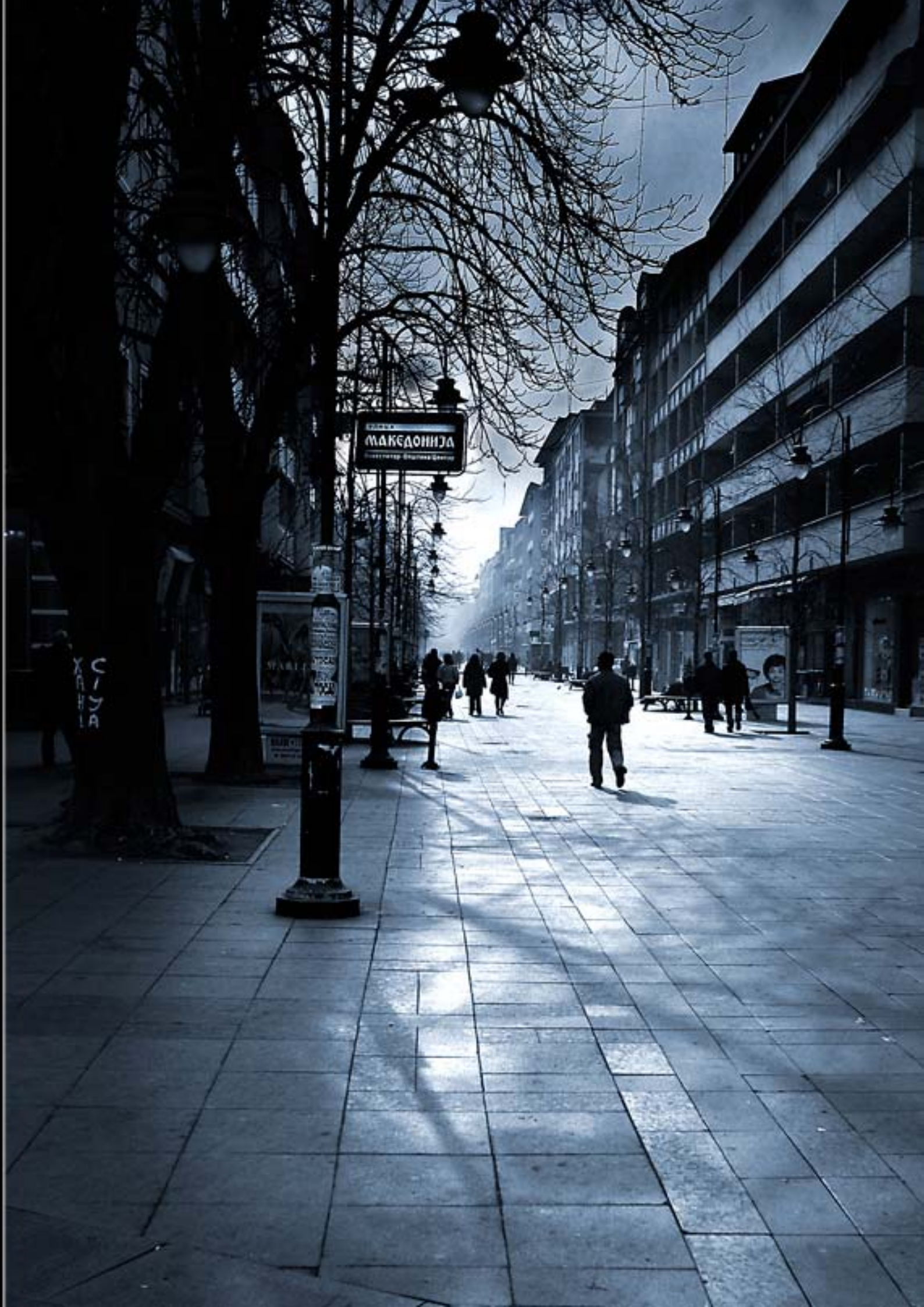
HELSINKI
COMMITTEE FOR HUMAN RIGHTS OF THE REPUBLIC OF MACEDONIA

Annual report
2008


МАКЕДОНИЈА

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2008

FROM BAD TO WORSE

As an unwritten rule each election year – since the independence – is a lost year for the Republic of Macedonia. 2008 was no exception. But if the previous years were lost due to the receding of the important activities of the authorities and the reforms in many areas, in 2008 the time was not the only thing that was lost, but regretfully the things went into an opposite direction than the desired one – they were going backwards, thus annulling the small progress made in the field of rule of law and democratization.

The dominance of daily politics and politicization or partisanship of everything on the public scene had, without any exaggeration, extremely concerning dimensions. This was more than obvious in every segment of the area covered by the Helsinki Committee of Human Rights of Republic of Macedonia. We will try to remember some of these unwanted results that were recorded in our press releases in 2008.

At the very beginning of 2008, in the monthly report for December 2007 and January 2008 we believed it was necessary to address the issue of secularism in our country. The reason was the information that the Government at one of its January's sessions has made a decision (with acclamation!) to build a church (or to reconstruct the former central church "Emperor Constantine and Empress Elena") on the main square in Skopje, on the location between the Department Store and "Dal-Met-Fu" restaurant. Afterwards, the deputy minister of culture has opened "international public call No. 4/08 for architectural and urban design for construction of an Orthodox Temple on the square Macedonia" with an award pool of MKD 860,000. How-

ever, no official explanation was given why the state and not the faith community was supposed to build the religious facility. No one commented on the fact that the detailed urban plan of Skopje did not foresee the construction of such facility, so the start of building activities was a move that disavows the entire system of urban planning. The Government and the Ministry of Culture has neglected the fact that the preparations for the construction (including the use of budget funds) were beyond the legal procedures and only reflected the obstinacy and arrogance of the ruling government.

We were right when we predicted that the governmental decision to build a church in Skopje's main square, would follow the principle of connected bodies, due to the anticipated reaction that this was a demonstration of the unequal treatment of the other faith communities, "hastily" triggered another decision on building a mosque in the same way (with state funds) in the centre of Tetovo. However, this did not stop the chain of reactions, but yet motivated new demands of the other faith communities for building more religious facilities in the capital's main square. A coordination body was established, constituted of 37 non-governmental organizations and associations of citizens of Islamic faith, with the support of additional 40 Turkish non-governmental organizations and associations for reconstruction of the Burmali – Mosque, which showed that the request for reconstructing the mosque was older than the decision for building the church and what was more important the Islamic Religious Community, wanted to be an investor and did not ask for budget money, which made this offer socially more acceptable. So, the government has created a situation and has to deal with it: if the old church is reconstructed on the old site then all religious facilities of the other faith communities that existed in the past should be also reconstructed. There is no other alternative. The Government should respect the Constitution and not to be above it (by violating the equality of all faith communities and religious groups) or should amend the Constitution in order to embed the inequality of faith communities and religious groups.

But, the trickiest part in this situation was the fact that with this decision the Government has directly brought into question the principle of secularity i.e. the division between the state and faith communities The previous governments, also, particularly the one of VMRO-DPMNE (1998-2002) spent money for building the Millennium Cross on Vodno Mount, the Plaoshnik church in Ohrid and tried to introduce the religious education. Even if there were any cultural or civilization explanations for these decisions (2000 years since the crucifixion of the Jesus Christ, paying tribute to St. Clement of Ohrid...) the Government had no justification for the latest decision, except for the statements of the governmental spokesperson and the Prime Minister that there are churches on the main squares in all European cities and the unsuccessful attempt to convince us about this with paid commercials.

The Helsinki Committee believed that this decision was simply a step forward in promoting a "state religion" or more precisely "state faith communities" seen through the Macedonian Orthodox Church (MOC) and the Islamic Religious Community (IRC), which are evidently favored compared to the other faith communities in this country. The political motives of the ruling parties were clear and visible. For this government of VMRO-DPMNE this was a logical step after the attempt to get blessing from MOC for its parliamentary candidates before the latest parliamentary elections, while its Albanian coalition partner did not even hide its control over IRC. It was not an insignificant fact that this step came after the long tensions regarding the adoption of the new Law on legal position of the Church, Faith Community and Religious Group and the problem with the exclusivity of MOC and IRC and the serious problems that Republic of Macedonia had with the religious freedoms that led to a situation this law to be one of the requirements for Macedonia's accession in the Euro-Atlantic structures.

The introduction of religious education, disputed in front of the Constitutional Court, is a kind of a favor granted by the government to these favored faith communities in order to establish closer mutual relations.

The Police/Ministry of Internal Affairs expectedly did not become any better with the enforcement of the new Law on Police, and continued to generate fear with the spectacular arrests aired live on TV. Following the recommendation of the legendary Romanian woman – a fighter against corruption and a consultant of the Government called Monica Macovei, the Ministry of Justice suggested through the Government, and the Parliament expressly adopted amendments in laws with which opportunities aroused for the Ministry of Interior, as it is now, to begin to act as a police belonging to a Party. Moreover, it did not consult and respect the warnings of the experts which were hired by her to write laws in this area (for example, the new Law on Criminal Procedure!) And the experts warned that if the Ministry of Interior received greater authorizations for applying the special investigative measures, this could be highly dangerous because nobody could control how low long the eavesdropping would last and for what purpose it would be done.

The liberalization of eavesdropping, explained as a need for a more efficient fight against corruption, easily goes round the violation of human rights and because of the lack of mechanisms needed for an efficient control of its use. This problem was already observed and our government received a clear message about this by many international organizations and bodies. Many times and through many cases, when there were cases where people received exoneration from the Court, the Helsinki Committee unsuccessfully warned of the abuse and of (non-liberalized) use of the special investigative measures.

To top it all, during the last rebalance of the Budget of the Republic of Macedonia, the Ministry of Internal Affairs, that is to say its Agency for Safety and Counter-Intelligence, received EUR 25 million, which according to the information posted in the daily press will be spent for its own activities – so far the Agency for Safety and Counter-Intelligence annually, according to the same sources, used to spend EUR 400.000! There is no official response on what the Agency would spend the money, but the very fact that the secret police received funds which it did not spend in the past ten years in total, even for states that do not belong in the same political scheme as the Republic of Macedonia, is a signal for concern, especially in the field of protection of human rights.

The police operations, particularly when they were performed in areas dominantly populated by Albanians, proved to be extremely sensitive, because as by rule the people complaining to be just innocent victims never saw a satisfactory and official resolution. Unsatisfied with the explanation on the treatment with the detainees in the police operation in Brodec (November 7m 2007) and according to the findings from the fact finding mission on this case, the Helsinki Committee of Human Rights decided to file criminal charges against an unknown perpetrator . We are still waiting for a reply to our initiative. In the meantime, MoI was motivated and efficient in reacting to the video recordings that came from the hearing of one of the detainees in Brodec and put all efforts in identifying the persons that took the video, instead of providing explanation (even initiating a procedure) against those that conducted the hearing. The crucial misunderstanding between the Sector for Internal Control and Professional Standards of MoI and the Helsinki Committee regarding the recordings and the injuries sustained by the detained persons in the police operation continued in the following months

In the case of the police operation in Aracinovo on January 22, 2008 in which one person was killed was pointed out as another proof of the lacking skills of the police to manage these operations. It seemed as the police adopted special approach when conducting operations in the municipalities run by the political opponents, or even worse, which are dominantly populated by non-Macedonians. Instead of acknowledging the fact that it is in the interest of local government and population to deal with crime and criminals by establishing mutually useful cooperation with them, when conducting these operations the police as

by a rule behaves as if they were performed on a hostile territory inhabited by people that are natural enemies to the police. Similarly as with the operation in Brodec village, MoI did not find it necessary to inform the local authorities and the local population about the necessity and objectives of the operation. The effects of these police operations are disastrous. Not only they violate the normal relations between the law enforcement institutions and the population, but also directly stimulate the lack of confidence of the residents in these state institutions as if they are enemies by default.

Unfortunately, in this case similarly as in the operation in Brodec village, it seems that the Sector for Internal Control and Professional Standards shows its fragility under the dictate of leading police structures, and is not able to find strength and point out that it is necessary to manage these operations in a better way. So following its old practice in evaluating the operation the Sector has only justified it, irrespective of the way in which it was conducted.

We reacted several times to the police operations and "spectacular detainment" (as they violated the principle of presumption of innocence, use of handcuffs and presence of the media at these events). It is interesting to note that the announcement for these detainments and the distribution of police recordings is considered by MoI as freedom of media and right to free access to all sources of information of public interest.

Although, it can be noted that the cases of (no) rule of law with a prefix of interethnic relations were significantly reduced in 2008 in comparison with the previous years, we still observed that in 2008, seven years after the conflict in 2001 and the constitutional amendments, it is still not possible to respect the Constitution and the Law and to provide classes in mother tongue, in all places where the legal requirements are met .

We reacted about the decision of the Ministry of Culture not to finance the theater play "Uncle Vanja" by Chekhov, directed by, according to many, the best Macedonian director Slobodan Unkovski, in which the principal character is played by the famous actor Bajrush Mjaku. After the play "The father" by Strinberg, which represented the Macedonian theatre at several world stages, this is another successful project of this tandem. The viewers in Macedonia regretfully, will have no possibility to watch this play. An opportunity that the Ministry of Culture deprived us of because of reasons known to them, in any case incomprehensible and unacceptable. An opportunity that the viewers in Tirana and Prishtina had during the same month because the institutions of these two countries believed in the artistic potential of the project team and invested resources in the realization of this project, in which artists from Albania and Kosovo participated as well. That this is most probably all about sowing one's wild oats on the basis of personal and political intolerance is shown by the reaction of the Ministry to the text published in the daily newspaper in Albanian language "Lajme". The Ministry reacted with a "denial" to the feature in the newspaper about the (non)financing of the project written by the journalist Anila Disha entitled "Disgrace for the Ministry of Culture". The "denial", which was sent only to the newspapers in Albanian language, is full of insults at the journalist – author of the text, as well as at the actors in the project. To crown it all, they used the term "infidel's syntagma". For a second time in less than a year, the structures of the ruling Democratic Party of Albanians have continued with an unbelievable ease to use hate speech, racist approach and spreading of ethnic intolerance.

The establishment of the Culture Council defined in Article 11 of the Law on Culture as an "expert and advisory body to the Minister of Culture": "A Culture Council shall be established at the Ministry of Culture as an expert and advisory body to the Minister of Culture. The Council members shall be appointed by the Minister of Culture, from the ranks of renowned artists, professionals in the area of culture and public life, following the principle of expertise and competency and the principle of adequate and equitable representation of citizens belonging to the communities, to serve during the Minister's tenure." The Ministry of Culture announced that on 27 October 2008, the Culture Council held its constitutive meeting.

At the constitutive meeting, Minister of Culture Elizabeta Kanceska- Milevska, stated that "the members have been selected in a way that provides for equal representation of all artistic areas, while the Council also includes representatives of the Macedonia Academy of Arts and Sciences as the most renowned institution in the country, as well as a representative of the Macedonian Orthodox Church, Father Clement, whom the Commission for Relations with Religious Communities has delegated to be a member that would work on behalf of all religious communities in Macedonia". (Appointing a clergyman as a member of the Council with an odd duty to represent all religious communities, regretfully prompts the impression that opting for such and similar solutions, this Government calls too much in question the separation of the state from the church).

After the reaction by the Association of Albanian Writers, the Associations of painters (Art Vision), of historians and of writers- Albanians and upon the reaction of the Center for Promotion of Culture - "Skopje" and the Association of Albanian Publishers, as well as following the reaction in certain Albanian language media outlets, the Ministry and the Minister additionally informed that Mr. Abdilakim Ademi, Deputy Prime Minister was invited as a Council member and that another unnamed employee of the Ministry of Culture was also included as a member. On 18 November the Committee received written information that the person in question was Mr. Gjuler Nebi.

However, this intervention in respect of the composition of the Council, which clearly signals the intention to additionally include the constitutional principle of adequate and equitable representation causes another related problem of disregard of the principle of professionally and competence. If indeed a politician and a civil servant

are members of the Council, it would be very difficult to explain why the ethnic community they are to represent within the Council is not represented by renowned personalities in the area of culture, unless it is considered that there are no such personalities among the ranks of the said community.

Another case – the summer adoption of the Law on Amending the Law on Protection of the Children (adopted by the Parliament on 25 July 2008) – will probably have a reflection on the interethnic relations in this State, because it can be rightfully understood as a stimulant for the birth of new members of only one ethnic community. It is left to be seen if it is possible to happen in a multiethnic community as Macedonia. A well-known columnist wrote: "the idea for the salvation of the Macedonian nation from the Albanian supremacy in the near future has caricature dimensions which can become dramatically enormous dimensions". However, the changes in the Law on Amending the Law on the Protection of Children put the (future) mothers in an unequal position, depending on whether they live as "unemployed mothers who live in municipalities with birth rate below the average" or not.

The incidents during the early parliamentary elections 2008 held on June 1 came as a shock to both the local and international public. With certainty, the pre-election campaign, foretold the incidents of – until now – the worst organized elections in the history of the Republic of Macedonia. First of all, the legal provision was barely respected, according to which the pre-election campaign lasts 20 days before the day of voting. Practically, since the self-adjourning of the Parliament, an offensive pre-election campaign began, where all available measures were worn out.

Before the official start of the election campaign, the ruling party VMRO-DPMNE distributed their election program in the daily newspapers. Ten days passed before the Government could end its campaigns, pressured by the public, but even after the decision to cease the campaigns, the Ministry of Justice continued to publish advertisements in the following days. The goal was reached – the ruling parties got additional (free of charge) advertisement through the Government campaign.

The (regular) governmental activities still had elements from the pre-election campaign. Keystones, new water supplies, promotion of loans for the self-employment of the unemployed ... everything that has already been established as a pre-election folklore in the State. The announcements were the reason for doubt of serious abuse of the budget means, and the advertisements of vacant posts for pre-electoral employment. This type of governmental behavior posed the question of the behavior of the Government, from the moment of the announcement of the elections until the day of the elections, and posed a question if the Government behaved as a technical Government, and how much did it forget about this, by making decisions and moves that were ethically questionable.

The financing of the pre-election campaign is a problem per se, whose dimensions bring into question the political will for respecting the rule of law and fight against corruption. The way in which the payment of the paid political campaign on the most powerful electronic media is also questionable. Some estimates say, the five political parties and coalitions that secured seats in the new Parliament, broadcast 68-hour long paid political program on the five televisions that have national concessions, and were required to pay 23 million euro (according to the actual cost). This by far, exceeded the legally allowed 1.7 million euro per Party or coalition. Even if an enormous discount had been approved, or even if the television stations offered free of charge broadcasting, they still have an obligation to pay the value-added tax (VAT), which leaves space for corruption.

Although this is a matter of a completely clear case of breaking the laws, having in mind the so far used practice, it is hard to expect that the State Auditor would "catch" some of the major parties that spent more than the maximum amount foreseen for the election campaign pursuant to the law, nor it is to expect that the television stations or the parties, will be pursued by the Public Revenue Office for the unpaid VAT of the eventually free time to broadcast the video campaign advertisements.

The intimidations and the incidents were the main features of the pre-election campaign and the early parliamentary elections in 2008. A number of serious incidents marred the pre-election period. The things got worse, so the widely popular "Kalashnikov" was replaced with mortars. The incidents peaked when someone opened fire on the leader (or more specifically, his car) of the opposing DUI.

Despite the harsh reactions from the outside and the pressure to resolve the incidents, it remained unclear whether the police was abused as a party soldier and was involved in stirring the incidents. Despite the endless domestic and international reforms the police simply demonstrated that it was still the same as it was in the former system – partisan police. Even worse is that by serving the ruling coalition the police have divided on ethnic grounds. For the first time, significant segment in MoI is controlled and abused by the Albanian participant in the government. All warnings that a MoI official may control a party activist were futile, as the entire structure of party activists in MoI is abusing the Ministry for partisan purposes.

Of course, a normal reaction did not come even after the formal self-acknowledgement of MoI, when it initiated procedures against its employees. A response was not given even to the public claims about the police visits to houses in Stip during the weekends, which was understood by the citizens as a pressure to vote for one option as well as the accusations that the students at Tetovo University were under pressure by some of the professors to vote for DPA. There was also information on the racketeering of Albanian businessmen, but these claims were also not explored.

The phenomenon of "surveyors" flooding the towns and villages and registering the political preferences of the citizens was announced at the ear-

ly parliamentary elections to be further mastered at the next local and presidential elections as one of the forms of pressure on the voters. The results were vehemently recorded on the account of the party supporters as bonus points to be exchanged as future employment or state favor in case their option wins the elections.

Part of the intimidation was the absurd timing to promote the construction of new prison in Idrizovo in the midst of the pre-election campaign. The arrests came one after another as if they were by a list always in the presence of TV crews or followed by official records of the detention, which somehow always reached the electronic media. "Accidentally" during the campaign the verdict against one of the leading figures in the opposition party SDSM, Jani Makraduli, was publicly revealed, while high governmental structures threatened with criminal charges to SDSM leader Radmila Sekerinska and head of DUI's election board, Izet Mexhiti.

Probably, we should never know how and to what extent has these threats resulted into abstention from voting, which has only facilitated the work of professional ballot stuffers.

It is a fact that most of the incidents in the pre-election campaign and on the Election Day in which firearms were used happened in the predominantly Albanian populated areas and were closely related with the activities of the two major Albanian parties in Macedonia. Those that believed and still believe that these incidents will be covered by the explanation that the Albanians and their parties are not up for democracy are wrong. The price for the incidents that are not ethnically colored is paid by the Republic of Macedonia and all its citizens.

The impartial resolution of the incidents, to prove the guilt of the perpetrators and the evidence that this is done by order of the party leaders and their understanding of how the elections should be won, should be an introduction in the process in which the party leadership and the parties themselves will take on the responsibility. If we are already witnessing that with every new election the number of serious incidents multiplies and does not disappear, why don't we consider sanctioning those proven to be guilty by banning the leaders from performing their duties in the party or banning the party from taking part at the next elections.

Other problems, such as the outdated election list, creating non-existing voters, remained in the shadow of the elections.

The control over media became obvious from two aspects: the first is the de facto ownership of powerful TV stations by (in)formal party leaders and the effect of the fact that the state is the major advertiser.

For the media that could not have been tamed in this way the good old method of exerting pressure and threats was applied (Alsat M). From cutting the power supply of the transmitters of some electronic media in the sensitive time slots when the political programs were on, to taking off their programs from the local cable networks. During the campaign, again only the transmitters of Alsat M and ART from Tetovo were stolen (while those of the other electronic media were intact). The public broadcasting service showed that regardless of the poor position of the MRTV, it cannot let go its propagandistic services. The second channel of MRTV has taken the title of best manipulator with the election information .

The situation – or the "reforms" – in the judiciary were regularly illustrated in our monthly reports and analyses of specific cases. The judiciary reforms, have clearly, turned into the opposite direction. Required for years as a precondition by the two addresses in Brussels, to which we allegedly aspire (EU and NATO), most of all to provide independence and professionalism in the work of judiciary and to eliminate any pressure, especially the political one, the reforms were blocked, sabotaged in order to cut the umbilical cord between the daily politics and the judiciary. After the Judicial Council was recomposed, the same pattern has reflected into the Council of Prosecutors, which took over the Supreme Court, while the Public Prosecutors' Office was in the shadow of its Department of Organized Crime (particularly for the sensitive i.e. political cases). The further (political) regulations bringing order in the juridical institutions were loudly announced, although they rarely served to protect the constitution and laws. The President of the Judicial Council said the judiciary was letting go off the corrupted members, but this was done with dismissals and resignations and not with court decisions on corruption. The fear of repercussion did not disappear, but it seems to be worse than ever. As by rule, the absurd was the least common denominator, whether it was about the mega trials (Snake's Eye) or individual cases.

Unfortunately, the disrespect of social rights remained in the shadow of the developments of daily politics and rule of law. In the Constitution, Republic of Macedonia is defined as social state and we have institutions that should take care of these rights. However, with years we are witnessing their carelessness. The number of cases proportionally grows, as the country goes into a deeper crisis. The abuse and negligence of children as a result of no mechanisms for protection from physical or mental violence, abuse and negligence (including sexual abuse), exploitation became cruel reality in our everyday life. The Helsinki Committee in several occasions has published analyses of specific cases and concluded that the number of complaints submitted to the Helsinki Committee was growing. Lately, the number of

ABOUT US

HELSINKI
COMMITTEE FOR HUMAN RIGHTS OF THE REPUBLIC OF MACEDONIA

The public opinion poll "Confidence in the Civil Society" (MCIC, 2008) showed that the general confidence in the civil society organizations is 41.7%. The authors comment on the findings: "Majority of citizens in Macedonia believe that the civil society organizations serve to realize the interests of citizens and are good opportunity for their opinion and activities to reach out the public. The position that the civil society organizations are tool for the capable individuals to get money and have influence and/or serve only to the interests of the foreign states and their foundations is shared by minority of citizens. For 81.8% of the respondents the civil society organizations are abused by the political parties or their leaders, but only small minority (25%) could list a specific civil society organizations for which they believe that there is a political party behind its work. This may be an indication of a stereotype of a relation between the political parties and civil society organizations, which is not supported with concrete arguments. The general familiarity with the civil society organizations is good. Majority citizens (56.1%) can list civil society organizations considered as successful, and compared with previously they know more organizations active in specific areas. The knowledge about the civil society organizations has improved in all surveyed areas in comparison with 2007. The citizens are most familiar with the civil society organizations working on poverty reduction and least familiar with those working on economic development. The public has positive opinion of the civil society organizations."

The survey showed that the most of the respondents have positive opinion of the Helsinki Committee (positive 28.3 %, very positive 3.7%; negative 8.0%, very negative 6.4%). The Committee is among the ten most successful organizations, in the same group after the NGO "Most" according to the number of persons that heard about our work; in the top 5 organizations regarding the familiarity and dealing with the social priorities , which is an increase compared with the previous research from 2007; somewhere in the middle on the list of successful civil society organizations; recognized as the second best in the contribution for development of the civil society and third in the contribution for the fight against corruption.

However, the general confidence in NGO sector has declined from 45.4% in 2007 to 41.2% in 2008. The decline is even higher compared with 2006, when the general confidence reached 50.3%. The Helsinki Committee is on the bottom of the list of civil society organizations, which according to the respondents, are backed by the political party or political leaders.

In 2008, the Helsinki Committee was in the middle (according to the duration) of the process called "soft transformation". Namely, at the beginning of 2007 the Committee initiated activities and started its internal consolidation after the resignation of the president and five Board members and redefined its program, having in mind that at that point the Committee was implementing only two activities. The internal regulations were improved in 2008 and the Committee started to apply and to obtain more projects, which are close to its primary activity – taking care of the human rights in the state. Now, the Committee is in a much more comfortable position as it has won and is implementing 13 projects, and the decision on the applications for other 10 projects is still pending. The new projects will extend and deepen the existing activities and enhance the institutional security of the organization.

publicly revealed cases in which there are indications or even real violation of child's rights also increased. The role of the Ministry of Labor and Social Policy and the Centers for Social Work remained insignificant.

The summer months of 2008, unlike the summer months during the past years, (even in the conflict year of 2001) were months of intensive political activity. Not just because of the early parliamentary elections, but more because of everything that happened after the elections passed. Of course, the Helsinki Committee is mostly concerned about how all of this will reflect or may reflect in the future on the human rights situation in the Republic of Macedonia.

The new composition of the Parliament began its work infamously. For the Helsinki Committee, whose activities are grounded on the rule of law, this distortion and unseen vulgarization of the legislative power in the state is a direct attack on this basic principle of functioning of any state that aspires to be democratic In the situation when the new Government was not elected, it was in session and adopted laws proposed by the old, technical Government. Let us put aside the fact that a technical Government of this kind, anywhere in the world, may rarely propose laws. Also, the most impossible situation for democratic countries happened, where all the members of the old Government proposer were to become members of the new Parliament – the one that proposes and the one that votes for the proposal are to be melted into one person. Nevertheless, this was not enough, therefore the new Parliament began to vote new laws in very short periods of time (depending on the sources, 35-40 seconds per law).

During the period of July – August 2008, 172 laws were made in total, 50 of which were voted pro (in July 23, and in August 27), and voted amendments of laws 122 in total (in July 69, and in August 53) – the record was accomplished during three sessions of the Parliament, throughout which 66 laws were voted pro. In addition, despite the fact that the laws were voted pro without any sort of a discussion by the parliamentarians from the side of the position, they were voted pro in the absence of the opposition, and were not argued previously in the parliamentary bodies (because they were not elected!). Again, there is no justification for the adopted laws that passed the procedure of urgent process (invented as an exception), otherwise an "elegant" solution used previously in order to avoid the three mandatory phases which are needed for the regular procedure (which should be a rule).

For several years in a row, the Helsinki Committee submits applications at the public call of the Government for supporting the non-governmental sector with budget funding. Each year, the governmental decision for allocation of funding shows that the money is far from necessary to support objectively and transparently the civil sector and it all comes down to providing support to own organizations and association to the extent that the money is allocated even to those that are eligible for obtaining state funding from other ministries (such as the Ministry of Culture). This Government obviously does not want objective allocation of the modest funds and obviously has no intention of building another efficient and socially acceptable mechanism for support of the NGO sector. It seems the government cannot understand that the NGO sector also works on improving the quality of life of every citizen and the citizens are not left only to the (lack of) care of the state. The Helsinki Committee will continue to apply to every public call until the government realizes the role of the civil society sector and starts to stimulate their activities.

The observations and the findings of the Helsinki Committee on the situation of human rights in 2008 reflected in the reports and other documents of respectable international organizations and bodies dealing with the same issues. It is very simple to compare the warnings of the Committee and the observations of the High Commissioners of Human Rights of the United Nations and the Council of Europe, the specialized bodies such as the Committee for Prevention of Torture of the Council of Europe or the international organizations Amnesty International, Human Rights Watch, Freedom House… This does not make us happy, not even to the point to be vain (how psychic or smart we were!). But it is high time, those that are pinpointed by the public and the NGOs to start dealing with essential issues instead of firing back from the arsenal of their daily politics.

RULE OF LAW INSTEAD OF RULE OF POLITICS (OR OF THE POLICE)

Introduction – Justice System Reforms and Political Influence. A state governed by the rule of law which protects human rights necessitates sound, competent and stabile institutions that have the capacity of enforcing the law. The reforms implemented by the last three Governments have been aimed at enhancing the independence and autonomy of the justice system, as well as at the elimination of political influence. Yet, there are increasingly evident elements which demonstrate that in spite of declarative statements, daily politics takes advantage of the justice system reforms, using the reforms as a tool to exert political influence.

Despite the acceptance of contemporary conceptual paradigms of fundamental human rights and freedoms and of the rule of law, the judiciary in the Republic of Macedonia is in a permanent state of crisis, which is reflected in the lengthy and inefficient court procedures, generating a general lack of trust in the judiciary, ultimately resulting in an obvious erosion of values of the legal order overall. The sense of crisis can also be attributed to the fact that the judicial system has proven itself as unprepared to consistently deal with some of the social problems such as corruption and organized crime, being also unable to ensure legal security and protection of human rights and freedoms.

2. Are reforms drifting with no sense of direction?

The Justice System Reform Strategy aimed at enhancing the independence of the judiciary and at increasing the efficiency of courts has not yielded genuine results, in any of these two areas. Hence, one can witness concerns that many have articulated about the possibility that instead of a guarantor of the independence of the judiciary, the Judicial Council becomes the opposite - a body exposed to strong political pressures, a non-transparent body used as a tool of the executive power. It is exactly the Judicial Council and the Council of Public Prosecutors that have become in the practice an instrument for and a catalyst of the domination of politics over the judiciary, as confirmed by the use of party-based assessments and criteria for election of judges, or by the covert or open pressures on the judiciary in order that it adopts politically convenient decisions, all exasperated by the creation of a long lasting climate of uncertainty and threats among the ranks of judges.

In the second area, alleviating the caseload by liberating the courts from misdemeanor cases has produced only seemingly increased court efficiency. Regretfully, it has been exactly the misdemeanor system reform that has brought about additional chaos and legal uncertainty and it is especially concerning that large part of the proceedings before the state bodies do not satisfy the basic standards for fair procedure envisaged under Article 6 of the European Human Rights Convention, while these procedures ultimately end with high fines.

In this respect, the thus far efforts to increase the efficiency of courts have not brought results. In addition, the functions of the Supreme Court have weakened since in the reformed judicial system, the Supreme Court does not have a significant influence on court cases, which has produced manifest differences in the jurisprudence, resulting also in a certain type of "feudalization" of the court system. In addition, the overt politicization as seen in the flagrant case of "appointment" of the new President of the Supreme Court additionally demotivates and delegitimizes this highest instance Court in the performance of its constitutionally defined function of ensuring unity in the application of laws by courts. The situation in other courts in the country is similar. Even more, this year one could witness open attacks by the executive power against the Constitutional Court of the Republic of Macedonia, the last bastion of constitutionality and legality.

The purpose of the organizational reform of the courts was to adapt and restructure the courts following rational criteria, while on the other hand the number of courts and their jurisdiction do not fulfill the criterion of efficiency. On the contrary, there is a new Court of Appeals in Gostivar, established based on political criteria.

It is especially concerning that the country lacks a comprehensive strategy that would cover the overall system (the judiciary and the police). Not only that the deadlines under the Justice System Reform Strategy and the accompanying Action Plan have long expired, but also the Police Reform Strategy (also with expired deadlines) has been designed and implemented independently from the justice system reform strategy. Thus, without a well-thought through concept, the reforms are headed in different directions, at a different pace, depending on the priorities of the in line ministry and foreign partners that usually provide technical assistance. The latter, instead of being guided by European standards and best practices- taking the path of the least resistance- are guided by the laws and practices of the countries they come from.

Therefore, the judiciary is overflowed with large number of legislative and secondary legislation regulations which are often of bad quality, since at times they have been drafted hastily and without

regard to their quality. Therefore, legal norms often change at a speedy pace, which has a negative impact on the legal security of citizens, and which then burdens the higher instance courts and creates a confusion in the legal positions and opinions.

It is particularly concerning that neither the legal regulations nor the police or court practice do not take due account of the necessity of striking a reasonable balance between the desire for efficiency in the fight against crime and corruption and the protection of fundamental human rights and freedoms (physical and moral integrity, presumption of innocence, the right to a fair trial, freedom and privacy of citizens and similar). The endeavor for efficiency in the fight against crime in the Republic of Macedonia has caused an erosion of the respect for human rights. The Committee once again emphasizes that the fight against crime and corruption is not a constitutional priority! On the contrary, human rights and freedoms are the fundamental constitutional value of the constitutional order of the Republic of Macedonia, while the manner in which the suspects are treated mirrors the level of development of the Macedonian democracy.

For the first time, the Penal Law Reform Strategy encompasses the entirety of the penal law system and as such should be supported. The strengthening of the independence and capacities of the Public Prosecutor's Office will be of key importance for the success of this Reform. The establishment of the justice police under the management of the Public Prosecutor's Office, as a main tool in detecting and prosecuting crime and corruption, shall contribute to strengthening the legality and professionalism of the prosecution bodies. On the other hand, the close cooperation of the criminal police with the Public Prosecutor's Office will free the Ministry of the Interior from the charges of its politicization and selective approach to criminal investigations.

3. Police Abuses and the Police Reform.

In general terms, after the first wave of reforms at the police, once the interest of the international community was refocused on other spheres (political dialogue and similar), the reforms in terms of consistent implementation and advancement of the concept of the Law on the Police have been diluted and have fallen into deep crisis. This underlines the necessity of assuming a serious approach to the police reforms and that they continue supported by the required dedication and commitment, being coordinated at the same time with a wider scope action to promote professionalism and service orientation of policing. This is the only way of ensuring that the police will act in full compliance with international human rights standards, including in this respect minority rights and rights of other vulnerable groups.

The Reports of the Helsinki Committee, the Reports of the Council of Europe Committee for Prevention of Torture (CPT), the judgments of the European Human Rights Court and reports of several other relevant governmental and non-governmental organizations demonstrate that the national authorities have not undertaken sufficient measures to eliminate the sources of serious human rights violations. Namely, safeguard mechanisms against police abuses, which today are generally accepted in Europe, have not been ensured, such as, as the CPT states: informing the family, advise on the rights, the right to a lawyer, to a doctor, treatment procedure for suspects and similar. The purpose of these firmly established standards and procedures is to act preventively in terms of minimizing overstepping of police authorities.

The detention conditions are far from ensuring dignified and humane treatment. The Helsinki Committee considers that the designation of all 38 major police stations (PS) as a place of detention

without their proper equipping in accordance with European police standards for protection of apprehended and detained person indicates lack of serious approach in this respect and is rightful criticized by the CPT. This is an overt attempt to bypass the legal obligation under the Law on Criminal Procedure of 2004, on the consistent implementation of which the Helsinki Committee has been insisting for longer period.

On the other hand, despite the fact that for years the CPT in its recommendations on the Republic of Macedonia and the European Human Rights Court in several of its judgments (Jasar, Sulejmanov etc) have been underlining this necessity, virtually nothing has been done in the area of efficient and effective reaction to serious incidents with investigations that would be swift, thorough and complete, which on its part would have a deterring effect on occurrences of overstepping of police authorities and abuses. In the CPT reports and in the relevant literature, the Republic of Macedonia is regretfully pointed out as a negative example of a state in which there is deep rooted and widely spread practice of impunity of official persons who have abused their authorities.

Thus, in the case of the Republic of Macedonia, since its visit in October 2001, the CPT has been mostly focused on and mostly concerned about the accountability system of authorized persons in cases of indications of abuses. Upon overviews of the situation conducted during the subsequent visits by the CPT, it has been reiterated that even in cases in which persons detained by the police would complain before the Public Prosecutor or before the Investigative Judge that they have been ill-treated, there are no guarantees that an efficient investigation would be conducted into the allegations. The CPT has therefore given clear recommendations on the fight against this concerning situation and has called upon the national authorities to implement the recommendations in the practice.

Such a situation, and especially the ignoring of the CPT recommendations, has resulted in a public reprimand of the Republic of Macedonia at the Council of Europe.

Considering the fact that most of the human rights violations by the police take place during the arrest and the detention at the police station, the major issues on which the improvement of the legislative framework and practice should focus are: ensuring access to a lawyer and free legal assistance to persons in police custody; preparation of a plan of on duty lawyers and lists of on duty lawyers for persons in police custody; equipment in police stations designated for keeping persons in police custody; training of officers for treatment of persons held in police custody; preparation of new materials with advice about rights of suspects (in several languages); equipping police stations for keeping records of detained persons and ensuring the possibility for an inspection by the Public Prosecutor's Office and the Ombudsman; equipment and training about recording of the interviews with suspects and victims; handbook on interviews with suspects, witnesses, victims, etc.

The Helsinki Committee supports the amendments proposed by the domestic experts and the OSCE, which envisage a new efficient manner of conducting investigations into overstepping of police authorities through the introduction of a separate department at the Public Prosecutor's Office that would exclusively prosecute perpetrators of crimes who are official persons in certain police bodies. This Department would contribute towards better and more efficient prosecution against violations of individual rights and freedoms by official persons at police authorities.

4. Protection of privacy.

The last amendments to the Law on Communication Interception and the Law on Criminal Procedure have caused turbulent reactions and disagreements among the experts, the non-governmental sector and among certain opposition political parties, both regarding their contents and regarding the fact that such substantive laws which regulate the scope of the constitutional right to privacy, as one of the fundamental human

rights and freedoms, have been adopted without any public or expert debate.

These scandalous and controversial amendments not only expand the possibility for application of special investigative techniques regarding crimes which are not in the area of organized crime, but also envisage that these techniques are widely applied for preventing purposes, i.e. not only in cases of reasonable suspicion of serious crime and corruption. Such amendments are not in accordance with European and world standards on the respect for human rights, nor are they usual as an acceptable method of fight against crime and corruption. Thus, the fight against crime and corruption leads instead towards a rule of law state towards a police state in which fundamental human rights and freedoms are not respected.

These days there are final preparations of drafts of several new laws under which new legislative changes are proposed in this area, such as the Law on Criminal Procedure (under which redefinition of special investigative techniques is proposed), the Law on Internal Affairs (which regulates the organizational set up and competences of the Directorate for Security and Counterintelligence) and allegedly a new law in the area of security is prepared, which has been announced for a longer period.

5. Control of secret services/ police authorities of the Directorate for Security and Counterintelligence.

The Ministry of the Interior must design a new legal framework for counterintelligence, and must envisage a new organizational positioning and set up of the Directorate for Security and Counterintelligence in order to increase the efficiency of this Directorate, and to avoid overlapping of competences. The Ministry of the Interior must also establish bodies for coordination between the Directorate for Security and Counterintelligence and other bodies at the Ministry of the Interior and the Intelligence Agency, and must design a new policy and a procedure for identification of security problems among the staff working at sensitive positions in the country.

After the latest developments, the attention has been focused on the Directorate for Security and Counterintelligence, while these events have also determined the need for reform of this Directorate, with the aim of making this service more efficient and compatible with the interests of the country's security, a service which would be professional and would serve not closed political elites, but which would serve previously defined common interests (established by the Assembly of the Republic of Macedonia). The manner in which the present debate regarding the amendments to the Law on Internal Affairs is conducted, i.e. closed and non-transparent! – does not guarantees such democratic approach.

The government and Assembly procedures for adoption of the draft amendments focused on expansion of the scope of application of special investigative techniques under the Law on Criminal Procedure and the Law on Communication Interception, have also started without any expert debate. These amendments not only envisage expansion of the possibilities for application of special investigative techniques in respect of crimes which are not in the area of organized crime, but also envisage their wide-scope preventive application, i.e. not only in cases in which there are reasonable suspicions of serious crime and corruption. Such drafts are not in compliance with the European and world standards on respect for human rights, nor are they usual as an acceptable method of fight against crime and corruption.

Such legislative projects which regulate limitations on human rights and freedoms must be offered for wide scope expert and scientific debate at the justice system institutions, and within the civil society in order that the democratic debate results in a reasonable balance between the efficiency in the fight against crime and corruption and the respect for fundamental human rights to freedom, personal and physical integrity and privacy.

The Helsinki Committee is actively committed to the ratification of the Optional Protocol to the UN Convention against Torture, which is a new mechanism established by the international community for prevention and elimination of torture and other forms of inhuman and degrading treatment or punishment. The Optional Protocol offers a proactive international and national mechanism for monitoring of the situation in respect of torture through regular or periodic visit to places of detention.

In this regard, the Helsinki Committee has insisted that the non-governmental sector is part of the process of establishment of a body for prevention of torture at the national level, and that NGO representatives are members of such a body. Regretfully, the Ombudsman has been designated as a national prevention mechanism, without the guarantee for the participation of NGO representatives.

[1] www.helkom.org.mk
[2] www.cpt.coe.int
[3] www.humanrights.coe.int
[4] ww.echr.coe.int
[5] See: Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 12 till 19 July 2004, Strasbourg 16 November 2006, CPT/Inf (2004) para.19-27.
[6] See: Proposed Mechanism for Enactment of the System for External Control of the Law-Enforcement Bodies, OSCE, Skopje, 2008.
[7] See the analysis published at the website of the Helsinki Committee , www.helkom.org.mk
[8] See the Joint Protest Press Release of the Helsinki Committee, the Foundation Open Society Macedonia and the Association of Penal Law and Criminology of Macedonia in which it has been requested that the proposals for urgent amendments to the Law on Criminal Procedure and the Law on Communication Interception are withdrawn from government and Assembly adoption procedure and be offered for a wider scope scientific and expert debate in order to arrive at a reasonable balance between the efficiency in the fight against crime and corruption and the fundamental human right to privacy.

The Helsinki Committee in 2008 pointed out a phenomenon that had existed in the justice system of the Republic of Macedonia for many years, regardless of who was in power, and that was the abuse of the measure of ensuring presence of the accused in the criminal procedure - pre-trial detention.

The judges, primarily the investigative judges followed by the criminal panels of judges with unbearable easiness impose and prolong this measure.

And while in some cases, taking into consideration the way in which the crime is committed, the type of the crime and some other objective

ABUSE OF THE PRE-TRIAL DETENTION, PRESUMPTION OF INNOCENCE AND APPLICATION OF THE SPECIAL INVESTIGATIVE MEASURES

circumstances the pre-trial detention is justified, this measure has also been used in cases for which the measure of pre-trial detention is unnecessary as well as in cases for which there is no imperatively stated conditions for its application.

Often, the biggest and most important but definitely unlawful reason for assigning the pre-trial detention is the echo of the specific crime among the public. Hence, in the so-called (for the police and the prosecutor's office, but not really) big cases, even before the accused are brought before the investigative judge where they could present their defence, it is evident that they are going to get detention.

It is astonishing that this practice of the investigative judges has been going on for a long time, ever since the independence of the Republic of Macedonia, with no real assessment for each individual case and each individual defendant while the measure of pre-trial detention has been applied in the ab-

sence of the legally required conditions, immediately, right after the initial hearing of the accused.

In doing so the investigative judges failed to assess every reason for the detention, but they assigned pre-trial detention based on all three grounds envisaged in Article 184 Paragraph 1 Subparagraphs 1, 2 and 3 from the Law on Criminal Procedure – the revised text.

Thus, the pre-trial detention is assigned for example on the grounds of peril from flight or hiding for elderly persons born and living in Skopje, with families who objectively could not run away nor there is any indicator for anything similar.

Furthermore, unlawfully, with simple copying of the legal grounds the pre-trial detention was signed also for alleged influencing of witnesses or alleged destroying of evidence for the crime, in cases where all the evidences were in written format and collected by the police and the Prosecutor's Office.

Nothing less unlawful was the imposing of the pre-trial detention because of alleged repetition or completion of some crimes.

It is absurd when the pre-trial detention measure for reasons of possible repetition of the crime is imposed to accused in cases where the crime is committed by an official, and in the meantime this individual is released from office. How can they repeat the crime if that crime can be committed only by a person with particular competences (officials)?

