Code, and were directed against: 1) the life and body, 2) the freedoms and rights of citizens, 3) property, 4) security, 5) State, 6) office, 7) judiciary and 8) public order.

RECOMMENDATION:

The Helsinki Committee urges the Internal Control Sector of the Ministry of Interior and the Public Prosecutor's Office to conduct an urgent and comprehensive investigation to determine the responsibility of all involved in the violent attack. The role of the judicial authorities is to determine whether and which of the crimes have been committed or attempted and to not allow an incorrect qualification, collectivization of responsibility or arbitrary sanctioning. In qualification of the crimes, the Public Prosecutor's Office must take into account that the perpetrators created a sense of insecurity and fear among the citizens when they committed the crimes, and therefore the prosecution on the basis of "participation in a crowd" in the particular case is extremely inappropriate.

TEXTILE WORKERS

VIOLATION OF WORKERS' RIGHTS CONTINUES

The month of April noted the on-going reporting of cases of irregularities and violations of worker's rights by the textile and shoe industries' employers. After receiving information about violations of labor rights in a textile factory in Vinica, the Helsinki Committee sent a request for extraordinary inspection to the competent Labor Inspectorate. The case concerns an employer who did not issue employees' salaries for 8 consecutive months and did not secure employee health insurance contributions, pension benefits or disability insurance. In the meantime, the workers from the textile factory in Vinica went on strike, demanding the unpaid salaries from their employer.

The State Labor Inspectorate from PE Vinica made an appearance on the field and conducted inspection supervision at the textile factory in question. From the conducted supervision, the

Inspectorate found that in the specific case, the company was divided into two separate companies, both of which were inspected by the Inspectorate in October 2016. The inspection revealed the violation of failure to secure compensation to employees for February, March, April, May, June, July, August and September 2016, with which the employer violated the Law on Labor Relations. Based on the established situation and the identified violation, the competent Inspectorate informed the Helsinki Committee that, in accordance with the Law on Misdemeanors, the employer and the responsible person were fined for the committed misdemeanors. The employer and the responsible person paid the fines within the legally prescribed deadline. In addition, the inspectorate informed the Helsinki Committee that 90 persons, former employees of this employer, filed lawsuits before the competent court for which they received 90 effective verdicts that are currently subject to enforcement. The Inspectorate concluded that, at that time, there were no employees in the two textile factories.

RECOMMENDATION:

The situation in this industry is beyond concerning. Legal provisions and collective contracts are continuously violated, and thus employees' rights are violated as well. Employees do not receive income, and after a few months, are left without health insurance and must seek justice before the competent courts. The fact that the unsettled payments cannot even be collected by an enforcement agent is an indication that employees were never protected in any way during their employment and after its termination. We encourage all employees to report any kind of problem or a violation of their rights that they are faced with. We urge authorized inspectorates to carry out enhanced controls and supervision in order to secure companies/factories' compliance with legal regulations, as well as to issue punishments when the law is being violated.