After the initial imposing of the pre-trial detention, automatically, for a long period of time, usually many months, the detention is automatically prolonged by the criminal panel of judges, and the appeal is automatically refuted by simple copying of the legal provisions with no real reviewing of the specific case.

Almost as a rule the pre-trial detention is imposed with the maximum period of 30 days without taking into consideration the possibility that the purpose of the pre-trial detention can also be achieved in a shorter period of time. The pre-trial detention, even though it is regulated that this measure should be brought down to the shortest necessary time, is usually prolonged until the beginning of the trial and as a rule it is prolonged until the end of the trial and the moment when the court sentence goes into effect . Thus in these cases the measure of pre-trial detention de facto turns into a sentence imprisonment without a conviction.

The other measures such as the pledge by the defendant that s/he will not leave the place of residence, depositing the passport, etc. are lot less applied.

Providing a guarantee as a measure for ensuring the presence of the accused in the procedure is also less applied in practice, and even when they accept it usually it is after the defendant spends couple of months in detention.

It should be noted that the most frequently accepted guarantee is cash, while real-estate is a significantly less accepted guarantee, and the other forms of guarantees such as securities, valuables, etc. are almost unknown.

Another astonishing thing but nothing new is the selective approach in imposing and revoking the measure of pre-trial detention in the same case with more than one accused. While in some cases the pre-trial detention is easily imposed, for the same crime committed by other defendants this measure is not imposed.

On the other hand for some accused in the same case the offered guarantees are accepted, while the other co-accused need much more time and means as a guarantee.

The conduct of the investigative judges is especially astonishing.

Every time there is a so-called bigger case, and when the Ministry of Interior announces the gist of the case stating that the Interior Ministry expects a measure of pre-trial detention to be imposed, the investigative judges as a rule apply this measure regardless of the legal grounds. This kind of conduct questions the real independence of the investigative judges and whether they operate as the extended hand of the police and the prosecutor's office.

On the other hand the Helsinki Committee points out that a negative phenomenon that became regular practice are the spectacular arrests and declaring the detained persons as guilty before the trial even starts.

In reference to this practice the role of certain, especially electronic, media is especially interesting. The police practically announced the taking of the individuals to the police stations and before the investigative judges. The phenomenon of "direct broadcasting" of the taking of the individuals in handcuffs before the investigative judge without having any legal grounds either for the case and even less for the indicted persons.

One should point out that these are only persons taken into custody for whom the judicial-investigative procedure is not initiated and who in this way are declared guilty even before the initiation of the procedure.

In these cases the Ministry of Interior de facto has instrumentalised the media in order to achieve its propaganda goals and afterwards officially stating that they had nothing to do with that well-organised coverage of the arrests. However, even that was not enough for the Ministry of Interior which in certain cases, for which they had evident interest to "promote the guilt" before even the initiation of the procedure, they distributed their official recordings to the media.

The Helsinki Committee also reacted in the summer of 2008 asking the Ministry of Interior based on what regulation the MOI **always** takes the persons in custody handcuffed before the investigative judge when the regulations regulating this matter state that the handcuffs are used only when there is a possibility that the suspect might try to escape or use of force.

Furthermore, we asked how it is possible for a journalist to happen to be at the right place and in the right time when a tax inspector was arrested, suspected of accepting bribery, and the arrest happened in a restaurant 15 km outside of Skopje.

In stead of an answer the MOI in its response to the question criticises the work of the Helsinki Committee bragging about all the operations they carried out so far. The following actions by the MOI notoriously show that they have no intention of dropping up the very unnecessarily spectacular arrests using the special police forces and with media coverage by a selected group of journalists and taking the suspects before an investigative judge as rare exotic animals, handcuffed regardless whether that is necessary or not.

With this type of conduct and this conglomerate of illegal actions the constitutionally guaranteed presumption of innocence is violated, i.e. the presumption of guilt is established and individuals who are only taken into custody and not even charged are already declared guilty for crimes that could only be proved with the legal court procedure. The Helsinki Committee reminds of the Code of Journalists of the Republic of Macedonia where the principles on the journalists' conduct state that the journalists, baring in mind the role they have in building the democracy and civil society, should defend the human rights and freedoms. Based on these principles the journalists take on the obligation to respect the principle of innocence in the court procedures and not to incite hate, violence and discrimination on any grounds.

The Helsinki Committee has continuously monitored the events related to the arrests and regretfully realised that in most of the cases the principle of presumption of innocence was not respected even though it is one of the basic postulates of the criminal procedure protected by the Constitution of the Republic of Macedonia and the European Convention on Human Rights.

The special investigative measures in the criminal law of the Republic of Macedonia were introduced for a single and very much justified reason for efficient combating organised crime which often uses very sophisticated methods of committing the crimes.

From the very beginning of the practical application of these measures some mistakes and unlawful acts were committed by the bodies that are supposed to implement them. In most of the cases the special investigative measures were illegally used without the required legal preconditions for their application.

Hence, regardless of the cumulatively established legal pre-condition for the application and acceptance as evidence of the special investigative measures, such as the audio-visual recordings, in practice at the courts images with no audio were shown.

"PRE-TRIAL DETENTION"

The Analysis of pre-trial detention decision delivered by the Macedonian courts in the period between April 2004 and June 2007 carried out by the OSCE mission to Macedonia seems to only confirm that the weaknesses the Helsinki Committee speaks about in this and some of the other published statements regretfully represent continuation and even worsening of the bad practice of many years. In doing so one should not forget that according to the Department on the Rule of Law at the OSCE mission the purpose of the analysis "was to establish whether national courts detention decisions are delivered in accordance with the country's Law on Criminal Procedure (LCP) and relevant international standards such as the European Convention on Human Rights and Fundamental Freedoms and the UN Covenant on Civil and Political Rights".

In reference to the domestic law the Analysis states that "it can be concluded that the provisions of the Domestic Law regulating detention are consistent with the International Human Rights Standards" because among others the measure is considered to be the most severe measure for ensuring the presence of the accused and successful conduct of the criminal procedure. Consequently it should not be invoked when the same goal can be achieved with less severe measures.

The general observations of the analysis speak about the application of all three legal grounds for invoking the pre-trial detention measure from Article 199(1) of the LCP and the common tendency is to invoke two or three of them. It also points out the tendency by several courts (including the biggest one, BC Skopje 1) in almost all the decisions to give all three grounds. It is also noted that "most of the

OSCE's Analysis

detention decisions lack specific articulable facts given by the judges in respect to the reasoning behind their decision, hence giving the impression that particular attention has been paid only to the form and procedure and not substance".

As problematic practice that repeatedly appears in court detention orders country wide they identify the following: the failure to provide support for the finding of reasonable suspicion; lack of adequate reasoning of the legal grounds for detention; and failure to consider the applicability of alternative measures.

The analysis shows that in nearly 87% of the detention decisions delivered in first instance by the investigating judge there are certain deficiencies noted in the part where the court is required to provide relevant reasoning to support the grounds for the detention! What is even more problematic is the absence of relevant reasoning which almost as a rule appears in the decisions of the second instance by the criminal panel of judges.

And at the end the General Observations confirm our conclusion "that while considering whether to apply detention in cases where two or more accused are involved, courts fail to provide individual examination of the subjective circumstances for each of the accused separately. Contrary to this, detention is imposed for all accused under the same circumstances".

The "Conclusions and Recommendations" of the Analysis state the following as reasons why detention orders need to be grounded in fact and in line with national and international standards: to avoid possibility for misuse of detention, or using detention as a penalty, i.e. detaining persons in order to extort evidence; to guarantee consistent application of the law; and to avoid possible avalanche of European Court of Human Rights judgements against the country where violation of Article 5(3) of the Convention is established.

Furthermore, the special investigative measures were used in cases in which there was no group but a single perpetrator and for crimes for which no sentence imprisonment of at least 4 years was provisioned.

These unlawful special investigative measures were usually convalidated by the first instance courts, and with that they were legalised and used as grounds for convictions contrary to Article 15 Paragraph 2 from the Law on the Criminal Procedure.

The Appellate Courts usually immediately confirmed the convictions based on the unlawfully applied special investigative measures.

The Supreme Court of the Republic of Macedonia with its decision abolished both the first and the second instance verdicts in the famous case "SOUTH" clearly stating that the special investigative measures were applied in an unlawful manner.

Furthermore, the Supreme Court of the Republic of Macedonia also decided that the special investigative measures used in this case against police officers from the Deve Bair border crossing were unlawful.

The Helsinki Committee has been trying to show that due to the character of the special investigative measures they should always be applied in compliance with the law and the strictly elaborated conditions in the Law on Criminal Procedure because they touch upon the human rights.

With the Law Amending the Law on Communications Surveillance (Official Gazette of the Republic of Macedonia 110/08 from 2 September 2008) a number of crimes were included for which communications surveillance is allowed.

This was done with no previous consultation or analysis by the experts referring to the recommendation by a foreign expert contracted as an advisor to the Prime Minister in fighting corruption.

The astonishing thing is the fact that with this amendment the communications surveillance can be used for even less serious crimes such as:

- Customs duties fraud from 278-a of the Criminal Code,
- Malfeasance from Article 354 of the Criminal Code,
- Abuse of office from Article 356 of the Criminal Code,
- As well as the legal formulation for crimes committed using means for electronic communication, without stating which ones specifically.

Additionally the manner in which the warrant is issued is simplified so sometimes one can get even an oral permit for communications surveillance. This provides grounds for an incredible number of abuses and peeking into the privacy of an individual and all that not even for some serious crime but it could be anything.

The Helsinki Committee once again underlines that it absolutely supports fighting any kind of crime, however that fight should always be done within the legally provisioned framework and it should be strictly respected; everybody to be treated equally before the law; and only the legally obtained evidences to be used as grounds for a court verdict.

1 See the analysis **Continuous ignoring of the principle of presumption of innocence** given in the **Annexes** to the Report.
2 For more see the Analysis of the amendments to the Law on Communications Surveillance and the Law on Criminal Procedure **Right to Respecting Privacy in Macedonia** given in the **Annexes** to the Report.
3 OSCE Spillover Monitor Mission to Skopje, March 2008.

Sraso Angeleski

THE CHALLENGE OF ADOPTING A COMPREHENSIVE ANTI-DISCRIMINATION LEGISLATION ND POLICY IN THE REPUBLIC OF MACEDONIA

The anti-discrimination policy and legislation of any country must reflect the social-political circumstances existing in its society while being an original answer to the real problems and challenges, as seen from the anti-discrimination related perspective. Achieving this aim requires first of all a comprehensive empirical research as done from all key perspectives and as focused on all of the key areas and issues concerned as seen from the same anti-discrimination related perspective. This action (including the working out of a new comprehensive anti-discrimination law) requires an appropriate, sincere and sound dialogue at national level which involves all key actors (i.e. all state authorities, the national assembly, the academic community, the non-governmental world and the broader general publis) which (on the other side) should be seen and run within the broader framework in relation with the implementation of the United Nations` Paris Principles related to the national institutions for human rights promotion and protection.

Does the Republic of Macedonia need also a special and comprehensive anti-discrimination law or not? If "no", then "why"? And if "yes", then how it should be like ? What it should contain? This is the very question that is the complex of questions in relation to which during the last several years there were different opinions and views among all key domestic actors including in particular the non-governmental community in the state and the relevant state authorities. In the case of the Republic of Macedonia, providing for a broad concensus between all key domestic actors in this regard was not and is still not a quitte easy exercise at all, and so far the same is amounted to (non-intentional) absence of an appropriate "follow-up" of all of the so far initiatives for working out of such a law, that is, a dispersation and fragmentization of the key focus and objective, which are common for all key actors being called to design the anti-discrimination answer of the Republic of Macedonia.

In the above light this paper is divided into two parts: the first part is a short comparative overview of the so far efforts / initiatives for working out of an anti-discrimination law in the Republic of Macedonia; the second part deals with the so far work of the Working Group for drafting anti-discrimination law. The paper ends in form of concluding comments and recommendations as to the forthcoming action in that regard.

Comparative Critical Overview of the so far domestic action for drafting anti-discrimination law

The first draft anti-discrimination laws in the Republic of Macedonia were elaborated during the year 2004 by the Macedonian Helsinki Committee for Human Rights and the Macedonian Center for International Cooperation respectively. These two draft-laws were submitted to the Government of the Republic of Macedonia but they did not reachthe final legislative instance because of the absence of a broader consensus thereto. As to the content of these two draft-laws the OSCE-ODIHR mission was consulted the opinion of which that is the key recommendation is shortly ammonted on the following statement: "this document contains useful indi-

cators in relation to the areas of concern, which should be taken in account by the future drafts of the law; one of the criteria is amounted to the fact that the degree to which the legislation is efficient in ensuring the wanted rights concerned; the very law must be able for total and clear implementation; the achievement of this aim requires a legislation which is specific one, by clear respecting of the social context and the financial consequences for the implementing state".

The absence of a real and broader follow-up to the abovementioned initiatives was firstly clearly reflected in the Final Conclusions of the Project (as funded by SOROS) entitled "Assessment of the Potential for Good Governance in the Republic of Macedonia", which also covered the area of anti-discrimination while which there was no reference made to the prvious , that is, the first two (abovementioned) drafts-law from this field. More specifically, one of those recommendations only recommends "working out and adopting of some consistent strategic document against the discrimination in the Republic of Macedonia of the rights as well as a separate law on protection of the rights of Macedonian citizens against discrimination".This key finding is postulated on the basis of one set of "concluding remarks" one of which confirms that "no comprehensive research was conducted in the Republic of Macedonia in relation to the forms and types of discrimination in our country, in accordance with the relevant research work in the EU member-states".

In relation to this (abovementioned) Project of SOROS there is the interesting fact that the project-related activities did not take into account at all the already started work of the (in meanwhile established in the beginning of the year 2008) Working Group for drafting a new anti-discrimination law under leadership of the Ministry for Labour and Social Policy (MLSP). What is interesting and relevant in this regard (and according to me it is about contradictory and inconsistent) are the "key recommendations" of this Working Group, which contain 9among others) the following acts / findings:

"The critical analyses, whose subject is the discrimination phenomenon in our society – even though may not be characterized as frequent – are comprehensive and thorough and point out the undeniable fact the there is an absence of the indispensable level of protection of the rights of the citizens from discriminatory conduct in various spheres and upon various bases. These conditions are specific for the countries which are in a transition period, such as the Republic of Macedonia, in which the values of the previous social structure have disintegrated and new ones have not been created yet, including the norms required for their efficient functioning in the practice.

Despite the large number of laws treating issues in the sphere of discrimination, the results from the suppression of the reasons are not as expected.

The Republic of Macedonia does not have a comprehensive legal framework for the protection of the rights of the citizens from discrimination upon any bases. In particular, there is no consistent strategic document comprising precisely defined long-term goals and tasks. In addition, no special law has been enacted in terms of non-discrimination that would regulate the most important aspects in this sphere.

It is also indispensable to emphasize the fact that in the Republic of Macedonia there is no constructed, comprehensive system of mechanisms and legal instruments for the processing of individual discrimination cases, when individuals or state bodies appear as offenders; and yet, such mechanisms are required in order to ensure the efficient protection of the endangered rights of the citizens and indemnification for the suffered damages.

The findings indicate that the occurrences of discriminatory conduct are most widely spread in the spheres of social living which are especially significant and sensitive for the exercising of the rights of the citizens. Specifically, most frequently mentioned spheres are the following: employment and rights arising from the labour relation, judicial bodies, health, education, public administration, etc.

The most endangered category of discriminatory conduct are persons belonging to the lower social layers who, in addition to the poor financial condition, are also most often with a low level of education. Furthermore, what is especially concerning is the fact that discrimination victims are the most vulnerable social categories: children, women, elderly persons, disabled persons. There have also been indications regarding discrimination based upon the ethnicity or the religious convictions and the political orientation".

The abovementioned excerpt from the Working Group`s Information provides for a very sufficient and clear basis and background against which one may pose (among others) the following questions:

- On the basis of what research the abovementioned Working Group`s findings have been done?;
- What is the précise meaning of the formulation ", there is no consistent strategic document comprising precisely defined long-term goals and tasks"?
- What are "the relevant international bodies in relation to the need of improving our regulations with anti-discrimination related provisions, as mentioned in the Working Group`s Informationa"? And in this regard, more importantly, whether the Working Group has taken into consideration the possibility of ocurring a discriminatory behavior by the police officers while performing police duties and / or by the prison officials? That is, whether all of the Council of Europe`s relevant instruments (and especially the ECRI`s general policy recommendation) were properly taken into account?

Overview of the OSCE-ODIHR and Venice Commission Opinions in relation to the Draft-Law as done by the Working Group

Following the working out of its first draft-antidiscrimination law, the Working Group within the MLSP has asked (in May 2008) the OSCE-ODIHR for its opinion in relation to the text of draft-law, and such a similar request was also addressed to theVenice Commission within the Council of Europe. In the moment when the ODIHR was working out its own opinion, the Working Group has (in September 2008) done an updated version of the draft-law. In this context, consequently, due to such a dynamics around the developing of the draft law, both the ODIHR and the Venice Commission have conducted a joint working visit ("fact-finding mission") to Skopje on 24th- 26th November 2008 година,after which, they have (during December 2008) sent out their individual opinions . commentaries in relation to the September version of the draft law.

1. Summary of the ODIHR`s Opinion

In its commentary, the OSCE-ODIHR Mission underlines in particular (among others) the following points:

• Despite the positive aspects of the draft-Law, it nevertheless contains also some serious weaknesses . In general, more attention should be paid on "the organization of the sections". More specifically, some less important provisions precede some more important provisions without any obvious reason for it. Some definitions are established in a complex way. Certain phrases do not correspond to the familiar terminology from the EU law in the field of "equality". It is very important that the key concepts and terms in the Macedonian original text are in accordance with the precise terminology of the EU`s directives from the field of the equality, with a view to avoiding a confusion in the courts, among the administrative authorities, the employers, providers of services and the citizens.

• The "long list" in relation to the bases of discrimination in Article 3 is self-destructing for the efficiency of the very law. No "specialized equality-related body" is envisaged to be created for the purposes of promoting the law, the equality and the anti-discrimination more generally, while there are doubts in relation to the efficiency of "ombudsmen system" usage as an alternative system of litigation.

• The draft law is overburden with complicated definitions and too large list of bases of discrimination. It lacks a focus on the key elements of the discrimination and non-discrimination in the Republic of Macedonia, and this weakness is reinforced by the absence of a specialized body for promoting the equality and the non-discrimination as well as the implementation of the very Law.

• The ODIHR shares the concern of the Venice Commission in relation to the deficits in the draft-law and in the very process of its drafting. The lack of a real consultation with the Working Group as combined with the weakness in the text both are undermining the claims that the draft-law will seriously address the isues in relation to the discrimination.

The abovementioned is then followed by a more detailed overview of specific recommendations as to individual articles in the draft-law. The below is a selective overview of those recommendations:

- The first priority should consist of defining the key forms of discrimination especially the direct and indirect discrimination and the harassment;
- The definition of direct discrimination should be modeled on the basis of the definitions in the EU`s equality-related directives;
- The constitutional documents and the international standards contain a quite long list of bases of discrimination. For an example, the Article 14 of the European Convention for Human Rights (ECHR) stipulates that "the enjoyment of the rights and the freedoms as established in this Conven-

tion will be ensured without discrimination on any bases such as a sex, race, colour, language, political or other opinion, national or social origin association with a national minority, material or other status". It is also the Article 9 of the Constitution which stipulates that: "The citizens of the Republic of Macedonia are equal in their freedoms and rigts regardless of the sex, race, skin colour, the national or social origin, political and religious beliefs, material and social status. All citizens are equal before the Constitution and the law". The anti-discrimination related provisions in the constitutional and international documents are usually interpreted in relation to the direct tha the indirect discrimination, and even then, it may be subject of exceptions. The anti-discrimination law should be built on that rights through establishing of an infrastructure in relation to the right and the policy of equality, as well as through focusing on the protection from identifiable incidents of discrimination as recognized in the EU law or which are of a special relevance in the state.With this, the full effect of the law may be applied in developing of the protection of endangered or vulnerable members of the society.

Thus, it is recommendable that, in a context where the anti-discrimination provisions (regulations) are legal novelty, the start is made by making a short list of bases, for example, those in the EU law, allowing the amendments through a legislative action or court interpretation through the "other status" related basis.

- It is recommended that the draft Law contains a relatively short list of discriminatory bases and the Government to critically consider whether the broadening of this list on the basis of "reason by reason" is favorable.

-The part entitled "Definitions" reflects a confusive structure in this part of the draft-law. The first priority should consist of defining the key forms of discrimination, especially the direct and the indirect discrimination and the harassment.

- It is recommended that the terms used in the draft law, which reflect the EU`s key concepts, correspond to those in the EU law.

The main reason for this ODIHR`s recommendation is (among others) the definition of "harassment". In this sense, the ODIHR reminds that, the transplantation of the EU`s directives, for the EU member states, may not be regressive that is they may not decrase the existing level of protection from discrimination. In this regard, the ODIHR also reminds that there is a need to separately define the "sexual harassment" .

The abovementioned concerns also the provisions in relation to the segresion". In this regard, the ODIHR reminds that the segregation involves a more serious behavior than the one being generally covered in the anti-discrimination related laws. For example, it is not typical that the hate crime is included in the anti-discrimination laws, with the exception when there is a overlapping wth the provisions in relation to the harassment.

The ODIHR specially refers to the part of the draft-law entitled "Exceptions from discrimination", (Article 14), by underlining the fact that "this article establishes a broad, general exception especially when there is objective justifiable basis according to ….. the law". Although the international instruments, such as the ECHR, contain a list of specific exceptions connected with some particular right, they do not allow such a general exception. Re-formulation of this article of the draft law is recommended.In this regard, the contents of the Artile 15, which concerns the "special exceptions"is of a bigger concern for the ODIHR. The later reminds that the sex and the race-related discrimination in the EU law are subject of very limited exceptions which are narrowly interpreted by the European Court of Justice.

In the above light, the ODIHR additionally makes the following two general points:

- The direct discrimination MUST ALWAYS be a subject of limited justifications and exceptions, and

- The approach of "long list" in relation to the bases of discrimination encourages narrow interpretations of the concepts of non-discrimination and extensive usage of the exceptions, which is contrary to the approach of the European Court of Justice in relation to the concepts and the exception related to the non-discrimination.

At the end, in relation to the part entitled "Institutional Framework", the ODIHR gives the following recommendation / opinion:

"It is recommended that the Government takes into account the establishment of a specialized body for equality , which may have investigative and court functions, but which should also be at least able to intervene in court proceedings.That body should also have a strong promotative role"

Lastly,although the ODIHR makes also a reference to the UN Paris Principles on Establishment and Functionning of National Human Rights Bodies, in this regard, nevertheless, the views/ opinions expressed in the Venice Commission`s Opinion are more clear ones, the contents of which are presented in next part of this paper.

And most importantly, at this point one must pose the most key question: "Why the Working Group did not take into account or reflect the abovementioned OSCE-ODIHR`s Opinion / Commentary as to the first two drafts of anti-discrimination law"?

2. Summary of the Venice

Commission`s Opinion

The Venice Commission`s Opinion was conducted on the bases of the Council of Europe`s standards especially Article 14 of the ECHR, its Protocol 12, the European Social Charter, EU directives against discrimination and with specific attention to ECRI's documents (Recommendation no. 7 of 2002) regarding the National Legislation on the Fight Against Racism and Racial Discrimination.

After affirming the constitutional provision for non-discrimination, the Commission particularly welcomes the very attempt of drafting this law text, describing thereafter the situation in our country by making a reference to the European Commission`s Report, which clearly mentions that "the Republic of Macedonia has not a general law against discrimination" and that this is also criticized by several international institutions, inter alia, the European Commission and the ECRI. In line with this is also its specific emphasis on the last statement by the Council of Europe Commisioner for Human Rights: "the situation in the Republic of Macedonia as regards discrimination leaves a lot to be desired, and that there is need both for a better anti-discrimination legislative basis and for concrete and substantial action to be taken in this sector".

According to the Commission`s general commentaries: "The draft law is well structured and divided into eight parts, with 35 articles altogether. However, a considerable number of issues remain problematic and make this draft a rather complex piece of legislation, quite abstract and general, leaving too much room for discretion and which would not meet, at this stage, international standards. There are also doubts whether the draft as it stands can be effectively implemented and operated in a way that would actually reduce discrimination in the country…. . The very nature of the subject of anti discrimination calls for additional, separate and general consideration with regard to the law-making process and technique, as well as to the implementation of the law".

The above general part of the Opinion is then followed by a separate part of "specific commets" on the specific articles, the contents of which are generally similar to those illustrated by the ODIHR. In this regard, this paart amounts to (as a summary) to the following recommendations:

- the draf law should be made in more clear and precise way;
- it should explicitly state that the prohibition of discrimination applies to all public and private authorities;
- the definitions used in the draft, notably with regard to direct and indirect discrimination, positive action and burden of proof should be improved;
- the terms of the scope of application of the law to be revised;
- it is necessary to narrow down the exceptions and introduce a general principle of proportionality;
- to strengthen the institutional system for implementing and monitoring the law, preferably by setting up a specialized body for anti-discrimination along the lines recommended by the ECRI. In the alternative, the competences and resources of the office of the Ombudsman should be strengthened substantially beyond what is so far envisaged in the current draft;
- to produce an explanatory memorandum or some other sort of authoritative text on how the act should be interpreted and applied; and
- harmonize the draft with other relevant parts of the legislation by making the necessary amendments, and introduce cross-references to other relevant laws in the draft.

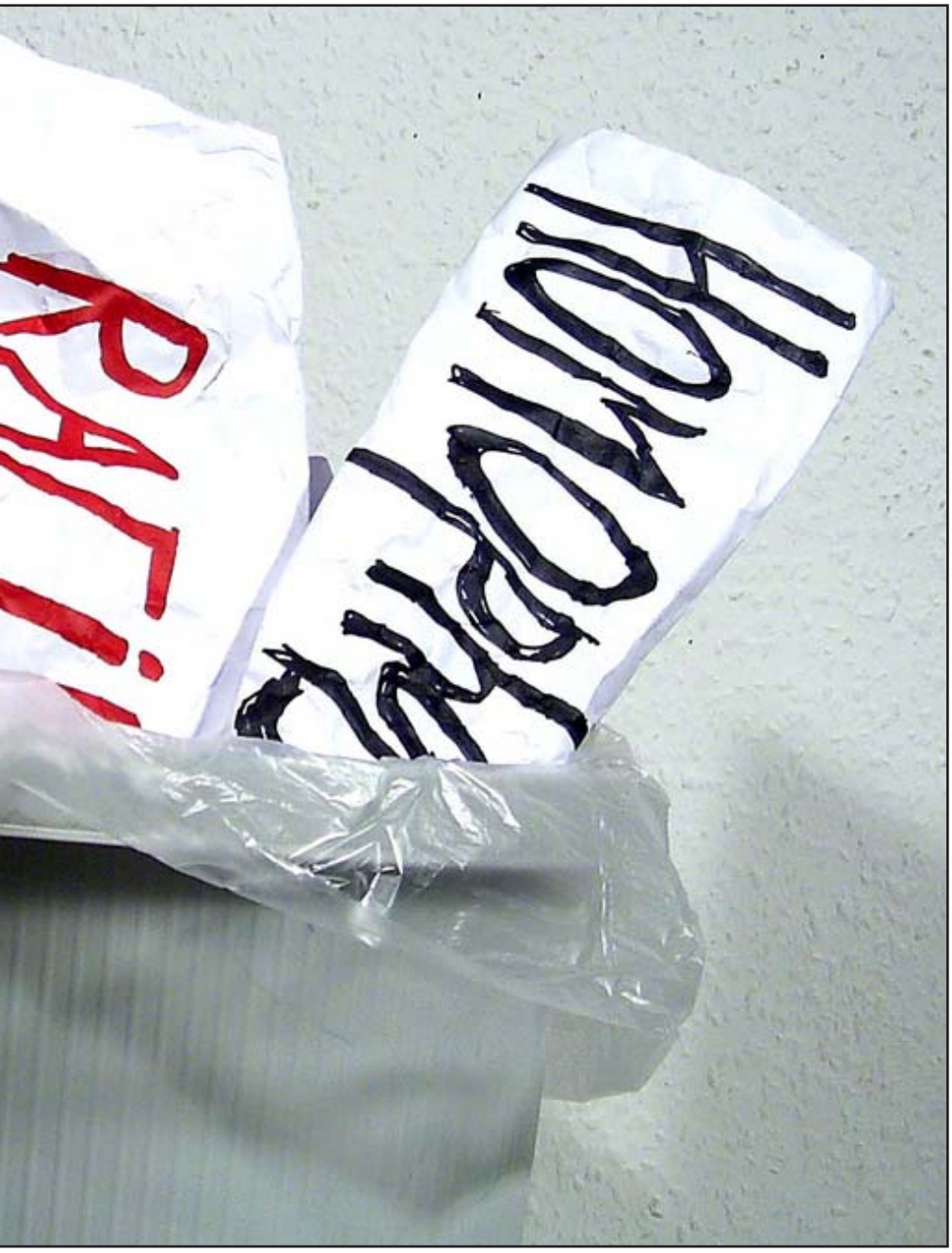
As a conclusion in relation to this part of the paper, one may immediately pose the question: "Why the Working Group has ignored the abovementioned OSCE-ODIHR`s Opinion / Commentary in relation to the first two drafts of antidiscrimination law since in the contrary it could have been used as a very good "lesson learnt" in relation to the same questions/ issues on which same and /or similar recommendations were provided.This, as a form of dispersation of the national attempt of drafting anti-discrimination legislation & policy has already been appropriately indicated in the afore-illustrated opinions of both the ODIHR and the Venice Commission.

Concluding Commentaries & Recommendations as to the Future Work on the Draft Law

In the light of all of the above-illustrated point, it is appropriate to conclude that is presuppose that the future version of the draft law would have incorporated * appropriately reflected all of the specific recommendations as contained in the two abovementioned opinions by the Working Group. It will be wrong, however, if during the "post-opinions" stage there is no real and comprehensive approach in relation to the complex of the above-pointed recommendations / commentaries.In this regad, it is first of all recommended that the Working Group takes into account (while revising the draft law) particularly the following key recommendation of the OSCE-ODIHR:

"Ensuring of up-dated text, which will first of all meet the abovementioned four key pre-conditions for efficient anti-discrimination legislation".

Of course, it is absolutely necessary, while making the aforementioned revision of the text, a clear difference to be made always between the legal nature and contents



between the legal instruments adopted within the Council of Europe where the Republic of Macedonia has a full-member status (on the one side) and the directives from this field of the EC/EU where the Republic of Macedonia has a candidate status for a full member thereof, with its own unique specifics within the legal system of Community / Union. It is important "what instrument, from what Organisation is followed and implemented while revising / improving of a specific part of the draft-law itself".

This is also clearly confirmed in the abovementioned Venice Commission`s Opinion; it particularly underlines that " its opinion is not to be seen as an attempt to assess whether the draft law represents a full and correct implementation of EC directives 2000/43 on racial discrimination and 2000/78 on equal treatment in employment and occupation, according to the criteria of Community law; as it furtherly states: "This would fall outside the scope and work of the Venice Commission".

Namely, in the case of the Council of Europe`s standards, all of the ratified instruments by our state are automatically an integral part of our domestic legislation. In this context there is also the need of parallel up-dating of the Information (as drafted by the Working Group) in its part dealing with the international standards through incorporating of (first of all) the general policy recommendations of the European Commission (within the Council of Europe) against Rasism and Intolerance –ECRI as well as integral consideration of these standards-related importance and relevance and which are designed to assist the states in their attempts to design and implement their policy and legislation just in the anti-discrimination-related field. Namely, it is not only the ECRI`s general Policy Recommendation No. 2 (as was also mentioned by the Venice Commission in its abovementioned opinion) but of equal relevance are also almost all remaining recommendations of this CoE`s specialized body. It would be thus appropriate and very useful if the eventual deeper reflecting by the Working Group in relation to the N° 2 on "Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level" is placed within the framework of a far broader discussion at national level about the UN Paris Principles (as are already mentioned in the two abovementioned opinions in the context of their recommendations for establishing a separate body in this field).

Furthermore, while applying the already known EU directives from tis field, it is necessary that the fact of their nature, aim, contents and application in the context of this Organisation is always taken into account. In parallel to this, it would be useful if the latest relevant developments within the EU are also taken into account: the latest proposal of the European Commission for adopting of a new directive for an equal treatment and the novelties envisaged in the EU Lisbon Treaty (which is to be ratified by all EU member states) including especially the incorporation of the EU Charter of Fundamental Rights, the role and the new competences of the European Court of Justice and most importantly the possibility of EU accession to the Europen Convention for Human Rights (of the Council of Europe) -related system. In this regard, one should also mention the already established EU Agency for Fundamental Rights as well as the possibility of its appropriate involvement in the further development of the draft-law (for example, requesting its opinion / commentary in relation to the final version of the very draft-law and/or likely).

Here, of course, there is also the question, that is, the phenomenon in relation to the multiple discrimination", which should also be taken into consideration in an appropriate way by the Working Group even during this stage of drafting the text of the law itself.

In the light of all of the above-illustrated points and reflections, it should also be specially underlined the big practical importance of the idea of drafting some explanatory memorandum or any kind of authoritative text on how the act should be interpreted and applied. This is the point for the key framework ensuring easier and more concise text of the draft-law (in relation to all specific recommendations of both the OSCE-ODIHR and the Venice Commission) and the contents of which, and in addition to the key international and in particular the European standards from this field, will be able to reflect the relevant case laws of the presently two European court instances, the Strasbourg Court within the Council of Europe and the European Court of Justice of the EU.

In concluding, this paper is designed to illustrate the complexity of the challenge of drafting comprenhensive anti-discrimination law in the Republic of Macedonia, underlining thereby in particular the following key thesis: "the drafting of such a law does not require only holding seminars and collecting opinions but a real and multiple analytical work and action focused on the real needs of the Macedonian society and state in this field. And this presupposes the most fundamental fact: existence of real and functional partnership and dialogue between all key governmental and non-governmental actors, the domestic academic community and in particular the Macedonian broader general public. The more actors are actively and properly involved in the drafting stage of the law the higher will be the prospects of its successful practical implementation.

[1] For more details please see the original Opinion / Commentary of OSCE-ODIHR: Warsaw, 12 March 2008, Opinion-Nr: NDISCR – MK/104/2008, (TND), which is available on the following web-site: www.legislationline.org

[2] The whole report in relation to this Project was to be made available at the web-site of the SOROS-Foundation Institute Open Society Macedonia: www.soros.org.mk as well as the web-site of the same project: www.gg.org.mk, where more details may be found in relation to the both activities and the outcomes of the very Project.

[3] Please see the Information on this subject as published on the web-site of the MLSP: www.mtsp.gov.mk

[4] Please see this in relation to the key abovementioned conclusion from the SOROS-funded Project.

[5] For more details on this please see in the last part of this paper.

[6] The experts of both the ODIHR and the Venice Commission were very closely cooperating while drafting their individual commentaries in relation to the draft-law. The 'September version" of the draft law is available on the web-site of the Venice Commission: http://www.venice.coe.int/docs/2008/CDL-AD(2008)042-f.asp ; CDL(2008)135 Draft Law on the Protection against Discrimination ("September draft") of "the former Yugoslav Republic of Macedonia"

[7] In this regard, also, the ODIHR recommends that definitions / concepts of the other international standards, for example, the UN Convention on Disabled Persons are used too.

[8] There were same and / or very similar commentaries by the OSCE-ODIHR in relation to the first draft-laws made by the Macedonian Helsinki Committee for Human Rights and the Macedonian Center for International Cooperation.

[9] CDL-AD(2008)042 Opinion on the Draft Law on protection against discrimination of "the former Yugoslav Republic of Macedonia" adopted by the Venice Commission at its 77th Plenary Session (Venice, 12-13 December 2008), 19/12/2008].

[10] In its Opinion, the OSCE-ODIHR points out the following (among others) "same" matters: "And to this aim, there are four pre-conditions for effective anti-discrimination measures: i. Definitions of unlawful practices which are effective and meaningful; ii. Remedies which provide incentives for voluntary compliance and effective means for change; iii. Procedural law which facilitates presentation of serious claims; and iv. Resources to implement the law. …….. It is also recommended that the law defines discrimination and analogous terms: a). to be consistent with the Law on Equal Opportunities; b). to conform to Articles 9 and 10 of the ECHR; c). by reference to specific situations rather than by reference to general concepts; d). to include assumed membership of or association with members of a protected group; and e). to more clearly express defences or justifications for discrimination".

[11] ECRI elaborates General Policy Recommendations (GPRs) addressed to the governments of all member States. They provide detailed guidelines which policy-makers are invited to use when drawing up national strategies and policies in a variety of fields. So far, ECRI has adopted eleven General Policy Recommendations: N° 1 on "Combating racism, xenophobia, antisemitism and intolerance" (this Recommendation provides a number of guidelines for the adoption of national measures concerning legal and policy aspects of the fight against racism and intolerance); N° 2 on "Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level" (this Recommendation underlines the important role played by national specialized bodies in combating racism and racial discrimination and sets out the basic principles concerning their statutes, forms, functions and responsibilities); N° 3 on "Combating racism and intolerance against Roma/Gypsies" (it encourages the adoption of a series of measures to combat manifestations of racism, intolerance and discriminatory practices against Roma/Gypsies); N° 4 on "National surveys on the experience and perception of discrimination and racism from the point of view of potential victims" (this Recommendation identifies ways how the results of such surveys may be used to highlight problems and improve the situation of victims of racism and racial discrimination, and provides guidelines for carrying out these surveys, including their practical organisation, design and follow-up); Recommendation No 5 on "Combating intolerance and discrimination against Muslims" (this Recommendation advocates the adoption of a number of specific measures for combating intolerance and discrimination directed against Muslims communities, including measures to counteract hostile stereotyping, prejudice and discriminatory acts; N° 6 on "Combating the dissemination of racist, xenophobic and antisemitic material via the Internet" (this Recommendation requests governments to take the necessary measures, at national and international levels, to act effectively against the use of Internet for racist, xenophobic and antisemitic aims); N° 7 on "National legislation to combat racism and racial discrimination" (this Recommendation contains the main elements which ECRI considers important to feature in the national legislation of the member States in order to combat effectively racism and racial discrimination. It advocates for the adoption of a comprehensive body of anti-discrimination legislation, containing provisions in different fields of law and covering areas such as employment, housing, education, access to social and public services; N° 8 on "Combating racism while fighting terrorism" (this Recommendation stresses the need for member States to refrain from adopting anti-terrorist measures which are discriminatory, notably on grounds of race, colour, language, religion, nationality or national or ethnic origin. It underlines the responsibility of States to react promptly and effectively, including through legal measures, to acts of racism and racial discrimination resulting from tensions generated by the fight against terrorism; N° 9 on "The fight against antisemitism" (this Recommendation reflects ECRI's concern about the increase in the dissemination of antisemitic ideas and in acts of violence perpetrated against members of Jewish communities and their institutions; it also suggests legal and policy measures that States should undertake in a variety of areas, including criminal legislation, education and awareness-raising, research, and inter-religious dialogue; N° 10 on "Combating racism and racial discrimination in and through school education" (this Recommendation presents member States with a comprehensive set of detailed and practical proposals in order to help governments to ensure compulsory, free and quality education for all, to combat racism and racial discrimination at school and to train all teaching staff to work in a multicultural environment); N° 11 on "Combating racism and racial discrimination in policing" (this Recommendation aims to help the police to promote security and human rights for all through adequate policing and covers racism and racial discrimination in the context of combating all crime, including terrorism; it focuses particularly on racial profiling; racial discrimination and racially motivated misconduct by the police; the role of the police in combating racist offences and monitoring racist incidents and relations between the police and members of minority groups.

[12] According to Article 1 of this Proposal ("Aim"): "This lays down a framework for combating discrimination on the grounds of religion or belief, disability, age, or sexual orientation, with a view to putting into effect in the Member States the principle of equal treatment other than in the field of employment and occupation". For more information please see in COM(2008) 426 final, 2008/0140 (CNS), "Proposal for a COUNCIL DIRECTIVE on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (presented by the Commission), SEC(2008) 2180} {SEC(2008) 2181}.

[13] For example, the Muslim women may encounter a mixture of sex, ethnic and religious discrimination. The first step to tackling multiple discrimination is to ensure that an equal level of protection is available for all discrimination grounds. For more information please see in ENAR Fact Sheet on Multiple Discrimination (2007), kako i vo "Tackling multiple discrimination- practices, policies and laws", (Luxembourg, Office for Official Publications of the European Communities, 2007).

CONTEXT AND LATEST DEVELOPMENTS REGARDING GENDER EQUALITY IN 2008

The Republic of Macedonia had made a significant progress in the European integration process, the rapprochement to the EU practices, primarily driven through the process of harmonization of the national laws with the EU acquis communautaire.

The Law on Equal Opportunities for Women and Men was brought more than two years ago (May 2006), following a long decade of awareness raising and negotiation – activities by and large conducted by the non-governmental sector. The Law, was and still is, a solid effort to negotiate this area and to provide space for practice of equal opportunity. It is through enough in defining the boundaries of its legislative impact and the institutional backbone of the system. It very explicitly involves the local-self-government, it proscribes and it sanctions. None the less, it never lived to see its full implementation, meaning that it had very limited success in gender mainstreaming and in awareness raising. Needless to say, the sanctions proscribed were in absurd way for the mother institution itself – they were never implemented or introduced.

A year later, following an extensive 10 month discussion over the design, contents and aim of the National Action Plan for Gender Equality, with strong support from donors, in particular by UNIFEM, the final draft version was created. Eventually, after being thought through and modified to meet the "Macedonian reality" the Plan had seen the light of the day in July 2007 and as of today, has only declarative power. At the onset of this year an Operational Plan to the NAPGE was created for the year 2008. The implementation of this Operational Plan is not known to the wider public, only some of the occasional activist undertaken by the Ministry of Labour and Social Affairs. Namely, the primary focus of the activities was in respect to Gender budgeting, without being supported or in parallel addressed with a complementary activity of gender mainstreaming activities.

The standstill with the Committees for Gender Equality of women and men at local level is another issue that is not receiving frontal attention by the institution in charge of implementation of the Law. More precisely, there was a progress in formally establishing the commissions at local level, however, most of the are of virtual character, rarely meeting, even rarely undertaking gender mainstreaming activities, as positions on day to day policies at local level.

In respect to the Equal opportunities coordinators at central level, it is notable that in 13 ministries they are appointed and have received training. It is also notable that the employees in the public bodies have little or no knowledge of existence of such coordinators, nor of their role. Hence, the marked gap is in the lack of measures to sensitize the environment where they operate as a whole – the public bodies. Further to that end, there is a notable misconception which needs to be addressed as soon as possible, where the concept of equal opportunities (including the one on gender polices) is utterly mistaken and overlapped with the concept of protection of women's rights, and this could be immediately seen by the composition of the coordinators, only one out of thirteen is male (this is also the case with the Commissions at local level). It is obvious that other state bodies, like the Agency for Civil servants, the Customs Office, the state Statistics office, the State Audit office, the General Secretariat, the Secretariat for European Affairs, the Legislative Secretariat, the Public revenue office and so forth, are not considered in terms of introduction of coordinator for equal opportunities – which either speaks of misconceptions, or to a on-sided interpretation of the legal provisions.

In the same context, following almost two and half years of the implementation of the Law on Equal opportunities for Women and Men, (which proscribes sanctions of pecuniary nature for the lack of implementation of its provisions), the line Ministry of Labour and Social Affairs in 2008 was unable to appoint or employ the representative for equal opportunities. Given the competences, role and legal importance of this position, and the fact that already complaints were filed in respect to the implementation of the respective law, this is if imminent need and urgency.

The issue of gathering and processing gender segregated data is still an issue, and has been left aside in 2008.

The Law on Labour relation was being amended to the outrage of the Unions, though the pretext was amendments in line with the EU legislation; the changes predominantly dealt with the retirement process and the number of working years for women and men.

A significant progress in terms of approximation and harmonisation with the EU was made in respect to the work on Joint Inclusion Memorandum - JIM and the open method of coordination – the credit goes to

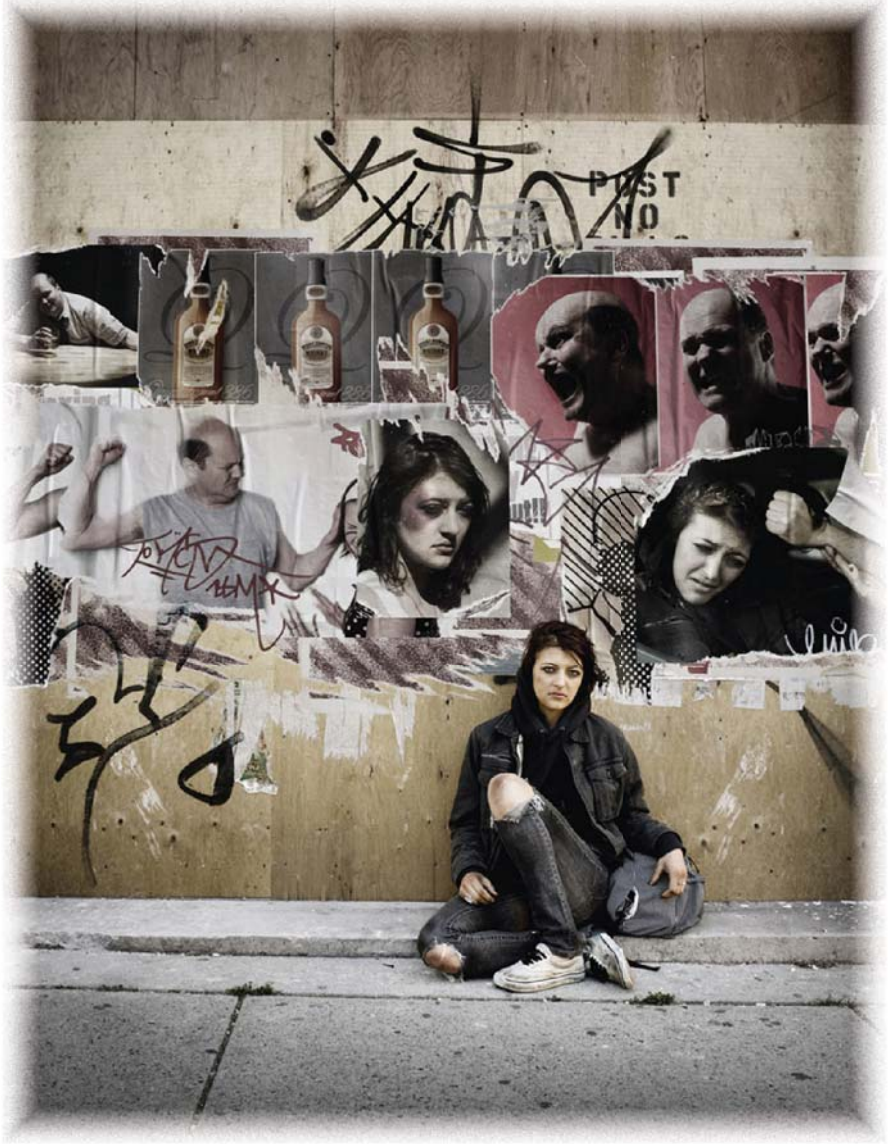
the NGO sector and the donors for the second one. JIM is a very important document, and the heterogeneity of the involved institutions, civil society and donor community is an effort worth of praise.

Another development in the domain of gender equality is the Strategy for fighting domestic violence – a joint effort of the ministry, the centres of social services and the NGO sector, which was presented to the public and to the donor community in May 2008. The creation of this document was obscure; it still remains to lack transparency and visibility. The manner of its implementation is not widely known of. Apart from the fact that it is adopted, there is no report on its implementation, during the visit of Mirjana Dokmanovic as an expert on domestic violence and her work on the analysis of the situation, the obvious was again concluded – there is a lack of understanding of the domestic violence as an act of discrimination.

As stated in the National Plan for the adoption of the acquis communautaire, the Law on protection from discrimination was supposed to reach the Parliament in the final moths of 2008, which was not achieved. The working group was created and works in cooperation with the NGO sector on the creation of first comprehensive legal solution addressing all forms of discrimination, yet the draft of the law is not to satisfaction of any involved party.

The activities that have marked the whole year were those related to the measures that were jointly introduced, promoted and pushed forward by the government, the Parliament and the non-governmental sector which were almost all in the domain of the protection of protection of the health of women. Namely, special programmes, supported with dominantly governmental funding were installed in the Budget and the programme of the work of the government for Pap-screens, mammography and HPV vaccines, free of charge for the population of Macedonia. However, these health protection and prevention measures were possible only in several towns in Macedonia, and this was heavily criticised by the NGO sector. The Women's' Lobby Group in the Parliament was very proactive and had advocated changes, widening of the programmes and activities and brining all of this opportunities closer to all women in Macedonia, especially those that are below the line of poverty and those whose suffer multiple discrimination. The Ministry of Health and both Ministers heading, it had promised and started working on improving the situation. With the coming of the new minister in power (who came from the previous opposition party) there was a legitimate fear that this will stop being implemented, which fortunately did not happen – he took the matter even further, in terms of implementation and outreach.

The conservative government in power had launched a campaign promoting families with multiple children, promising and providing substantial social and financial support for every third live-born child in a family. This measure raised debates and dissatisfaction form various corners. Dominantly the NGOs were those that articulated the imperfections of deliberate measures that result in human rights violation. To name just a few: throughout the campaign and the measures taken, the accent is on the family referring dominantly to a family with both parents; yet the specific stipulations dominantly provide an favour the mother as a primary recipient, and plainly disregards the father as possible beneficiary (in particular, the possible absences of the mother and the right of the father to obtain the social benefit, yet omitting to mention the vice versa; the right to financial support of the unemployed mother – yet lack of the same right for the other parent in case of his unemployment); the accent is on mothers who attend regular medical examination, with clear discrimination for all those who due to various reasons had not done that (poor financial conditions, remoteness, lack of mandatory check-ups, etc); the favoured population for this stimulative measure is in the municipalities with the fertility rate of the population that is below 2.1promils, thus, excluding vast part of the strata of population that otherwise would have been eligible for the measure. There is no mention of families that adopted or tend to adopt more children – no stimulus or support; needless to say, that single parents who adopt children are as well excluded. To that end, there is no complementary measure to support childless families to adopt children – yet, it is worth noting that a separate measure was introduced for more favourable position of these families in access to subsidized fertility treatments



The poor definition of this measure of the government leads to direct violation of the human rights guaranteed with the Constitution and with several laws (Law on the family, and Law on equal opportunity); it leaves he impression of on-off activity, with

no thought through strategy or embedding and linking it to the overall coherent framework of series of measures that improve the overall situation in the country for both man and women in terms of their health, parenthood and right to choice.

The presence of donors, their sufficient coordination and the efforts they make in this domain is still notable and significant. The glaring truth is that there will be a large field for operation and a wide variety and scope of activities yet to be implemented and introduced.

2008 in terms of human rights protection and gender equality has been characterised by several developments. Early elections were called by the ruling elite, which also won the elections however, with a different compositum of the new government, i.e. the change of the Albanian partner in the coalition government. For the first time in the existence of the Republic of Macedonia as a country with plural political life, a programme of a party pinpointed as a priority the work on the betterment and protection of human rights. In general terms, the elections at any point of time in a society bring disruption and a heated not only debate but general overall atmosphere in the state. Irrespective of the fact that there were 5000 monitors, domestic and international, in place, the day of the elections was so descriptive of the overall atmosphere of disrespect. The same anomalies were noted, almost at the same places, which resulted in very harsh criticism of all participants in the elections of the unreformed and undemocratic practices. Needless to say, everything revolved around human rights. The outcome of the elections has noted a regression also in the participation of women in the political life. Namely, with the law guaranteeing and setting the quota for the parties at 30%, the previous election in 2006 brought a result that was widely published; the quota was surpassed by 3 percent. On these elections the quota was not maintained at the same level, it was not even met. The current participation of women in the parliament is less than 30% which in itself is a regression. The same happened in the composition of the new government.

Another phenomenon that to the shock of the public opinion is the absolute rise in reported paedophile abuse cases, as well as the domestic violence cases, with the former one in lead. There is a strong response from the civil society sector, especially to the paedophilia cases, and the activity of the state bodies is also notable – in the detection and persecution phase. However, the overall impression is that there is absolute absence of an integral and integrated system under a state patronage, to deal primarily with prevention, followed by social nurture and care of the victims, nor a right understanding of the care and treatment that the perpetrators should receive.

The end of the year was marked with the raised topic of abolition of abortion. Throughout December, and on into the coming year, a public awareness campaign initially conducted by non-governmental organisations, was ubiquitous at every corner. Immediately it was accompanied by statements made by the younger group of Members of Parliament with conservative orientation, criticizing the existing liberal policy in respect to the right to abortion, naming it irresponsible and detrimental to the birth rate of the country. No mention was made of preventive policies for teen pregnancies and their termination. The Ministry of Health did not respond well and timely to the public outcry, which provided room for suspicion that some rigorous amendments to the current legislation allowing abortion we in the pipeline – eventually, the Minister stated that considerations were made on making the access to abortion more limited and more scrutinised.

In respect to the topic of abortion and its abolition, as well as the promotive and supportive activities for third and more children, there is evident lack of state population strategy based on evidence, data research or/and extrapolation of desired effects. The imposing conclusion is that the government took two ad hoc measures, which reverberated in the public as populist polices typical for the right political movement, causing outrage, especially in the latter case, and prompting the stakeholders to doubt the soundness of the process of policy making to that effect.

Two significant legal developments marked 2008: the introduction of the Law on mandatory secondary education and the Law on Life Long Learning (adult education). The former shall have a significant effect on a less explored or researched issue – the drop-out rates of girls due to various reason (rural way of life, conservative and religious background, teen pregnancies, and poor progress in school) and the lack of systematised measures to provide them with support to re-enter the system, and reduce the possibility for their absorption by the informal sector. With the Law on mandatory secondary education there is an ample opportunity to eradicate on segment of the multiple discrimination of women and girls (rural women, minority women), and with the Law on Life Long Learning the ground is laid for consecutive solutions to their advancement and fruitful e\involvement in the society is. In both cases, it is already visible that the implementation is an issue, which reinforces the observation that the rule of law and enforcement is the weakest loop in the chain.

Conclusion

As a general conclusion, the notable thing about the situation in Macedonia is the alignment and eagerness, and finally the openness of the institutions to work on harmonisation with EU practices, a drive that comes as state priority as well as a dictum under the EU scrutiny of the progress of the Republic of Macedonia in the process of association to the EU. The role of the state institutions is very big; however, due to low capacity it remains very limited and mainly informative. The legal framework and the institutional preconditions were created, however, so typical and without any interest of escaping the stereotype for the country belonging to the region of the Balkan or of SEE, the prolonged, i.e. the second transition takes its toll. The most ubiquitous manifestation of this is the rule of law, lack of enforcing and complacency with this. The gender equality efforts are victims that have note managed to be a good example and an epitome of what and how should things be done, gender equality has succumbed to the same malaise. The future of Gender Equality, Gender Mainstreaming, and Gender Budgeting in Macedonia should be seen through finding methods, tactics, strategies, avenues and practices in translating the created legal and institutional environment into a functioning reality.

The activity of the NGO sector is still perceived as the driving force, though, the decentralization and transfer of functions and responsibilities had taken root at local level. Guidance is immediately needed, given that the concepts and practical implementation of Gender Mainstreaming and Gender Budgeting are not fully understood. Therefore, a stronger presence of the national structures, i.e. the Ministry of Labour and Social Affairs as leading agency in gender equality and stronger cooperation with the civil society sector can lead to a complementary effort on proper understanding and introduction of valid practices at local level.

In the case of Macedonia, the main concern remains to be the inability to translate good intentions, declarative and affirmative statements and documents into action - the low level and/or partial implementation, i.e. enforcement. And above all, the concern remains regarding policies, activities and measures that are undertaken to the level of perfect technicism in the writing and conceptualization process, without, either knowledge, understanding and/or will, ultimately, to observe the rule of law.

MEDIA AND CONTROL MECHANISMS – FREEDOM OF MEDIA UNDER THREAT

The Constitution of the Republic of Macedonia guarantees the freedom of speech and media. Almost all relevant reports and analyses by the international governmental and non-governmental organizations as well as the local observers show that the Government, in general, respects this constitutional provision. The Internet in Macedonia is liberal, though unavailable for large percentage of the citizens.

It is of high concern that in the past few years there is a permanent backwards trend in the area of civic freedoms and rights (confirmed in the latest report of the Washington-based not-profit organization, Freedom House, where Macedonia is in the group of "partially free countries").

Even when speaking of this notorious fact, of going backwards in the freedom area, we cannot avoid one paradox – the state adopts much better laws, i.e. harmonizes them with the European legislation, but instead of making progress in the freedom of media and speech we are undergoing regression! Instead of freedom, unfortunately we see growing influence and control exerted by the Government on the media, particularly the electronic ones.

Another concerning fact is the increased partisanship of the media from two sides – the first one is the party leaders being media owners and the other – parties, particularly the ruling ones, want to have direct control on the media. Apart from creating a legal framework for prevention of these negative phenomena, which directly affect the democratization of the state, we believe that in future the editorial teams, particularly the editors in chief should be the key for protecting the independent editorial policy. Few months ago we heard how an owner of one private TV station publicly said that he was the owner and the journalists and editors should follow his instructions, making it clear that there is no room for independent editorial policy.

Apart from this political infection of the media space, we will underline another pressing problem, which appears to be a symptom of another more severe disease. The media are still divided along ethnic lines or to put it vulgarly there is one truth in Macedonian language and completely different one in Albanian language. Although many debates, courses, roundtables and seminars were organized, especially after the adoption of the Ohrid Framework Agreement, it is obvious that some journalists (or rather outlets) instead of searching for the truth and the facts, prefer to take over the role of defending the national causes. We suspect that partisan influences can be found behind these tendencies.

Media Space

The media market in the Republic of Macedonia is like a meadow covered with flowers – many different media, which does not necessarily mean that there is a climate guaranteeing fair market or breaking free from political influences. On the contrary. Particularly worrying is that leaders of political parties are owners of several TV stations (TV Kanal 5, A1, Sitel, to name just a few).

The Government is not an owner of any newspaper, but maintains the financial control over the only public broadcasting service – the national television – the Macedonian Radio Television. There is no precise i.e. official data on the amount of the governmental campaigns i.e. the advertisements in the media. One daily paper published that around 7 million euro was spent in 2007, but this amount was neither confirmed nor denied by the Government. It is difficult to find any specific numbers as the price lists of the media are not transparent and on the other hand they also offer certain discounts. It would be good if any body or agency focuses on this issue and one of the possibilities is to find the taxes paid on the governmental money given to the media. In any case, the governmental funding of the media through the numerous campaigns mars the freedom of media, so it would be good if this problem becomes fully transparent in the future. These are budget funds, i.e. money of the tax payers and should not be kept a secret. Strangely enough even the media themselves did not investigate this issue more seriously or in-depth.

The election of MRT bodies follows the same recipe, already tested in the times of a different ideological system – they are elected with majority vote of the Parliament. So it is not strange that the public service is inclined to the Government. The transition period has unfortunately not brought reforms in MRT, which is permanently facing financial problems and technologically is lagging behind the other public services in the region.

For years MRT has faced problems

with the staff promoted by the ruling parties, which have reflected on the overall ambience in the house, especially the human relations, which have erupted in conflicts and strikes and resulted in poor quality of the programming.

Unfortunately, we can note that MRT is still far from what had to be its primary function – public service.

MRT cannot be freed from the influence of the ruling parties (a problem that persists) and even the leader of the Democratic Party of Albanians has complained to this "method" of functioning, saying that he was boycotted by the public service. For example, the coverage of the early parliamentary elections in 2008 as well as the presidential and local elections in March and April 2009 confirms the thesis that MRT is favoring the parties in power. The same pattern is obvious in 2009, as MRT positively reports on the ruling parties and gives negative connotation on the reports referring to the oppositional parties. This is just another fact speaking of MRT as failing to exercise its function as a public service.

In the Republic of Macedonia there are five television stations with national concessions i.e. broadcasting on the entire territory of the state. In addition, there are 46 local and regional TV stations. Last August the Broadcasting Council has issued 10 licenses for satellite TV stations.

The country also has dozens private radio stations, several news agencies and lately we see a rise in the development of internet portals. All TV stations and newspapers have their online editions. The blogosphere also sees an incredibly fast growth, which can be highlighted as a positive process.

The ten daily newspapers (seven in Macedonian and three in Albanian language) are only adding up to the heterogeneity i.e. pluralism in the media space. The newspapers are mainly printed in Macedonian and in Albanian, but the newsstands also offer international newspapers. The market offers hundreds various magazines, political and specialized papers. However, this does not imply that we have independent journalism, let alone high standards in practicing it. Many assessments, including those of the Helsinki Committee, have regretfully noted a decline in the quality of journalism. The main problem lies in the influence of the parties exerted on the most of the daily newspapers as well as the financial pressure of the Government. The Government is the main advertiser, promoting all governmental projects in the newspapers and the electronic media. No one really knows what the cost of these governmental campaigns is, although an amount of "several million euro" is rumored. The practice shows that it is difficult to withstand this financial pressure when the newspapers/media already face financial problems.

The fears of the journalists that they are under constant pressure of the Government proved to be true, when recently the spokesperson of the Government requested list of all journalists including their phone numbers and addresses. He even said that he was not interested in the sport journalists – meaning they would only like to influence those covering the politics and economy, areas closely related with party activities. Miraculously, the epilogue was withdrawal of the request and no one heard that any sanctions were taken against someone from the PR team of the Prime Minister that wanted to have the data. For the absurd to be even bigger, several months ago the ruling party VMRO-DPMNE has publicly showed its "good will" and withdrew the 12 lawsuits against the journalists. It seems they quickly forgot what they have promised, so they attempted again to put a hand on the journalism, probably wanting to say they have intention of controlling the journalists. At least this is how the journalists got the governmental message.

This pressure on the journalists became obvious in June 2008 when the Prime Minister Nikola Gruevski has publicly accused the journalists – reporters from Brussels of speculating with the information at the cost of their own country. The message was – they were not patriots. Despite the fierce criticism from the Macedonian Association of Journalists (AJM) and SEEMO, the newspaper "Vecer" decided to support the government and even called to a public lynch of the three journalists – two working for WAZ and one for Kanal 5 TV.

These articles, including the one in Vecer where the journalists and other persons, mainly from the opposition, are publicly insulted or unverified information is published, are present in almost all media, which makes it necessary to apply strict regulation. In some way with the adoption of the new Broadcasting Law there is at least a legal framework for the functioning of the electronic media. However, there is room for amendments in the law, particularly for further depoliticizing of the Broadcasting Council and for more transparent work of the TV stations in the marketing area. Nevertheless, the framework is set.

The picture is quite different in the printed media and they are left to self-regulation. Certainly, there is a need of such system, the Code of Conduct of the journalists must be respected, but the question is what happens when it is violated. The increasingly active AJM and its Council of Honor say that jour-

nalists often publish texts although they have not fully verified them. Some of them are written under the pressure of the editors, but some are not. Who will punish the editors in these cases?

Last year there were 160 court cases on defamation, clearly illustrating the environment in which the journalists work. It is malpractice that the news desks do not take over the responsibility, but usually the journalist is found responsible and exactly they are lacking protection mechanisms.

The number of journalists sued for defamation, usually by politicians and powerful business people, is constantly increasing thus clearly demonstrating that the pressure is high. We had an example of a Veles reporter for one radio, who was sued and he only reported what was said at a press conference. If the work of a journalist is only to check who said what then we are losing the main point of journalism as profession. Therefore, cooperation should be established with the judiciary i.e. the prosecutor's office in order to monitor the journalistic information and the suspicion into something. So the system would be fairer and the society will demonstrate its awareness of the need to search for the truth and to punish the evil.

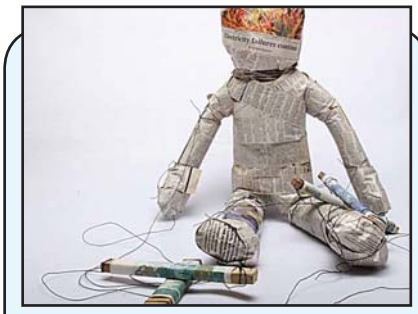
Since we have mentioned the defamation cases, it should be noted that amendments to the Criminal Code were made in 2007, so the defamation was decriminalized to a certain degree, i.e. the usual punishment is to pay a fine. But, let us not forget that the defamation cases became very popular, so we would state the case of Prof. Ljubomir Frckoski, who is also columnist for the daily newspaper Dnevnik. He was sued by the Prime Minister Nikola Gruevski for a number of accusations published in his regular column regarding the OKTA case. The first instance court found Frckoski guilty and fined him with 1.9 million denar.

The Helsinki Committee supports the commitment of the journalists voiced through AJM for further decriminalization of defamation, pledging for full application of the European legislation in line with the recommendations of the Council of Europe. In this way, the rope around the journalists' necks will loose and they just as their European colleagues would be able to publicly express their doubts into something. By this, the society will show that the mission of the journalists is not to lie, but to search for the truth and in executing this mission they have a right to suspicion. In a closed governmental system of information, when the access to public information is still restrictive, we hope that the decriminalization of defamation would contribute for further enhancement of democratic processes in the country.

We mentioned previously that there is a need of protection mechanisms for the journalists, including legal aid, establishment of trade union of journalists, a process that should be stimulated and not suffocated (evident in several desks) making it possible for the journalists to sign contracts, which will provide social security. Unfortunately, the current situation is not good at all. We support this with the fact that several journalists in the past year were maltreated and were under constant pressure of the editors in chief or the managers and some were even fired. We will only refer to the case when the editor in chief of the free of charge daily newspaper Spic, Branko Geroski, was replaced by the owner Velija Ramkovski only because he was writing columns that the owner did not like. Geroski was replaced simply because he publicly expressed his stance! Something similar happened to one of the editors in chief of Kanal 5 TV, Vasko Popetreski. Unofficially, he was replaced because he insisted on checking the information from several sources, to which the TV owner opposed.

The Helsinki Committee welcomes the efforts of AJM, which often voice their concerns regarding the violation of the Code of Conduct. However, another concern is the frequent hate speech displayed in the media, which is not penalized. Obviously, the self-regulation does not work in this case. We encourage AJM to open public debate on this problem in order to find out better mechanisms of punishment in those cases.

The Helsinki Committee warns of some serious problems in the media sphere, which may have repercussions in the public and the society. The first is that the freedom of media is suffocated, which is evident in the influence of the parties and the Government. This has contributed for deep divisions of the media not only along ethnic, but also along party lines, thus losing its primary mission – inform truthfully about the events and developments. The journalism has already become a reflection of the internal structure of the parties, which is authoritarian. Hence, instead of clash of ideas we are witnessing conflict of ideologies, which is absolutely not good for creation of objective picture on the relevant issues and processes in the public. The hate speech is more frequent form of expression, particularly dominant among the media outlets under political and financial control of the Government or its political satellites. For several years in a row, the media outlets in the Republic of Macedonia receive bad assessments and the country is qualified as partly free. This only signals that the red alert is on and the freedom of media is in a serious crisis i.e. danger. The journalists will have to fight for their rights and freedoms and it seems that at the moment they are lacking real protection mechanism as well as strong trade union and professional organization and association.



The Articles referring to defamation and insult as stipulated in the Criminal Code:

Defamation
Article 172

(1) A person who expresses or spreads some untruth about another, which could damage his honor and reputation, shall be punished with a fine, or with imprisonment of up to six months.

(2) If the crime as stipulated in paragraph 1 is committed by means of the press, radio, television or through other public media or at a public gathering, the offender shall be punished with a fine, or with imprisonment of up to one year.

(3) If the untruth that is expressed or spread is of such significance that it caused or could have caused severe consequences for the damaged, the offender shall be punished with imprisonment of three months to three years.

(4) If the accused proves the truth of his statement, or if he proves that he had founded reason to believe in the truthfulness of what he had stated or spread, he shall not be punished for defamation.

(5) A person who falsely expresses or spreads about another that he has committed a crime which is prosecuted in the line of duty, shall be punished for defamation, even though he had had founded reason to believe in the truthfulness of what he expressed or spread, if the expression or spreading is not done under the conditions from article 176, paragraph 2. The truthfulness of the fact that another has committed a crime for which he is prosecuted in line of duty may be proved only with a sentence that has come into effect, and with other evidence only if the prosecution of the trial is not possible or is not allowed.

Insult
Article 173

(1) A person who insults another shall be punished with a fine or with imprisonment of up to three months.

(2) If the crime from paragraph 1 was committed through the press, radio, television, e-mail or with other public media or at a public gathering, the offender shall be punished with a fine, or with imprisonment of up to six months.

(3) A person who will publicly slight another through an information system on the grounds of the other person's belonging to a certain community, ethnic or racial or religious group shall be punished with a fine or with imprisonment of up to one year.

HELSINKI COMMITTEE FOR HUMAN RIGHTS
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Projects of the Helsinki Committee for Human Rights of the Republic of Macedonia for 2008

Title of the project	Supported by	Duration	amount in EURO
Monitoring and Reporting the Human Rights' Violations on the Territory of Republic of Macedonia	Norwegian Helsinki Committee	June 2008 - May 2009	45000
Improving access to justice	Swedish Helsinki Committee	January - December 2008	90000
Improving access to justice- Support to the victims of torture	UNVFTV	January - December 2008	19380
"Promoting Equal Opportunities Mechanisms at local level in Bulgaria, Macedonia and Vojvodina, Serbia"	Bulgarian Gender Research Foundation	October 2007- October 2008	10400
Disseminating Information about Human Rights (web page upgrade)	National Endowment for Democracy	October 2007- October 2008	25000
Establishing Internship in MHC / Human Rights Defenders Trainings	American Embassy in Macedonia	October 2007- October 2008	19950
Second part of the regional Human Rights training programme	Raoul Wallenberg Institute of Human Rights	March - June 2008	20000
Human Rights Schools - two	Norwegian Helsinki Committee	June - July 2008	21000
Human Rights Schools - two	Norwegian Helsinki Committee	August 2008	21000

Joint projects with the Center for Human rights and Conflict Resolution, 2007/2008

Title of the project	Supported by	Duration	amount in EURO
School of tolerance	SIDA	January 2007- June 2008	135900
School of tolerance - follow up	SIDA	December 2008- February 2009	17000
School of tolerance	SIDA	January 2007- June 2008	135900

MHC - EXECUTIVE BOARD MEMBERS

1. Meto Jovanovski
Writer
1994

2. Sasko Dukoski
Attorney
1996

3. Hristo Ivanovski
Diplomatic editor at daily newspaper "Dnevnik"
2001

4. Iso Rusi
Acting President of the MHC, Chairman of the Board
2002

5. Periklija Beshka
Electrical engineer – general manager of "Narodna Tehnika", Skopje
2004

6. Samet Skenderi
Economist, president of "Common Values", Skopje
2004

7. Borjan Jovanovski
New moment video house
2005

REPORT ABOUT THE VISIT OF THE PUBLIC HEALTH INSTITUTE PSYCHIATRIC HOSPITAL "NEGORCI"

Performed on 14 August, 2008

I. P.H.I. Psychiatric Hospital "Negorci"

II. Capacity

III. Personnel and employees

IV. Patients, treatment and care
4.1. Health protection
4.1.1. Cases of patients infected with TB
4.1.2. Hygiene and sanitary conditions
4.2. Program contents, activities and contacts of patients outside the Institution
4.2.1. Program contents and activities
4.2.2. Resocialization
4.2.3. Security measures
4.2.4. Visits
4.2.5. Diet

V. Projects and donations

VI. Inspection

VII. Needs and activities that are to be taken upon, stated by the management of the P.H.I. Psychiatric Hospital "Negorci"

VIII. Preliminary remarks made by the Helsinki Committee

IX. Recommendations from the Helsinki Committee for Human Rights of the Republic of Macedonia

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I. P.H.I. Psychiatric Hospital "Negorci"

On 14 August, 2008, a delegation from the Helsinki Committee for Human Rights of Macedonia (Ana Stojkovic and Toni Menkinoski[1]) visited the Psychiatric Hospital "Negorci". The representatives of the Helsinki Committee were welcomed by the Director of the hospital Dr.Petar Kangov, who is a neuropsychiatrist. In accordance with the mandate, during the visit of the Psychiatric Hospital "Negorci", at the beginning the Helsinki Committee held a brief informative meeting with the Director, regarding the current situation in the Institution. Afterwards, every department and each premise in the hospital were visited, and during this visit the following was recorded:

II. Capacity

The Psychiatric Hospital "Negorci" is a regional hospital located near Gevgelija, and is intended to serve the regions of Veles, Kavadarci, Shtip, and the southern part of Macedonia. The hospital has a ground of 1,500 square meters, that is to say, 7.5 square meters per patient.

The accommodation capacity of the Institution is 210–215 people. Currently, there are 208 patients divided into male and female departments and wards, depending on the type and degree of the disease.

The Psychiatric Hospital "Negorci" has two wards for urgent cases, which actually represent admission wards divided into male and female wards. The patients from these wards are either sent home, if there is no need to admit them, or they are sent to the Department for resocialization, where the treatment lasts from 3 to 6 months, sometimes longer, depending on the case. According to the doctor's opinion, special admission wards with a capacity of 5 to 10 patients are needed. There, the patients will receive adequate attention, but currently there are not enough financial means for this. At present, the wards for urgent cases are used to meet the needs of the patients with little success. There is no premise intended for daily living in the female admission department and in the legal department.

Also, the Institution has: an independent Legal Department since 2006, a Department for Alcoholism and a Department for Neurosis and non-psychotic diseases. The Institution has three buildings.

The Institution's buildings are quite old – they were built in 1947, 1948, and 1950. Only minor repairs have been performed these past years. Since 1980 and 1986, there are two newly installed huts and one new building built in 1970 that is in use since 1972.

In the framework of the hospital there is a pig farm which is looked after by people with completed Agricultural High School and occasionally by the patients. Moreover, the institution has a field with potatoes, cabbage, and onions. The patients have a chance to seasonally work at the field. The patients are not paid for their work with a determined amount of money and are not paid regularly. Their payment is done incidentally and periodically with a small financial compensation, and sometimes their payment is done with products, most often cigarettes and etc. Additionally, the hospital also has mill.

III. Personnel and employees

Currently, 85 people are regular employees (in the recent future there is a plan to issue an ad for 6 new employment positions), 10 people are contractors according to the following classification:

9 doctors, of which 5 are psychiatrists and 4 neuropsychiatrists
1 psychologist, and another one is to be employed with the new employments
3 social workers, 2 more social are to be employed with the new employments
40 medical nurses
16 nursing maids
12 nursing maids
The rest of the employees are technical staff.

Currently, the psychiatric hospital has no general doctor, which represents a problem. However, in the future, they will employ one. Moreover, the psychiatric hospital has a need of more social workers and more psychologists.

IV. Patients, treatment and care

4.1. Health protection

If there is a need of a medical intervention different from the one provided by the specialized hospital, the patients are referred to the General Hospital in Gevgelija. For this purpose, the psychiatric hospital has an ambulance vehicle which is fully equipped and running.

There are no rooms for isolation when some of the patients are temporarily aggressive, but the Director informed us that bed strapping of patients is allowed, because it is necessary and medically justified. This measure contains strapping of the feet and arms of the patients to the bed while they receive the necessary therapy that will calm them down. It should be noted that during our visit we did not see any bed strapped patients. Moreover, we were assured by the Director and the other doctors in the Institution that electroconvulsive therapy (ECT) is no longer applied, because it is considered to be an outdated method of treatment.

There are no recorded problems regarding the medicine supplies. Additionally, a flu vaccination is performed annually.

4.1.1. Cases of patients infected with TB

During our visit, there was one suspected case of TB. The patient was referred to Jasenovo in the escort of one medical person, and brought back while we were still at the Institution, because the exam at Jasenovo confirmed that the patient does not have TB.

Four years ago, there was one patient infected with TB. The patient was successfully cured.

4.1.2. Hygiene and sanitary conditions

According to the Director of the hospital, the personal hygiene of the patients is at an extremely low level because of their personal habits. The collective hygiene is at a satisfactory level because it is being looked after by the employees. The clothes and sheets are washed twice a week.

The patients have their own clothes, as well as, clothes donated by the Australian Red Cross which cooperates with the hospital. Moreover, the patients have night clothes (pajamas), which are different from the ones they wear during the day, and are only to be used for sleeping.

4.2. Program contents, activities and contacts of patients outside the Institution

4.2.1. Program contents and activities

The patient's therapies are organized in group, and individual therapy is conducted only if it is necessary. Additionally, if needed, psychiatrists visit the patients and conduct special treatments.

The field intended for hospital gymnastics is in the process of renovation, and the construction of terrains for rugby and basketball is in preparation. We asked the Director how the patients spend their day, that is to say, what are the social programs practiced by the patients. The answer of the Director was that there are no special activities, and that the patients "waste their time". The Director agreed that improvements of this matter are necessary.

4.2.2. Resocialization

According to the opinion of the Director, the programs for resocialization are not successful because the patients return home in the more or less same state they were when they were brought in, and their families cannot handle the problems, thus the patients are forced to return to the hospital for therapy.

Additionally, the Director – as a problem – pointed out that the non-severe cases of oligofrenie patients should not be admitted in this hospital, because it does not offer suitable treatment. However, these patients are forced to stay in this hospital because no other hospital/facility can provide them with proper treatment.

4.2.3. Security measures

During our conversation with the Director and the other medical personnel, we were informed that the procedure determined by the Law on Non-Contentious Procedure is complied for the patients that are involuntarily hospitalized, that is to say, that the authorized court is informed and asked for an opinion. The representatives of the Helsinki Committee discussed this matter with one of the patients that was involuntarily brought to the hospital one week ago. The patient confirmed that he/she was heard by a judge, and that a decision for his/her temporary hospitalization was made. The management informed us that because they were submitted to a lot of bad critics about this matter in the past, they tend to be very careful in the present regarding this matter, and uphold the legal regulations.

According to them, the same implies for the patients with a pronounced measure of security by the Legal Department, although it was pointed out that a greater collaboration with the Court is necessary for these patients.

4.2.4. Visits

Non-announced visits are allowed at any time. The visits are held in the canteen and in the premises for everyday living. The most frequent visitors are the relatives of the patients. We regret to say that there are patients that have no visitors.

The patients that are hospitalized in the wards for alcoholism, as well as, the patients with neurosis, may move freely and resocialize, while the patients from the wards for urgent cases are closely monitored by the hospital staff. Some of the patients are only allowed to walk in the yard of the hospital, while others are allowed to walk outside the hospital. This rarely happens, because the hospital is almost isolated from any inhabited place, and has a lot of space and green vegetation.

4.2.4. Diet

According to the information given by the Director, the diet in the Institution relatively good. Meat and vegetables, and etc. are included, more or less, daily. During the visit, the Helsinki Committee had a chance to see the conditions in the kitchen. During that time, lunch consisted of boiled potatoes, salad and chicken stake was being prepared. Although the kitchen was old, it was clean and tidy.

V. Projects and donations

The Psychiatric Hospital "Negorci" has received a donation from SOZM (Union of Women Associations of Macedonia), with which a new laundry room has been built. Currently, there are no donations. The hospital has submitted a proposition to the Government, where it is stated that there is a need to build a new kitchen, because the current one is old and in a bad condition. However, they still have not received a response.

The financing of the Institution is realized with the State Budget of the Republic of Macedonia, a part of the financing is done from the Health Care Fund and a part by the Ministry of Health. The Psychiatric Hospital "Negorci" does not receive other financial means from donations or donations.

VI. Inspection

The hospital is regularly inspected, especially by the sanitary inspection. This is done twice a year in order to inspect the food, the condition of the working premises, etc. The Director is satisfied by the collaboration with the Ministry of Health, especially with the Department of Secondary Health Care.

VII. Needs and activities that are to be taken upon, stated

by the management of the P.H.I. Psychiatric Hospital "Negorci"

It was pointed out that the biggest problem is the need of a new building and the renovation of the current buildings. In order to meet this need, the hospital, by its own initiative, has in plan to build a new building of approximately 160 square meters. With the new legislative for setting video cameras in the hospitals, 16 video cameras are to be set in the corridors and in front of the entrances of the building.

The hospital does not have a posted household regime, nor are there any issued brochures or pamphlets. Yet, the Director claims that the patients are well informed of their rights and obligations.

There are no organized seminars or trainings for the personnel, although they find these necessary.

VIII. Preliminary remarks made by the Helsinki Committee

The representatives from the Helsinki Committee visited every department in the escort of the Director of the hospital, as well as, the medical personnel from each ward. Thus the representatives of the Helsinki Committee were able to discuss with the personnel and with the patients. The wards were separated from the remaining premises with metal bars that were locked. It could be observed that the wards for patients with acute diseases had the worst living conditions.

Generally, the rooms of the patients in each ward were 10 square meters large (for 3-4 patients) or 20 square meters (with 8 patients), therefore it was obvious that there is a lack of bigger rooms for the patients individually. The rooms left an impression that they are crowded with patients. In them, there were only beds with sheets, and nothing else, which left us with the impression of impersonality. The general hygiene was at an average level, except that it was visible that the sheets (blankets and bed sheets), as well as, the bet mattresses were soiled. The patients wore visibly old clothes.

In the corridors of the male wards for chronically ill patients there were newly built wooden lockers with individual keys for the personal belongings of the patients, which explained the fact that there was nothing else in the rooms but beds. In the remaining wards, the patients had small lockers in the rooms, which were not enough for their needs and were in a bad condition. Generally, there were windows in every room, which enabled daylight to reach the rooms. However, because the rooms were not equipped properly, and because the lack of hygiene, a grey and lethargic atmosphere ruled the premises.

The dining rooms and the premises for everyday living were equipped only with benches, tables and chairs, as well as, televisions that were placed in locked metal lockers with bars. This is because, in the past, some of the patients that were aggressive at the moment broke the televisions on a few occasions. The patients just sat in the premises for everyday living, or on the floors in the corridors. They did not take a part in any activities, which, of course, is not useful for the creation of an apposite therapeutic environment. The patients were continuously monitored by the personnel.

It is worth to mention the fact that every ward in the hospital was equipped with air-conditions, which were in use during our visit. Of course, their use is necessary having in mind the high temperatures during the summer period, especially in the region of Gevgelija.

The restrooms were at an average level. They were visibly old and damaged, yet the hygiene was at a decent level, although there were no necessary means needed for the maintenance of the personal hygiene – soaps, towels, etc.

IX. Recommendations from the Helsinki Committee for Human Rights of the Republic of Macedonia

- It is more than necessary, in the recent future, to establish programs and activities in order to divide the time of the patients, and all this with a purpose to enrich their therapeutic program aiming to achieve greater results in their recuperation, and improve their resocialization.

- In order to achieve the previous goal, it is necessary for the hospital to employ occupational therapists from different types: a musical-therapist, an art therapist, etc.

- To form a psychosocial team consisted of the employees from these profiles (psychologists and social workers), and to apply individual and group therapy (sociodrama, psychodrama) in the treatment.

- For this purpose, it is necessary to supply means in order to build proper animating halls, sport halls, or other rooms or buildings approved by the world medical standards.

- Additionally, organization seminars and training of the medical and other staff is necessary, so that they can exchange experiences with their colleagues and apply what they have learned in their work.

- Raising the level of hygiene with regular maintenance of the rooms, as well as, a different arrangement of every premise in the hospital.

- Appropriate informative brochures about the rights of the patients are necessary, as well as, posting the household regime at more visible sights everywhere in the hospital, so that it can be easily seen by the patients.

The Helsinki Committee wishes to thank the kind welcome and the bestowed time by the Director and the employees, as well as, commend their openness regarding the questions that are of interest to the hospital. We hope that with united hard work we will contribute for the improvement of the conditions in the hospital, and elevate the living standards in the P.H.I. Psychiatric Hospital "Negorci".

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[1] Accompanied by the volunteers Maja Dimitrova and Michael MacLennan

REPORT ABOUT THE VISIT TO THE PSYCHIATRIC HOSPITAL IN DEMIR HISAR

Performed on 22 September, 2008

I. Basic Information on the Types of Placement Provided in the Hospital
1.1. Civil Placement
1.2. Criminal Placement

II. Basic Data
2.1. Types of Hospital Wards
2.2. Admission to the Hospital
2.3. Living Conditions and Hygiene
2.3.1. Food
2.3.2. Therapy
2.3.3. Isolation and Restriction
2.4. Supervision
2.5. Contact with the Outside World

III. List of Detected Problems
3.1. Other Problems related to Human Rights

IV. Recommendations

I. Basic Information on the Types of Placement Provided in the Hospital

The involuntary placement and treatment of mentally disables persons in Macedonia can be done through two procedures – civil and criminal. The procedure on civil placement is regulated by the Non litigation procedure Law and the Law on Health Care, while the procedure on criminal placement is regulated by the Criminal Code and the Law on Execution of Sanctions.

1.1. Civil Placement

The Non litigation procedure Law makes a distinction between a placement in a hospital, leading to detention and open treatment. Irrespective of whether the person was forcefully brought to a hospital or comes voluntarily, if the treatment is of detention type and the medical staff considers that the person should be placed and treated in the hospital, then they should notify the district court no later than 48 hours after the admission (Article 59 of the Law on Extra-Judicial Procedure). The report should include information on the mental state of the person, including the facts proving this condition and the name of the person that took the patient to the hospital. The decision on forceful hospitalization is made by the Court. Such notification is not required if the person is admitted through the punitive procedure or the person has legal capacity (Article 61).

The Primary Court should open ex officio procedure right after the hospital report is received (Article 63). Afterwards, it should order a medical examination, review all facts related to the hospital placement and to have a hearing of the patient. The Court is obliged to make a decision no later than three days after the hearing. The decision should determine the duration of the placement or treatment, which should not take more than a year (Article 67). If the public health institution deems as necessary that the person should continue the treatment after the expiration of the time period prescribed by the court, it is obliged to request extension of the treatment no later than 30 days prior to the expiration. The decision on extending the detention period is made by the court upon another medical examination and hearing of the patient.

The Law does not stipulate presence of a lawyer, presentation of evidence and hearing procedure in front of the district court and the court of appeals. Therefore, it does not guarantee fair process, allowing for arbitrary decisions and abuse.

1.2. Criminal Placement

A person can be sent to compulsory treatment in a health institution in Macedonia, proven that the person has impaired mental health and cannot be tried. This procedure is applied upon a court order and medical examination. Chapter XIX of the Law on Execution of Sanctions (Articles 240-247) regulates the execution of security measure “compulsory psychiatric treatment and keeping in a health institution”. The health institution, where the security measure of compulsory psychiatric treatment and keeping in health institution is being executed, is obliged at least once a year to inform the court having pronounced that measure about the person’s state of health. In case when the health institution estimates that the need for treatment and keeping has ceased, it shall propose to the competent court to release the patient or to be referred to serve the remaining of his pronounced imprisonment sentence.

II. Main Data

The psychiatric hospital in Demir Hisar was built in 1955. Some of the facilities were renovated, but most of them are in very bad condition, failing to meet even the minimal accommodation standards.

The building, where the Adolescent Ward is located, was built in 1993/1994 as a donation of the Dutch Embassy.

Representatives of the Helsinki Committee of Human Rights visited the psychiatric hospital in Demir Hisar on August 25, 2008 and stayed for around four hours. The delegation arrived around 11:00h and first they talked with the Managing Director, Ms. Suzana Dzambazovska, but were not able to talk to the Director, Dr. Laze Kuzmanovski, as he was away for the day. An additional meeting was scheduled with the Director, during which we have learned about the budget of this institution, the funding sources and the sustainability of the funding. In this respect, 80% of the expenditures are refunded by the Health Insurance

Fund, while 20% from the Ministry of Health. Because the Health Insurance Fund does not provide 100% coverage of the expenditures, they have a negative balance.

The Director and the staff complained to the small number of doctors and support staff (cleaners), which are necessary for providing better treatment to the patients. The total number of employees is 261, of which 30 are administrative staff. The staff always attends seminars and conferences and there is an annual rotation within the hospital wards.

The delegation talked to one charge nurse and one of the doctors, the other staff and the patients. During the visit, the Helsinki Committee's representatives visited the administration building, all hospital wards (except the 6th, which was closed in June 2006 upon the recommendation of the World Health Organization and is still under reconstruction). The psychiatric hospital in Demir Hisar is a regional hospital for the residents of southwestern Macedonia above 18 years of age. The Ministry of Health is in charge of the hospital.

The capacity of the hospital in 2004 was 550 beds, reducing to 480 in the following years. At the time of the visit, the capacity was 420 beds and the number of patients was 391 (both men and women), 34 of which were absent or on vacation with their relatives. The total number of present patient was 357.

A Daily Psychosis Centre operates within the hospital. At the time of the visit, there were 82 registered patients in this Centre and other 112 in the Mental Health Centre in Prilep.

The total number of employees is 261, of which 11 specialists neuro- psychiatrists – psychiatrists, 1 specialist in internal medicine, 1 dentist and 1 dental nurse, 3 general practitioners, 5 social workers, 3 psychologists, 96 nurses, 38 caretakers and the rest is technical (support) staff.

The staff is rotating, attending training sessions, seminars and conferences, where they have opportunity to share their experience with other persons in this area.

The joint conclusion was that there is a need of more cleaners to be hired in the hospital. For the administrative purposes, 24 computers were procured. The hospital plans to establish a computer network and develop an electronic database.

2.1. Types of Hospital Wards

The hospital has 10 wards. The table below presents data on the types of wards and the number of patients in each of them, at the time of the visit.

1. Psychotic Women Ward
42 patients, one absent

2. Ward for Acutely Sick Young Men and Women
11 women; 19 men, one absent

3. Ward for Chronically and Sub-Chronically Sick Men
58 patients, five absent

4. Male Psycho geriatric Ward
37 patients

5. Ward for Chronically Sick Older Men
66 patients, one absent

6. Ward for Chronically Sick Men with psychosomatic syndrome, resistant to therapy with poor hygienic habits
Closed in June, 2006- in renovation

7. Ward for Chronically Sick Women resistant to therapy
43 patients

8. Female Psycho geriatric Ward
38 patients, one absent

9. Male Ward for Alcoholics for voluntary treatment
16 patients, five absent

10. Male Ward – forensic psychiatry
61 patients, 20 absent

TOTAL

391 patients, 34 absent

2.2. Admission to the Hospital

The hospital staff told us that the patients are taken to the hospital by their relatives upon doctor's order. The psychiatrist performs medical examination and if there is a ground for admitting the patient in the hospital, they submit the application for admission together with the findings and the expert opinion to the court. The court representatives go to the hospital, assess the validity of the application for admission in the hospital, and define the duration of the stay.

According to the Director and the staff, it takes time for the court representatives to respond to the application. Usually they break the legally defined deadline as they wait for several applications to be submitted, so they can cover several patients with one visit. We were also informed that the court representatives come only once, when they deliver the decision on admission.

If the patient is admitted on a voluntarily basis, but after certain period of time wants to leave the hospital, the doctor suggests that the patient would be allowed to leave the hospital after all necessary examinations and checkups,

which would likely show that the patient needs to continue the hospital treatment.

2.3. Living Conditions and Hygiene

The hospital facilities have central heating and hot water (heated with boilers in spring, summer and autumn).

Eight A/C appliances were installed in the facilities. Although they were constantly on, the facilities were too warm. There is no central ventilation. The conditions differ from one ward to another, according to the doctors, depending on the mental condition of the patients. The ward for patients with mental disabilities and/or those for patients resistant to therapy (5th, 7th and 8th ward) had poorest conditions. There were almost no personal items (with certain exceptions).

The average number of patients using the same toilet and shower is 10. The toilets and baths are not accessible for people with physical disabilities. Most of the taps have no faucets, so it is impossible to use them. The patients are allowed to take bath once a week (some of the staff believed this is compulsory, but the caretaker in the forensic ward told us that it is compulsory for the patients to have a bath once a week, but if they want they are allowed to take more baths. We did not get reply to the question what if the patients do not want to take bath.) Allegedly, the patients in the acute ward had bath everyday. The hygiene in the 5th, 7th and 8th ward was poor, with strong urine odor. The charge nurse claimed that the floor was cleaned regularly. Furthermore, traces of urine were evident on the toilet tiles in the 7th ward.

It was not possible to see whether the patients get enough hygienic products (soap, shampoo, toothpaste, toilet paper, etc.), although they told us they procure personal hygienic products once a month. However, we were not able to see any of these products neither in the toilets, nor the rooms. The patients receive diapers only if the family members bring them in the hospital. The management said they were unable to buy diapers due to lack of funds.

Regarding the personal hygiene, it was evident that the persons not able to take care of themselves were neglected, they were not washed, their clothes were dirty. To the question, why these persons do not get clean clothes, the people in charge told us that they would make the clean clothes dirty in less than an hour.

The patients in the forensic ward were placed in 11 rooms with average size of 15 – 22 m2. The rooms were in bad condition, particularly those on the first floor. There is a natural and artificial light, the floor is covered with linoleum and there is only elementary furniture, beds and some cabinets. In some of the rooms on the first floor, the patients did not have even their own cabinets to store the personal items. The patients had civilian clothes.

The forensic ward had three toilets (just cleaned with a hose) on the second floor serving 30 people. There were three showers and two sinks. The other three sinks were out of order, due to the missing faucets. Two showers were provided for the other patients on the first floor. We were told that the bed linens are changed once a week, but the existing lining was weary and old.

The Third and Fifth Wards are located in another two-story building, which was in worse condition than the forensic ward. The hygiene was very poor. Most of the bed mattresses are not waterproof. The walls and the floors were dirty and urgent renovation is required. Every room of around 20m2 had four to five beds. All rooms had big windows (some with bars), giving direct access to sunlight and fresh air. The sheets and the blankets were old and dirty. The patients were dressed in dirty pajamas. These conditions are not good for enhancing the personal identity and self-respect; individual clothing should be part of the therapeutic process.

The women's building has three wards: geriatrics (8th ward), chronically sick (7th ward) and the 1st ward were in very bad condition. The windows were not cleaned since the spring, and the general cleaning was planned in the autumn. According to the caretakers, the windows are cleaned only twice a year. The toilets and showers were substandard.

2.3.1. Food

According to the charge nurse, during the preparation of the menu, the cook and the doctors try to stick to the recipe book and the recommended calories per meal.

According to one of the doctors and confirmed by the managing director, the patients receive three meals per day, always including some type of meat. At the additional meeting with the Director, he clarified that pork is not served since the beginning of 2008. Previously, they did not pay attention to the religious restrictions on the consumption of certain food.

The food is same for all patients, except in the cases of patients who have special dietary regime.

2.3.2. Therapy

According to the doctors, all patients are on medication, but they did not have enough medicines for all patients. Some of the medicines were in short supply, so the patients received substitute. At the moment of the visit, the hospital had supply of risperdal and nozinon. We were informed that they had a deficit of tranquilizers for the aggressive patients, but none of the nurses was able to tell us which medication is provided as a substitute.

One of the previous recommendations given to the hospital was to start use new neuroleptics (e.g. rispolept). At the beginning of 2008, they started using the medicine, which was provided through donations. However, the Director told us that for the period July – December they have requested rebalance of the budget in order to continue this treatment, which proved to be very efficient.

According to the doctors, other types of therapy were used, including group therapy, painting, sport and work therapy. The hospital has Daily Centre with several workshops used for work therapy, if the patients want to get involved.

2.3.3. Isolation and Restriction

There was one isolated room in the forensic ward and a room with a video surveillance in the 5th ward.

In cases of aggression, the patients were confined to the beds in their rooms with leather straps. Only one arm of the patient is fixed. The duration of this confinement is not limited, but according to the records from the daily book, they may be confined for more than 12 hours.

This practice cannot be justified as part of the therapy and is considered as malpractice.

2.4. Supervision

Representatives of the Health Ministry visited the hospital at least once a year. They have delivered documentation for the last two inspections performed by the Ministry of Health – Food Directorate – Bitola branch, listing the shortcomings that should be eliminated.

Other documents from the inspection visits were not presented.

2.5. Contact with the Outside World

An authorized person in the hospital told us that excursions for the patients are organized every spring. The patients participating in the excursions are selected according to their activity in the rehabilitation unit.

III. List of Detected Problems

· Bad conditions in some of the facilities, particularly the toilets;
· Bad personal hygiene of the patients;
· Small number of cleaners;
· Procurement of medicines and use of substitution
· The relation between the employees and the patients
· Use of straps
· Courts fail to respond in the legally prescribed time period
· Civic procedure on placement of people in psychiatric institution

3.1. Other Problems related to Human Rights

The Delegation did not hear any complaints on torture or other forms of maltreatment of the patients in Demir Hisar hospital. However, the number of deceased people in one year is 20-30, which is highly concerning.

The relations between the employees and the patients were generally positive, without tensions, with the hospital staff showing lack of interest for the patients and their needs.

IV. Recommendations

1. The Macedonian authorities should allow the visits of non-governmental organizations to all institutions for the purpose of observing. The visits should be regular, unannounced, and the organizations should be given an opportunity to speak with the patients in private and to have access to the necessary documentation.

2. The civic procedure on placement of people in psychiatric institution with active treatment should be in compliance with the international standards. The following issues should be regulated:

· Taking the person in front of the court of law through specific procedure on determining the legality of his/her detention IMMEDIATELY after the initial placement;
· Involvement of a lawyer since the moment of detention and compulsory representation during the entire procedure, including the complaints. A system of providing adequate legal assistance should be developed for the patients that are not being able to pay for the lawyer;
· Running the court hearing for involuntary hospitalization according to the standards of the case-law, including the possibility of personal appearance in front of the court, presentation of alternative expertise, sufficient time for preparation of his/her defense and cross-examination of witnesses.

3. The civic and criminal procedure on placement in psychiatric institutions for active treatment should be subject to ex officio occasional revision in short periods of time.

4. The methods of treatment should be as diverse as possible and should include more activities.

5. High priority should be given to the improvement of living conditions for the patients in the forensic, 3rd, 5th, 7th and 8th ward of the Psychiatric Hospital in Demir Hisar, particularly the renovation of the toilets and providing cabinets for the personal belongings for all patients.

6. The confinement to bed to be abolished or the duration to be reduced.

7. To improve the personal hygiene of the patients, to provide diapers for the people that need them.

8. To increase the number of cleaners, particularly in the wards where the patients are not able to maintain the hygiene on their own.

9. To provide incentives/disincentives for the staff.

10. Full renovation and maintenance of the toilets.

11. To continue the therapy with Rispolept consta.

12. To find a way for improving the lack of communication with the Social Care Centers regarding the visits of the patients' relatives.

13. To find ways for maintaining (reestablishing) the communication with the patients' families, regarding the condition of the patient, the need for regular visits and maintaining good relations with the sick member of their family.

14. To plan the care for the patients after leaving the hospital and to prepare the patient for reintegration in the society, participation in the Mental Health Centre or Daily Hospital, Social Club or employment in protective company.

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[1] The delegation was comprised of the members of the Helsinki Committee: Keti Jandrijeska Jovanova, Vjolca Mora – Bayrami and Toni Menkinovski and the volunteer, Mary Maclennan from Canada

REPORT ABOUT THE VISIT OF THE SPECIAL INSTITUTE FOR PERSONS WITH SPECIAL NEEDS "DEMIR KAPIJA"

Performed on 14 August, 2008

I. The Special Institute for persons with special needs "Demir Kapija"

II. Capacity

III. Personnel and employees

IV. Protegees, treatment and care
4.1. Health protection
4.1.1. Preventive measures
4.1.2 General check-ups
4.1.3. Hygiene and sanitary supervision
4.1.4. Curative measures and activities
4.1.5. Cases of protegees infected with Tuberculosis
4.2. Program contents and activities, and contacts of the protegees that are outside the Institution
4.2.1. Program contents and activities
4.2.2. Visits
4.2.3. Outings

V. Projects and donations

VI. Needs and activities that are to be taken upon, stated by the Management of the Special Institution for persons with special needs "Demir Kapija"

VII. Preliminary remarks made by the Helsinki Committee
7.1 Handling, treatment, and care of the protegees
7.2. The living conditions of the protegees
7.3. Recommendations from the Helsinki Committee

I. The Special Institute for persons with special needs "Demir Kapija"

On 14 August, 2008, representatives of the Helsinki Committee (Ana Stojkovic and Toni Menkinoski[1]) visited the Special Institute for persons with special needs "Demir Kapija". This Special Institute is the only institution in the Republic of Macedonia that provides accommodation, care, health protection, an educational–working process, and working occupations for persons with special needs from all categories. The Institute was established with the decision No.204, which dates from 20 October, 1958, approved by the Executive Council of the Socialist Republic of Macedonia.

The basic activities of the Institution are to:

- Provide and organize protection and rehabilitation of individuals that have impediments in the psycho-physical development at various ages;
- Provide health protection and rehabilitation;
- Provide educational treatment;
- Provide various types of educational and working occupation depending on the psycho-physical capabilities;
- Provide and organize various activities on various occasions

The representatives of the Helsinki Committee were welcomed by the legal representative of the Institution (because the Director of the Institution was on yearly holiday), and by the chief medical nurse and one defectologist. At the meeting we were informed of the following:

II. Capacity

The capacity of the buildings intended for the accommodation of the protegees is up to 360 persons, thus depending on the current number the patients are accommodated in different wards. The main building was built in 1933, and 2 years ago it was whitewashed, the middle and the end parts of the building were built in 1970 and later renovated, and there is an entirely new building.

The Institution has an Economy of 13 acres, of which 10 acres are cultivable land. Occasionally, for the cultivation of the land, the protegees are included and some of them occasionally receive an undetermined amount of compensation, or incidentally from case to case, or according to their needs (if they need the compensation for walks, cultural activities, contests and so on).

III. Employees

According to the following classification the Institution has 133 employees on indefinite time:

- 1 doctor who at present is executing the duty of director
- 9 medical nurses
- 5 instructors
- 2 social workers
- 51 nursery maids, with at least 3rd degree of education (40 of them work in the Department for Health)
- 6 educators
- 3 defectologists
- 4 hygienists
- 5 laundry workers
- 6 chefs
- 4 guards
- the remaining 37 persons work as technical personnel and administration
- 63 persons from different areas have a part-time contract in accordance with the current needs. The Institution makes the decisions for the current needs.

According to the information by the employees in the Institution, 190 employees are needed, and the lack of employees is being compensated by hiring employees with different profiles on indefinite working time of a few months.

IV. Protegees

Currently, the Institution looks after 313 individuals of various ages, which are accommodated in different wards, depending on their:

- Primary damage
- Psycho-physical abilities and capabilities
- Age

There are three buildings in the Health Section where the worst cases of mentally impeded individuals are accommodated.

The division in the Institution is as follows:

1. Wards for persons with multiple damages – severe or the worst mental impediment and physical damage – A1, A2, B1, B2.
2. Wards for persons with severe or the worst mental impediment – A3, A4, C1, C2

4.1. Health protection

According to the authorized persons in the Special Institution for persons with special needs "Demir Kapija", the activities of the Institution contain preventive measures, a general check-up, hygiene and sanitary supervision and curative measures and activities.

4.1.1. Preventive measures

The preventive measures are consisted of the implementation of all necessary measures in order to prevent contagious diseases. The preventive measures are: daily visits, laboratory exams and check-ups, general and control check-ups, routine vaccination, flu vaccines for the chronically ill persons and for the persons with low immunity, hygiene and sanitary supervision, daily check-ups of the protegees and registering contagious diseases, disinfection, fumigation and deratization.

4.1.2. General check-ups

The protegees are submitted to continuous follow-ups of their health condition and to eventual detection of some diseases which will be uncovered by the results, and will provide timely treatment of the newly found diseases.

Every year, more specifically, in the second half of the year, a general check-up of all employees that are in contact with the protegees and everyday supplies is performed. The general check-up covers: fluorographic screening, performing coproculture tests, clinical examinations, collecting smears from the nose and mouth, and antibiograms.

4.1.3. Hygiene and sanitary supervision

The hygiene and sanitary supervision is consisted of hygiene control in the premises and of the sanitary sewer system, control of the hygiene maintenance of the protegees, satisfying the basic living conditions and ecological removal of waste, and daily control of the personal hygiene of the protegees. The regular control is performed by persons working in the management of the Institution, and the external control is performed by apt inspections by the Government.

4.1.4. Curative measures and activities

The curative measures and activities are implied in order to treat the ill protegees and are conducted during short morning rounds intended for emergencies. The main round is performed at 9 a.m., and is consisted of giving therapy, giving advice, or if needed, the ill protegee is sent to another facility.

For a more detailed diagnosis, more complex interventions, that is to say, providing more appropriate health protection to the protegees is enabled by cooperation and consultations with other medical facilities, which are: the clinic Demir Kapija, the health care facility in Negotino, the Medical Centre Kavadarci, Veles, the Institute for Pulmonary diseases, as well as, the Institute for Pathophysiology, and other clinical centers in Skopje.

4.1.5. Cases of protegees infected with Tuberculosis

Currently, there are two protegees infected with Tuberculosis (TB). According to the recommendation given by Dr. Gjore Arsov, there is no need to isolate them. The chief medical nurse informed us that another protegee infected with TB died one month before, and another one died one week before our visit. The chief medical nurse also informed us that fluorographic screening of the protegees is performed twice a year, and that the number of protegees infected with TB and their mortality is decreasing over the years.

The representatives of the Helsinki Committee performed an inspection of the medical books used to record the protegees infected with TB from 2005 onward. During the inspection it was established that:

- 2005, there were 12 registered cases of protegees infected with TB, 4 departed, and the remaining infected protegees were cured, yet again in 2006, 1 of the previously infected protegees was diagnosed with TB.
- 2006, there were 6 registered cases of protegees infected with TB, 1 departed in 2006, another departed in 2007, and the others were cured.
- 2007, there were 6 registered cases of protegees infected with TB, except the protegee that was infected in 2006, and departed in 2007. The other infected protegees in 2007 were cured.
- 2008[2], there were 4 registered cases of protegees infected with TB, 2 of which had already departed.

4.2. Program contents and activities, and contacts of the protegees that are outside the Institution

4.2.1. Program contents and activities

Regarding the programs intended to organize their time, there are multiple activities during which the protegees work with defectologists. The Institute has one creativity workshop, and one workshop for individual work which is

intended for the more capable protegees. There are groups for drawing and painting, graphical techniques, as well as, plastic sculpturing and constructing.

4.2.2. Visits

Non-announced visits of the protegees are allowed at any time. The most frequent visitors of the protegees are their relatives. They often call them on the phone. If the protegees express the need to use the phone, he/she is provided with a phone by the employees. Moreover, the protegees are allowed to move outside the Institution, with or without entourage, depending on the degree of their disease and capability.

4.2.3. Outings

The organizing of outings represents an irreplaceable value that is practiced in every occasion, and in this way, the protegees are introduced to the wider area, the things in it and the natural environment. Moreover, the outings develop the sense for helping, endurance, independence, managing obstacles and so on, and the encounter with different terrains and the fresh air aid the rehabilitation process. We were informed that in the previous years there were organized vacations abroad, for example, last year around 30 protegees went to vacation in Bulgaria. The team of experts establishes which of the groups of protegees are allowed to go on outings and walks outside the Institution, depending on their degree and capability, as well as, depending on the protegee's current state.

V. Projects and donations

Presently, there is no ongoing project for the needs of the Institution. Regarding the donations we have the following records:

- for the years 2007/2008 the Institution received a donation of €12,000 from the President of the Republic of Macedonia Crvenkovski, intended for the construction of a sport terrain, which is still in plan,
- the Institution received €15,000 from the vinery Kula, which were used for supplies, to acquire hygienic means and so on,
- the Institution cooperates with the Red Cross, which supplies them with donated clothes,
- the Institution received a donation from the Belgian embassy for the renovation of one of the buildings
- Cosmofon donated €40,000 for the park that lies in the area of the buildings,
- every month OKTA deposits 13,000 denars to the Institution, and the money are used for supplies and basic needs,
- of course, the main source of financial means is the State Budget

VI. Needs and activities that are to be taken upon, stated by the Management of the Special Institution for persons with special needs "Demir Kapija"

According to the representatives of the management the Institution has an urgent need of:

· renovation of some of the premises, especially the restrooms;
· supplies of better and more medications
· issuing an informative brochure about the Institution
· special programs in order to literate the protegees
· employing more defectologists
· additional training and enrollment in proper training courses and seminars for the employed, because so far there was none, or there was very little additional training.

VII. Preliminary remarks made by the Helsinki Committee

7.1. Handling, treatment, and care of the protegees

During the visit, the delegation from the Helsinki Committee heard numerous, consistent and persuasive statements for the good quality treatment of the protegees by the personnel. However, the delegation also derived the conclusion from the contacts with the protegees. The personnel informed us that they do not apply the measure of bed strapping of the protegees, instead that they manage the problems by applying appropriate therapy.

Yet, the main remark is that there is no independent and objective system for appeals and inspections, which will be used to punish bad treatment of the protegees by the personnel.

7.2. The living conditions of the protegees

Generally, the delegation from the Helsinki Committee established that there is an improvement of the living standards in comparison with the visit in 2005, however it must be noted that in the entire Special Institution for persons with special needs "Demir Kapija", an unbearable smell of urine was present, which leaves a bad impression about the basic living standards of the protegees.

The hygiene varied in accordance with the departments, but generally the hygiene was not on a satisfactory level, thus the unpleasant smell. Some departments had very old and ragged blankets, and the bed sheets were soiled.

Moreover, the restrooms were not according to standards. Besides being old and broken, the restrooms did not include the basic means for hygiene as soap, etc.

The condition of the buildings was in accordance with the year they were renovated. As it was mentioned before, the buildings that are older did not satisfy the basic living standards, and in contrast, the renovated buildings gave away an image of a pleasant living place.

It is worthy to mention the children's wards, especially those intended for the immobile protegees where. There the premises were colored in various colors, had decorations

and contained toys which enriched the premises.
Regarding the creativity workshop, it is sad to report that the machines and tools which they possess are not in use because there is a deficiency of a slighter number of additional elements, thus the employees and the protegees must learn to work with the basic tools, instead of engaging minimal effort which will allow them a full usage of the tools and machines.
The large and nicely arranged park in the Institution is praiseworthy. Unfortunately, during our visit the park could not be enjoyed because of the high temperatures.

The doctor that performs the rounds and treats the problems regarding the state of the protegees on the field of diagnosis, curing, prevention and rehabilitation, writes the history of the disease of the protegees, thus evaluates the state of health of the protegees, after which he sets the diagnosis and therapy. At the same time, the doctor works as the director of the Institution.

7.3. Recommendations from the Helsinki Committee

1. Generally, in order for this type of Institutions to function and be maintained, and in order to improve their quality, the Government of the Republic of Macedonia needs to have a clear, long-term, strategic plan. Nevertheless, this is a civil duty of Macedonia, and it is in accordance with the Action Plan of the Council of Europe regarding the disabled (2006-2015). This Action Plan of the Council of Europe, in terms of disabilities, is based (among other things) on every relevant existing European and international instrument, on every agreement and plan, including the Convention of the UN for persons with disabilities. Moreover, this Plan bears in sight the New Strategy of the Council of Europe for Social Cohesion (2004), which has a goal (among the other goals) to provide approach to the human rights for the children, adolescents, the migrants, as well as, for the disabled persons.[3] (http://www.mhc.org.mk/)
2. It is necessary to raise the level of hygiene in the entire Institution, because it is unimaginable that in this century there could be so low hygiene, especially, because in order for the hygiene to be on a higher level there is no need for more financial means, but for more good will and dedication in order not to degrade the dignity of the protegees, which represents a basic human right.
3. The need for a plan and program in order to organize the time of the protegees in group and individual, well equipped creative workshops with trained and motivated defectologists is evident.
4. The Helsinki Committee appeals that additional financial means should be found in order to upgrade the training of the employees, in order for the employees to visit appropriate seminars and exchange of experiences with colleagues so that they can follow the trend of changes in this area.
5. Moreover, the Helsinki Committee believes that it is necessary to provide an informative brochure which will contain information about the work of the Institution and the rights of its protegees.
6. To enlarge the number of employees from other expert profiles: defectologists, social workers, to employ a psychologist and occupational therapists, psycho-therapists for various kinds of therapy, medical nurses and nursery maids. All this should be done in the interest and well-being of the patients.
7. At the end, one of the most important missions of the Institution is to takeover and give measures, and to provide health protection of the patients. All this cannot be done by only one doctor.
8. It is necessary to employ more doctors.
The Helsinki Committee is monitoring the plan for the deinstitutionalization of the Institute "Demir Kapija" and will state about this additionally. We wish to appeal that this process will last a long period of time, and that this does not mean that the Institution "Demir Kapija" should be neglected and left on its own during the duration of the process.

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[1] Accompanied by the volunteers Maja Dimitrova and Michael Mac Lennan
[2] Up to our visit on 14 August, 2008.
[3] A special analysis of the Helsinki Committee for the – New "old" popular challenges for the Republic of Macedonia regarding the persons with invalidity.

Strumica on August 15, 2008

I. Rehabilitation Institute "Banja Bansko" – Strumica
1.1. About the Institute

II. Capacity

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IV. Service Users, Treatment and Care
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4.3.1. Visits
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V. Projects and Donations

VI. Needs and Activities to be undertaken, already noted by the Institute's Management and the Service Users

VII. Preliminary remarks of the Helsinki Committee
7.1. Treatment and Care of Service Users
7.2. Living Conditions for the Service Users
7.3. Recommendations of the Helsinki Committee

I. Rehabilitation Institute "Banja Bansko" – Strumica

Representatives of the Helsinki Committee of Human Rights of the Republic of Macedonia (Vjollca Mora – Bajrami and Keti Jandrijeska Jovanova[1]) visited the Public Rehabilitation Institute "Banja Bansko" – Strumica on August 15, 2008. The Delegation arrived around 11:00h and stayed for almost four hours. The Institute's Director, Justina Gnoinska Dimitrieva, welcomed the delegation, but due to other obligations was not able to stay with the guests until the end of the visit.

The delegation was accompanied by the Institute's Secretary, Vase Zimbakov. During the visit, the delegation saw the administrative building and the accommodation facilities, men and women ward.

1.1. About the Institute

The Institute is a social institution providing social care to people with physical disabilities. This is the only institution in Macedonia taking care of the people with severe physical disabilities.

REPORT ABOUT THE VISIT TO THE REHABILITATION INSTITUTE "BANJA BANSKO"

The main activities of the Institute include:

- to provide and organize protection and rehabilitation of children and young persons with physical disabilities
- to provide accommodation, housing, food and care
- to provide health protection and rehabilitation
- to provide primary education
- to organize schooling in the secondary schools in Strumica
- to provide and organize different types of vocational education depending on the mental and physical disabilities

The Institute falls under the Ministry of Labor and Social Policy and the Ministry of Education and Science, in the part of providing primary education. The Institute was opened in 1974 with the assistance of the Sue Rider Foundation and the Municipal Council of Strumica. The administrative building was built in 2002, in accordance with the project on deinstitutionalization, which should be completed by 2012 as house accommodation.

The Institute provides regular primary education from 1st to 8th grade, in accordance with the official curricula. This part falls under the Ministry of Education and Science. The Institute has own teaching staff for the children with special needs. In the school year 2007/2008 only ten children attended the classes from 1st to 8th grade, but the Institute has sent letter to the Centers for Social Care, with a request of increasing this number in the future.

The children – service users of the Institute receive books and school equipment and have daily classes. After the classes they attend the therapy sessions. The staff includes teachers, pedagogue and special education teacher.

In the school year 2008/2009, 20 children will attend the primary education. The Institute also provides schooling for those children that want to continue the education in cooperation with the secondary schools in Strumica. During this school year, five students will attend the secondary schooling. They apply for taking an exam and the teachers come to the facility to test their knowledge.

The Institute's Director informed us on the exchange activities with a similar institution in Poland. Four children from the Institute took part in these activities.

The old building that was burnt down during the fire in 2007 is renovated and put into use on August 1, 2008. Funds for renovation were provided by the Italian Embassy and the insurance. Although the building is fully renovated, the beds and other inventory were still missing.

The Institute has cabinets for special education teacher, sociologist, computers and physiotherapy.

II. Capacity

The capacity of the Institute is 70 people and on the day of the visit, total of 56 people, men and women, were present. The population differs according to:

- primary disability
- age (the oldest is born in 1948, while the youngest is born in 1999)
- psycho-physical abilities
- ethnical background (Macedonians – 47, Roma people – 3, Turks – 2, Albanians – 2 and others – 2).

The most frequent medical conditions are: cerebral palsy, infantile paralysis, progressive muscular dystrophy, epilepsy and osteogenesis imperfecta.

The Institute has 24 apartments and 30 rooms, designed for collective housing. The new building has apartments for independent life (one to two persons). If request-

ed, it is allowed for a man and a woman to live together. In the newly renovated building, there are 30 rooms (15 for women and 15 for men), while the administration will be located on the ground floor.

In March 2008, two deaths were registered as two service users died of natural causes. On the other hand, three children died in 2007, as a result of the fire.

The service users are accepted only upon a Decision of the Centers for Social Care, operating in the area of the beneficiary's residence. Together with the decision, the Centers for Social Care are obliged to submit to the Institute a medical certificate and medical records, together with the health card and the health insurance. The management was very positive about the work of the Social Care Centers from Skopje, Strumica and Kocani, which always provide the health insurance on time.

III. Staff

The Institute used to have 30 full-time employees on a permanent basis, while 15 new people were hired on a temporary basis in the past 18 months. The Director pointed out that 14 people were hired by the Ministry of Labor and Social Policy (eight of which are nurses) and one person (music teacher) was hired by the Ministry of Education and Science.

The structure of the employees is as follows:

- 3 special education teachers
- 1 sociologist
- 1 physiotherapist
- 1 general practice doctor (taking care of the medical records)
- 1 psychologist
- 4 main nurses

- 18 nurses (9 male and 9 female)
- 3 cooks
- 1 janitor
- 1 driver and
- 10 people hired by the Ministry of Education

IV. Service Users, Treatment and Care

There is a central heating and hot water in all facilities. When the temperature is below 10°C, additional heating is switched on. The floor covering in the new building is with linoleum, instead of tiles. Only the toilets are tiled. The new building also has a fire alarm, directly connected with Strumica fire brigade.

Having in mind the recent reconstruction and refurnishing of both buildings, the conditions they provide are good. Two large rooms are used for leisure activities, such as watching TV, playing chess, etc.

Four nurses were on duty during the visit. Air condition appliances are to be installed in the corridors. The A/C is already installed in the room for leisure activities. There are three toilets for women and three for men.

The dining room is also large, but a strange smell came from it. There are only four tables with four chairs each. Most of the service users eat the meals in their apartments.

The Institute has its own laundry facilities, where the clothing is washed and dried. The bed linen is changed twice a week and the service users have a shower twice a week.

The service users have no objections about the food and they were happy with the meals. They usually get hot meals and cooked food. The grains and fried food are avoided. Around 12-13 service users are on special diet.

The management told us that the Hazard Analysis and Critical Control Point (HACCP) System has not been introduced yet, although they were aware that every institution must apply the system by the end of 2008.

Regarding the food served to the service users, it is controlled every 15 days by the National Health Care Bureau, when the menu for the next 15 days is also prepared.

Cleaners are hired to take care of the hygiene in the rooms and the apartments, but the service users were not happy either with their attitude or work. Once a month, the Institute provides personal care products and cleaning products to all service users.

4.1. Medical Unit

The Medical Unit provides primary health care and rehabilitation for every service user through treatments and therapy prescribed by physician, who comes once a week and monitors their health condition.

The medical staff is comprised of nurses, special education teacher, physiotherapy nurses and caretakers.

The medical rehabilitation and physical therapy include: electrotherapy, kinesitherapy, hydrotherapy, manual therapy, paraffin therapy and play therapy.

Orthopedic aids are also provided and help is given to the service users in order to learn how to use them. The purpose of this type of rehabilitation is to:

- keep them fit and active

- prevent decubitus and contractures
- keep the existing psycho-motor activities
- develop new movements (in case of young people).

The Health Unit not only takes care of the psycho-physical state, but also motivates and inspires the service users to take active part in the treatment. The full medical therapy is provided in the Institute.

4.2. Health Care

4.2.1. Medical Checkup

According to the Institute's management, when the new service user is being admitted, it is required from the Social Care Centre to provide the medical record, in order to register all checkups and treatments.

Regarding the procurement of medicines, the Institute does not have special funds for this purpose, but they manage to get funds from the other budget lines.

The Institute hires one doctor - general practitioner, who is not employed in the Institute, but comes twice a week. In case of emergency, the service users are transported with an ambulance in Strumica or Skopje.

4.2.2. Supervision

The supervision on the Institute's work has been performed by the National Health Protection Bureau, the Ministry of Labor and Social Policy and the Ministry of Education and Science.

The management told us that four inspections and supervisions are performed annually by the MLSP and MoES. Conclusions are provided after the inspection, but we were not able to have a look in these conclusions.

The Social Care Centers also have the right to perform the supervision, but both the Institute's management and the service users complained that not all centers have visited the facilities, adding that the cooperation with most of them is weak.

4.3. Activities and Contacts of the Service Users outside the Institution

There is a Professional Development Unit within the Institute, tasked with providing active engagement of the service users. Despite being occupied in these activities, the service users also have an opportunity to exercise, perform different movements that improve the psychomotor coordination and the entire psycho-physical condition. The activities are realized in a relaxed and positive environment.

This is a place, where they can hang around, communicate, exchange their attitudes and opinions and develop into generous and positive persons. They also create friendships, build relations based on mutual respect, tolerance and help. The Unit also helps the service users to maintain their psycho-physical condition, motivation and desire to be active.

The activities occupying the time of service users include: making ikebana arrangements, knitting, embroidery, sewing, making tapestries, painting and wood carving.

All these activities require certain psychomotor coordination, precision, ability, knowledge and skills. The Institute's staff is very proud with the artistic expression of the service users.

The Institute has organized several exhibitions for their artistic creations, while the service users also go to different fairs, where they exhibit their products.

4.3.1. Visits

The branches of the Women's Organization organize an Easter picnic every year, bringing Easter eggs to the service users. This traditional event is organized for 11 years in a row.

4.3.2. Picnics/Excursions

The service users say they rarely walk outside the gates of the Institute, and if they want to go out in the city, they should pay for taxi on their own.

Every year they go on a vacation in Struga. Although they first said that they spent 10 days in Struga, it turned out they only spent seven days, where they had different engagements and leisure activities.

V. Projects and Donations

The working materials and tools in the Professional Development Unit were provided as assistance from several organizations/foundations.

The Director says that most of the donations and assistance came from the Sue Rider Foundation.

VI. Needs and Activities to be undertaken, already noted by the Institute's Management and the Service Users

The Institute's service users complained that the support received for third person care has been cancelled, but could not specify when this assistance was terminated. The support amounted to 3.500 MKD per month. The

Secretary told us that the procedure on third person care was put on stand by for as long as they use the Institute's services.

Off the record, the Secretary told us that the monthly costs for each service user are 17.000 MKD, covering the accommodation, medical care and hygiene.

The pocket money amounting from 1,000 to 1,500 MKD, provided by the Social Care Centers was also cancelled.

Most of the Institute's service users complained about the decision, they started to receive last year, for payment of participation fee. According to them, the participation fee for adults is too high, as their income is limited and minimal and they cannot afford the additional costs, having in mind that they are fully responsible for their own clothes, hygienic products, telephone, interenet, etc.

These funds are too low and cannot even cover their visits outside the Institute. Sometimes, they even have to pay to the employees, if they need any help inside the Institute, as officially this kind of help was not in the scope of their work.

Another problem is that they have to pay for the repair of wheelchairs once the warranty expires. The new serviceman, who was supposed to be responsible for maintenance of the wheelchairs, can hardly fix them so they have to find another serviceman outside the Institute and pay for the service from their own pockets.

The amount of the participation fee differs. Some have to pay 1.500 MKD, others 3.500 MKD, but they all agree that this amount is too high for the low standards provided to the service users.

The service users also complained to the unprofessional attitude of the director as well as the staff hired in the past 18 months, as they lacked organizational and professional skills.

In January 2008, without any reason, the Institute's Director decided to switch off the landline phone for the service users.

They are responsible for buying their own clothes and mainly complain about the inability of the new serviceman to repair their wheelchairs, unlike the old one, they still use for private purposes.

VII. Preliminary Remarks of the Helsinki Committee

7.1. Treatment and Care of Service Users

The Helsinki Committee for Human Rights has objections regarding the treatment/behavior of the Director towards the Institute's service users, as well as the inadequate expertise of the newly employed people.

7.2. Living Conditions for the Service Users

The Helsinki Committee for Human Rights has no remarks on the living conditions for the service users, assessing that there are good accommodation facilities and equipment.

The Helsinki Committee hopes that the refurnishing of the old facility will be completed soon, providing more space for both the administration and the service users.

7.3. Recommendations of the Helsinki Committee

1. Hiring professional and adequate staff for providing medical and psycho-social assistance

2. To this end, it is necessary to hire more social workers, therapists for different types of psychotherapy, socio-therapy and occupational therapy

3. Improving the cooperation between some of the Social Care Centers and the Institute

4. To finalize the tender for procurement of interior elements for furnishing the old/new building as soon as possible

5. Regular and compulsory walks for the service users outside the Institute's premises

6. Revision of the Rulebook on the type and volume of social care services and the amount of participation fee for covering the costs of the service users, even prior to the adoption of the new Law on Social Care

7. Developing criteria for calculating the amount of the participation fee, depending on the financial situation of the family of the service user

8. Continuous training for the staff on introduction of new methods (individual and group) for improving the psycho-physical situation of the service users

9. Landscaping is required, as the garden was in terrible condition

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[1] The Delegation was accompanied by a volunteer of the Helsinki Committee, Darko Gjorgiev

REPORT ABOUT THE VISIT OF THE PUBLIC HEALTH CARE INSTITUTION – SKOPJE PSYCHIATRIC HOSPITAL, SKOPJE (BARDOVCI)

30 October, 2008

I. Basic Information about the Public Health Care Institution (PHCI) Psychiatric Hospital, Skopje

II. Organizational Set Up, Capacities and Human Resources at the PHCI Psychiatric Hospital, Skopje
2.1. Organizational Set Up
2.2. Capacities
2.3. Personnel and Staff Organization

III. Conditions for Life and Hygiene
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IV. Patients, Treatment and Care
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4.1.2. Civil Committal
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4.3. Program Contents, Activities and Contacts of Patients Outside the Institution
4.4. Supervision

V. Funding

VI. List of Specifically Detected Problems and Requirements

VII. Recommendations

I. Basic Information about the Public Health Care Institution - Skopje Psychiatric Hospital, Skopje

On 30 October 2008, the representatives of the Helsinki Committee for Human Rights of the Republic of Macedonia – Ana Stojkovic, Sena Begovska and Toni Menkinoski visited the Skopje Psychiatric Hospital, Skopje (Bardovci). The representatives first met and talked with the Hospital Administrator and Deputy Administrator. Then all wards and premises of the Hospital were visited.

The Public Health Care Institution, Psychiatric Hospital Skopje was established in 1954, and started its operations in 1995 under the name Hospital for the Mentally Ill. In 1997, in accordance with the Law on Health Care, the Hospital acquired the status of a public health care organization under the name of Psychiatric Hospital-Skopje and a new organizational set up of the wards was established, which are functionally linked into mental health centers. The Hospital was established for purposes of providing care, accommodation, treatment of persons with mental disorders, as well as for the purpose of providing for their rehabilitation, resettlement and reintegration.

The Skopje Psychiatric Hospital is located in the village of Bardovci, at several kilometer distance from the central city area, covering a large area with several facilities accommodating persons with mental disorders. This is a regional hospital and covers primarily the Central and North - East parts of Macedonia. The Hospital is under the competencies of the Ministry of Health.

II. Organizational Set Up, Capacities and Human Resources at the PHCI Psychiatric Hospital, Skopje

2.1. Organizational Set Up

The Public Health Care Institution, Psychiatric Hospital Skopje has 9 wards where persons with mental and psychiatric disorders are accommodated, while in the framework of the ward units 6 outpatient clinics and one dispensary are established. The Hospital has the following organizational structure:

1. Ward - Center for Reception, Diagnostics and Intensive Treatment composed of the following units: Unit for general health care activities; Unit for treatment of somatic conditions with persons with mental disorders; Unit for epidemiological -psychiatric research and medical statistics.

2. Ward – Center for Acute and Emergency Psychiatric Conditions. This Ward has the following units: Unit for Acute Psychiatric Conditions; Male Unit for Emergency Psychiatry and Female Unit for Emergency Psychiatry.

3. Ward - Center for Continued Treatment, Rehabilitation and Resettlement composed of: Unit for Continued Treatment, Rehabilitation and Resettlement (A); Unit for Continued Treatment, Rehabilitation and Resettlement (B); Unit for Psychiatric Rehabilitation and Resettlement (Hostel); and Unit for Work Therapy, Rehabilitation, Resettlement, Farming and Horticulture.

4. Ward - Center for Continued Treatment and Care composed of: Unit for Continued Treatment and Care (A); and Unit for Continued Treatment and Care (B).

5. Ward - Center for Forensic Psychiatry and Forensic Psychiatric Expert Assessment composed of: Unit for Treatment of Convicted Persons with Mental Disorders; and Unit for Forensic Psychiatric Expert Opinions.

6. Ward - Center of Psycho-Geriatrics composed of: Unit for Dementia Syndrome; and Unit- Outpatient Clinic for Psycho-Geriatrics.

7. Ward - Center for Prevention and Treatment of Alcohol Abuse and Addiction composed of: Unit for Reception, Diagnostics and Treatment of Alcohol Abuse and Addiction; Unit - Out Patient Clinic for Prevention and Treatment of Alcohol Abuse and Addiction; Unit for Specialist and Sub-specialist Consultations.

8. Ward - Center for Prevention and Treatment of Abuse of Drugs and other Psychoactive Substances, composed of: Unit for Reception, Diagnostics and Intensive Treatment of Abuse and Addiction to Drugs and other Psychoactive Substances; Unit - Outpatient Clinic for Prevention and Treatment of Abuse and Addiction to Drugs and other Psychoactive Substances; and Unit for Specialist and Sub-specialist Consultations.

9. Ward - Center for Outpatient Protection and Promotion of Mental Health, composed of: Unit for Outpatient Protection and Promotion of Mental Health and Specialist and Sub-specialist Consultations and Vlae Outpatient Clinic; Unit for Outpatient Protection and Promotion of Mental Health and Specialist and Sub-specialist Consultations and Centar Outpatient Clinic; Unit for Outpatient Protection and Promotion of Mental Health and Specialist and Sub-specialist Consultations and Prolet Outpatient Clinic.

2.2. Capacities

The total capacity of the Skopje Psychiatric Hospital is 1037 beds. According to their health status, patients are distributed in the outpatient clinics and in the main inpatient facility. According to the statements of the responsible persons this number changes.

2.3. Personnel and Staff Organization

The hospital has 408 staff as follows: 40 doctors specialists, 12 psychologists, 12 social workers, 4 senior medical nurses, 128 medical nurses, 12 orderlies, 31 nurse assistants and the rest are technical staff.

The Hospital Administrator and Deputy Administrator informed that the Hospital is traditionally providing education for newly recruited staff, while the other staff attends various trainings, seminars and congresses in the country and abroad for purposes of upgrading their expertise.

The Hospital administration emphasized the problem of small number of doctors, informing that 7 to 8 of them were attending specialist studies abroad. Hence, if they would return to the Hospital there would be no shortage of doctors. However, the Hospital requires 30 to 40 medical nurses, and about 20- new cleaning staff, since the present staff number of this profile does not satisfy the needs.

III. Conditions for Life and Hygiene

The Helsinki Committee team reviewed the facilities, aiming at establishing under what conditions the patients in the Public Health Care Institution- Skopje Psychiatric Hospital are accommodated.

3.1. Material Conditions

The material conditions are different from one unit to another. The worst material conditions and dissatisfactory level of hygiene are in the Geriatrics Unit and in the Units for the chronically ill, especially the male units.

The Hospital facilities have central heating and hot water. There are solar energy collectors, as well, but they are not functional. There is air conditioning in the living rooms.

The general assessment of the conditions in the rooms is rather relative and differs from one to another unit. Despite their spaciousness, some rooms are overcrowded. Thus, there are 6 to 8 beds in one room. The rooms have only elementary equipment - beds and lockers. However, in some units, the rooms even lack lockers for personal items, and in some rooms the beds are old.

The rooms have large windows which ensure sufficient light, however some of the windows have bars on them. The bed linen although old, was neatly set and mainly clean. All units have a living room equipped with a TV set, as well as a dining table.

In all halls there were visible boxes for complaints, and in all wards there were boards on which the house rules were placed, as well as a list describing the patients' rights.

The condition of the toilets is satisfactory, especially since they have been recently reconstructed. However, considering that all patients in a Unit use the same toilet they are utilized to their maximum capacity which leads to their fast deterioration. Several toilets that have not been reconstructed are in an evidently bad state. There were not even personal hygiene products (soap, shampoo, toilet papers etc), neither in the toilets nor in the rooms. One of the explanations of the doctors was that considering the category of patients leaving soap was risky for their health, but the Hospital Administrator informed that it was planned to set plastic containers with liquid soap.

The Helsinki Committee delegation was rather impressed by the readiness of the staff of the Skopje Psychiatric Hospital to receive the delegation. Namely, the floors in all rooms were clean, and in some rooms the floors were even still wet after the floor wiping.

It must however be underlined that most of the rooms and facilities are evidently dilapidated, almost ruined by dampness and leaking roofs. Thus, in some units there is an absurd situation- the toilets have been recently reconstructed, but are immediately damaged because of roof leaking.

3.2. Food

As far as the food is considered, the Hospital Administrator and the Deputy Administrator informed that the food is the same for all, and that patients were satisfied in general. However, the Helsinki Committee representatives were not able to talk to the patients, since at the time of the visit the patients were not in their rooms (except for those who were sleeping and those with the most grievous mental disability).

Bread is prepared and baked at the Hospital, without additives, which due to health related reasons is served the following day. The rooms where food is served satisfy the basic hygiene needs and seem clean. The responsible persons at the Hospital informed the Committee representatives that members of the medical staff were present at each meal considering the specificities of patients.

As regards the condition and equipment of the kitchen, the administration stressed that there were activities under way to create conditions for the introduction of the HASSAP system.

3.3. Accommodation

One of the shortcomings that can be noticed is that at the Forensic Ward there is not a female unit. Instead women are placed in the female closed unit. Hence, female patients of the forensic ward are subject to worse and more difficult conditions than the conditions they are entitled to in the forensic ward.

The assessments are positive and it can be said that high standards have been attained at the Unit for psychiatric rehabilitation, where patients are prepared for integration and return to their homes. The Unit is called a hostel, in which the accommodation conditions are impeccable, the hygiene is at a high level, the equipment and the kitchen are new, and the living room and toilets are in an excellent condition. Patients are encouraged to take care of themselves (prepare meals, serve the food, tidy up). This prompts the impression of warmth and calmness, a picture much closer to a genuine home, rather than a hospital. This ward has been recently constructed and satisfies the standards set forth by the applicable regulations. Regretfully, a very small percentage of patients are placed in the Hostel. The maximum capacity is 13 beds, and they were all used. Patients stay in the Hostel from 6 months up to 1 year.

IV. Patients, Treatment and Care

4.1. Basic Information on the Grounds for Committal to the Hospital

In accordance with domestic and international law on committal and treatment of mentally disturbed persons, in Macedonia there are civil law and criminal law grounds for committal. The civil committal is regulated under the Law on Non-Litigation and the Law on Health Care. The criminal committal is regulated in the Criminal Code and the Law on Enforcement of Sanctions.

4.1.2. Civil Committal

The civil committal procedure is regulated under Chapter 2 –Restraining in a public health care institution for treatment of mental illnesses contained in the Law on Non-Litigation Procedure. According to Article 58 of this Law the court decides when the freedom of movement or contacts with the outside world of a mentally disturbed person are to be limited, and the procedure is urgent. In case the health care organization admits an involuntary mental patient, or if there is no court decision in this respect, as well as in case the health care institution admits a person under a consent confirmed with a written statement done before and authorized person and before two literate full aged witnesses that are not employed at the concerned institution, the autho-

rized person at the institution is obliged to file a report to the court. The report contains data on who brought the person to the public health care institution, the character and level of illness and evidence based on which the institution has made its findings on the health care status of the person (Article 60). After receiving the report, the court is obliged to order an examination of the person (Article 64), to review all circumstances of importance for the adoption of the decision and to hear the examined person (Article 65) and adopt a decision with 3 (three) days whether the person will be kept at the public health care institution or will be released, and then accordingly inform the Social Work Center (Article 66). In its decision, the Court determines the duration of the placement in the institution, which may not be longer than 1 (one) year (Article 67), while if according to the assessment of the health care institution the person needs to be placed longer than 1 (one) year, within 30- days before the end of the one year period, the relevant institution is to file a request to the court for continuation of the hospitalization (Article 68). In this situation, the court again orders an examination and a hearing of the person and after receiving the findings and assessment, the court continues the period of treatment (Article 69).

4.1.3. Criminal Committal

As regards the criminal law aspect of treatment of persons with mental disorders, Article 61 of the Law on Non-Litigation Procedure envisages that the report is not to be filed if the person is placed with the public health care institution based on a decision adopted in a procedure for deprivation of legal capacity or in a criminal law procedure. The provisions of the Criminal Code regulate mental incompetence and significantly reduced mental competence of a person committing a crime, who owing to the state at the time of committing the crime, may be referred to a security measure- compulsory psychiatric treatment and custody in health care institution, after the completion of the relevant proceedings. The procedure for application of this measure is normatively regulated under provisions of Articles 525-531 of the Law on Criminal Procedure, while Articles 240-247 of the Law on Enforcement of Sanctions prescribe the enforcement of this security measure. After the placement, the health care institution is obliged to inform the court that has ordered the security measure about the course and results of the treatment. If the institution concludes that the measure in no longer needed, the institution is to propose to the court that the patient is released or transferred to the prison to serve the rest of the sentence.

4.1.4. Involuntary Hospitalization

In respect of the problem of involuntary hospitalization, the responsible persons informed that the problem was overcome, i.e. patients are no longer taken to hospital accompanied by police officers, but with an ambulance, and at the beginning an interview is conducted with the person that can give his/her consent for committal; if not the report is filed in and submitted to the relevant court. There were complaints about the great delays in the process of adoption of a decision by the courts, which in spite of the legal obligation to urgently process such cases and adopt a decision within three days, sometimes adopt decisions within 3 or 4 months from the date of receipt of the report. In such cases, if the person is in a bad health condition, the person is hospitalized without a court decision, since the responsible entities do not want to undertake the responsibility for the consequences that could arise from the person's release. There have been instances of patients being kept, treated and released even before the court adopts a decision on the report.

4.2. Health Care

There have been no cases of active TBC recorded in the last 2 to 3 years. Death cases are owed only to natural causes. However, if there is a case of TBC the Hospital is equipped with a special room for isolation of patients. Every year all patients and staff are subject to rentgen screening.

The Hospital has an Internal Medicine Unit where an internal medicine specialist treats patients requiring attention. The Hospital also has a Dentist Office.

4.2.1. The Measure of Fixating

As regards the measure of fixating, the Hospital administration informed the Committee representatives that this measure was applied only in exceptional cases and only for the necessary period (10-15 minutes or hour, hour and half) until the sedation therapy sets in. Medically approved leather belts are used and complete documentation is prepared for each instance of use of the fixating measure, where the duration of the fixating is also recorded. This measure is especially applied during the night, when new patients are admitted, considering that the capacities allow that only two technicians are on duty. This was underlined as a shortcoming by the Hospital staff. This measure is applied only for certain patients with more serious mental disorders with signs of self-inflicted injuries or violence against others.

During the visit, the representatives of the Helsinki Committee did not see any person fixed to the bed. As different from this measure, according to the information provided by doctors, shock therapy was last used in 2002.

4.3. Program Contents, Activities and Contacts of Patients Outside the Institution

According to the information provided by the Hospital administration occupational therapies, group and individual therapies, socio-therapies are applied, while at the Hostel there is an adult education specialist.

The information provided by the responsible persons that the day of the patients is completely organized through various activities, work and other creative therapies are especially surprising. The Hospital has a special (workshop) Unit for occupational therapy where various statuettes, drawings, and poetry created by the patients were displayed. There is also a gym with sports equipment, and an open football field.

According to the information provided by the medical staff, each morning patients are measured their pulls and temperature and an interview about the daily therapy is conducted.

However, the Helsinki Committee representatives could not witness that practice upon their visit.

The Committee representatives were presented a special program of daily activities at the Unit for treatment of alcohol dependants, which incorporates every day afternoon education discussions and lectures in the area of alcohol dependency.

The so called Clubs for alcoholism treatment function as part of the Hospital. They are located in the city where in the afternoons, group psychotherapy is organized.

The professional team working in the Hostel informed the Committee representatives that some of the patients released in good condition from the Hostel, who have certain property join with other patients and then live together. These persons although released from the Hospital are occasionally visited and supervised by the Hospital staff. The staff underlined the need for creating conditions in order that the so called patronage services - visiting public health care services are more active.

Field trips are regularly organized for the patients. Visits are allowed almost at all times. Patients from certain Units are allowed to move within and outside the Hospital premises, as necessary, while patients that cannot do that on their own are accompanied by medical staff. There are also telephones that the patients' families can call to communicate with the patients.

Occasionally field trips and walks in the city are organized for each separate Unit, when patients are accompanied by the head of the Unit. However, the Hospital administration underlines that it is necessary to organize more often field trips for patients in order to diversify their hospital stay.

4.4. Supervision

The Hospital is regularly supervised by the inspection services – 2 (two) times a year by the Labor Inspection and 2 (two) times a year by the Sanitary Inspection when the food, the hygiene in the working premises, etc. are checked.

V. Funding

The main source of funding is the Ministry of Health and the Health Care Fund, and very little foreign donations.

According to information of the Hospital administration, there are no foreign donations currently.

The clothes of patients are donated by the Red Cross, El Hilal and other humanitarian organizations.

The Hospital administration and the medical staff expressed regrets in respect of the funding, particularly in respect of the visiting health care service that the Hospital is paying from its own funds, and which visits patients after their release in order to supervise the regular administration of therapy.

VI. List of Specifically Detected Problems and Requirements

The general assessment of this health care institution is that the expert staff performs its duties in respect of the treatment of patients, although with limited funds. The list of specially detected problems and requirements established by the representatives of the Helsinki Committee is the following:

· Keeping persons in custody without a relevant court decision; the responsibility for this is shared by the judiciary and the health care institution, but it is certainly damaging for the patients who are limited their right to movement and their freedom outside any legal procedure;

· Some of the units require repainting, replacement of the equipment and primarily reconstruction of the toilets with new bathroom elements;

· Bad material conditions in some of the facilities, especially at the Geriatrics Unit;

· Overcrowded rooms;

· Insufficient number of medical nurses;

· Small number of cleaning staff;

· The Hospital administration underlined the need for a separate canteen within the Hospital premises, where patients can spend part of the day and receive visits by their close ones.

VII. Recommendations

Considering the goal of advancing the situation in the psychiatric institutions in the Republic of Macedonia, the following recommendations need to be applied:

· Full application of the provisions of the Law on Non-Litigation Procedure on restraining persons for treatment in a health care institution, especially the provisions on involuntary hospitalization;

· Adoption of a specific program for overhaul and reconstruction of facilities and premises where patients stay or are treated;

· Undertaking additional activities to stimulate the contacts of patients with their families through cooperation with the Social Work Centers;

· Continual supervision of these institutions by the competent bodies, as well as supervision by civil society organizations in order to improve their work through constructive criticism.

The Helsinki Committee would like to express its appreciation for the warm welcome and the time afforded by the Hospital Administrator and Deputy Administrator and for their openness to all questions of interest to the Committee.

The Committee therefore hopes that with joint efforts the conditions would be improved and that the living standards would be raised at the Public Health Care Institution, Psychiatric Hospital, Skopje.

REPORT ABOUT THE VISIT OF THE PRISON FOR JUVENILES IN OHRID

November 6, 2008

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1. General Information

On November 6, 2008, the representatives from the Helsinki Committee for Human Rights of the Republic of Macedonia Keti Jandrijeska Jovanova, Vjolca Mora Bajrami and Pavlina Zefic completed a visit of the Prison for Juveniles in Ohrid. The duration of the visit lasted more than 4 hours, and the representatives spoke with the Director of the Prison Mr. Mirce Ristevski, the Deputy Director Adzhibajram Rizvani and with the two Prison educators.

The Prison is a facility of closed character, it is located in the town, and only a high wall separates it from the neighboring houses. The building dates since 1959/1960 when it was part of the police station, and in 1962/1963, it was separated in order to serve as a special prison facility, where there is also a part of the building intended for investigation of persons who are from Ohrid, Struga and Debar, held in custody.

Video cameras are placed in the Prison and they serve only to monitor the public areas of the Prison. However, the privacy of the juveniles is not regarded; they can be seen by the neighboring houses – how they live, how they line up, their visits to the kitchen, how they use their leisure time, etc. They are literally in the viewing field of the people that live in the neighboring houses.

During our visit, there were 30 imprisoned juveniles in the Prison and 7 persons that were held in custody. The capacity of the prison is up to 50 persons, yet this number has never been reached. During the time of our visit, there were 20 persons in the prison, 9 were at work, and one was absent, that is to say, one was in refuge; also, the Prison had admitted a new person.

A big reconstruction of the Prison for Juveniles was performed in 2000, especially a reconstruction of the premises that serve for custody. Minor renovations are constantly being performed in the Prison, especially renovations of the sanitary facilities. During the time of our visit, the Director of the Prison informed us that the storage room is in the process of renovation, and that in the future it will serve as a hall for sports activities, that is to say a gym where the juveniles would be able to spend their leisure time. Moreover, we were also informed that the old laundry machine has been replaced with a new laundry machine and a dryer.

The prison has many employees; a Director, a Deputy Director, two educators whose profession is psychology, and a Security Sector where there are 22 persons. We were also informed that there are 5 supervisors in one shift.

The Re-Educational Sector has ONLY 2 employees, while the Administration has 5, and 3 persons work in the Financial Department. There is no reason that the Re-Educational Sector, which plays an important role in the re-socialization of the persons, is comprised of only 2 persons, and that the Administration has as much as 5 employees. The Prison lacks a social worker (so far they had not had a social worker), and when we asked if they inquired employment of a social worker, the Director wisely avoided the answer and he informed us that this position is foreseen with the systematization. Four available work places have been approved for 2009, therefore the Helsinki Committee hopes that among these employments a social worker will be employed.

1.1. Categories of Persons

The Prison takes in persons that are sentenced to prison, but that have committed their act of crime when they were juveniles. Every person in the Prison is there for the first time. Most often, the sentences vary in regard of the time duration and last from 1 up to 10 years, but currently one person was sentenced to 6 months of imprisonment. The maximum penalty is 8 years, and 4 persons have been sentenced to 7 years in prison.

The criminal acts for which the juveniles imprisoned vary, among which are the following: murder, robbery, theft, heavy theft, etc. The fact that 10 persons were sentenced for the criminal act murder informs that the State should take real and suitable measures for a more efficient re-socialization of the persons that have already been sentenced to the educational programs in the Educational Correctional Center – Tetovo.

During the time of our visit, 17 persons in the Prison were imprisoned for theft and robbery, 2 persons were imprisoned for sexual assault, 1 person was imprisoned for satisfying sexual passions, and 10 persons were imprisoned for committing murder.

The age of the persons varies from 17 to 23 years, and when the persons turn 23 years old, they are not transferred to another facility. The persons are of different nationality: 7 Albanians, 8 Macedonians, 13 Romanies and 2 Turks.

1.1.1. Allocation of Categories of Persons

After the juveniles arrive in the Prison for Juveniles, they are monitored and their behavior is assessed, and after the

person profile is completed, the persons are provided with a sleeping room. The educators spoke of a division of good and bad persons. The good persons are placed in 3 sleeping rooms that have very good conditions, and that are almost renovated, while the bad persons are placed in the remaining 3 sleeping rooms that do not have the same conditions as the ones that are provided to the good persons. In order to make the decision in which sleeping room a person is to be placed, the criminal act for which the person is convicted, as well as, the degree of the conviction of the person that has been sentenced by the competent Primary Court are being taken into consideration.

The adaptation period is individual for every person separately. The Admissions Sector is a special department (Admissions Department) where a psychologist admits the juvenile person for observation, and in most cases, this lasts 15 days; however, it can vary. The Admissions Sector is composed of a psychologist, as well as, an educator, and a doctor that examines the person during the time of the admission. If the juvenile is admitted on a Saturday or on a Sunday, then the initial examination performed by the doctor is done on the first weekday. The persons that are admitted in the Admissions Sector are not tested for Hepatitis B and Hepatitis C. No other test is performed. However, if suspicion that the admitted person belongs to the risk group, tests are performed. This practice of mandatory testing of only the risk group was introduced in the Prison during 2006. This Sector, almost a few years in a row, does not include a social worker.

The Red Cross donated 20 tests for Hepatitis C. The tests would include persons that belong to the risk group, which have not been tested before. The prison employees are obliged to undergo a sanitary inspection every 6 months, and the data from every inspection is recorded in their medical charts.

1.2. Material Conditions

The Prison has 6 sleeping rooms where the juveniles reside. They are separated from the Department for Custody. There are 6 rooms in the Department for Custody and 6 solitaries. There is a special room in the Prison that serves as a Department for Admission.

1.2.1. Material Conditions in the Prison

The juveniles are provided with sleeping rooms of different sizes. Every sleeping room has from 3 to 5 beds, and in one of the sleeping rooms there were 7–8 beds, which surpasses the legally tolerated number[2].

First, the representatives visited the rooms intended for the “good persons” where the conditions were satisfactory, that is to say, every room had a TV in it, a DVD, Cable TV, lockers, natural lighting, natural ventilation, radiators for heating, the beds were made neatly with clean sheets. The beds are classical and are 30 centimeters (11 inches) above the floor.

The other 3 sleeping rooms that are intended for the “bad persons” were different from the previously seen sleeping rooms. However, the conditions in these rooms were also satisfactory. The sleeping room doors were actually bars, which was not the case with the other sleeping rooms. There was no TV in one of the sleeping rooms, but we were informed that this would be taken care of very soon. The sleeping rooms were larger than the previous 3 rooms, and they contained more beds. One of the rooms had a carpet, which was given to the persons by the educators. There were new mattresses for every bed. There were religious pictures and symbols above the beds in 4 sleeping rooms set up by the juveniles, but the personnel informed us that, so far nobody has complained regarding this, and that they do not considered this to be a problem.

The sleeping rooms intended for the “good persons” had the names of the persons that reside written in them, and the representatives concluded that there are 3 persons that are serving sentence of a crime that they did not commit as juveniles and are not serving the sentence as juveniles, but as adults that have committed a criminal act. The employees informed us that they have 3 adults that have been sent there by demand of the Ministry of Justice. These persons were adults when they committed the criminal acts.

A few days after our visit, the Director of the Prison in Ohrid informed us that the adults were transferred to the Prison in Struga. However, the fact remains that on the day of our visit, there were adults in the prison that have performed criminal acts, and if the Helsinki Committee did not react to this matter, it is vague if these adults would have been transferred or if they would have remained in the Prison in Ohrid.

The bathroom contained 3 faucets, 2 toilets, 2 pissoirs, 1 shower, and 1 boiler that had hot water. In addition, the hygiene was at a satisfactory level.

The cells, that is to say, the rooms had good isolation so that noise could not be heard, and discipline was regulated with the daily agenda that is publically displayed and respected by the persons.

The juveniles always get underwear, clothes, sneakers, socks, and they get hygiene products. The sheets are always clean. In addition, for this purpose a washing machine of the brand Samsung was bought, as well as, a dryer. A list of persons that have their turn to wash their clothes in the laundry machine is made, and there are two persons that work with them. When admitted to the Prison, every juvenile receives hygiene products. The persons receive hygiene products every two weeks.

The premise for free activities has 5 computers, and only one is in use. There is a ping-pong table, and a few tables and chairs. There is a publically displayed daily agenda in the premise, as well as, a timetable with the names of the persons whose task is to maintain the hygiene of the Prison. The names of the persons rotate weekly.

1.2.2. Material Conditions in the Prison

The conditions in the Department for Custody were catastrophic. There were enormous holes in the floor, the premise had humid air, the persons in custody did not receive natural lighting, and the lighting in the cells came from the light bulbs that are located in the corridor of the Department for Custody, and some of them were out of order. The representatives visited one room where the persons are held in custody. There were 3 beds and a sanitary facilities that were in poor shape, one of the beds in the cell was made, and there was a shampoo. Therefore, the representatives were under the impression that someone is staying in this room, while the employees claimed otherwise.

The persons held in custody are taken out of their cells for only one hour once in 24 hours. This means that the persons in custody are 23 hours in solitary confinement, and have only an hour outside to perform free activities, that is to say taking walks around the Prison. The agenda for taking the persons in custody out of their cells is regulated with a schedule; first, the persons in custody from one cell are taken out, then persons in custody from another cell, and so on until every person in custody has been out of the cell.

The personnel call the premises that are intended for the persons with bad behavior solitary confinement premises. These premises were in the worst condition of all premises. They contained only a bed with a decomposing mattress, no light, and no toilets. If the prisoners need to go to the bathroom, they have to call the supervisors, so that they could take them to the bathroom.

The solitary confinement premises MUST URGENTLY be renovated.

The inner toilets for the persons in custody were in good condition, almost renovated, with new tiles, 3 shower and 2 faucets; however, the toilet that was outside the premises intended for the persons in custody was in bad condition. The toilets were rusted. There was a small boiler in the bathroom and it is always full with hot water so that the persons in custody can satisfy their basic needs, as washing their face, shaving, etc.

The juveniles and the persons in custody shower once a week. However, during the summer, they shower as needed, especially the persons that were engaged in work. Allegedly, they showered everyday.

The Director of the Prison informed us that soon the Department for Custody would be renovated with financial means predicted with the rebalance of the budget, and that it will be completed until December 20, and that €40,000.00 have been intended for this cause. The renovation of the Department for Custody also predicts changes in the natural lighting.

The kitchen, where the food for the juveniles and for the persons in custody is prepared was clean and tidy. The cook informed us that disinfection of the kitchen and the places where the food is stored is performed every 6 months. The last disinfection and deratization was performed August 10, 2008. The persons that help in the kitchen and the persons that work in the kitchen have their own medical charts, and undergo continuous examinations by the inspectorates. In addition, the Prison has employed a cook for its needs. Two juveniles help the cook.

There are 5 tables with wooden benches in the dining room. They are well preserved, but there is no heating in the dining room. The dining room was cold, and when we asked how they handle the winter period, and if heating is provided during the winter period, the employees avoided answering the question and we did not receive a suitable response. This leads us to the conclusion that during the winter, when the temperatures are very low, the juveniles are forced to dine in a cold premise.

The entertainment premise is a room where the juveniles can enjoy their free activities, for example play ping-pong, chess and use the computers. The entertainment premise is big. It contains 4 little windows with dimensions from 0,5 x 0,5; and 4 tables with a few chairs. Certain places on the floor have damaged parquet. The entertainment premise had a bad smell; it is necessary to open the windows more often. We were told that the Prison uses the entertainment premise as a premise for elementary education.

The yard, which is used by the juveniles is big. In one angle of the yard, there was an improvised birdhouse, where the persons keep the pigeons. There were two storage premises in the yard, and one of them will be turned into a gym.

1.3. Nutrition

These past two years, the food was enriched in quality and in quantity. The juveniles have 3 meals a day, and a snack. The cook that is employed in the kitchen prepares the list of meals, and the Director approves it. The most common food on the menu is chicken meat, and the use of pork is avoided because of the various religions of the juveniles. The juveniles that have certain health problems, with a preapproval from the doctor, receive special food.

During the time of our visit, we were informed that there are no HIV positive persons in the Prison. However, there is one juvenile and one adult infected with Hepatitis C, and because of this, their food is served in plastic dishes for single

use, so that another juvenile or a person in custody does not contract the disease. However, we were informed, that a special request has been filed in order to transfer the infected persons to another prison because of safety reasons.

1.4. Medical Care

A neuropsychiatrist has been employed to meet the needs of the juveniles. He/she visits the Prison twice a week, if needed more. If an emergency arises, an ambulance that takes the person to the Emergency Centre is called. The medical bills are at the expense of the Prison. The doctor examines the juveniles, and the laboratory analyses are not performed in the Prison. The Prison awaits 20 Hepatitis C tests only for the persons that are at risk, but if they receive a bigger number, testing of every person will be performed. The juveniles are not vaccinated because, as the Director claims, the vaccines are very expensive and the Prison cannot afford them. Even the employees, who are submitted to an enormous risk daily, have not been vaccinated.

There is homosexuality in the Prison. The educators held educative lectures, and the juveniles received brochures from the Red Cross that explain the sexually transmitted diseases; HIV, Hepatitis B and Hepatitis C, however, according to the claims of the personnel, the juveniles did not show interest in the brochures, and only a few juveniles read them. Dental exams were performed 2 years ago, and the juveniles visit the dentist only if needed.

Condoms are not provided, but if the juveniles wish to protect themselves, they can by them with their own money.

1.5. Work in the Prison

Some of the juveniles are engaged in work in various places. During the time of the visit, 8–10 persons were carrying out their work engagement outside the Prison. The persons are paid for their work engagement; the pay depends on the type of work, and it varies from 500 to 1200 denars per month. The pay of the juveniles is kept by the referent, and the juveniles can take their payment depending on their needs.

Engagement in work plays a significant role in the early release of the prisoner.

1.6. Discipline, Punishment and Isolation

It is important to mention that during the time of the visit the juveniles were notably frightened, and did not wish to speak privately with the delegation. If the behavior of the juvenile is not satisfactory, that is to say, if they escape or if they commit another offence, as punishment, they are sent to solitary confinement, and the period of confinement cannot exceed 10 days. In order to send a person to solitary confinement, a procedure must be followed, that is to say to suggest this disciplinary measure, to collect witness statements, and at the end, to get permission from the Director.

Reports about the behavior of the juveniles are regularly sent to the Court, and to the Centers for Social Work. However, the Director also suggests probation releases if a person has had good behavior. The Director informed us that it is not unusual for the Court to reject the proposition of the Prison for a release on probation with the explanation that the purpose of re-education has not been fulfilled, although the Court is not directly involved in the re-education process.

1.7. Use of Force and Weapons

The Director of the Prison informed us that there is no evidence of the use of force in this facility, and that force has been used only in one occasion, where he too was a witness, when a person held in custody attacked a supervisor. So far, two employees were suspended; an educator for prompting a juvenile to escape, and a supervisor who illegally imported cell phones for the needs of the juveniles, as well as, for the inappropriate relations with the juveniles.

During the visit, we observed that the supervisors are not armed; however, some of the supervisors carried their weapon cases. This led the representatives to believe that the weapons were removed only for the visit.

1.8. Contact with the Outer World

The juveniles have right to receive visits, which are performed in the prison canteen, and the duration of the visits lasts from 1 to 2 hours. Visits are not allowed if the juveniles are in solitary confinement, and also, the Director can reject visits if there are reasonable reasons to do so.

The juveniles are allowed to have telephone calls twice a week. The telephone calls are done from the public telephone, and the juveniles buy telephone cards with their own money. The supervisors monitor the telephone number that is dialed by the juveniles.

The juveniles are allowed to send and receive letters. However, the Director reads the mail that is being sent, as well as, the mail that is being received.

The persons that are in custody correspond with the outer world through the competent Basic Court, that is to say, through the Investigative Judge or through the Presiding Judge.

1.9. Free Activities

Common activities that are performed in the frames of the Prison are the sports activities: soccer, basketball, and ping-pong, and in the frames of the Prison there is a big library that is seldom used by the juveniles because many are illiterate.

The Prison provides education for the juveniles. Teachers from the Labor University in Ohrid perform the lectures. Only 5 juveniles attend the lectures, and 3 juveniles continued their high school education in their stem schools as part-time students, and one person has completed high school education.

1.10. Inspection

The Management for Execution of Sanctions of the Min-

istry of Justice performs the inspection. They visited the Prison in 2007, as well as, a week ago; however, the report with the recommendations has not been delivered to them yet.

After the last visit by the Management for Execution of Sanctions, the Prison received remarks that are directed towards the better and speedy management of records, the speedy recording in the medical charts and similar remarks.

The recommendation is that these problems should be removed immediately.

The Ombudsman from Kicevo also visits the Prison once a month, as well as, OBSCE that performed their visit recently, and other Non-Governmental Organizations.

The visits from the judges and the Centers for Social Work are rare, and in the past few months, only the judge Vasilka B. from the Basic Court Skopje I Skopje has visited the Prison.

2. List of Notable Problems

- The Re-Educational Sector, which plays a significant part in the re-socialization of the juveniles, is composed of only 2 people.
- The admission of adults, who in the time when they committed the criminal act were adults, in a prison for juveniles, is against the law and against every international document[3].
- Bad conditions in the Custody Department: there were enormous holes in the floor, the air in the entire premise was humid, the persons in custody did not have natural lighting, and the lighting in the cells came from the light bulbs from the corridor of the Custody Department, and some of them were out of order.
- The bad condition of the solitary confinement rooms.
- There is no heating in the dining room.
- Although there are prisoners infected with Hepatitis C, the other prisoner and the employees have not been vaccinated.
- The lack of dental exams. The last dental exams were performed two years ago, and the prisoners visit the dentist only if necessary.
- The rare visits from the judges and the Centers for Social Work.
- Violation of the Right of Privacy; the Prison is located in the town, and it is separated only with a high wall from the neighboring houses.

3. Recommendations

- Urgent employment of a Social Worker.

- Urgent reconstruction of the solitary confinement rooms and the cells in the Custody Department.

- Regular and mandatory visits from the judges and the Centers for Social Work.

- Vaccination of every imprisoned person and every employee, regular systematic check-ups and dental exams.

- Heating of the dining room.

- Dislocation of the Prison.

- Taking real and appropriate measures for more efficient re-socialization of the persons that already have been through the educational programs in the Educational Correctional Home – Tetovo.

- Respect of every provision in the Law on Executing Sanctions, without a selective approach.

- A greater cooperation by the Courts regarding the submitted propositions for probation release; they should have more faith in the objectivity of the decisions made by the Prison management that files propositions for probation release using argumentative reasons.

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[1] The visit was performed by representatives of the Helsinki Committee: Keti Jandrijeska Jovanova, Vjolca Mora Bajrami and Pavlina Zefic

[2] Law on Execution of Sanctions

Article 268

(1) At night, the juveniles will be accommodated in separated sleeping rooms in one premise, according to the institution possibilities.

(2) If at night, because of shortage of space more juveniles are accommodated in one room, which number must not be higher than five persons, supervision should be organized in such way so that each juvenile shall be given protection.

[3] The United Nations Rules for the Protection of Juveniles Deprived of their Liberty are that the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be used as a last resort.

The Law on Execution of Sanctions (Art. 24, 40 и 259)[3] states that the sentence for juvenile imprisonment imposed upon juveniles under age of 23 years shall be executed separately from the adults sentenced to imprisonment. Ruling No. 07-857/1 of August 8, 2008 of the Ministry of Justice for the allocation of the convicted and juveniles states that in the Prison in Ohrid only junior adults and juvenile males that have been sentenced to imprisonment in a juvenile prison are admitted.

REPORT ABOUT THE VISIT OF THE EDUCATIONAL CORRECTIONAL HOME – TETOVO

October 21, 2008

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Visit of the Educational Correctional Center – Tetovo

On October 21, 2008 a delegation from the Helsinki Committee for Human Rights of the Republic of Macedonia, complied of the representatives Vjolca Mora Bajrami, Keti Jandrijeska Jovanova and Pavlina Zefic, visited the Educational Correctional Center – Tetovo, located in the building of the Correctional Facility Prison Skopje – Skopje since 2001 when it was transferred in Skopje. The duration of the visit lasted approximately 4.5 hours. The representatives arrived at 10 a.m.

The representatives met with the Deputy Director of the Educational Correctional Center – Tetovo, Mr. Burim Maksuti, with the Head of the Re-Educational Service, with the doctor and with the supervisor of the Security Sector.

The representatives were allowed to speak without restraint with the juveniles, but because of the presence of some of the employees of the Center, the juveniles did not want to communicate freely, thus they requested to speak privately, without the presence of the employees.

On the day of the visit, the Educational Correctional Center for Juveniles was located in one wing of the Prison "Skopje". The Educational Correctional Center was dislocated in Skopje during the armed conflict in 2001. In Tetovo, the stem location, the Center was comprised of several buildings and workshops in the fashion of Swedish pavilions, in which an entire network of different programs for theoretical and practical qualification and education of the juveniles were embedded, as well as, their rights and obligations. After the conflict ended, the building has not been transferred from Skopje back to Tetovo. Almost 8 years have passed since the dislocation of the Center from its stem location, and the Government has not succeeded to be of assistance for a speedy solution of the problem, therefore, currently the juveniles are compelled to live in harsh conditions in the Prison for Adults, and they intermingle with the adults on the playing field everyday. The entire personnel, including the Director, the educators and the guards, travel everyday from Tetovo to Skopje.

The Deputy Director, Maksuti, informed us that the project for the construction of the Center is in preparation and that for this purpose a location of 14,000 square meters (45, 931 square feet) has been found in the village Zelino near Tetovo. This location is property of the Ministry of Defence.

1. General Information

The Educational Correctional Center – Tetovo is a facility of semi-open character and it dates since 1962 when protegees from Kraguevac were transferred to this Center. Since 1974, in this Center, European Prison Rules have been introduced. These Rules are applied at the present time. This Center is the only type of collective institution for juveniles in Macedonia. The total surface area of the Center is around 100–120 square meters (328–393 square feet) for the entire building.

The capacity of the Center is 20 persons. Currently, in the frames of the Center, during our visit, 22 juveniles were registered, 18 of which were present, and 4 absent. According to the records of the Center, 35 juveniles have been registered, 1 of which is in custody, 12 are in refuge, and 4 are foreign persons.

The Center has 6 sleeping rooms that are divided as educational groups. The surface area of the sleeping rooms is from 10 to 12 square meters (32–39 square feet), and the number of beds in the sleeping rooms varies from 4 to 6 beds per room. The standard of 4 square meters (13 square feet) per minor cannot be fulfilled due to the crowdedness in the Center.

Trifling renovations in the Center are done annually, the Center was painted, the sanitary facilities were renovated last year, and for larger repairs, maintenance persons are summoned.

The Institution personnel is comprised of the following employees:

- 2 social workers,
- 1 pedagogue,
- 1 defectologist,
- 1 doctor (employed for the needs of the Health Service, the doctor also works as a laboratory assistant and as a medical nurse),
- 4 psychologists – educators,
- 6 employees in the Tutoring Sector (the Sector includes 2 cooks, 1 painter, 1 upholsterer, 1 carpenter and 1 employee in the agro-economy – every employee has a highly qualified education),
- 15 indefinite employees in the Security Sector (the Security Sector includes 1 commandant, 1 marshal, 1 driver-supervisor, 12 supervisors)
- 3 supervisors, definite employees in the Security Sector,
- 8 employees in the Administration, which is located in Tetovo.

There are no employed hygienists in the Center because the juveniles take care of the sanitary conditions in the Center. Moreover, there is no dentist employed in the Center, but if a need for dental intervention arises, or if there is a need of dental examinations, then the doctor from the Center takes the juveniles, on a scheduled appointment, to see a dentist outside the rounds of the Center, with escort if necessary.

During the conversation, it was pointed out that the actual number of supervisors that are needed for an Institution of this type is 34. However, according to the statements made by the Head of the Security Sector, and with the current capacity of the Institution, they have 24-hour coverage; 3 supervisors are engaged during the day and during the night, there are 2 engaged supervisors.

The juveniles alleged part of the supervisors of inappropriate behavior, that is to say, that the supervisors often use verbal threats, curses and so on.

The Deputy Director pointed out that there is a need of two more educators due to the needs of the re-educational service, as well as, that the Center has filed a request for 8 new employments, for which they are awaiting response.

1.1. Categories of Persons in Detention

The juveniles in the Center are male, they belong to different nationalities and the groups are homogenous. The juveniles are from 14 to 23 years of age. According to the statistics of the Center, 4 foreign persons that are currently in refuge have been sentenced with an educational correctional punishment.

The juveniles in the Educational Correctional Center have performed various criminal acts: theft, murder, rape, etc. These criminal acts are their first offence. If they were to perform another criminal act, they would be sent to the Prison for Juveniles in Ohrid. The persons are allowed to stay in the Center until they reach the age of 23. Rarely, a juvenile is sentenced with a precisely determined length of stay at the moment when he enters the Center. The length of the stay in the Center depends on the behavior of the juvenile.

The Center pays attention of the nationality of the juveniles, which are in the Center, and in every 3 months, prepares a report that is submitted to the Ministry of Justice.

The decision to place a juvenile in the Center is made by a judge during a hearing and in the presence of a Prosecutor and representatives from the Centre for Social Work from the residing area of the juvenile. The decision to terminate the stay in the Center is made by a Commission comprised of representatives of the Court, the Public Prosecution, and the Centre for Social Work and members of the personnel from the Center (usually the Director, and members of the Department of Education).

1.1.1. Departments in the Center

The disobedient juveniles are placed in the closed department where they are monitored, and where the rules are stricter, with regular controls and limitation of their movement. In this department, the juvenile is always with another person that has also been punished, and the duration of the sentence is from 3 to 7 days.

If the juvenile shows progress in his education and behavior, he is transferred to the semi-open department. If he shows additional progress, then he is transferred to the open department, where there are more privileges, for example, domestic visits and more visits with their families.

The placing in these three departments (closed, semi-open and open department) is the only form of segregation in the Educational Correctional Center.

The team of experts that works with the juveniles is comprised of a social worker, sociologist, psychologist, and a doctor. The same team of experts works with the juvenile while he is in the Admissions Department[1], after his arrival in the Center. In the Admissions Department, a systematical examination is performed, and it is mandatory to record the data in the medical chart. The rules of the Center and the house rule are explained to the juvenile, the psychologist meets with the juvenile, and so on.

Afterwards, the team of experts prepares an expert opinion, which serves as ground for the preparation of the program for work with the juvenile. The educators who prepare a report for the realization of the same realize the program. The realized work is different for every juvenile.

The team performs a monthly study of the personality of the juvenile.

1.2. Material Conditions and Hygiene

The building in which the Center is contained is divided into two floors. There is a room for everyday activities on the first floor, which is used as a classroom and as a workshop for the specialized subjects. This room is used as a dining room as well.

The two rooms in the Closed Department are in very poor material conditions, with humid air, and old ruined toilets, which have no doors and are located in the rooms.

The sleeping rooms are on the second floor in the building. There are six sleeping rooms on the second floor. The room, which they call the "temporary room", and use as a room to place the newly admitted juveniles while they adapt to the conditions in the Institution, is in a poorer condition compared to the other rooms, because it has been equipped only with a bed and newly placed shelves on the wall. Usually, the juveniles spend one to two months in this room, depending on their case. On the day of our visit, we were told that nobody resides in this room, however the juveniles told us that one person is placed in the room under medical supervision.

The other rooms were far more beautiful and cleaner. These rooms are called "permanent cells". The juveniles are placed in these rooms after they get used to the regime of the Institution. These "permanent rooms" are the same size as the "temporary room", but some of these rooms contain curtains, carpets, shelves, radio and cassette players, and many posters and pictures on the walls. The sleeping rooms in which the juveniles are accommodated have good lighting, there is natural ventilation, and each room has its own electricity plug. The regime of the Center is to turn off the lights at 10 p.m. Only three rooms have air conditioning, that is to say, the dining room, which is also a free activity room, in the Department for Enhanced Re-Education and in the library. Radiators heat the rooms; the Prison "Skopje" regulates the heating, and there are additional radiators in each room that serve for additional heating.

Every room has beds (two-storey beds that are 30 centimeters [11 inches] above the floor) with clean sheets, blankets and mattresses, tables, chairs, shelves, etc. However, there was a lack of lockers where the juveniles can store their personal belongings and clothes. Some of the lockers were locked, but at our request, the juveniles unlocked them and the delegation could inspect the tidy storage of their personal clothes. The Center provides the juveniles with blankets, clean sheets, and pillows, which can also be brought by the juveniles in the Center. Moreover, the Center supplies the juveniles with clothes and products for personal hygiene (toothpaste, toothbrush, toilet paper, soap, shampoo and razors).

According to the statements made by the Deputy Director and the Supervisor of the Security Sector, sometimes the juveniles demolish the equipment in the rooms, especially until they adapt to life in the Institution, thus during this period they break part of the inventory.

The sheets are washed in the laundry room (with the laundry machine and the dryer, which are property of the Center) where a juvenile is engaged to work, and he is replaced by another juvenile the following week or by need.

The employees informed us that the Center has two usable toilets for the needs of the juveniles, 2 faucets, 2 sanitary facilities, 2 showers with 2 boilers, and that the juveniles always have hot water for their needs. However, during our visit of the Center, only one toilet was in use, in which the hygiene was terrible, and only one shower was in use. However, there was no water in the Center because, as the employees informed us, the pipes were being repaired. The products for hygiene, allegedly, were provided by the Center, bought with budgetary means.

The yard that is being used by the Center is small and has access to the sports field. There is no shade in the yard, except the wooden board. On the day of the visit of the delegation, the juveniles did not use the benefits of the Center; instead, they quietly sat under the wooden board along with the members of the personnel, and part of the personnel from the Re-Educational Service. Some of the persons that live in the Center sat near the Center, and were not at all engaged.

The delegation succeeded to speak with a few boys. They spoke of additional problems. First, they complained about the bad material conditions, the small space, the lack of lockers, the lack of heating, and the lack of hot water. Second, they complained about the work of part of the Re-Educational Service, as well as, the manner in which the juveniles receive the right to a free weekend. Third and last, the juveniles complained that the adult prisoners come

in their part of the prison (on the soccer field or in the TV room) and a crowd of juveniles and adults is formed. Provocations in these situations are possible.

During the visit, the delegation could see the immediate surrounding of the prison, and the possibility to achieve contact with the adult prisoners. Moreover, we received an impression that the relations between the juveniles and the personnel are not good and are not on the highest level.

1.3. Nutrition

The juveniles receive versatile food; there is a list of meals (composed by the doctor, the store man, and the educator), which is altered according to the needs of the juveniles. The employees pointed out that the food contains around 14,000 KJ, that it is quality food, and that it satisfies the needs of the juveniles. The juveniles receive 4 meals per day; breakfast at 7 a.m., a snack at 10 a.m., lunch at 1:30 p.m. and dinner at 6:30 p.m.

The meals are served in the prison canteen. The record book for nutrition is in the prison canteen. Most often, the meals contain chicken meat, beef or fish, because some of the juveniles are Muslim.

1.4. Medical Care

One doctor takes care for the health of the juveniles. The doctor performs every necessary exam. In the case of a severe injury, the minor is sent for treatment to the City Hospital or to the Clinical Centre with the presence of a doctor. The juveniles do not have health insurance, although in a few attempts the Center has made effort to change this, however the attempts have failed.

The fact that the juveniles are not considered to have health insurance is surprising because according to Article 5, paragraph (1), item 13 of the Law on Health Insurance and Article 12, paragraph (1), item 21 of the Law on Health Protection, it is stated that health insured persons are the "persons that are sentenced to prison, the persons that are in custody if they are not insured on another basis, and the juveniles that are sentenced to an Educational Correctional Center, that is to say Facility ".

We were informed that the doctor is available 24 hours to the juveniles, although his working hours are from 8:30 a.m. to 4:30 p.m. In the case of a serious injury, the juveniles can call the doctor.

One of the sleeping rooms in the Center serves also as an Admissions Department, and as an outpatient clinic. The medicine is supplied from Tetovo, and during next week, the Center will receive a donation from the Bureau for Medicines from the Ministry of Health.

Systematic check-ups of the juveniles are performed twice a year. So far, the doctor has recorded 7 cases of Hepatitis C and 5 cases of Hepatitis B among the juveniles[2]. There are no HIV positive juveniles in the Center. However, there are 4–5 registered drug addicts. The Center does not provide treatment with Methadone; the Center provides only vitamin therapy. However, there are juveniles that have been diagnosed with the Clap – a sexually transmitted disease. In order to protect the other juveniles, the doctor vaccinated them, and they received counseling and condoms.

Mandatory testing of the blood of the juveniles is performed twice a year.

The employees that are in daily contact with the juveniles have also been vaccinated. In 2008, 2 appendectomies were performed, and surgery in order to remove a razor from the stomach of a juvenile; the costs for these health services were covered by the Center. So far, there has been no recorded death case in the frames of the Center.

The doctor records every injury that the juveniles receive in the medical register. The doctor consults with a psychiatrist regarding the mental health of the juveniles. If the juveniles need to receive medical help from a dentist, they are taken to a private dentist and the expenses are covered by the Center, although according to the standards of the Committee for the Prevention of Torture it is stated that the juveniles have right to an appropriate access to various specialized health protection, including dental protection. Every juvenile has a medical chart.

The Center does not cooperate with the Fund for Health, but the Deputy of the Center informed us that they have contacted with the Global Fund and with UNICEF, and that they expect to cooperate with them.

The doctor pointed out the need of a medical nurse; however, this request and the request for an ambulance car have been denied.

When a juvenile is punished, primarily he is examined by the doctor in order to evaluate if he is capable of accepting the sanction, and then sent to the Re-Education Department. If a juvenile has escaped from the Center, when he is brought back his blood is tested for HIV, Hepatitis B and Hepatitis C.

1.5. Work in the Center

The juveniles perform various chores like painting, cooking, washing, etc. In return for their engagement, the Center compensates them with 100–800 denars in accordance with the heaviness of the chore. The employees informed us that an amount of 800 denars is paid to the persons that work in the kitchen or that paint; however, a juvenile informed us that he received 250 denars for the painting job that he performed. The educators store the money, and they are the ones that regulate their spending.

The report is done individually for every juvenile. In the report, the work of the juvenile is listed, thus it is measured with his behavior and the opportunity to receive certain

benefits, for example a free day, which is very important for the juveniles.

1.6. Discipline, Punishment and Isolation

The persons that are retrieved from refuge or the persons that have dangerous behavior are sent to the Re-Educational Department. There are several disciplinary measures in the Center: notice, public notice, restrictions to 20 % of the allowance, and halt of benefits for a period of three months. The benefits include absence, additional visits, telephone calls and receiving packages. The strictest disciplinary measure is placing a minor in the discipline cell.

The Director of the Center in accordance with the regulations for which the juveniles are informed sentences the disciplinary measures; the Director also has the task to control the procedure.

The juveniles complete their sentence in two rooms, and the sentence lasts from 3–7 days; however, during the sentence the juvenile is never alone. The rooms have 6 beds and a sanitary facilities.

The Center has regulations regarding the disciplinary measure – solitary, and we were informed that during 2008 they were 72 solitary meausures, 60 of which for escape.

1.7. Use of Force and Weapons

The employees in the Supervision Sector in the Center informed us that they do not use force on the juveniles. The Ministry of Justice has made a regulation that forbids the use of force. The delegation had the opportunity to see the regulation. Most of the time, the problems among the juveniles in the Center are solved with conversations, but the supervisor of the Center informed us there are difficulties in the handling of the juveniles, because often they are provoked by them. During the visit, the supervisor of the Center showed us the locked closet where they store the bats and weapons of the supervisors, thus pointed out that, the supervisors do not use their weapons during the work hours of the Center. The juveniles were in dilemma whether or not the bats are used to “punish” them, and so some of the juveniles stated that such cases do exist, while some denied this.

1.8. Contact with the Outer World

The Center allows the juveniles to receive visits from family members, and they are not time limited. The family visits are performed in a special room that is located in the entrance of the Prison “Skopje”, but the problem is that this room is also used by the adult prisoners. Most of the time, the visits are performed during the weekends, although the Center does not exclude the possibility for the visits to be performed during the weekdays, that is to say until 2 p.m. The juveniles are allowed to have telephone calls throughout the entire day; however, the fact that the employees regularly read the personal mail of the juveniles, that is to say the packages that they send out[3] and receive, was surprising. The employees justified this with the fact that they do this for the safety of the juveniles, and that the juveniles are aware that their mail is being read.

The Ombudsman also visits the Center, and the Committee for the Prevention of Torture visited the Center twice during 2008. The Ministry of Justice and the European Representative Mr. Erwan Fouere also visited the Center. During the summer, the Non-Governmental Organization HOPS also visited the Center. The media and press also perform visits of the Center.

1.9. Free Activities

The small space and the lack of equipment in the Center do not permit to perform a large number of organized activities. In accordance with the legal provisions that entail the juveniles to complete elementary education, the juveniles continue their education or begin to become literate in the frames of the Center. Teachers from the Labour University “AS Makarenko” perform the lectures. Four juveniles are in the 1–2 grade[4], 9 juveniles are in 2–4 grade, 10 juveniles are in 5–6 grade, and 4 juveniles are in 7–8 grade. Teaching is done in the room for everyday activities. There are two juveniles in the Center that are in high school (hotelier education), they study part-time, and they receive their books from the Ministry of Justice. The employees informed us that it is not stated in the diplomas that the juveniles receive, that they have completed their education in an Educational Correctional Center.

The free activities are composed of theoretical and practical education; various sections are not performed because the Center does not provide suitable conditions, and because there is a lack of space. The juveniles have certain benefits, for example going outside the Center, bonus days received for good behavior, pool visits during the summer, and excursions. There are also sports competitions with “25 May” and “Ranka Milovanovic” for which the juveniles are especially motivated.

The Center contains a library which is very poor, however because some of the juveniles are illiterate it is almost out of use. There are two computers in the library that can be used by the juveniles. However, some of the juveniles told us that they cannot always access the computers because they need passwords to log in. Moreover, during our visit, one of the computers was out of order.

The personnel of the Center did not give us any explanation whether or not the juveniles showed interest to practice their religion. Moreover, the Center does not entice them to do so. On the territory where the Center is located, there are neither conditions nor objects built for the intention of religious purposes.

1.10. Inspection

The inspections in the Center are performed by the Department for the execution of Sanctions of the Ministry of

Justice, the Institute for Health Protection (collecting swabs for the analysis of the water and bacteriological analysis), members of the Council of Europe, the Committee for the Prevention of Torture – CPT, the Ombudsman, and HOPS. However, the Centres for Social Work rarely visit the Center and they almost do not cooperate with the Center. Only a small number of judges visit the juveniles and care about their behavior[5].

During September 2008, a fluorographic screening was performed on every minor in the Center.

2. List of Notable Problems

- The juveniles in the Center are not considered to have health insurance; this is contrary to the legal norms[6].

- The use of the disciplinary measure "solitary confinement", in accordance with the international standards, is an inhumane manner of punishment, and is contrary to the international standards[7].

- The restriction to 20 % of the allowance as a disciplinary measure against the disobedient juveniles is contrary to the regulations for the reward of their completed chores.

- The rare visits by the Centers for Social Work and the almost complete hinder with the Center, as well as, the small number of judges that visit the juveniles and care about their behavior.

- Permission for all of the necessary employments in the Sectors, which are relevant for the efficient completion of the tasks in the Center.

- The inability to efficiently perform the disciplinary measures through the existing programs in the Center, with a goal to re-socialize the juveniles and to provide appropriate development of their personality.

- The direct contact and intermingling of the juveniles with the adult prisoners.

3. Recommendations

O The Center must be dislocated immediately to a location that will be adequate for juveniles;
O Until the Center is dislocated, the Macedonian authorities should IMMEDIATELY take urgent measures to physically divide the juveniles in the Prison "Skopje" from the adult prisoners, as it is stated by the international standards[8];
O Immediate efforts should be made so that the juveniles in Center are covered by the Law on Health Protection and Health Insurance, so that they could use their health services from the secondary and tertiary preventive protection[9], if such a need arises;
O Continuous professional training for the treatment and control during the performance of their chores, for the entire personnel including the supervisors;
O Careful selection and employment of personnel in accordance with their maturity and capability to handle the challenges which are brought on by the job, because they have to be devoted to work with young people and to be able to manage and motivate the persons that are under their responsibility;
O Regular and mandatory visits by the judges and the Centers for Social Work;
O Solitary confinement of juveniles as a disciplinary measure should be immediately terminated, because this is an inhumane manner of punishment that is contrary to the international standards;
O Continuing the well-started practice of health education, through programs which would contain information about contagious diseases, treatment and prevention of the sexually transmitted diseases;
O The formation of an appropriate legal mechanism that would be outside the administrative body of the Center and that would be totally independent in the revising of the appeals and complaints by the juveniles, after which proper actions and measures would follow;
O The punished juveniles should be kept separately from the other juveniles, and they should have access to reading materials and they should have at least one hour of daily recreation on the open;
O The Macedonian authorities should allow visits of Non-Governmental Organizations of every place for monitoring. The visits should be regular, unannounced, and the organizations should be able to conduct private conversations with the persons in the Institution, and they should also be allowed to access the necessary documentation;
O Object for religious purposes should be built, and agreements with religious organizations should be contracted, so that the prisoners can have the opportunity to practice their religion, because it does not mean that they are not interested in practicing their religion if they do not state so.

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[1] Due to the lack of space, one of the sleeping rooms serves as and Admissions Department, that is to say as a room for stationing.
[2] The last systematic check-up was performed during the months April and May.
[3] When the employees were asked if they read the personal mail, which the juveniles send to certain Institutions, for example the Ombudsman or the Helsinki Committee, they said that "the mail is read depending to which Institution it is sent to".
[4] In one school year, the juveniles receive a diploma for two completed grades.
[5] The visits are performed by the Centers for Social Work of Kavadarci, Stip, often by the Centre for Social Work of Bitola. However, the employees could not recall when was the last time when they received a visit from the Centre for Social Work of Skopje, where the Home is located.
[6] Law on Health Protection Article 12, paragraph (1), item 21 and Law on Health Insurance Article 5, paragraph (1), item 13.
[7] The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, part K. Discipline procedures, item 66 and item 67.
[8] The United Nation Rules for the Protection of Juveniles Deprived of their Liberty part C. Categorization and Placement, item 29
[9] specialized and consultative health protection and hospital (short-term and long-term) health protection.

THE RIGHT TO RESPECT OF PRIVACY IN MACEDONIA

Introduction

The legalization of special investigation techniques (SIT) in the Republic of Macedonia has expanded the range of techniques that authorized law enforcement officers may use in order to much more successfully counter the growing problem of organized crime and terrorism. However, this has also increased the possibility for greater infringement upon the private life of individuals. The introduction of special methods in the criminal procedural legislation, which until recently have been applied only by secret services is a relatively new development in comparative and international law. On one hand, it is recognized that the techniques of secret surveillance, recording and earsdropping are threats to democracy and human rights and freedoms in terms of their protection. On the other hand, there is awareness that today's democratic societies are threatened by sophisticated forms of crime, espionage and terrorism, which requires that states to have means that they could use in efficiently countering such threats. Hence, a reasonable compromise between the requirements to protect the democratic society and the individual rights is accepted. The main rationale is to legally regulate certain activities by state bodies that could significantly infringe upon civil rights and freedoms in order to protect the rights and freedoms from abuse and to fulfill the reasonable expectations for privacy in a democratic society, ensuring at the same time that the results of the techniques could be used as evidence in proceedings. In any case, instead of gradually designing more consistent solutions based on the hitherto experiences and good practices of developed European countries, the latest "offensive" by the Government in the fight against organized crime was aggressively refocused on corruption which suddenly has become the greatest evil for the young Macedonian democracy, which on its part has resulted in expansion of the application of special techniques on a wide range of crimes.

As early as mid 2007, the Helsinki Committee published an analysis regarding the then announced amendments to the Law on Criminal Procedure, appealing to the relevant institutions that in a state governed by the rule of law and in which fundamental human rights and freedoms are respected, the law and human rights must not be devaluated in favor of illegally applied techniques in suppressing the crime in the country. In addition, the application of special investigation techniques must be limited to cases of an overriding social threat that is proportionate and appropriate to the derogation from the fundamental human rights and freedoms.

The Constitution of the Republic of Macedonia envisages that fundamental human rights and freedoms recognized under international law and set forth in the Constitution are one of the fundamental values of the constitutional order[1]. The Constitution furthermore sets forth norms on the respect for and protection of the privacy of personal and family life of citizens, of the dignity and repute of the person[2]. The Constitution also envisages the possibility for setting limitations on the rights and freedoms under precisely determined conditions. Thus, the inviolability of the home may be limited only on grounds of a court decision for purposes of detection or prevention of crimes, or to protect the health of citizens. However, the Constitution does not set any limitations on the right to respect for and protection of the right to privacy of personal and family life of citizens, and of the dignity and repute of the person.

The purpose for which derogation from inviolability of the right to privacy is allowed is too widely defined under Amendment XIX. Each measure which limits the right to respect of the privacy of correspondence and communication must be aimed at protecting an interest which is of such significance that justifies the limitation of privacy. Despite the fact that the relevant provision contains a seemingly exhaustive list of purposes that could legitimately justify the limitation, these purposes have been worded with too general terms and have strong ideological and political connotations, which allows indeed great flexibility in their application. This especially applies to the area of national security in respect of which there are practically no objective criteria which could prevent large scale and arbitrary intrusion upon privacy of communication, instead of preventing it.[3]

Amendments to the Macedonian legislation in respect of the derogation from the right to privacy and use of special investigation techniques

Special investigation techniques were introduced after the relevant amendments to the Constitution of the Republic of Macedonia (Amendment XIX) and to the Law on Criminal Procedure in 2004, as well as the Law on Communication Interception of 2006. They were introduced to be applied in precisely defined situations, following a procedure set forth in law. The materials of the debate on the adoption of these regulations show that these techniques are allowed only as the last resort (ultima ratio), as the necessary evil, applied only

in respect of the most serious forms of organized crime.[4]

They are applied when there are grounds to suspect that a crime is prepared, is being perpetrated or has been perpetrated for which a prison sentence of at least four years has been prescribed, as well as for crimes for which there are grounds to suspect that they are prepared, are being perpetrated or have been perpetrated by an organized group, gang or other criminal association, for purposes of ensuring information and evidence necessary for successful criminal proceedings, which may not be provided in another manner or their collection would be linked with great difficulties.

The latest amendments to the Law on Criminal Procedure and the Law on Communication Interception[5] expand the types of crimes for which use of special investigation techniques is allowed. Hence, these techniques may now be used in respect of the following crimes under the Criminal Code:

- Unauthorized production and release for trade of narcotics psychotropic substances and precursors, under Article 215;
- Extortion under Article 258;
- Blackmail under Article 259;
- Money laundering and other criminal proceeds under Article 273;
- Smuggling under Article 278;
- Customs fraud under Article 278-a;
- Misuse of official position and authorization under Article 353;
- Embezzlement in the service under Article 354;
- Fraud in the service under Article 355;
- Helping oneself in the service under Article 356;
- Accepting a bribe under Article 357;
- Giving a bribe under Article 358;
- Unlawful mediation under Article 359;
- Unlawful influence on witnesses under Article 368-a;
- Criminal association under Article 394;
- Terrorist organization under Article 394-a;
- Terrorism under Article 394-b;
- Crimes against the state (Chapter XXVIII) and
- Crimes against humanity and international law, (Chapter XXXIV) of this Law as well as crimes perpetrated via electronic means of communication".

These latest amendments to the laws have opened the doors wide for the use of special investigation techniques in preventive purposes, as well (even when there is a suspicion that a person will perpetrate a crime). The amendments have changed the condition under which these techniques are to be applied for a crime for which a five year prison sentence is prescribed, perpetrated by an organized group, gang or other criminal association. If some of the crimes for which use of these techniques is allowed are taken into consideration, it can be seen that the latest legislative amendments avoid cumulative conditioning and that the minimal threshold is lowered to one year prescribed sentence.

The Law sets forth that the order for the application of special investigation techniques may be issued by the Public Prosecutor or by the Investigative Judge in the preliminary investigative procedure or only by an Investigative Judge in the course of an investigative procedure. In this respect, it should be taken into consideration that the order is issued with the aim of facilitating gathering of evidence and information necessary for the criminal proceedings, which could not be otherwise gathered or their gathering would be linked with great difficulties. According to the Law on Criminal Procedure evidence gathered through application of special investigation techniques will be admitted only if these techniques have been used in a manner and in a procedure set forth in this Law.

The novelties introduced with the said laws also relate to the duration of the ap-

plication of special investigation techniques. Hence, the thus far allowed duration of four months at the most (30 days+90 days) has been prolonged under the Law on Communication Interception to a period of one year at the most. Considering that the amendments to both laws were adopted one after the other in a brief period, the obvious inconsistencies in these two laws are indeed surprising. Thus, the longest allowed duration of application of special investigation techniques according to the Law on Criminal Procedure is seven months, while this period according to the Law on Communication Interception is one year. It remains to see what will be the practical effects of these inconsistencies.

A significant amendment to the Law on Communication Interception is the change regarding the obligation of competent bodies to immediately destroy information gathered upon application of special investigation techniques, in case no charges are instituted against the concerned person. After the amendments, Article 22 of the Law envisages that in case the competent Public Prosecutor does not file a request for institution of an investigation, the materials gathered by communication interception are kept at the Public Prosecutor's Office until the legally prescribed statutory limitation for criminal prosecution expires, meaning a significantly long period.

Especially disputable and rather confusing provisions envisage the legal possibility for issuance of oral order for use of special investigation techniques, which leaves room to play the law or violate it. This regards the so called urgent cases, in which there is a threat of causing irreparable damage to the successful pursuance of the criminal procedure. In such cases, the investigative judge may issue an oral order allowing communication interception in a 48 hour period, acting upon an oral request for communication interception submitted by the relevant Public Prosecutor. It seems that there is a confusion made in respect of the preventive, pre-delict activities and post -delict investigation of the case. Namely, certain urgent situations are usually linked with cases when the security, life and health of people are threatened, or when there is a threat of a larger scale damage occurring. Indeed, Constitutional amendment XIX leaves room for preventive application of the techniques "for purposes of preventing or detecting crimes", which is now being confused with the post delictum work and functioning of the prosecution bodies and of courts.

European Convention on Human Rights and the right to privacy in the context of special investigation techniques

The European Convention on Human Rights (hereinafter the Convention) applies to the Republic of Macedonia as of 1997, while in line with Article 118 of the Constitution of the Republic of Macedonia, this Convention is an integral part of the domestic legislation of the country. Namely, international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law. Therefore, the Convention has supremacy regarding domestic legislation when the domestic legislation provisions are in collision with the Convention. However, in the national court practice, the Convention provisions are rarely applied, i.e. they are applied as an exception to the rule, rather as the rule. The references to the case law consisting of specific positions of the European Human Rights Court are even scarcer. The reasons for such a situation are complex and could be the object of a separate research.

In a period when there is a serious interest in the protection of national security, public health and public order and in the fight against crime, the state has the growing need to receive, observe and assess information. Individuals, on the other hand, need and have the right to respect of their home and correspondence. In its jurisprudence, the European Court endeavors for equalization of the serious requirements of the state with the protection of the personal sphere, in which respect it is underlined that any interference with the life of persons via special investigation techniques or gathering information is to be accompanied with sufficient safeguards against arbitrariness and abuse. In this regard the European Human Rights Court stresses that the safeguards need to be precise, predictable, necessary and proportionate, against which the Court reviews any claim of unjustified interference in the life of a person.

The national legislation, on one hand, needs to be sufficiently clear and comprehensive in order to give citizens sufficient indications related to the conditions under which the public authorities have the right to infringe and secretly interfere with the right to privacy of a person. On the other hand, the national legislation is to be also precise in terms of allowing the state a certain degree of possible interference, also precisely defining the scope and manner of interference. When this is established under the national legislation, the national authorities are to abide by law in absolute terms. In this context, it should be mentioned that the justifications that are strictly based on the need to protect the national security are accepted by the Human Rights Court with a certain reservation. Namely, according to the Court this does not give the state the right to unlimited margin of appreciation of the confidential use of secret measures against persons under its jurisdiction.

The European Court accepts a wider definition of the term "correspondence" under Article 8 and it includes written materials, especially those posted by mail, as well as telephone conversations. Most of the Article 8 judgments of the European Human Rights Court are related to interferences with the right to personal correspondence by prisoners or are related to surveillance technologies, such as for example telephone tapping.

In the Malone case there was a thorough analysis made of telephone tapping by the police. According to the applicable law of the United Kingdom, in this case the authorities had applied the special investigation techniques correctly. However, the European Human Rights considered that there was a violation of Article 8, paragraph 2 because the special investigation techniques had not been explicitly set forth in the law. [6]

This issue has been elaborated in greater detail in two cases against France, i.e. in the cases of Kruslin and Huvig. [7] In both cases telephone tapping by the police was disputed, and it was claimed that it represented interference with the right of the applicants to confidentiality of correspondence and personal life. Therefore, the European Human Rights Court in its judgments established that France violated Article 8, paragraph 2 of the European Convention and stated the following:

"Tapping and other forms of interception of telephone conversations represent a serious interference with private life and correspondence and must accordingly be based on a "law" that is particularly precise. It is essential to have clear, detailed rules on the subject, especially as the technology available for use is continually becoming more sophisticated."

In the case A. v. France[8], the Court goes as far as considering that the recording of a telephone conversation, even upon the initiative and consent of one of the interlocutress, and regardless that the conversation had dealt exclusively and deliberately with preparations of a criminal nature represents a interference in the right to respect of confidentiality of correspondence of the applicant. The French Government underlined that the recorded conversation fell outside the scope of private life of the applicant. However, the European Human Rights Court considered and established that the national legislation did not set forth the grounds for interference with the right to correspondence. Therefore, the Court established violation of Article 8.

The provisions of Article 8, paragraph 2 of the Convention allow the state to interfere with the general right to privacy proclaimed in paragraph 1 of the same Article, in order to prevent a crime or if this is in the interest of national security. The case law of the European Human Rights Courts leads to the conclusion that the state " in most cases is capable of proving and justifying the purposes" of the application of special investigation techniques, but it is much more difficult for the state to prove that the interference with the private life

has been “necessary in a democratic society” and that it has been “in accordance with the law”. States are to cumulatively satisfy both requirements in order that the state intervention could be in line with the Convention.

The Court considers that the term “necessary in a democratic society” implies that the interference in the private life of the individual is to be a response to a “pressing social need”[9] and in this respect it is not sufficient that such interference is “only” desirable and reasonable, i.e. the state is to prove that there is proportionality[10] between the goal pursued and the means used. The term “proportionality” implies two aspects:[11]

- Proportionality between the goal of the measures and the means used in pursuing the goal,
- Proportionality or just balance between the general interests of the community and protection of the rights of the individual.

In determining proportionality, the Court establishes whether certain interference in the private life of citizens is too intrusive or it imposes too great a burden for certain individuals, if this is justified by the interest of the community. At the same time, the state is to demonstrate that the interference in the private life of the individual has not been greater than necessary. In this context, the Court understands that when the interference in the private life of the individual is of “intrusive character” or the information gathered by the state is of especially sensitive character[12] , the state is to strongly substantiate the interference.[13]

In the case Klass v. Germany, the court states that the “powers of secret surveillance of citizens, characterizing as they do the police state, are tolerable under the Convention only in so far as strictly necessary for safeguarding the democratic institutions”[14]. In this sense, the Court considers that organized crime, terrorism or espionage can create the need for a higher level of interference in the private life of the individual owing to the seriousness of the threats against the democratic society, but in any case the social relevance of the goal one had and the level of intrusion into the private life of the citizen on the other hand, need to be taken into consideration.

Furthermore, the Court considers that in addition to proportionality, the state is to take due account of the principle of subsidiarity. Thus, the interference in the private life of the individual will not be considered necessary, if the state has other alternative methods the application of which leads to the attainment of the same goal.[15]

In conclusion, Article 8 of the Convention does not contain explicit provisions on the procedural safeguards in ordering application of special investigation techniques. However, the Court considers that the existence of procedural protection in ordering special investigation techniques is another criterion in considering the term “necessary”.

The second requirement that the state is to cumulatively fulfill (in addition to “necessary”), is the requirement “in accordance with the law”, which in other words means a requirement that the procedure, conditions and other circumstances of the application of special investigation techniques are regulated by precise legal provisions, in order to avoid the arbitrary discretion of the state. In other words, the law must strictly define the scope, i.e. the category or persons that could be subject to the application of special investigation techniques, then the type of crimes for which application of special investigation techniques is allowed, the duration of the measure (which must be reasonably acceptable), the manner is which the techniques are applied and the manner of exercising control and supervision of their application, the regime of use and storage of recordings made by use of special investigation techniques and other circumstances of importance for the application of special investigation techniques, and which are at the same time reflected on the individual’s rights and freedoms. In fact, such a requirement directly affects the principle of legal security of citizens, which is the pillar of the concept of the rule of law, i.e. of the state governed by the rule of law. The existence of this principle ensures protection against legal insecurity and injustices in the enforcement of laws and at the same time it ensures that the state performs its competences in accordance with prescribed legal rules.

The Court considers that the term “law” covers any legal framework of the domicile country, which regulates the application of special investigation techniques. In this respect, if the domicile country lacks a legal framework, this means violation (of Article 8) of the Convention. The Court does not insist (but recommends) that the “legal framework” is in a form of a legal act- law, but demands a legal act with a statutory effect.[16]

In addition to the formal features of the “legal framework”, the Court insist on certain features of the contents that the law is to have, which are related to the precision, clarity and determination of norms that would enable citizens to predict (to a reasonable degree) in which cases there could be violations of their private life.[17]

Furthermore, the legislation is to be accompanied with appropriate procedural safeguards from arbitrary discretionary rights of the executive authorities in applying the special investigation techniques[18]. Even more, if the state has discretionary rights it is obliged to point out the degree of such discretion[19] in order to establish just procedures and in order that the state reduces its discretionary rights to the minimum level.[20]

In the context of the above stated, the Court demands that the law is sufficiently accessible for citizens so that they are informed about the possibilities of their individual rights and freedoms being threatened. On the other hand, this does not mean that the law is to create possibilities for citizens to be able to predict in advance that they are objects of application of special investigation techniques, since this would disrupt the efficiency of the criminal prosecution and the state "would disarm itself".

The Court does not pretend to establish an obligation for the state to always inform citizens about the application of special investigation techniques. Namely, in cases in which the material gathered by application of special investigation techniques means is used as evidence in criminal proceedings, the persons against whom the special investigation techniques have been used will be of course informed, while in cases in which the special investigation techniques have been suspended, the Court considers that "perhaps it is necessary to inform persons about special investigation techniques that have been applied against them, although there is no rule that such a disclosure is absolutely necessary."[21]

The legal provisions must be precise and unequivocal in order that citizens could comply with the law. However, the request for clarity of the law is not threatened if certain provisions could be interpreted in several manners.[22]

In summary of the above stated, certain opinions and interpretations of the Court in a number of cases are presented:

"The rules with statutory effects must regulate circumstances in which intrusive surveillance is allowed[23] and must contain appropriate and efficient protection from abuse which will ensure that it will not be ordered incidentally and without proper attention[24]. The protection must involve "accessible and precise"[25] provisions (laws) which regulate the authorization for surveillance and which are sufficiently clear and precise. It must provide citizens with indications of the circumstances under which the surveillance techniques are to be used and the conditions which the state must satisfy before applying such techniques.[26] While these rules do not have to contain comprehensive definitions[27], they cannot simply leave the decision whether the surveillance will take place upon the unlimited discretion of the executive power or the Court[28] and the scope of any discretion must be indicated with sufficient clarity[29]. The rules must be in a legally binding form and must be accessible to the public.[30] The rules must define the category of people who are subject of surveillance, the types of crimes for which the investigation would be justified, the acceptable duration of surveillance and the circumstances under which a file of each recording will be kept by the state.[31] The rules must also point to the scope and manner in which the surveillance will be practically implemented[32] and there must be appropriate accountability methods regarding the authorization for application of surveillance and its control and supervision[33]. Such supervision does not have to be entrusted to the courts[34], although this is desirable and even important[35], but must be entrusted to an independent body capable of practicing continual control. After the surveillance has been suspended, perhaps the object of the surveillance should be informed, however this is not required when such information would be impractical and would undermine the efficiency of the operation."[36]

Special Investigation Techniques and the Right to Privacy from the International Perspective

As it has been already underlined in the analysis of the Helsinki Committee of 2007, considering the expressed need for more efficient fight against organized crime and serious crimes, the Council of Europe encourages states to apply special investigation techniques within the legal procedures, recommending however to strike a balance between their application and the guarantees for fundamental human rights and freedoms stipulated in the European Human Rights Convention and under the case law of the European Human Rights Court.

The Council of Europe has adopted a Convention on the Prevention of Terrorism that the Republic of Macedonia signed on 21 November 2006, but has not still ratified. In its Preamble, the Convention envisages that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms.

In the context of fight against organized crime and application of special investigation techniques, a Regional Strategy of the South-East European Countries was adopted on 23 September 2005. The Strategy envisages general guidelines regarding the application of special investigation techniques, and regarding the guarantees for fundamental human rights and freedoms. The Strategy envisages court protection and establishment of a national reporting system for the application of these techniques, as a form of evidence of the conducted control.

The United Nations Convention against Transnational Organized Crime envisages special investigation techniques in its Article 20, stressing that their application should be legally prescribed and aimed at efficient fight against organized crime, while each State Party shall, to the extent necessary, initiate, develop or improve specific training programs for its law enforcement personnel charged with the prevention, detection and control of the offences covered by this Convention.

Presenting its position on the use of special investigation techniques, in 2007 the Helsinki Committee referred to the Recommendation No. (2005)10 on special investigation techniques in relation to serious crimes including acts of terrorism adopted by the Committee of Ministers of the Council of Europe. According to this Recommendation, these techniques are to be applied restrictively where there is sufficient reason to believe that a serious crime has been committed or prepared, or is being prepared, by one or more persons. The Recommendation calls for supervision of the application of these techniques, as well as for safeguards i.e. that the procedural rules governing the production and admissibility of evidence gained from special investigation techniques shall safeguard the rights of the accused to a fair trial.

This Recommendation recognizes that the use of special investigation techniques is a vital tool for the fight against the most serious forms of crime, including acts of terrorism. The general principle set forth by the Recommendation is that Member states should take appropriate legislative measures to ensure adequate control of the implementation of special investigation techniques by judicial authorities or other independent bodies through prior authorization, supervision during the investigation or ex post facto review.

According to the Recommendation, special investigation techniques should only be used where there is sufficient reason to believe that a serious crime has been committed or prepared and proportionality between the effects of the use of special investigation techniques and the objective that has been identified should be ensured. In this respect, when deciding on their use, an evaluation in the light of the seriousness of the offence should be made, taking account of the intrusive nature of the specific special investigation techniques used.

The Committee of Ministers further recommends to the member states to ensure that the competent authorities apply less intrusive investigation methods than special investigation techniques if such methods enable the offence to be detected, prevented or prosecuted with adequate effectiveness. Regretfully, the latest amendments to the Macedonian legislation in respect of special investigation techniques do not follow properly these recommendations taking into consideration the expansion of the scope of crimes for which it is allowed to apply such measures instead of finding more efficient and less intrusive solutions to detect the perpetrators.

On the other hand, an important safeguard such as the requirement that the request for communication interception filed with the investigative judge contains the reasons owing

to which the data and evidence cannot be ensured in another way, as one of the key instruments, has still not been practically implemented. Instead, it is further undermined through its expansion to cases in which gathering of evidence in another manner would be related to great difficulties (Article 10, paragraph 1, item 5, presently item 6 of the Law on Communication Interception).

The Committee inter alia recommends that Member states should ensure adequate training of competent authorities on the use of special investigation techniques, then training on criminal procedural legislation and relevant training in human rights, which as it can be seen, has still not become reality.

The Committee of Ministers of the Council of Europe has expressed its opinion regarding the use of special investigation techniques also in the Guidelines on Human Rights and the Fight Against Terrorism[37] in which it stresses that all measures taken by states to fight terrorism must respect human rights and the principle of the rule of law, then they need to be legally regulated and must be subject to appropriate supervision by an external independent body.

According to the same Guidelines, when these techniques restrict human rights, the restrictions must be defined as precisely as possible and be necessary and proportionate to the aim pursued.

Furthermore, in respect of measures which interfere with privacy, and special investigation techniques certainly do, it must be possible to challenge their lawfulness before a relevant court. The right to efficient legal remedy is the basic postulate of each state governed by the rule of law and is the basic prerequisite for legal security in a democracy society, and is hence integral part of all recommendations.

It can be concluded that despite the recommendations, as regards the use of special investigation techniques, the Macedonian legislation lacks concise solutions for the review of the lawfulness of the procedure for use of these techniques. Namely, Article 6 of the Law on Communication Interception stipulates that the person whose communication is intercepted has the right to dispute the authenticity of the collected data and the lawfulness of the communication interception procedure, in a procedure set forth in the Law on Criminal Procedure, which on the other hand lacks specific provisions in this regard. However, the legislator ensures the possibility for damage compensation for persons whose communication has been intercepted unlawfully. These legislative solutions do not clearly state which exact procedure is to be followed by a person who disputes the lawfulness of the gathered information, separate from the rest of the criminal procedure, in order to institute damage compensation proceedings.

The Committee of Ministers of the Council of Europe, in its Recommendation No. 95(4)[38] to the member-states on the protection of personal data in the area of telecommunication services, with particular reference to telephone services considers that interference by public authorities with the content of a communication, including the use of listening or

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tapping devices or other means of surveillance or interception of communication, must be carried out only when this is provided for by law and constitutes a necessary measure in a democratic society and in the interests of protecting state security, public safety, the monetary interests of the state or the suppression of criminal offences. Taking into consideration the latest amendments to the Law on Criminal Procedure and to the Law on Communication Interception and the consequent expansion of the scope of crimes for which use of communication interception techniques is allowed, it would be difficult to say that the crimes such as extortion[39], blackmail[40], embezzlement in the office[41], giving and accepting a bribe[42] and similar are acts in the sphere of state and public security or monetary policy.

The same Recommendation further envisages that in the case of interference by public authorities with the content of a communication, the domestic law should regulate:

- the exercise of the data subjects' rights of access and rectification;
- in what circumstances the responsible public authorities are entitled to refuse to provide information to the person concerned , or delay providing it;
- Storage or destruction of such data.

The Committee of Ministers of the Council of Europe has considered this issue also in its Recommendation No 85 (10) [43] in which it stresses the necessity to protect the individual against unjustified interceptions and interference in the privacy.

As previous recommendations, this Recommendation also points to the fact that the use of communication interception devices requires detailed legal regulation, especially with reference to the manner of use of the devices, the transfer of information of gathered by interception and the use of such information in the concerned country.

The execution of interception may be made dependant on one of the following conditions:

- Request to the judicial authorities to destroy as soon as possible those parts of the records, which are of no relevance to the criminal proceedings and to transmit a copy of the report on the destruction to the requesting party;
- After the requested interception has taken place the relevant authorities shall inform the subscriber of the telecommunication facility which has been intercepted or any other person concerned of the interception;
- That the evidence contained in the records resulting from the interception will not be used by the authorities for purposes other than those underlying the letters rogatory in respect of which assistance has been granted.

The same direction is followed in the Recommendation of the Committee of Ministers of the Council of Europe No. (87) 15[44] regulating the use of personal data in the police sector, which stipulates that the data subject should be able to obtain access to a police file at reasonable intervals and without delay, in accordance with the arrangements provided for by domestic law.

Furthermore, according to this Recommendation the data subject should be able to obtain, where appropriate, rectification of his data which are contained in a file. Personal data which in the exercise of the right of access reveals to be inaccurate or which is found to be excessive, inaccurate or irrelevant in application of any of the other principles contained in the Recommendation should be erased or corrected or else be subject to a corrective statement added to a file.

This Recommendation, as the previous ones, envisages that the person should be informed, where practicable, that information is held about him/her as soon as the object of the police activities is not longer likely to be prejudiced.

Regretfully, contrary to the recommendations of the Council of Europe Committee of Ministers addressed to all member-states, which includes the Republic of Macedonia, the legislative solutions in Macedonia do not envisage the right of access.

The amendments to the Law on Communication Interception also do not regulate this right. Hence, the provisions of this Law do not provide for the possibility that a person, who has been an object of use of special investigation techniques and whose privacy has been de facto infringed, is informed about this after the completion of the use of measures if no charges are instituted against him/her.

The absurd is even greater since despite the fact that the right of access has not been set forth neither by the Law on Communication Interception nor under the Law on Criminal Procedure, the amendments to these laws go even farther in derogating from this right. Hence, it is envisaged that not only that the person shall not be informed that he/she has been an object of use of special techniques, but also if no charges are filed, data gathered with the use of such measures, instead of being immediately destroyed, are kept in special case files at the premises of the Public Prosecutor's Office until the expiration of the statute of limitations.

A question that would logically be raised in respect of such solutions contained in the law is the following: how can the person who has been the object of use of special investigation techniques have the possibility of disputing the lawfulness of such measures and the right to legal protection when the person is not aware at all that he/she has been object of use of special investigation measures.

It could be inevitably concluded that the new legal solutions open the doors wide for abuse of data stored although such data are not the grounds for a legal procedure, which grossly undermines the principle of legal security of citizens in a democratic society.

It can be noticed that the Recommendations do not even make reference to the possibility of issuing oral orders for the use of special investigation techniques. However, such a possibility is envisaged under the amendments to the Law on Communication Interception. According to these amendments, as it has been explained, the Investigative Judge may issue an oral order for communication interception, upon a previous oral request by the Public Prosecutor, which is to be confirmed with a written request to be filed within 24 hours, after which the Investigative Judge is to issue a written surveillance order.

However, the procedure regulated in such a manner contains an inexplicable contradictoriness- namely the law envisages that if the investigative judge does not grant the written request, the request shall be considered by the criminal chamber of the relevant court in accordance with the Law on Criminal Procedure[45]. It would seem logical that once the investigative judge has granted an oral request by the Public Prosecutor, the judge would not have a completely different opinion in a matter of 24 hours - upon the request filed in writing. However, it is not excluded that based on the gathered information (with the application of the techniques or in another way) the judge could assume a different position. On the other hand, these provisions should be interpreted in way according to which without the (oral) approval the measure will not be applied, while if the prosecution bodies wish to dispute the decision of the Investigative Judge, such bodies will have to submit a written request and a complaint.

This Article envisages another possibility- if within 24 hours of the orally issued order, which means at a time when the communication of a person is already being intercepted, the relevant Public Prosecutor does not file a written request to the Investigative Judge, it shall be considered that no communication interception order has been issued, while the that far gathered information shall be destroyed. The same applies in case the criminal chamber rejects the request for communication interception, which on its part would mean that the orally granted communication interception is already on the way for more than 24 hours, meaning until the chamber adopts the decision. [46]

An amendment worded in such a manner is a serious derogation from the principle of legal security and efficient legal remedy. Namely, the omissions made in wording the amendments and the lack of possibility that the person is informed that he/she has been an object of communication interception, which later has been proven as legally ungrounded, eliminates the possibility of accountability of the relevant bodies for their omission which on its part leaves ample room for their arbitrary and legally ungrounded conduct. On the other hand, the person is also deprived of the right to damage compensation for unlawful interception, since the person has no way of becoming aware that he/she has been the object of use of special investigation techniques, which represents an explicit demonstration of the authoritarian power of the state vis-a-vis the individual.

Conclusions and Recommendations

Conclusions

The latest amendments to the domestic legislation threaten the rights of citizens to inviolability of their privacy on several grounds:

· There is a vacuum between the legally envisaged and the de facto control by the judiciary, as well as contradictorness in the application of the oral request by the Public Prosecutor. Despite this, the court is not realistically in a position of being able to meritoriously (preventively) assess whether there are real criminal or security threats;

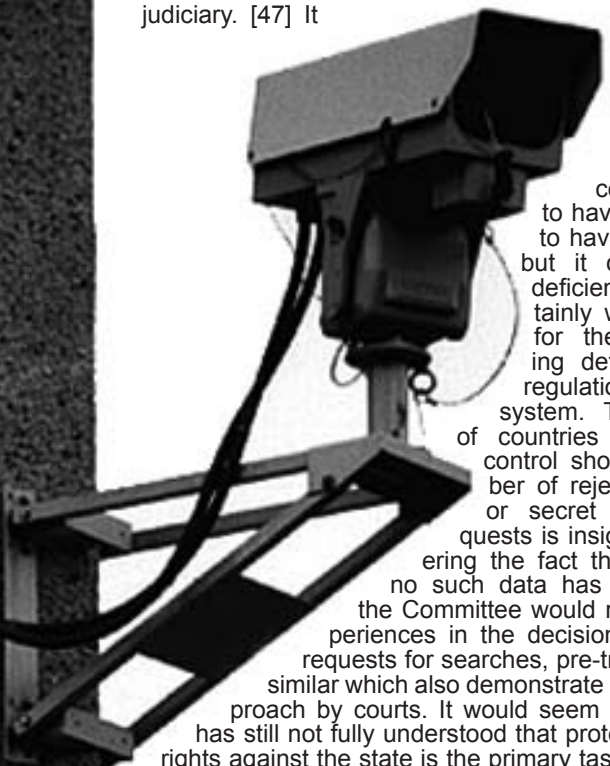
· There is no system of efficient and continual outside control of the application of special investigation techniques in order to ensure that the measures are indeed applied under a court order and in a legal procedure, along with all safeguards against arbitrariness and abuse;

· The grounds for use of such techniques without a judicial sanction leave the possibility of their abuse, by which the authorities can freely use these measures disguised, i.e. protected by the law. The terms “immediate threat of perpetration..” or “threatening the national security” are general and are not concrete, giving thus the practical possibility for violation of citizens’ rights;

· The materials gathered during the application of these measures which do not constitute sufficient grounds for filing charges are archived with the Public Prosecutor’s Office until the statute of limitation of criminal prosecution for which the communication interception has been ordered expires. This is a serious threat of violation of citizens’ rights and arbitrary and unlawful interference with their private life;

· When special investigation techniques are applied, even by fully and correctly applying the relevant procedure and when it has not been established that there are grounds for their application and the purpose and results of the application have not been attained there is interference in the life of the individual. After the termination of the use of these surveillance techniques, each person is to be informed that he/she has been the object of use of special investigation techniques. This limits the right of each individual guaranteed under the Constitution of the Republic of Macedonia to request protection of the violated rights- something which has not been envisaged by the relevant legal provisions;

· Judicial control is offered as a sufficient safeguard against arbitrariness, abuse and discrimination. In areas where abuse is potentially easy to occur in certain cases, and can have very damaging consequences on the democratic society overall, in the principle, it would be desirable to entrust the control role to the judiciary. [47] It



certainly is better to have rather than not to have judicial control, but it can have many deficiencies which certainly will not make up for the already existing deficiencies of the regulations or the overall system. The experiences of countries practicing such control show that the number of rejected interception or secret surveillance requests is insignificant. Considering the fact that in Macedonia no such data has been published, the Committee would remind of the experiences in the decision deliberation on requests for searches, pre-trial detention and similar which also demonstrate lack of critical approach by courts. It would seem that the judiciary has still not fully understood that protection of citizens’ rights against the state is the primary task of the judiciary. Judges have too lenient approach towards the executive authorities and bureaucratic approach in interpreting the law. If this is so in areas in which judges are well versed, one could imagine what could be expected in the slippery and covert sphere of national security, an area which judges have little knowledge of: pressure for prompt decisions, and as a rule the judge will decide based on one-sided information. Regardless of the previously stated, if in the thus far conditions of absolute legal prohibition there has been large scale eavesdropping, one would rightfully expect that now it would be much easier to disguise the application of some of the measures;

· Although publicly announced as measures strictly focused on the most serious threats of organized crime, terrorism and similar, the way is opened for wide scope use of special investigation techniques. This state of play, coupled with terminological confusion, vagueness, wide scope exceptions, low benchmark for allowing infringement upon privacy and the low probability of an efficient control lead to the conclusion that in the Republic of Macedonia arbitrary infringement upon privacy is not reduced, on the contrary it is being “legalized”. Privacy and freedom are very often marginalized when the situation is analyzed on case to case bases, and in the majority of cases one can encounter the growing threat of a police state;

· The legalization of some of the measures is constitutionally disputable without amendment intervention in respect of Articles 25 and 18 of the Constitution of the Republic of Macedonia. Namely, Article 25 of the Constitution o the Republic of Macedonia envisages in most general terms protection of private life of the individual, and the envisaged

protection is absolute (without exceptions). Such a situation does not create room for application of certain special investigation techniques. Article 18 of the Constitution of the Republic of Macedonia goes into the same direction and envisages the principle of "informed self-determination" by citizens. In this case too de lege lata the situation does not leave "constitutional normative room" for application of the measure of computer comparison of personal data of citizens;

· The measures legalized under the Law on Criminal Procedure of the Republic of Macedonia do not respect consistently the principles of legality, proportionality and subsidiarity;

· The legalized measures are not sufficiently precise and clear.

Recommendations

· Some of the legalized special investigation techniques are "atypical" and therefore should not remain within the range of measures set forth in the Law on Criminal Procedure;

· There should be a certain category of persons envisaged (considering their profession) and positions (considering their authority) who would be exempt, with defined exclusions from the exemption, from the possibility of applying certain measures in their respect;

· There must be sufficient, correct and independent system of control ensured to oversee the application of measures which infringe upon the privacy of citizens. Which control shall be deemed sufficient and correct will depend on the specific system. In cases in which the national system allows use of special investigation techniques outside the scope of the judicial control, the legislation is to be clear and precise. The laws need to clearly determine: which categories of persons may be subject to use of special investigation techniques, under which conditions such techniques may be used, and on what grounds special investigation techniques may be undertaken, the rules of use of such techniques, the storage and destruction of gathered information , persons having access to such information etc.;

· Following the requirement for necessity and proportionality emphasized by the European Human Rights Court, not all measures may be applied, except in respect of most serious crimes and organized crime;

· Considering that these techniques are derogation from the fundamental human rights and freedoms, since they infringe upon the right to privacy, they should be applied with the outmost caution, only as a legally envisaged derogation from human rights, in order to prevent arbitrariness and abuse. The legal framework must ensure efficient supervision mechanism to control the application of these techniques.

· The Law on Criminal Procedure is to fully regulate the application of special investigation techniques post delictum, and the prevention and the national security are to be regulated in another law (Law on Communication Interception or the Law on the Police);

· The Law on Criminal Procedure should allow interception of telecommunications and similar methods only in case of a reasonable suspicion, based on facts that can be articulated, that a person has committed or has attempted to commit a crime. The possibility of these measures being applied in order to start collecting information about incriminating actions is not allowed;

· In the area of defense and security, there must be stricter boundaries set as well as principles that courts would follow in assessing the requests from the executive power that would run contrary to the human rights and freedoms. The requests invoking the interest of national security must be considered with sound skepticism. Security services will have to prove that there is direct, immediate, concrete and serious threat, and not only undetermined or speculative threat. The proposed measure must be proportionate and necessary, limited to the least necessary infringement for the attainment of the desired goal. As much as possible, strict and objective rules should be defined, and not some loose tests for measuring the interests;

· National norms, should also allow citizens access to an independent institution, or to the courts more precisely, before which they can dispute each decision introducing these measure against a person , disputing as well the manner in which the techniques have been applied;

· The Parliamentary committees for control of the application of communication interception and for supervision of the Agency for Security and Counter Intelligence and the Intelligence Agency must seriously take their important role in a state governed by the rule of law and practice control regularly and efficiently. Evidently certain tools and prerequisites need to be created in this respect.

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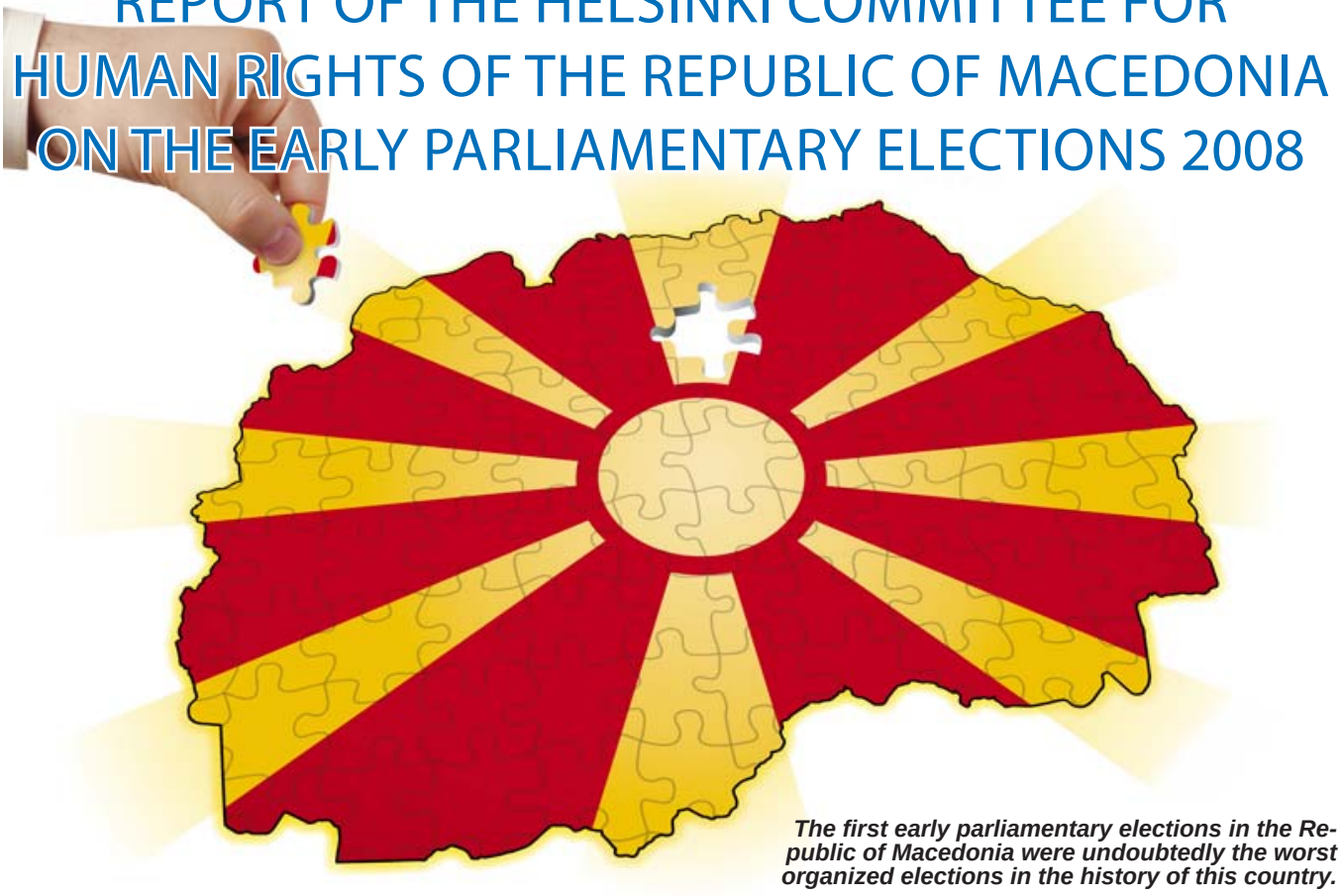
[1] Article 8 of the Constitution of the Republic of Macedonia.
[2] Article 25 of the Constitution of the Republic of Macedonia.
[3] Even more once a measure is easily covered with a court warrant, citizens will not be able to additionally exercise their right to efficient court protection considering the fact that the body infringing upon their privacy will "have it in writing" that it has acted "lawfully".
[4] See: Debate on Constitutional Amendments, Police Academy, Skopje 2005
[5] Law amending and supplementing the Law on Communication Interception (Official Gazette of the Republic of Macedonia No. 110, dated 2 September 2008; Law amending and supplementing the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia No. 83, dated 10 July 2008).
[6] See: Malone v. the United Kingdom, 2.08.2004, Series A, No. 82 (1995).
[7] See: Kruslin v. France 24.04.1990, Series A, No. 176-A (1990); Huvig v. France 24.04.1990, Series A, No. 176-B (1990).
[8] See: A. v. France. 23.11.1993, Series A, No. 277-B (1994).
[9] Sunday Times v. the United Kingdom, 1980 ., 2 EHRR 245
[10] Although the term "proportionality" is not stated in Article 8 of the Convention, this term plays a key role in the Court's jurisprudence.
[11] James v the UK 1986, 8 EHRR 123, Sporrong v. Sweden 1983,5 EHRR 35, Smith and Grady v. the UK , 2000 – 29 EHRR 493.
[12] Secret surveillance of persons with specific offices and duties (judges, politicians, clergy etc);
[13] Kopp v. Switzerland 1999 27 EHRR 91.
[14] Klass v. Germany, 1979/80 – 2 EHRR 213.
[15] Campbell v. the United Kingdom , 1992 15 EHRR 137.
[16] De Wide and others v. Belgium, 1971, 1 EHRR 373.
[17] Sunday Times v. the United Kingdom, 1979, 80 EHRR 245.
[18] Huvig v. France, 1990 r., 12 EHRR 528.
[19] Silver v. the United Kingdom , 1983 5 EHRR 347.
[20] Sunday Times v. the United Kingdom, 1979, 80 EHRR 245.
[21] Klass v. Germany 1978., 2 EHRR 214.
[22] Castells v. Spain 199, 14 EHRR 445.
[23] Kruslin v. France, 1990 r., 12 EHRR 547.
[24] Klass v. Germany, 1979/80 EHRR 214.
[25] Melone v. the UK 1985, 7EHRR 14.
[26] Huvig v. France, 1990, 12EHRR EHRR 528.
[27] Hewitt and Herman v. the UK 1992, 14 EHRR 657.
[28] Valenzuela Contreras v. Spain 1999, 28ENRR 483.
[29] Leander v. Sweden , 1987, 9 EHRR 433.
[30] Hewitt and Herman V. the UK 1992, 14 EHRR 657.
[31] Huvig v. France, 1990, 12 EHRR 528.
[32] Kopp v. Switzerland 1998, 27 EHRR 91.
[33] Klass v. Germany, 1979/80 EHRR 224.
[34] Ibidem.
[35] Kopp v. Switzerland 1999, 27 EHRR 91.
[36] Klass v. Germany, 1979/80 EHRR 214.
[37] 11, July 2002.
[38] Adopted by the Committee of Ministers on 7 February 1995.
[39] Article 258 of the Law on Criminal Procedure.
[40] Article 259 of the Law on Criminal Procedure.
[41] Article 354 of the Law on Criminal Procedure.
[42] Article 357 and 358 of the Law on Criminal Procedure.
[43] Recommendation on the practical implementation of the European Convention on Cooperation in Criminal Law Matters in respect of communication interception. The Republic of Macedonia signed this Convention on 28 July 1999, and it entered into force on 26/10/1999.
[44] Adopted by the Committee of Ministers on 17 September 1987.
[45] Article 11-a of the Law amending and supplementing the Law on Communication Interception.
[46] Ibid.
[47] See: Klass v. FRG, 1978, para. 56. and Rotaru v. Romania, 2000.

REPORT OF THE HELSINKI COMMITTEE FOR HUMAN RIGHTS OF THE REPUBLIC OF MACEDONIA ON THE EARLY PARLIAMENTARY ELECTIONS 2008



The first early parliamentary elections in the Republic of Macedonia were undoubtedly the worst organized elections in the history of this country.

The State Election Committee (SEC) decided to repeat the voting in 193 polling stations with around 190,000 potential voters in the first, second and sixth election district. Numbers that explicitly speak of the irregularities in the voting procedure for more than 10 percent of the electorate (1,779,116 registered people on the voters' list) in the half of the existing election districts. Or if you want an assessment from an ethnic point of view: the elections were not fair and democratic for at least one quarter of the population in the country. The first assessments that only 1-2 percent of the votes were irregular and the elections in general were fair and democratic were wrong. They were also harmful as de facto they divide the country into interesting and less interesting part depending on the ethnical belonging, parts in which there could be rule of law or not. It was obvious that it is not possible to win at home, when one is losing abroad – one cannot celebrate own success at the elections, which were assessed by the relevant international organizations as defeat of democracy.

Unfortunately, the repeated voting will be a chance to symbolically improve the impression from the incidents on June 1, which cast shadow on the democratic processes in the country and the authorities will be reminded of this from many sides, unfortunately even at moments that are of key importance for our Euro-Atlantic integration, no matter how marginalized this perspective is.

Everyone will remember that the following phrase does not apply to us "no elections and no election result can be a justification for the loss of one human life" because the price for these elections was one dead, several injured from firearms, while the process of voting and counting the votes was disrupted with many irregularities, including the intimidation, physical assaults, threats at gunpoint, thefts, breaking and stuffing of ballot boxes, manipulation with election material often in the presence, and also active participation, of officials that were present at the polling stations to prevent this (but shamelessly did it in the presence of international monitors, even demonstrating their pride of doing it so). Under these circumstances, it is not strange that there was enormous turnout of 99-100 percent at 75 polling stations and almost 100% of the votes were in favor of one political party.

It is a fact that most of the incidents in the pre-election campaign and on the Election Day in which firearms were used happened in the predominantly Albanian populated areas and were closely related with the activities of the two major Albanian parties in Macedonia. Those that believed and still believe that these incidents will be covered by the explanation that the Albanians and their parties are not up for democracy are wrong. The price for the incidents that are not ethnically colored is paid by the Republic of Macedonia and all its citizens.

However, behind every act of violence stands a person, either as an executor or someone who orders, whose profession is not the ethnical belonging. Therefore, the guilt should not be generalized or to be balanced by the party. Not all Albanians were involved in the incidents, nor all Albanian parties in the country were related to them.

Hardly any objections can be given to the US Ambassador to Macedonia when she says "This is not about ethnic Macedonians or ethnic Albanians, but citizens of Macedonia. If you want to maintain or if you want to have one state then the questions is not which entity or which part of the territory is at stake, but it is about citizens that do not want their votes to be stolen by use of force. And it is the task of the authorities to provide for this."

The impartial resolution of the incidents, to prove the guilt of the perpetrators and the evidence that this is done by order of the party leaders and their understanding of how the elections should be won, should be an introduction

in the process in which the party leadership and the parties themselves will take on the responsibility. If we are already witnessing that with every new election the number of serious incidents multiplies and does not disappear, why don't we consider sanctioning those proven to be guilty by banning the leaders from performing their duties in the party or banning the party from taking part at the next elections.

It was more than clear that the best prevention of the incidents on the Election Day was to stop them during the election campaign. Because the perpetrators and the party leaders that ordered these activities were not identified, the pre-election incidents have only opened the door to the more serious incidents on the day of voting. The failure to uncover the perpetrators only enhanced the impression that these criminal acts will go unpunished.

State = Party

However, one of the most overwhelming revelations at these elections was in fact the bursting of all state institutions.

The responsibility for organizing all elections, including the latest one, falls on the state institutions and their managers. Whole segments of the ruling institutions did not even try to perform their duties according to the Constitution and the laws. Their highest achievement was to act as if they work.

It became obvious that the state institutions are partisan and the only thing that matters are the party interests. Starting from their legitimate right to materialize the high rating (the time will show whether this will be in favor or against some other national or state interests) all the way to claiming the victory at any cost.

It was not known who was drinking, but everyone knew who was paying: the aggressive and expensive campaign started too early and was financed by unknown sources, which is against all laws; the public speaking was at the lowest possible level, the controlled and shut down media in which the party promoters and activists resurrected and a series of serious incidents, which were not solved and practically opened the door to the ugly events that followed on June 1.

A systematic question was opened at these elections, what kind of government we have when the parliament is dissolved. Is it really only technical, i.e. transitory or not. Below in this report we provide arguments for this dilemma (governmental propaganda, pre-election activities, using budget funds for election activities). A responsible government would make efforts to specify the legal solutions and will forbid the government in the period from announcing the elections until their closure to behave differently than a technical one and if this proves inefficient to make decisions as an expert/administrative government in this period.

During the pre-election period, the SEC was almost non-existent, saying it was not competent to make a decision about the similar names used on the lists of the Social-Democratic Party and the Social-Democratic Union (SDSM), an electoral trick also used during the elections in 2006. After the vote on June 1, the Prime Minister, the spokesperson of the government and the other officials referred to the SEC as a source of information that the incidents refer to only 1-2 percent of the voting process. Then through a series of decisive statements, instructions and "allocation of tasks" by the spokesperson, prime minister and other ministers, the SEC started to annul the voting at numerous polling stations. These examples reflect the relations between the state institutions, which are supposed to be fully independent in performing their activities.

Although the public prosecutor's office did undertake some activities in the case of similar names on the lists of candidates of SDP and SDSM, at the end took advantage of the MoI's tardiness regarding their request to check the consent of the "stunts" from SDP as an alibi not to do anything before the elections, so SDP went to the elections with the candidates who bore similar names and surnames as those from SDSM. The public prosecutor's office will probably become famous after its interpretation of the shooting in Rakovec, in which luckily only the cars were hit.

Frightening and MoI

A number of serious incidents marked the pre-election period: attacks to party's headquarters, beating party activists, ill-treatment of senior citizens for renting their premises, Tetovo overnight became a red town after 1,000 blue flags of the Democratic Union for Integration (DUI) were replaced with those of DPA, and the police did not even see this. The things got worse, so the widely popular "Kalashnikov" was replaced with mortars. The incidents peaked when someone opened fire on the leader (or more specifically, his car) of the opposing DUI.

No matter how much he tries to elaborate his statement, the leader of the powerful political party DPA, part of the ruling governmental coalition, Menduh Taci was right when he announced "slaughter house" during the early parliamentary elections. A question, that will most likely remain open, is the role of Thaci as a butcher in this performance combining singing and shooting.

In several occasions the opposition has mentioned the involvement of professional police officers, particularly the members of the Alfa team, in the incidents. The government did not even try to respond.

A response was not given even to the public claims about the police visits to houses in Stip during the weekends, which was understood by the citizens as a pressure to vote for one option as well as the accusations that the students at Tetovo University were under pressure by some of the professors to vote for DPA. There was also information on the racketeering of Albanian businessmen, but these claims were also not explored.

After June 1, OSCE revealed that the Office for Democratic Institutions and Human Rights (OSCE/ODIHR)

received numerous reports from the political parties and citizens on other alleged incidents (such as movement of vehicles with armed people during the night in the villages and the alleged illegal crossing of people from Kosovo in order to cause incidents during the elections). For some of them it will become obvious that they were not reported to the authorities. The question is why?

The towns and villages were flooded with "surveyors" registering the political preferences of the citizens. The results were vehemently recorded on the account of the party supporters as bonus points to be exchanges as future employment or state favor in case their option wins the elections.

Although most of these and similar other "party activities" took place in the electoral district in which the leader on the list of candidates was the existing Minister of Interior, Gordana Jankulovska, for her it was sufficient to say that the police have taken all necessary measures to investigate the cases.

Despite the endless domestic and international reforms the police simply demonstrated that it is still the same as it was in the former system – partisan police. Even worse is that by serving the ruling coalition the police have divided on ethnic grounds. For the first time, significant segment in MoI is controlled and abused by the Albanian participant in the government. All warnings that a MoI official may control a party activist were futile, as the entire structure of party activists in MoI is abusing the Ministry for partisan purposes.

After June 1, we are witnessing a string of statements by foreign diplomats to the country voicing their astonishment that as foreign monitors on the Election Day they have witnessed the "proactive" role of the police members who have not hidden their discontent and instead of preventing the irregularities they have participated, or at earnest tolerated them in the election process. Without any respect for the reformed police they have labeled it as partisan.

In the midst of the pre-election campaign the government has promoted the construction of new prison in Idrizovo and renovation of the existing ones. The arrests came one after another as if they were by a list always in the presence of TV crews or followed by official records of the detention, which somehow always reached the electronic media.

"Accidentally" during the campaign the verdict against one of the leading figures in the opposition party SDSM, Jani Makraduli, was publicly revealed, while high governmental structures threatened with criminal charges to SDSM leader Radmila Sekerinska and head of DUI's election board, Izet Mexhiti.

Probably, we should never know how and to what extent has these threats resulted into abstention from voting, which has only facilitated the work of professional ballot stuffers.

On the other hand the fear was obvious among those that were supposed to take care of implementing the elections. In the preliminary report OSCE/ODIHR stated the data according to which many members of the electoral boards in the regions troubled with high political tensions requested to be relieved from duty fearing the possible violence on the Election Day. This number reached 50 in Tetovo, while in Brvenica 5 out of 18 election boards refused to work on the Election Day without the constant presence of the police in the polling stations.

Post festum reactions

After the assessment that the elections did not comply with the international standards and the failure to minimize the incidents by proclaiming as guilty the leading Albanian parties and particularly after the intervention of the influential international diplomats, MoI has undertaken activities and according to Minister Jankulovska (at the time when this report is compiled) "in 20 cases of violation of the voting process, numerous operations were initiated, which resulted in detention of around 50 people. From the documented cases, 40 suspects are already reported. Charges are filed against 38 perpetrators for committing over 25 severe crimes". The public was informed that two police officers and former high official of MoI are among the arrested. In this way, the MoI gave its modest contribution to confirm the information that "in some cases, the monitors observed how the police and other law enforcement officials just stood aside while the irregularities happened and even actively supported the perpetrators." (OSCE/ODIHR). And in this case, MoI respected the principle of presumption of innocence (we did not see any recordings from the spectacular detention of the police officers and MoI official).

As a benchmark for the efficiency of these forced post festum reaction of the competent state institutions, we will remind that even after the incidents at the 2006 parliamentary elections upon the strong pressure from the representatives of the international community, the competent bodies initiated procedure against people suspected of causing the electoral incidents. Two years later, the media (as an irony in the middle of the pre-election campaign) released the information that not a single person was convicted on the charges and the only case that ended with court ruling was the punishment of a witness that accused another person of causing election incident.

So far there is no announcement that MoI will tackle the "parallel armed individuals" related to the political parties (US Ambassador Jilian Milovanovic). After all, the non-governmental sector in Macedonia will have to adjust its activities on elimination of the illegal weapons in order to "demilitarize the parties" because the parties despite their security (or maybe through them) literally have their own parapolice and paramilitary forces!

Controlled or bought media

The statement that the most powerful, particularly the electronic media, are controlled or bought by the (ruling) political parties became evident during these early parliamentary elections.

In order to realize this "interrelatedness" a wide array of means was "employed". On one hand, a sophisticated

"catch 22" was used, so media owners (in this case the fathers of the owners of two national TV stations) were on the candidates' lists of the coalition "For Better Macedonia", while on the other hand it was widely speculated that partiality was secured by the bulk of findings from the previous (financial) inspections and threats from processing them.

For the media that could not have been tamed in this way the good old method of exerting pressure and threats was applied. From cutting the power supply of the transmitters of some electronic media in the sensitive time slots when the political programs were on, to taking off their programs from the local cable networks. Even before the elections, inspectors from the Public Revenue Office paid a visit to Alsat M and fined the TV station. Then after the police operation in Brodec, threats on criminal charges were received and only their transmitters were stolen from the joint facilities. During the campaign, again only the transmitters of Alsat M and ART from Tetovo were stolen (while those of the other electronic media were intact). Commenting on the chances to catch the perpetrators of these thefts, MoI spokesperson said that it would be hard to find them as no one saw them!

However, what has happened with the public broadcasting service shows that irregardless of the poor position of the MRTV, it cannot let go its propagandistic services. The second channel of MRTV has taken the title of best manipulator with the election information. OSCE/ODIHR speaks of "high bias in favor of DPA, which received 47% of the coverage in the main broadcast news, whose political and election activities had extremely favorable tone" against 19 percent with mainly neutral tone for DUI. The non-governmental "Media Mirror" speaks of the scandalous inequality in favor of DPA and mentions the failure to broadcast the news on the shooting in Rakovec (attack on Ahmeti and his car), then DPA's reactions on some of DUI's positions, which were never released on this channel. The Broadcasting Council speaks of the imbalance again in favor of DPA.

Abuse of budget and other funds

During the pre-election period the governmental structures announced an employment of 5,000 Albanians in the state administration as a victory or a contribution of DPA in accomplishing equal representation of non-majority communities. So far, there are no precise data on whether any of these employments were realized. The Anti-corruption commission stated a number of less than 500 employments in the pre-election campaign, which was a violation of the rules.

The government in this case, just as in the case of the hectic promotional campaigns in the pre-election period, justified its action by saying that these activities were planned a long time before it was evident that there would be early elections. Although there is no legal ban for this type of governmental campaigns in the printed media, the assumption is that the press should follow the ban of the electronic media, because on ethical level, these press campaigns are corruptive in at least two ways. First, the governmental campaigns evidently support the ruling parties (propaganda paid with governmental money) and second the intensity of publishing is a serious source of income for the impoverished newspapers, which, whether they like it or not, should appreciate this.

If the information and the regular governmental activities are on the ethical border of abusing the election rules, a real enigma is the use of state infrastructure in the pre-election activities (starting from not paying for pay tolls to using the official cars and other services on the account of the state administration).

In the domain of low political culture, probably it will be a folklore tradition to put into operation facilities (even uncompleted where the secondary school in Skopje "Zef Ljush Marku" would be probably a leader), laying the groundwork and similar moves that leave holes, scaffoldings, fences and other things behind, indicating that there was no serious intention of finishing the building.

In the area of political ethics, also falls the early start of the campaign. The ruling VMRO-DPMNE distributed its election program through a daily paper several days before the official start of the campaign. There is also the attempt of the Justice Ministry to continue publishing its advertisement in the press despite the announcement of the Government that all advertising campaigns will cease during the elections.

Under ethics, which no one pays respect to, will be also the use of public speech in the campaign. In fact could the language be equally lethal as the weapons if they are used simultaneously?

Unfortunately, the domain of ethics will also cover the serious dilemmas regarding the (ab)use of children in the election campaign, the abuse of personal data (for sending graduation and birthday cards).

Probably in the domain of legal and expert analysis stays the dilemma of lack of harmonization between the Electoral Code and some laws regulating the judiciary, which were adopted later, such as the second instance complain of those feeling damaged by the SEC's decision (problem that may become a hot issue due to the discontent of DPA with some of the decisions of SEC on repeated voting).

The following days should resolve the enigma how it is possible to realize expensive campaign, when the law limits the funding for pre-election campaigns. In other words, the Anti-corruption commission and the state auditor should investigate the source of funding for the numerous videos of the two major parties on the national and local TV stations.

For now, the common citizens will be left with the suspicion that besides their votes, they have given to the participating parties at these elections much more, including their money.

At the end just a reminder – the local and presidential elections are still to come next year.

TORTURE IS STILL AMONG US!

Message on the occasion of June 26th – the UN International Day of support for victims of torture[1]

This is already the second year in a row that the Helsinki Committee for Protection of the Human Rights of the Republic of Macedonia has received support from the United Nations Voluntary Fund for Victims of Torture[2] for our activities related to the victims of torture in our country.

The Committee is likely to obtain support for 2009 as well. When we first applied and obtained the Fund's support for the first time we were the only NGO from the Republic of Macedonia, whilst in 2008 there was an additional Macedonian NGO that obtained support from the Fund besides us. One of the preconditions that we were supposed to fulfill was to submit ten cases of victims of torture processed according to the international standards. In the first year we used cases from several years, whereas in the following years just the cases from the previous year sufficed…

Having said this, it is not a surprise that only a couple of months ago the Committee of the Council of Europe for Combating Torture criticized Macedonia of ill treatment of the persons deprived of their freedom. The report was developed following a 10-day visit to Macedonia by a delegation of the Committee in May 2006, when 6 prisons and pre-trial detention centers were visited. The Committee indicates that a "significant number" of persons, including juveniles, stated that the Police forces had treated them badly. The report includes statements of prisoners claiming that Police officers wearing civilian clothes interrogated them in special rooms during a 24 hour period, hitting them with their legs, arms and nightsticks to make them talk, during which some of the prisoners passed out. The Committee indicates that force was often used by inexperienced Police officers, and that this was due to poorly conducted investigations. The report includes an opinion that this can be considered as a kind of situation where the official instances act as an accomplice because of the fact that the Macedonian State is not ready to face this problem. The report requires the Macedonian authorities to implement a policy of "zero tolerance" for violence and to carry out a genuine investigation in cases of suspected ill-treatment.

This year as well, several serious cases of (Police) torture are being documented in the Helsinki Committee.

The conclusion is obvious – Torture is still among us! Unfortunately, even on a day like this victims of torture are among us.

On the other hand, the conditions in the penitentiary institutions are such that there is almost no difference between the situation assessments made by the NGO sector, the international organizations, as well as by the Government itself, which during the pre-election campaign promoted construction of a new prison in Idrizovo and refurbishment of several of the existing prisons in the country.

On the occasion of the celebration of December 10th – the Day of Human Rights – we sent a clear appeal to the Government to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. We repeated this appeal in the monthly report for February 2008 as well. In the meantime things started to move forward modestly (the Committee had working meetings in the Ministry of Foreign Affairs, which is working on the Law on Ratification of the Protocol; the UN team in the country organized a seminar; and other NGOs became active with the same purpose), but the fact remains that the draft Law on Ratification of the Protocol did not enter a Government procedure for the ultimate enactment, nor are there any indications that the new Government has placed it among their priorities.

The Macedonian delegation lead by the Minister of Justice, participating at the 40th session of the UN Committee against Torture held in Geneva to defend the second periodic report of Macedonia concerning the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, boasted of the progress achieved in all areas that are of interest for the exercise of the human rights, especially of the implementation of the reforms in the judicial system, criminal legislation (both substantive and procedural), Police, penitentiary system, organized crime, trafficking in human beings and family violence. The Minister of Justice stated in Geneva that "the Government of Macedonia was firmly committed to changing the appearance of the penitentiary institutions in the country", and that "the penitentiary system was being reformed in accordance with the broader reform of the criminal legislation".

Therefore we call upon the new Government to speed up the preparations for the enactment of the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The states ratifying the Protocol undertake the obligation to appoint, establish or create one or several bodies at national level that will be authorized to visit places of detention and to publish their reports.

Let us remind ourselves what the Protocol is about.

This is a new instrument for prevention and elimination of torture or other forms of inhuman and humiliating treatment or punishment, which offers a proactive international and national mechanism for surveillance and prevention of torture through regular or periodic visits to places where persons deprived of their freedom are held in custody. The Protocol leaves a great flexibility to the state in that regard: (i) they are free to establish a totally new structure; (ii) to use for this purpose the already existing mechanisms for protection of human rights in the country (Ombudsman, parliamentary committees, citizen organizations etc.); or (iii) combine the existing structures with new ones.

The national mechanisms for prevention warn the Government about the general situation in the places for detention of people deprived of their freedom, especially about policies or cases of torture or inhuman and humiliating treatment and punishment. The recommendations prepared by these bodies should be guidelines for the governments to improve the situation of the persons deprived of their freedom, and the conditions in which they are held in custody.

The national mechanisms for prevention must be enabled and allowed to visit the places for detention. These visits must be planned for, previously announced and coordinated. However, this does not limit these bodies to visit the places for detention unannounced and to inspect them, meet with the persons deprived of their freedom and with the staff, and stay for as long as it is necessary in order to ascertain the actual situation and the conditions in which the persons deprived of their freedom are held. Financial resources that will fully cover this activity of the national mechanisms for prevention in order for it to be efficient have to be provided.

Given the great importance of this proactive international and national mechanism for the monitoring and prevention of torture through regular and periodic visits to places of detention of persons deprived of their freedom with a view to intensifying the protection of these persons, the Helsinki Committee for Human Rights of the Republic of Macedonia calls upon the new Government of the Republic of Macedonia to ratify the Protocol as soon as possible, where the non-governmental sector should be part of the process of creation of the body(ies) for prevention of torture at national level and should take part in the work thereof.

June 26, 2008

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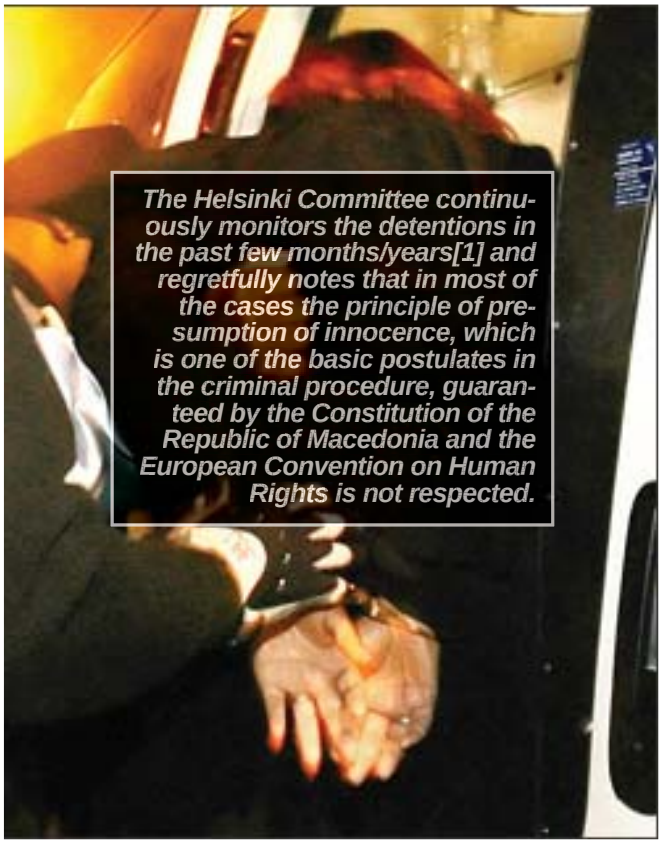
[1] On December 12th 1997, on the tenth anniversary of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entry into force, the General Assembly declared June 26th as the UN International Day of support for victims of torture by means of the Resolution 52/149.

[2] The United Nations Voluntary Fund for Victims of Torture was established in 1981. By raising funds from voluntary contributions by governments, NGOs and individuals, this Fund finances activities of NGOs for supporting victims of torture and family members.

CONTINUOUS NEGLIGENCE OF THE PRINCIPLE OF PRESUMPTION OF INNOCENCE



First, in some cases the application of procedures prescribed in the internal acts of the Ministry of Interior is at least questionable. The Constitution of the Republic of Macedonia guarantees the principle of the presumption of innocence[2] and the right for privacy and dignity[3]. These constitutional provisions are translated into the Law on Police[4], and the Code of Police Ethics[5] which prescribes that in exercising their duties the law enforcement officials are obliged to respect the dignity and reputation of the citizens.

Pursuant to the Law on Criminal Procedure, everyone persecuted by the state or upon private charges will enjoy the right of presumption of innocence. This is definitely not the right we are witnessing on a daily basis in Macedonia, where the arrested are being video taped during their transportation to the investigative court or investigative judge and the event becomes breaking news in all media. Considering the fact that the Ministry of Interior is organizing and realizing the police operations for detention, it is symptomatic how the media are properly informed on the exact date, hour and place of detention, so they can fully broadcast the spectacle of ruining someone's dignity and show it to the entire Macedonian public. With the Code of Police Ethics, the Police are obliged to objectively inform the public regarding its activities, in accordance with the principles of confidentiality of data, which are respected in the course of individual integrity protection of citizens, respect of the principle of presumption of innocence, as well as for reasons of leading the criminal procedure[6]. The question is who has a benefit from this non-ethical sensation that ruins the human dignity and violates all legal principles and standards of one democratic society, such as Macedonian is considered?

When speaking of the principle of presumption of innocence we have to mention that besides this principle, the broadcasting of the operational recordings also violates the right of privacy, personal and family life, repute and dignity, as well guaranteed by the Constitution and the international acts. We would like to point out that a citizen cannot enjoy this right when all TV stations broadcast the recordings of the detainees, loudly announcing their names or ironically enough, in some cases, when MoI releases an information using initials accompanied with a photo and detailed description of the profession of the detained person.

Therefore, the Helsinki Committee insists on application of the Article 8 of the European Convention on Human Rights, meaning that during the process of provision of information on suspects, accused or convicted persons in the criminal procedures, everyone has a right to respect for one's private life. When releasing information, the state institutions and media should pay special attention on the detrimental effect this information may have if it allows identification of these persons, who are only suspected of and not proven perpetrators of criminal acts.

An intriguing issue is whether the police can justify the handcuffing of the persons with arguments such as preventing the resistance towards the police officer, escape or self-injury or the handcuffs are only an element of the "circus" performance provided by the Ministry with the help of the media!

In this occasion, the Helsinki Committee reminds of the Code of Journalists of the Republic of Macedonia, stipulating that having in mind their role in the building of democracy and civic society, the journalists shall defend the human rights, dignity and freedom. Based on these principles, the journalists are obliged to apply the principle of presumption of innocence, when reporting on court procedures, shall not use hate speech and shall not encourage discrimination of any sort

The Helsinki Committee has no intention to minimize the right for informing the public, but appeals to the journalists to be careful and not to violate the other basic rights such as the presumption of innocence and the right for respect of private and family life, guaranteed with the European Convention on Human Rights.

The Helsinki Committee encourages and deems as positive the combat of the state against corruption and prevention of crime, but POINTS OUT that these operations should not violate the basic principles on respect for fundamental human rights and freedoms in a way that will directly violate the principle of presumption of innocence and right for respect of private and family life, dignity and repute in a strive to earn political points or amuse the public.

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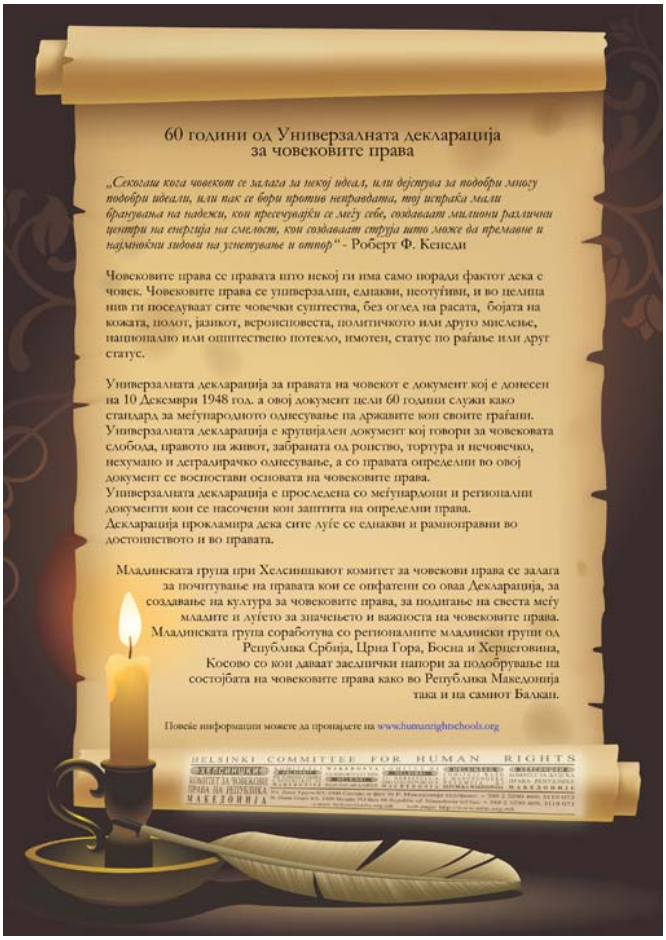
[1] Monthly reports for December 2007/January 2008, November 2007, July/August 2007, February 2007, March 2008, June 2008.
[2] Article 25 of the Constitution "Each citizen is guaranteed the respect and protection of the privacy of his/her personal and family life and his/her dignity and repute."
[3] Article 13 "A person indicted for an offence shall be considered innocent until his/her guilt is established by a legally valid court verdict."
[4] Article 32 of the Law on Police (Official Gazette No. 114/2006), enforced in November 2007 "In the performance of the police authorisations, the police officer is obliged to act in a human manner and to respect the dignity, reputation and the honour of the persons as well as the fundamental human and citizens' freedoms and rights.
[5] Article 56 of the Code of Police Ethics adopted on June 4, 2007, "Members of the police are obliged to respect the personal dignity and the individual needs of the person who is called, detained or deprived of freedom when there are reasonable doubts for perpetrating criminal act.."
[6] Article 19, Code of Police Ethics, Official Gazette of RM, No. 114/2006

DIGNITY AND JUSTICE FOR ALL



Message on the occasion of 10th December – Human Rights Day and 60th. Anniversary of the adoption of the Universal Declaration of Human Rights

On 10 December 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Ever since, the Declaration has made the pillars of and has been the hallmark of the fundamental rights and freedoms of people throughout the world. The Declaration makes the basis of international law in the area of human rights and freedoms and through the time it has become part of the common standards incorporated in the constitutions of almost half of the United Nations member-states, including the Constitution of the Republic of Macedonia.

The thirty articles of the Universal Declaration are an expression of the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world; then of the awareness that the disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and what has been proclaimed as the highest aspiration of the common people; as well as of the awareness that it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law; and of the need to promote the development of friendly relations between nations. Therefore, the first Article of the Declaration has become the motto embodying the commitments to respecting and promoting human rights and freedoms: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood ", while the second Article sets forth that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Regretfully, 60 years after the adoption of the Declaration there is almost no country in the world where the Declaration is fully applied, in which the exceptional vision and determination of the Declaration drafters have been accomplished. Available in 360 languages, as the most translated document worldwide, the Declaration is still an ideal – the principles of equality and justice are not accessible to all members of the human kind. Dignity and Justice for All is the motto of the events marking this year's Human Rights Day and the 60th Anniversary of the adoption of the Universal Declaration.

Plenty of work lies ahead of us here in the Republic of Macedonia. The police continue to use torture; violate the presumption of innocence principle, and instrumentalize the media in publicizing spectacular arrests. Pre-trial detention is still used as a prison sentence without a final verdict being pronounced in court. The use of special investigation techniques is further complicated with their liberal use, without appropriate control mechanisms. The situation in penitentiaries and in closed institutions is an insult to the elementary human dignity.

It could not be said that rule of law is our virtue. Instead of getting rid of political influence, the justice system reforms are increasingly seen by politicians as a tool to efficiently issue binding instructions to prosecutors and judges. It is not easy to go on a strike either, while the media are under tight and effective control. Exhausted with the long trials, and injustices done, citizens more and more look for justice in Strasburg. Although the country is constitutionally defined as a welfare state, there are the least investments in the respect for social rights, which represent one of the most vulnerable categories in the country. There are dangerous improvisations with the secularism of the state. The country is far from a satisfactory level of establishing and implementing legislation in the area of fight against corruption. The people's representatives at the Assembly have still not managed to debate on the ratification of international documents in areas where the country shows evident deficiencies, such as for example the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. According to the latest global ratings in significant areas such as corruption perception, exercise of the right to association, freedom of speech, ... the country's rating is not progressing and is most often deteriorating.

In his message on the occasion of the Anniversary, the UN High Commissioner for Human Rights recommends that next year is proclaimed as an International Year of Human Rights Learning, as a way of ensuring that future generations are given the maximum possibilities to exercise what is promised under the exceptional document known as Universal Declaration of Human Rights. Perhaps this is the remedy for the present generation as well. In the meantime, the Helsinki Committee will continue the activities as so far - it will fight with determination for the protection of human rights in the Republic of Macedonia.

10 December 2008

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UNIVERSAL DECLARATION OF HUMAN RIGHTS
Dignity and justice for all of us

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

December 2007
January 2008

I. PUBLIC EVENTS AND VIOLATION OF DEMOCRATIC PRINCIPLES

1.1. Secularism in the Republic of Macedonia

According to the information published in the local media and confirmed by the spokesperson of the government, in the second half of January, the Government has made a decision to build a church (or to reconstruct the former central church "Saints Constantine and Elena") on the main square in Skopje, on the location between the Department Store and "Dal-Met-Fu" restaurant.

The decision was adopted (with acclamation!) at the end of one of the January's sessions of the Government, after the idea was presented by the Prime Minister. Afterwards, the deputy minister of culture has opened "international public call No. 4/08 for architectural and urban design for construction of an Orthodox Temple on the square Macedonia" with 860,000 MKD award pool. The deadline for submission of projects is March 23, and according to the plans the construction should begin this summer.However, no official explanation is given why the state and not the faith community is building this religious facility.

No one comments the fact that the detailed urban plan of Skopje does not foresee the development of such facility, so the start of activities aimed at construction of this church is a move that disavows the entire system of urban planning. So, at least in this stage, all preparations for the construction (including the use of budget funds) are beyond the legal procedures and reflect the obstinacy and arrogance of the ruling government. The decision of the government to build a church in Skopje's main square, following the principle of connected bodies and the anticipated reaction after the decision is assessed as a demonstration of the unequal treatment of the other faith communities, "hastily" triggered another decision on building a mosque in the same way (with state funds) in the centre of Tetovo. However, this did not stop the chain of reactions, but yet motivated new demands of the other faith communities for building more religious facilities in the capital's main square. A coordination body was established, constituted of 37 non-governmental organizations and associations of citizens of Islamic faith, with the support of additional 40 Turkish non-governmental organizations and associations for reconstruction of the Burmali – Mosque. It can be definitely expected for the other faith communities in the country to come out with similar proposals to the government of the Republic of Macedonia. In this way, the government has created a situation and now has to cope with it: if the old church is reconstructed on the old site then all religious facilities of the other faith communities that existed in the past should be also reconstructed. There is no other alternative. The Government should respect the Constitution and not to be above it (to respect the equality of all faith communities and religious groups) or should amend the Constitution embedding the inequality of faith communities and religious groups.

The trickiest in this situation is the fact that with this decision the Government has directly brought into question the principle of secularity i.e. the division between the state and faith communities [1]. But this is not the only thing.The previous governments, particularly the one of VMRO-DPMNE (1998-2002) spent money for building the Millennium Cross on Vodno Mount, the Plaoshnik church in Ohrid and tried to introduce the religious education. Even if there were any cultural or civilization explanations for these decisions (2000 years since the crucifixion of the Jesus Christ, paying tribute to St. Clement of Ohrid...) the Government has no justification for the latest decision, except for the statements of the governmental spokesperson and the Prime Minister that there are churches on the main squares in all European cities.

This decision is simply a step forward in promoting "state religion" or more precisely "state faith communities" seen through the Macedonian Orthodox Church (MOC) and the Islamic Religious Community (IRC). In this respect the decision for construction of an Orthodox church and eventually the decision for building a mosque in Tetovo are only favoring these two faith communities.

The political motives of the ruling parties are clear and visible. For this government of VMRO-DPMNE this is a logical step after the attempt to get blessing from MOC for its parliamentary candidates before the latest parliamentary elections, while its Albanian coalition partner does not even hide its control over IRC. The introduction of religious education, disputed in front of the Constitutional Court, is a kind of a favor granted by the government to these favored faith communities in order to establish closer mutual relations.

No wonder that the Government (with written notice!) tries to influence the Constitutional Court prior to its final decision on the initiative for introduction of religious education. This step comes after the long debates regarding the adoption of the new Law on the legal position of a church, faith community and religious group (which will be implemented starting from May this year) and the struggle of MOC and IRC for marinating their exclusivity in the state regulation and the serious problems that the Republic of Macedonia ha(d)ve with religious freedoms, which resulted the adoption of this law to be one of the conditions for the country's Euro-Atlantic integration.

1.2. Cross-sector body for human rights

In a bid to improve the situation with human rights, the executive power in the Republic of Macedonia has established Cross-sector body for human rights, comprised of representatives of several ministries and other state organs and bodies [2]. The purpose of the cross-sector body for human rights is to coordinate the efforts of line ministries, to promote and provide suggestions regarding the legal regulations in the area of human rights such as exchange of information, data and implementation of recommendations issued by the UN and Council of Europe committees. Pursuant to the decision, the body is obliged to report to the Government once a year.

The establishment of such body is

really necessary and is considered to be a positive step for promoting the human rights in Macedonia. The promotion of human rights is closely related with the protection and prevention of possible violation. According to Mary Robinson, former UN High Commissioner for Human Rights, the 21st century should be a century for prevention of human rights. Undisputable fact is that the real goal of promotion of human rights is their protection and prevention as much as possible and in the best possible way by the state. Very concerning is the fact that the existence of the Cross-sector body for human rights is unknown to the wider public, let alone the results of its work. We should hope that this Cross-sector body for human rights is not only a formal obligation, a recommendation given by the European Commission or just a form without content in order to hide the essential drawbacks regarding the human rights, their promotion and protection. Having in mind the democratic principles, the executive power in the Republic of Macedonia should inform the public on the work of this body, the undertaken activities and to allow appropriate cooperation between this body and the non-governmental sector dealing with the human rights issues.

1.3. Police operation in Aracinovo

The police operation in Aracinovo (January 22, 2008), in which Naser Nebija was killed, is another proof of lacking skills to manage these operations. It seems the police adopt special approach when conducting operations in the municipalities run by the political opponents, or even worse, which are dominantly populated by non-Macedonians. It seems that MoI forgets that one of the priority reforms in the country in the past few years was the decentralization, which should significantly increase the influence of the citizen in the institutions of the system and building relations of mutual trust. Instead of acknowledging the fact that it is in the interest of local government and population to deal with crime and criminals by establishing mutually useful cooperation with them, when conducting these operations the police as by a rule behaves as if they were performed on a hostile territory inhabited by people that are natural enemies to the police. Similarly as with the operation in Brodec village, MoI did not find it necessary to inform the local authorities and the local population about the necessity and objectives of the operation. The failure to provide relevant information on the intention and purpose of police interventions on the territory of the local government units speaks of the mistrust of MoI towards them, due to a simple, but highly concerning reason, as the local authorities are from the opposing political parties or the population is not trustworthy.

The effects of these police operations are disastrous. Not only they violate the normal relations between the law enforcement institutions and the population, but also directly stimulate the lack of confidence of the residents in these state institutions as if they are enemies by default. Unfortunately, in this case similarly as in the operation in Brodec village, it seems that the Sector for Internal Control and Professional Standards shows its fragility under the dictate of leading police structures, and is not able to find strength and point out that it is necessary to manage these operations in a better way.

So following its old practice in evaluating the operation the Sector has only justified it, irrespective of the way in which it was conducted. In the efforts to "hide" the dissatisfaction of local residents and local authorities, MoI once again used its well practiced method of utilizing some of the media outlets that disseminated number of "information" in order to distract the attention from the expressed discontent. For the Helsinki Committee for Human Rights this is another proof that the new Law on Police, particularly regarding the procedures for evaluating the police actions, is far from the desired effects of a truly reformed police.

1.4. According to the Ministry of Interior, the spectacular arrests are in the spirit of the media freedom

The Helsinki Committee for Human Rights, in the previous report for November, appealed to the Ministry of Interior to explain the need for use of force, handcuffs, during the latest arrests and to explain the presence of media during these arrests. In the response received from the Sector for Internal Control and Professional Standards as of December 25, 2007, it was explained that the legal ground for using the handcuffs is to prevent the possible escape of suspects. According to MoI, several suspects have attempted escape during the arrest, so by analogy they are afraid that the others may also try to escape, without stating the circumstances under which these people were arrested. Regarding the media, MoI finds the justification in the freedom of media saying the media have right to free access to all sources of information of public interest.

The Committee reminds the Ministry that the rights of each suspect, particularly the right of safety and security, the right of privacy and presumption of innocence should be significantly more protected against the freedom of media. The committee is fully committed for freedom of media and independent dissemination of information for the public, but maintains that the information may be received and transmitted in another way, by protecting the dignity of suspects.

II. VIOLATION OF ECONOMIC AND SOCIAL RIGHTS

2.1. Transformation of employment with fixed duration into full-time employment, with special emphasis of this problem in education

For a longer period of time, the Helsinki Committee received complaints from citizens, employed in the education system, due to their unregulated employment status, in terms of the failure to be transformed from employment with fixed duration into full-time employment, although they meet the legal requirements. The persons working in the primary and secondary schools wait too long for the consent for full-time employment, so many of them opt for initiating court procedures and spending additional funds for realizing this legal right. Article 46 of the Law on Labor Relations stipulates the following: "The Employment Agreement shall be signed for a fixed period of time,..., with or without breaks for up to four years. The employment status based on an employment agreement for a fixed period of time is transformed into full-time employment, if the employee continues to work after the period of time defined in paragraph (1) of this article, under terms and conditions provided by the law." Namely, in the general provisions of the employment agreement there is a rule that this agreement is signed for indefinite period. This is one of the characteristics of the labor-legal nature of the employment agreement.

Due to this characteristic, emphasized in the international documents [3] mainly to protect the fixed-time employees as well as to avoid the violation of the provisions for dismissing employees. Before signing the employment agreement with the employee, the employer must explicitly emphasize that this agreement is signed for a fixed period of time because of the nature of the work.

In addition, the Directive of the Council of Europe emphasizes the obligation of the employer to inform the employees on the terms of employment in the employment agreement. The international documents stipulate that it is necessary to define in the law the cases in which fixed-time employment is possible. Pursuant to the domestic legislation, it is possible to transform the employment from employment with fixed duration into full-time employment for an employee who has signed employment agreement and did the same work consequently for the period of four years. Although this legal provision is imperative, in the practice it is not fully implemented, as there are "certain practices" that hinder the implementation of this legal provision and force the employees to initiate court procedures [4]. The provision stated in

paragraph 2, stipulates transformation "under terms and conditions defined by law", but not a single law provides such provision. On the other hand, the Law on Labor Relations does not allow this issue to be regulated with a collective agreement, but only with law, which emphasizes the legal gap in the practice that will create problems with the interpretation. As a result of this practice, the Committee saw the problem in exercising this right after the expiration of the legally prescribed deadline, particularly for people employed in the educational institutions. Namely, this is a procedure, which is not stipulated by law, and yet hinders the right of the employee as stipulated in Article 46, paragraph 2. The information of the Committee regarding this problem in primary and secondary schools say that after working for four years in the same school, the school director submits to the Ministry of Education and Science a request for consent for transformation of the employment of this person. The request signed by the Education and Finance ministers is a basis for opening a public advertisement as well as for registering the employee in the Employment Agency for indefinite period of time. But the registration is not possible without the signature of the two ministers. Sometimes the employees wait for months, even years, to get consent by these Ministries. The Helsinki Committee points out the need to specify the legal provisions i.e. to regulate the procedure and the way for transformation of the employment from employment with fixed duration into full-time employment, particularly in the field of education. This also includes setting deadlines for providing consent in order to rectify this legal inconsistency and remove any type of legal insecurity for employees, so that the realization of this right will not depend solely on the will of line ministers.

2.2. The case of Jordan Donev

r. Donev addressed the Committee regarding the termination of his employment as inspector (state servant) in the Administrative inspection because he met the legal requirement for retirement. Pursuant to the decision of the Constitutional Court No.161/2005 as of December 21, 2005 published in the Official Gazette No. 04/06, Article 104, paragraph 1 of the Law on Labor Relations [5] is annulled, so his employment cannot be terminated on this ground. In the decision, the Constitutional Court refers to the protection against discrimination, equality of citizens in front of the law and the right and freedom to work, pointing out that each job position should be available to each citizen. The Court found the ground for annulling this article as the disputed legal provision is not in compliance with the principle of equality of citizens regardless of the gender and the principle of availability of each job position to everyone under equal conditions, most of all due to the fact that the conditions for reaching the age for retirement are different for men and women.

The Law on Labor Relations is lex generalis regarding the regulation of rights and responsibilities arising from the labor relations. The client as state servant has filed a complaint about the decision on termination of employment to the Commission within the Agency of State Servants and got a reply that in the law on state servants, as lex specialis, the provision that when the employee reaches the age for retirement the state organ can terminate the employment is still imperative [6]. Regarding the decision, the Commission within the Agency has not taken into consideration the annulled provision of the Law on Labor Relations, but restrictively and formally implemented the provision of the Law on State Servants, which refers to the identical matter.

Therefore, the Committee is worried that there are two groups of employees to which different grounds for termination of their employment apply. These are employees to which the Law on Labor Relations is applied, according to which the retirement by age is not the legal ground for termination of the employment and the state servants to which the Law on State Servants is directly applied, according to which this ground is still enforced. This legal inconsistency and ignorant attitude towards the decisions of the Constitutional Court are the basis for discrimination of a certain category of employees at the expense of all others. The Committee appeals to the state organs to take care of the implementation of the legal amendments and in cases of incompatibility of certain legal decisions in the same area to submit initiative to the Constitutional Court for their harmonization with the lex generalis regulations.

III. POLICE AND COURT CASES

3.1. The case of Angel Dimitrov

Angel Dimitrov from Kavadarci, addressed the Committee due to unprofessional and unscrupulous conduct of a judge from the Basic Court in Kavadarci. In the ruling about his case, in which the client was sued for compensation of a debt registered under No. 148/00 as of April 2, 2003 the judge has established responsibility of solidarity of the client for the incurred debt pursuant to the Law on Enterprises, and referred to this law when determining the merit in the dispute. The Law on Enterprises is annulled with the adoption of the Law on Trade Companies, published in the Official Gazette of the Republic of Macedonia, No. 29/96 as of June 6, 1996, while the charges of the plaintiff were pressed in the course of 2000, when the Law on Enterprises, on which the ruling of the judge is based, was no longer valid. The client has also submitted request to the Judicial Council of Republic of Macedonia to examine the allegations for unprofessional work of the judge, and the reply is pending. The Committee believes that the Judicial Council should carefully examine the work of the judges and their expertise in implementation of legal regulations. Although this is subject to second instance judicial control and there is a possibility for annulling this ruling, however this is an indicator of the knowledge and implementation of the laws, which may directly harm the citizens and this is why additional control of the expertise of the judge in question is required.

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[1] Article 19 of the Constitution of the Republic of Macedonia:
The freedom of religious confession is guaranteed.
The right to express one's faith freely and publicly, individually or with others is guaranteed.
The Macedonian Orthodox Church and other religious communities and groups are separate from the state and equal before the law.
The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.
[2] Decision of the Government, No. 19-1378/1 as of March 29, 2006 (Official Gazette, No. 44/2006)
[3] Directive of the Council of Europe, June 25, 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a temporary employment relationship as well as Convention No. 158 and Recommendation 166 of ILO for termination of employment upon the initiative of the employer
[4] According to the Opinion of the Ministry of Labor and Social Policy, published in the Commentary and Guide for the Labor Relations Law of the Association of Economy Lawyers, March 2006, "in a public or any other type of institution funded by the state budget, in order to transform the employment for indefinite period of time, funding for salaries and benefits should be provided for the specific job position and the need for this job position should be stated in the systematization act of the institution."
[5] Article 104, paragraph 1 of the Law on Labor Relations "(1) The employer has the right to terminate the employment when the employee meets the legal requirements for retirement. "
[6] Decision of the Commission of the State Servants Agency No. 12-15658/2 as of November 26, 2007

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

February 2008

I. PUBLIC EVENTS AND VIOLATION OF DEMOCRATIC PRINCIPLES

1.1. Second call to the Government of the Republic of Macedonia for ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
1.2. Note on the police operation in Brodec village, Tetovo region

1.3. Attack on Goran Gavrilov – indicator of the situation in the broadcasting sector

II. VIOLATION OF ECONOMIC AND SOCIAL RIGHTS

2.1. Vagueness in the Law on Payment Turnover

2.2. Treatment of the persons infected with Hepatitis C

III. POLICE AND COURT CASES

3.1. Organizational and ethical aspects of health care in prisons

3.2. Cases indicating police brutality

I. PUBLIC EVENTS AND VIOLATION OF DEMOCRATIC PRINCIPLES

1.1. Second call to the Government of the Republic of Macedonia for ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In the message released on the occasion of December 10 – the International Day of Human Rights, the Helsinki Committee called for urgent ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the meantime the Optional Protocol was not ratified, but increasing number of Macedonian non-governmental organizations received international grants for monitoring the cases of torture in our state institutions, while the situation in the penitentiaries is often subject of different reports monitoring the human rights in the Republic of Macedonia. Therefore, the Committee takes the opportunity to repeat the public call to the Government for ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, hoping that the Government will finally fulfill the obligation it has undertaken. We expect the other non-governmental organizations active in this area to support this call.

In addition, we would like to offer to the public our arguments on the necessity for ratification of this Optional Protocol and its implementation in the Republic of Macedonia.

Affirming the human rights as universal value, the international community accepts that the torture constitutes serious violations of human rights – dignity, physical integrity and safety of the person. The fight against torture was encircled by the adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention not only defines the term torture, but also imposes strict obligations on the State Parties in terms of respecting this right by undertaking efficient legislative, administrative and other judicial measures to prevent the torture.

Twenty years after the adoption of the Convention against Torture, the General Assembly of the United Nations by resolution adopted the Optional Protocol to the Convention on 18 December 2002, which entered into force on 22 June 2006 after the twentieth instrument of ratification was deposited.

The aim of the Protocol is to help the State Parties to achieve the purposes of the Convention against Torture.

The Optional Protocol is laid on two pillars. The first one establishes a preventive and not reactive system. The second pillar pertains to the cooperation of the State Parties in prevention and elimination of cases of torture. With this, the Optional Protocol creates a system of independent inspection of the places of detention in order to prevent the torture and monitor the conditions in these places.

On the other hand, each State Party should maintain, designate or establish one or several independent national preventive mechanisms to regularly examine the treatment of the persons deprived of their liberty in places of detention. Furthermore, the State Parties undertake to publish and disseminate the annual reports of the national preventive mechanisms.

The intention of the Optional Protocol is through the visits and reports to open debate between the authorities and the supervising bodies in order to prevent the violation of human rights and to remove the causes that generate conditions for torture.

The adoption of the Optional Protocol confirms the fact that the increased openness and transparency in the places of detention reduces the chances for abuse of force by the law enforcement officials and provides better protection of the persons deprived of liberty that are particularly vulnerable and unprotected and may be subject to torture, inhuman and degrading treatment and punishment.

The members of the international and national mechanisms for prevention of torture have mandate for regular and periodic visits to the places of detention. The power given to the experts that constitute these bodies is of exceptional importance because the approval by the state is not needed prior to the visits of the places of detention.

It is important to note that the Protocol does not make a reference to the form and the type of the national mechanisms for prevention of torture, and leaves great flexibility to the State Parties in this regard: they are free to establish a totally new structure, to use to this end the mechanisms for protection of the human rights already existing in the country (Ombudsman, parliamentary commissions, civil society organizations etc.), or to combine the existing ones with new ones. In order to meet the objectives of the Protocol, the practice of the majority State Parties is to use the existing mechanisms for protection of human rights such as the Ombudsman and existing parliamentary commissions, by extending their capacities for monitoring the cases of torture. In some State Parties, there is an ongoing debate on the possible creation of new body, which will establish a link between the non-governmental sector and the national institutions for protection of human rights. This is a confirmation of the commitment of most State Parties that the non-governmental sector must be part of the process for creation of the bodies for prevention of torture on national

level. The creation of national mechanisms is crucial step in the process of building their efficacy.

The national preventive mechanism has no judicial function and is not a replacement of the judiciary in the state. It is not controlled by the government, but it is not a non-governmental organization either, although the participation of the non-governmental sector is not excluded in its creation and functioning.

Having in mind the great importance of this proactive international and national mechanism for monitoring and prevention of torture through regular and periodic visits to the places of detention of persons deprived of liberty in order to intensify the protection of the persons deprived of liberty, the Helsinki Committee of Human Rights calls the Government of the Republic of Macedonia to ratify the Protocol and to invite the non-governmental sector to be part of the process of establishing the body(ies) for prevention of torture on national level as well as to invite the representatives of the non-governmental organizations to be members of this body.

1.2. Note on the police operation in Brodec village, Tetovo region

In the course of February, the media outlets showed a video of a person detained during the police operation in Brodec village, Tetovo region. The recordings clearly showed that the person sustained severe injuries in the head, making it hard to recognize his identity. Through the conversation with the law enforcement official, which was not identified, the public was able to see how these persons are treated during the investigation procedure.

This is only a confirmation of the accuracy and objectivity of the statements made in the Report on the police operation performed in Brodec village on November 7, 2007 released by the Helsinki Committee.

Unfortunately, the Ministry of Interior instead of undertaking specific measures and filing criminal charges against the perpetrators for torture of the detained persons, the police have focused the action towards those who made the video clip, which showed that excessive violence was used during this operation.

The Helsinki Committee calls the competent institutions to admit the mistake, to conduct investigation on the treatment of detained persons during the police operation and to file criminal charges against all perpetrators, without selective approach.

1.3. Attack on Goran Gavrilov – indicator of the situation in the broadcasting sector

The (life-threatening) attack on the owner of the radio network "Kanal 77", Goran Gavrilov, is just another indicator of the situation in the broadcasting sector i.e. the evident presence of financial and political interests in this area.

Although the first laws regulating this area were adopted ten years ago, the chaos still reigns in this sector, which has been multiplied with the penetration of cable operators. The illegal operations are still present: illegal radio and TV broadcasting, unlawful work of the cable operators and other accompanying developments (treatment of employees, violation of their basic rights in terms of the salary, refusal to pay the fringe benefits…). At the end, the citizens pay the price through the final product or service delivered by the electronic media. The situation reflects on the quality of programming and information disseminated through the powerful electronic media that are available to the citizens. It is unnecessary to highlight that the chaotic situation is fruitful ground for direct political pressures and threats, influence on editorial police, (ab)use of budget funds for commercials and advertising without any efforts of the competent state institutions to resolve the chaos.

The Helsinki Committee expects that the authorities will be equally efficient in resolving the situation in the broadcasting sector just as they were efficient in identifying the attackers on Gavrilov. First, they have to implement and respect the existing legislation and then by upgrading the regulations they can create a broadcasting sector whose primary interest will be developing and delivering satisfying programs and services to the citizens.

II. VIOLATION OF ECONOMIC AND SOCIAL RIGHTS

2.1. Vagueness in the Law on Payment Turnover

The new law on payment turnover was enforced on January 1, 2008, introducing novelties and solutions that are compatible with the current payment system of the European Union.

However, there is dilemma and vagueness regarding its practical application, specifically in Section III Performing the operations in the payment system. Article 22 of the Law on payment turnover stipulates that if an entity (legal or physical) does not have sufficient funds on the account in the relevant bank that initiated the court procedure for forced payment of the debts, then this bank notifies all other banks to stop using the funds on the accounts opened by this person in these banks.

Generally, this solution is legally grounded and justified. But the problem that may emerge is whether this solution may be applied to the accounts in which the indebted person – the citizen is someone's guardian, legal representative or authorized by the holder of the account, etc.

The Helsinki Committee calls the competent institutions to clarify these dilemmas in a timely manner by issuing instructions for operational application of the law on payment turnover.

2.2. Treatment of the persons infected with Hepatitis C

The non-governmental organization HEPTA sent a letter to the Helsinki Committee, notifying that the Ministry of Health and the Health Fund made a decision, according to which the people infected with Hepatitis C should continue the medical treatment and receive the appropriate therapy at the Clinic of Infectious Diseases in Skopje, and not at the departments of infectious diseases in the cities of their residence. After the notification from the Ministry of Health and the Health Fund, HEPTA informed us that the situation has changed i.e. the patients were able to get the therapy at the departments of infectious diseases in the cities of their residence, but there is a problem with timely diagnosis and lack of therapy for the patients that should start the treatment. HEPTA believes that instead of improvement, these persons face new negative conditions that violate their basic human rights for timely diagnosis and available treatment. By delaying the diagnosis and treatment of the people infected with Hepatitis C, the Law on protection of citizens from infections diseases is violated, which is a threat not only for the infected persons, but also for the entire population of the Republic of Macedonia.

The Helsinki Committee of Human Rights supports HEPTA and considering the severity of the problem calls the competent institutions to pay due respect to this problem and resolve this situation as soon as possible.

III. POLICE AND COURT CASES

3.1. Organizational and ethical aspects of health care in jails

The person K.F. from Gostivar

addressed the Helsinki Committee for Human Rights through his lawyer regarding his deteriorated health condition and the request for medical examination at the Cardiology Department in the University Hospital in Skopje. According to the allegations, the suspect who was in detention had a deteriorated health condition for a while and was diagnosed to suffer from several diseases. The lawyer says that the suspect had earlier health problems and during the detention in Suto Orizari penitentiary he complained to severe chest pain, suffocation and other symptoms, which were more intensive than previously when he was hospitalized in the Cardiology Department. Concerned about the health condition of K.F., according to his lawyer, he and the family of the suspect have addressed the prison doctor and institution's director to undertake appropriate measures and provide health care for the suspect, but these requests were fruitless.

Even more disturbing is the need to undertake appropriate actions, particularly in terms of monitoring the implementation of legal provisions for providing health care in the prisons, when there are lethal consequences and death of a prisoner, as a result (according to the allegations of the clients) of the inappropriate health care and the failure to undertake prevention measures. A real example highlights this.

The person N.A. addressed the Helsinki Committee for Human Rights as a father of the deceased prisoner S.A. According to the allegations, his son (born June 13, 1980) died on October 29, 2007 while serving a sentence in Idrizovo penitentiary. The death certificate and the medical report show that his son died as a result of brain inflammation. According to the client, his son complained to severe headaches for two months and requested a medical examination, but was refused from prison officers, which probably contributed for his death.

In reality there is a need for addition and further specification of the legal provisions referring to the health care in prisons and full implementation by the prison administration and medical staff. This need comes out of the numerous examples in the practice, which somehow show that the opposite is the case. In support of this need is the Recommendation No. 7 Concerning the Ethical and Organisational Aspects of Health Care in Prison as of 1998, which may serve as a relevant example of a document containing a full list of principles, rights and obligations that can be used for specification of the general provisions in our legislation covering this area.

The provisions stipulated in this way are not sufficient or even if they are sufficient are not fully implemented and respected by the prison administration, which is clearly evident by the fact that in only two months two persons (which were not the only ones) addressed the Helsinki Committee for Human Rights of the Republic of Macedonia regarding the inconsistent implementation of these provisions and the failure to respect the rights of prisoners for health care, which may have lethal consequences as it happened in the second case.

3.2. Cases indicating police brutality

Persons, Boge Ugrinovski from Podbregje village, Andon Spasov from Skopje as well as Grozde and Zlate Dencovski from Skopje, complained to the Helsinki Committee about the degrading treatment and police brutality. Although the cases are not related, the three persons claim that they were attacked and beaten by law enforcement officials and sustained body and head injuries that affected their general health. They all substantiated their claims with relevant medical records.

Because the factual situation provided serious indications that the law enforcement officers abused their authorizations in performing their duty and acted against the law[1], the Helsinki Committee of Human Rights of the Republic of Macedonia addressed the Sector of Internal Control and Professional Standards in the Ministry of Interior requesting information on the undertaken activities by the Sector against the law enforcement officers and requiring information on whether an investigation was conducted and what was the outcome.

In the spirit of the improved cooperation with the Sector, we received an information saying that the clients allegedly used insulting and obscene language towards the law enforcement officers and they were challenged to use force, so the Ministry of Interior in two out of the three cases filed criminal charges against these persons for "Attack upon an official person, when performing security activities"[2], concluding that the complaints are not grounded.

We are not in a position to close the eyes confronted by the fact that in a time period of two months, in three different complaints by the citizens, the investigation conducted by the Sector for Internal Control showed that the professionally trained law enforcement officers were verbally provoked by the clients to intervene and they had to use force, which resulted in body injuries. The Sector considers the intervention to be justified and even files criminal charges against the clients for attacking a person in official capacity.

The Helsinki Committee calls the Interior Ministry and the Sector for Internal Control and Professional Standards not to abuse the provision Attack upon an official person, when performing security activities in order to neglect its duty for thorough investigation and sanctioning of the law enforcement officers that overstepped their official authorizations[3] and reminds them to implement into practice the commitment for protection and respect for human rights.

The Committee agrees with the statements of the Prime Minister in the letter addressed to the MoI and the law enforcement officials regarding their code of conduct and good manners, but reminds that the Government is a collegiate body that may adopt precisely defined acts and the letter is not a legal act that can be enforced, especially as the obligations and competences of the law enforcement officers are regulated with laws and bylaws that have to be adequately implemented in practice and not to serve as a narrative cover for the respect of human rights.

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[1] Article 32, paragraph. 2, Law on Police:

"In the performance of the police authorisations, the police officer is obliged to act in a human manner and to respect the dignity, reputation and the honour of the persons as well as the fundamental human and citizens' freedoms and rights."

[2] Article 383 of the Criminal Code of the Republic of Macedonia

[3] Article 37, Code of Police Ethics, as of June 4, 2007

"The police cannot cause, encourage or tolerate any type of torture, inhuman or degrading treatment or punishment", while Article 56 of the same Code stipulates that "Members of the police are obliged to respect the personal dignity and the individual needs of the person who is called, detained or deprived of freedom when there are reasonable doubts for perpetrating criminal act."

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

March 2008

Attached to this Report:

Statement by Iso Rusi
Acting President of the Helsinki Committee for Human Rights of the Republic of Macedonia

About the unfinished obligations

We will say nothing new if we as well conclude that in our country - for a number of years already – everything seems to follow the pattern where one/new event covers the previous one, which we most often forget about or more precisely "we put it under the carpet" for it to "hit us in the head" months or years later.

Now we will be dealing with the early parliamentary elections, which will set aside the name issue that we have with our southern neighbor reducing it to one of the topics in the pre-election campaign, in the same way as the name issue covered the country's failure to obtain an invitation for NATO membership and the Greek veto that lead to this situation. And the veto and the failure to obtain the invitation, when they were top topics, fully dragged our attention away from the things that were required from us until then as a precondition for obtaining the invitation...

Had we been dogs, we would have acquired since long ago the Pavlov's "conditional reflex" and would have known by now that every election year is an irrecoverably lost year for us. And probably we would have done something instead of having an endless futile transition in which, if possible at all to talk about achievements on the way to what we are all standing for declaratively (Euro-Atlantic integration), those achievements resulted, as a rule, from the interventions in terms of advice/pressure/imposition of conditions by our powerful friends from abroad.

Since we belong to humankind beyond any doubt, as champions in democracy we will be dealing in the following couple of months with the pre-election campaign, the elections and the formation of the new Government, with all of our colorful folkloric habits for each and every of these phases.

With such democratic priorities ahead of us, we certainly don't have time to remind ourselves that some thirty days ago, the EU Commissioner for Enlargement brought to us 8 benchmarks at the session of the Parliamentary/State body that should lead the way for our meteoric approach to Brussels, the fulfillment of which is a precondition for the EU to decide to start the accession negotiations with us.

For us as the Helsinki Committee for Human Rights in the Republic of Macedonia, three of these benchmarks are especially important, although almost all of them fall under our umbrella more or less: the implementation of the Law on the Police, the enactment of an anti-corruption legislation, and reform of the judiciary. One can say with a great dose of optimism that these are areas in which we have started the reforms and are halfway through their implementation. On the other hand, the skeptics are left with arguments of the type: (i) the hopes that our Police will be reformed with the entry into force of the Law on the Police were razed to the ground – a bad law can't be repaired with even worse bylaws; (ii) what anti-corruption laws can one talk about when even the small thing we had (the State Anti-Corruption Commission) got disciplined, and finally, (iii) what can be expected from the judicial reforms with a fault embedded since the very beginning – the failure to eliminate the possibilities for political influence on the Public Prosecution Offices and on the courts. There is no wonder then that the number of "enthusiasts" among the people in the judiciary is rising – these are people whom the politicians who are in power do not need to call - they know themselves what they need to do in order to fulfill their wishes.

And we will revisit the unfinished obligations when Brussels reminds us that we were supposed to finish them yesterday.

I. PUBLIC EVENTS AND VIOLATIONS OF THE DEMOCRATIC PRINCIPLES

1.1. The open competition for enrollment in secondary schools: Why make it simple when it can be made extremely complicated and harmful!

At the end of March, the Ministry of Education published the open competition for enrollment of students in the secondary education, which provided for the opening of Albanian language classes in some secondary schools in several municipalities. This open competition provoked a series of reactions by representatives of the units of local self-government, the schools where the Albanian language classes were foreseen to be opened, representatives of local organizations, citizens... These reactions can be described as resentment against the announcement of the opening of Albanian language classes. The media reported that even the Chairman (otherwise State Secretary in the Ministry of Education) and the "members of Macedonian background" (expression used in the press) of the Ministerial Commission that decided on the open competition did not agree with the announcement. The arguments "against" ranged from lack of space and staff to counting how many Albanians live in those towns.

Even some a bit unusual organizations such as the fighters against anarchy joined this "soap opera" requesting that the Councils of the Pelagonia municipalities hold urgent sessions, and that both the teachers' and the parents' councils give their opinion on the problem, also sending a warning that "they will take activities involving more radical measures unless the Government puts an end to the self-will of (the Minister) Rushiti". The reactions of the local branches of some political parties mentioned, inter alia, narrow partisan interests. Macedonian language media also made a contribution to this by publishing some "bloomers" which we thought we would not see again after the eighties and the nineties of the last century. All this colored the reactions to the announced open competition with political colors, and this was regretfully done from the position of obvious protection of the "Macedonian cause", which as we can see is defended, inter alia, by preventing the other ethnic communities to receive education in their mother tongue, especially the Albanian community.

This problem is not new at all, nor can it be attributed to this Government. It reappears more or less with almost every

school year. In the past, a situation like this would be "overcome" in such a way that the Ministry would withdraw after the protests in the municipalities and the schools; as for the students who have to right to secondary education in their mother tongue, hybrid solutions would be sought such as taking them to other municipalities and placing them in boarding schools.

This issue is extremely simple, if daily politics is put aside, of course.

Pursuant to the Constitution of the Republic of Macedonia: "Members of the nationalities have the right to instruction in their own language in the primary and secondary education in a manner as established by law " (Article 48), whereas the Law on the Secondary Education provides that: "For the members of the communities who follow instruction in a language different than the Macedonian language and its Cyrillic alphabet, the upbringing and educational activity in the public secondary schools shall be carried out in the language and alphabet of the respective community in a manner and under conditions as established by this law." (Article 4, Paragraph 2 of the same law). In addition, according to the amendments to this law, secondary education becomes "compulsory for every citizen, under equal conditions as established by this law" as of the following school year. This means that secondary education is no longer only a right, but an obligation as well.

The Ministry and the units of the local self-government are there only to comply with the Constitution and to implement the law, and all the rest is just daily politics with a view to scoring cheap political points among "one's own people" at the expense of "the others".

The Helsinki Committee is hereby supporting the statement of 21 non-governmental organizations, initiated by the Association for Democratic Initiatives (ADI) from Gostivar "Secondary education for all", which expresses concern over the attitudes by some representatives of units of local self-government and secondary school representatives regarding the issue of opening Albanian language classes.

1.2. The Ministry of Culture is spreading hate speech instead of art

In the beginning of March this year, the premiere of Chekhov's "Uncle Vanja" filled all the seats in the hall of the Child Center located in the Old Bazaar in Skopje. This play is directed by, according to many, the best Macedonian director Slobodan Unkovski, and the principal character is played by the famous actor Bajrush Mjaku. After the play "The father" by Strinberg, which represented the Macedonian theatre at several world stages, this is another successful project of this tandem. The premiere, regretfully, was actually a performance for the Macedonian friends of the project team. The Ministry of Culture did not finance the work of Unkovski and Mjaku and the viewers in Macedonia will have no possibility to watch this play.

"It's difficult to know that your own country does not support you", said in those days the director Unkovski. It is probably even more difficult to explain why the public here in Macedonia does not have the opportunity to enjoy the quality of this project. An opportunity that the Ministry of Culture deprived us of because of reasons known to them, in any case incomprehensible and unacceptable. An opportunity that the viewers in Tirana and Prishtina had during the same month because the institutions of these two countries believed in the artistic potential of the project team and invested resources in the realization of this project, in which artists from Albania and Kosovo participated as well.

One could perhaps find understanding for the bureaucratic blindness and obvious lack of competence in the bureaucrats from the Ministry of Culture, but no understanding whatsoever could there be for the ease and arrogance the project was rejected with, thus preventing the audience here to see it. Money is obviously not a problem because this Government demonstrated in many cases their "generosity" in spending taxpayers' money, even for quasi-artistic projects and works.

That this is most probably all about sowing one's wild oats on the basis of personal and political intolerance is shown by the reaction of the Ministry to the text published in the daily newspaper in Albanian language "Lajme". The Ministry reacted with a "denial" to the feature in the newspaper about the (non)financing of the project written by the journalist Anila Disha entitled "Disgrace for the Ministry of Culture". The "denial", which was sent only to the newspapers in Albanian language, is full of insults at the journalist – author of the text, as well as at the actors in the project. To crown it all, they used the term "infidel's syntagma". For a second time in less than a year, the structures of the ruling Democratic Party of Albanians have continued with an unbelievable ease to use hate speech, racist approach and spreading of ethnic intolerance.

1.3. Discrimination of children born with artificial insemination

The Universal Declaration of Human Rights, accepted both in the international legal order and in the Republic of Macedonia as a basis for setting the norms and for protection of the fundamental human rights, determines that "All human beings are born free and equal in dignity and rights"[1]. However, according to the information that spread among the public last month, it is obvious that the professors from the Theological Faculty are not of the same opinion since they think that the children born with artificial insemination are different from the other children and therefore they should be deprived of the possibility to be baptized according to the rituals of the Christian religion. In their opinion, the birth of a new life through artificial insemination is a sin.

In this way, these children are directly discriminated against with regard to other children, notwithstanding that the Macedonian state has accepted the prohibition of discrimination on the grounds of origin at birth or any other status[2], all the more so since the Republic of Macedonia, with the very acceptance of the Convention on the Rights of the Child as part of her national law, has committed herself to provide equal rights for all children within her territory without any discrimination and regardless of birth or another status of the child or its parent.

This attitude of the leaders of the Theological Faculty, whereby they refuse to baptize a live born child, is also in contradiction of the right to life that is stipulated in numerous international human rights acts which provide that the right to life is indivisible from the human personality[3], and States Parties recognize that every child has the inherent right to life[4].

It is unavoidable to ask the question how the professors from the Theological Faculty can recognize which child was born with artificial insemination, bearing in mind the legal obligation of the health care institutions to protect all personal, medical and genetic data on the donor and receiver[5], (classified information), or maybe they have a different way of coming to information and some system of marking of the children.

This attitude of the Theological Faculty is even more astonishing given the introduction of the religious instruction in primary schools[6], which should start in the new school year.

The professors from the Theological Faculty go that far as to say that the Church will take no special measures against the believers that had artificial insemination done because "we are all sinful". Therefore, the Helsinki Committee asks what measures are available to the Church and where her right to punish somebody comes from?

1.4. Inefficiency in the protection of the green areas

On 5 March 2008, vehicles parked on green areas[7] were noticed in front of the Ministry of Foreign Affairs of the Republic of Macedonia, in spite of the designated space for parking.

The Helsinki Committee for Human Rights reacted to this and had telephone conversations with the Ministry of Interior[8] - Phone Service 192, the municipality of Centar, the city of Skopje and the Ministry of Environment, which according to the legislation are the competent authorities for this issue, requesting their intervention in this case[9]. However, we were surprised by their answer: "We are not competent for this issue". The competent authorities shifted their responsibility to other authorities, after which we came to the conclusion that they actually didn't know which the competent authority for this case was.

When we finally got one of the competent authorities for sanctioning the cases

of parking on green areas, and these in addition to the Police officers are the communal inspectors[10] appointed by the municipalities, the municipality of Centar replied to us that all their inspectors were attending a seminar.

Environmental protection is a category that is regulated in several laws[11], which include clearly defined legal solutions for a case like this one. The abovementioned authorities may act upon these legal provisions, but they close their eyes to the destruction of the environment, and the offenders remain unpunished.

We were all witnesses of the drive organized by the Government of the Republic of Macedonia "Day of the tree – Plant your future", in which more than 2 million trees were planted, thus being one of the most massive drives in the Balkans. The Helsinki Committee for Human Rights supports this drive and hopes that it will become a tradition in the future.

We wonder what the effect of such drives is, if in the remaining 364 days of the year the competent authorities take no actions to prevent such offences from happening, the destroyers of the greenery remain unpunished, the final impact of these developments is again felt by the citizens, and none of the competent institutions takes on responsibility for this situation.

1.5. Supplement on the ratification of the Optional Protocol to the Convention against Torture - Cooperation between the Helsinki Committee and the Ministry of Foreign Affairs

Over the past months, the Helsinki Committee launched two public appeals to the Government of the Republic of Macedonia to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Republic of Macedonia signed the Protocol on 1 September 2006.

As we have already explained, the Optional Protocol is based on two pillars. The first pillar establishes a system of prevention of the cases of torture instead of reacting to them after they have happened, and the second pillar is the cooperation between the States Parties in the prevention and elimination of the cases of torture. In this way, the Optional Protocol creates a system of independent inspection of the places of detention with a view to preventing torture and monitoring the conditions in these places.

The intention of the Optional Protocol is to open a discussion between the authorities and the monitoring bodies through the visits and the resulting reports, with a view to preventing the violations of the human rights and removing the reasons enabling the conditions for torture.

The Optional Protocol confirms the fact that the greater transparency of the places of detention contributes to less of a likelihood for excessive use of force by the authorized officials, which provides for a greater protection of the persons deprived of liberty who are extremely vulnerable and unprotected from the possibility of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

In the interim period after the seminar on ratification of the Optional Protocol to the UN Convention against Torture organized by the Office of the High Commissioner for Human Rights, a UN team in Macedonia and the Association for Prevention of Torture, meeting was held between representatives of the Helsinki Committee for Human Rights and representatives of the Ministry of Foreign Affairs. The model of the national prevention mechanism and the ratification of the Protocol were discussed in the meeting. In this meeting held in the Ministry of Foreign Affairs we faced cooperation, so we are expecting the ratification of the OPCAT soon.

Given the great importance of this proactive international and national mechanism for supervision and prevention of torture through regular and periodic visits to places of detention of the persons deprived of liberty with the purpose of intensifying their protection, the Helsinki Committee for Human Rights of the Republic of Macedonia hereby greets the cooperation provided by the Ministry of Foreign Affairs with regard to the idea of involving the non-governmental sector in the process of creation of the body(ies) for prevention of torture at national level, as well as the inclusion of NGO representatives as members of this body.

II. VIOLATIONS OF ECONOMIC AND SOCIAL RIGHTS

2.1. How is the social protection enjoyed in P.U.D.O. – "Mladost"?

The families of Lekovic Sinan, Lekovic Zehra, Mikic Saso and Mikic Blagica addressed the Helsinki Committee for Human Rights of the Republic of Macedonia with a request for legal assistance.

The Inter-Municipal Center for Social Work of the city of Skopje issued to them a Decision dated 26 February 2007 on temporary accommodation in the facility of P.U.D.O. – "Mladost" in Chichino Selo, located in the municipality of Saraj.

A team of the Helsinki Committee for Human Rights of the Republic of Macedonia visited the facility for the needs of the project "Monitoring of the violation of the human rights within the territory of the Republic of Macedonia".

The actual situation that was found on the spot was that this facility also hosts refugees from Radusha, refugees from other countries, female victims of family violence and others. The abovementioned four families are accommodated in one shack, and later on another young couple – drug addicts got accommodated in the same shack, with a young child diagnosed with Hepatitis C.

The living conditions are below any standard of civilized livelihood; more precisely, the shacks are falling down, the walls that are made out of gypsum are fissured, and atmospheric water leaks through the ceiling. No disinfections or insect and rat extermination activities have been carried out in the premises where these people are living.

Just for comparison, the following is stipulated in the Law on the Execution of Sanctions, more precisely in its section on accommodation of sentenced persons (Article 102): "The premises where the sentenced persons are accommodated must not be wet, and 9 (nine) m3 of space on average should be provided for every sentenced person." In the case concerned, this requirement is beyond any imagination.

The toilet and the bath are shared, the sanitation equipment is broken, only one boiler is working, and the electrical fixtures are quite damaged and dangerous to life.

Two children that go to school are living in these four families. Requests for free bus tickets have been filed several times in order for these children to be able to go to school by bus, but the relevant authorities have not responded to these requests yet. One of the parents takes his child to school on his bike every day, regardless of the weather conditions.

It is with regret that the Helsinki Committee notes again that the social protection and social security of the citizens underlying the principle of social justice are at a very low level in the Republic of Macedonia, below any civilization standards.

2.2. The right to work and the presumption of innocence

The Helsinki Committee for Human Rights of the Republic of Macedonia has been continuously pointing to the violations of the principle of presumption of innocence and has noted with regret the continuation of the non-observance of this basic principle of the criminal procedure, protected by the Constitution of the Republic of Macedonia, the Law on the Criminal Procedure and the European Convention of Human Rights. Even more alarming is the fact that this basic postulation of the criminal procedure is not observed even when it comes to one of the basic human rights – THE RIGHT TO WORK, which certainly deserved criticism.

Namely, in the case of the Customs officers from the border crossing Deve Bair suspected of committing the crime "Taking bribe", the Committee commented on the serious indications of abuse of the special investigative measures in the Monthly Report for June 2007. By monitoring the ensuing part of the court procedure against these persons, which is still underway, the Helsinki Committee came to knowledge substantiated by relevant documentation that in the case of all suspects, their employment lasting for an indefinite period as Ministry of Interior

workers was terminated on 22 February 2007 in the Employment Service Agency – Employment Center Skopje, on the ground of a sentence of up to six month imprisonment. However, these same persons whose employment was terminated without them knowing at all that "they were accused, that a criminal procedure against them was conducted, and even less that this procedure ended in an effective prison sentence", were detained to a Police station on the following day of 23 February 2007 under the suspicion of having committed the respective crime, and the Decision ordering the conduct of investigation, including pre-trial detention, was issued on 24 February 2007.

Pursuant to Article 13 of the Constitution of the Republic of Macedonia: "A person indicted for a criminal offence shall be considered innocent until his/her guilt is established by a legally valid court verdict." In this specific case, the guilt of the suspects has not yet been established by a legally valid court verdict for more than one year after the employment termination, hence it is surprising how and when "the legally valid court verdict was reached" based on which the employment was terminated on the controversial date indicated in the Certificate on deregistration of the employment-related insurance issued by the Employment Center Skopje?

Maybe more worrisome is the fact that this act of the Center for Employment Skopje has caused a violation of the Law on the Labor Relations. The latter provides that when due to serving of a sentence or another impossibility the worker does not go to work for a period of less than 6 months, the employment contract shall not cease to apply and the employer must not terminate it[12].

The surprising behavior of the institutions has continued with the Proposal for issuing a Decision on termination of the employment of the suspects dated 3 April 2007 by the employer, in this specific case the Ministry of Interior, which was followed by the Decision on Termination almost two months after their deregistration in the Employment Center.

The Law on the Labor Relations provides that there has to be a justified reason for the employer to give notice to a worker, which reason the employer is obliged to explain and prove in writing[13], but prior to this the employer should warn the worker in writing of his/her failure to deliver. The purpose of this provision is to limit the employers and protect the workers against their arbitrary behavior when giving notice, which was not the case in this particular story given the fact that there is a clear violation of the principle of presumption of innocence and of the rights stemming from the employment status.

The Committee reminds the readers again that the rights that every suspect has – the right to privacy and the presumption of innocence – should be visibly more protected. Moreover, the Helsinki Committee thinks that the Ministry of Interior and the Employment Center Skopje should provide an explanation for the ground for termination of the employment indicated in the Deregistration Certificate issued by the Center given the fact that the first instance criminal procedure has not finished yet, which implies that there is no question of some sentence of imprisonment.

III. POLICE AND COURT CASES

3.1. The "urgency" of the criminal procedure in case where pre-trial detention was ordered - case of Miodrag Markovic

Miodrag Markovic is a citizen of the Republic of Montenegro, charged in the Republic of Macedonia with the criminal offence "Laundering money and other proceeds of crime", sanctioned with Article 273 of the Criminal Code of the Republic of Macedonia.

This is about a case that the general public became familiar with through the media, but also a case that the Helsinki Committee for Human Rights of the Republic of Macedonia became interested in and whose trial is subject of constant observation.

The Helsinki Committee has been continuously pointing to the need for the judicial authorities to go by the standards for using pre-trial detention as a tool for securing the presence of the defendants, which should be the measure of last resort that is applied when the goal can't be achieved with a more lenient measure[14]. Unfortunately, the judicial authorities have continued to abuse of the pre-trial detention in such a way that they have been using it as an indispensable measure for securing the presence of the defendant in the criminal procedure.

That this is true is proven by the fact that the person Miodrag Markovic is in pre-trial detention for more than 16 months. Based on an arrest warrant issued by the Public Prosecutor's Office of the Republic of Macedonia, the defendant, then suspect, was arrested in the Republic of Serbia in December 2006 where he served time in pre-trial detention until October 2007, when he was extradited to the Republic of Macedonia. In spite of the legal provisions requiring urgent action in pre-trial detention cases[15], the first instance criminal procedure against the defendant is still underway, and it has been constantly delayed without taking into consideration the negative consequences of such indifferent attitude toward the measure of pre-trial detention. The last example of such delay was the adjournment of the main hearing for about one month for the translation of written evidence suggested by the Basic Public Prosecutor's Office, unlike the previous time limit of two weeks allowed for translation of huge evidential materials submitted by the defense lawyers. The Helsinki Committee would like to remind on this occasion of the principle of equality of arms in the criminal procedure.

The situation is even more alarming in view of the situation that during one of the hearings observed by the Helsinki Committee, the defense lawyers of Mr. Markovic made a proposal for revocation of the pre-trial detention measure and for considering the other legally foreseen measures for securing the presence of the defendant, offering guarantees for this, but the Deputy Basic Public Prosecutor objected to this proposal without providing any legally sound arguments in favor of the objection. The court did not accept the proposal with a simple explanation: "The reasons for pronouncing the measure of pre-trial detention are still valid".

The Helsinki Committee thinks that especially when deciding on restriction of the liberty of movement of a person - when ordering or extending the measure of pre-trial detention - the approach should be based on due care and legally relevant and justified reasons as well as urgency, because one of the basic human rights is at stake here.

The Helsinki Committee for Human Rights has criticized on several occasions this attitude of abuse of the pre-trial detention as a measure, and is hereby once again calling upon the judicial authorities to take equally into consideration the alternatives to pre-trial detention, given the fact that the latter should be a means for securing the presence of the defendant rather than a punishment, whilst not forgetting the presumption of innocence as a Constitutional principle[16].

3.2. The case of Zebushe Krasnici

A relative of the person Zebushe Krasnici addressed the Helsinki Committee for Human Rights of the Republic of Macedonia through Amnesty International, asking for help for this person to be found. On 23 February 2008, Krasnici was arrested by the Police in the apartment that she was renting.

Based on her submission, as well as a previously obtained approval from the Ministry of Interior, a representative of the Helsinki Committee for Human Rights of the Republic of Macedonia visited Miss Zebushe Krasnici in the premises of the Transit Center for Foreigners.

This person is an ethnic Albanian born in Skopje in 1976, who has only a Birth Certificate and no nationality. During the conversation with Miss Krasnici we were told that she wanted to stay in the Republic of Macedonia and to apply for Macedonian nationality, that she had lived within the territory of the Republic of Macedonia, and that she had relatives where she could live and be taken care of. Based on the data obtained from the client, no misdemeanor or criminal procedure has ever been conducted against her.

The European Convention on Nationality[17],[18] provides that the rules on nationality of each State Party are based on the following principles: (i) everyone has the right to a nationality; (ii) statelessness is to be avoided. Bearing in mind that the Law on the Foreign Nationals[19] stipulates that the provisions of the Law

on the General Administrative Procedure apply to a procedure of this kind, it is implied that the principles that apply to this specific care are those of economy and urgency[20].

Given the urgency of the case and bearing in mind that Miss Krasnici has been in the Transit Center for Foreign Nationals for almost one month, and considering that there are legal possibilities for her to be released and accommodated elsewhere based on Article 110[21] of the Law on the Foreign Nationals, the Helsinki Committee is calling upon the Ministry of Interior to consider the possibility of issuing a Decision enabling accommodation of the client at her relatives' place, in agreement with the law and bearing in mind the circumstances of the case.

We want to stress that the Ombudsman, after becoming aware of the problems of acquiring citizenship through naturalization, has filed an Initiative for amending the Law on Nationality in this regard, which the Helsinki Committee is greeting and supporting.

3.3. The case of Elizabeta Naseska

The secondary school "Kuzman Josifoski - Pitu" from Prilep launched a vacancy announcement on 22 April 2006 for teachers of economic subjects, which 9 candidates applied to, out of whom 8 fulfilled the required criteria.

The Director of the secondary school "Kuzman Josifoski - Pitu" from Prilep issued a Decision on selection of teachers of economic subjects on 17 May 2006 (No.02-118 of 17 May 2006). Before the legally determined period for objections, the Director entered into Employment Contracts for an indefinite period of time with the selected candidates on 17 May 2006. One day before the issuing of the Decision No. 02-118, i.e. on 16 May 2006, the Director deregistered from the Employment Center the selected candidates that previously had Temporary Service Contracts valid from 9 November 2005 until 31 August 2006. Elizabeta Naseska received the Decision No. 02-118 of 17 May 2006 on 22 May 2006.

Elizabeta Naseska, dissatisfied with the selection made in this way by the Director, filed within the legally determined period an Objection to the school board. The latter ACCEPTED THE OBJECTION AND DECIDED TO ANNUL the Decision No. 02-118 of 17 May 2006, and entrusted the Director with the task to make a new selection out of the applicants within 8 days.

The Director issued a new Decision No. 02-175 of 6 July 2006, whereby she selected the same candidates to be teachers of economic subjects for an indefinite period of time. Elizabeta Naseska filed an Objection to this Decision as well within the legally determined period.

The School Board held a meeting on 3 August 2006, reviewed the Objection, ACCEPTED IT FULLY and DECIDED TO CHANGE the Decision No. 02-175 of 6 July 2006 by issuing a new Decision No. 02-206 of 11 August 2006. Since the Director of the school failed to enforce this Decision of the School Board, Elizabeta Naseska filed a complaint on 31 August 2006 to the Basic Court in Prilep, asking that the Decision be enforced.

The Basic Court in Prilep rendered the Judgment No.738/06 of 24 November 2006 whereby the complaint of Elizabeta Naseska was rejected as unfounded. This complaint asked that the plaintiff be ordered to enforce the Decision No. 02-206 of 11 August 2006 issued by the School Board, in relation to the vacancy announcement for a teacher of economic subjects, in such a way that the secondary school "Kuzman Josifoski - Pitu" should enter into Employment Contract with Elizabeta Naseska for an indefinite period of time for the position of teacher of economic subjects, starting as of 1 September 2006.

Appeal was laid against the Decision of the Basic Court in Prilep to the Appeal Court in Bitola. In addition to the appeal, a submission was filed asking for convocation of a hearing at the second instance court according to the provisions of Article 351 Paragraph 2 of the Law on the Civil Procedure, in connection with Article 352 of the same law.

The Appeal Court in Bitola rendered the Judgment No. 16/2007 whereby the Appeal of Elizabeta Naseska was rejected as unfounded and the Verdict of the Basic Court – Prilep No. 738/06 of 24 November 2006 was confirmed. Application for Revision was filed within the legally determined period to the Basic Court in Prilep.

The Basic Court in Prilep issued a Decision whereby the application for Revision was rejected as unfounded. This Decision was then appealed to the Appeal Court in Bitola, which rejected the appeal as unfounded.

The Helsinki Committee notes with regret that the evidence pointing to abuse of the official duties by the Director, which duties are stipulated in the Law on the Secondary Education,[22] will need to be established by the European Court of Human Rights in Strasbourg. Another failure of the Macedonian judiciary.

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[1] Article 1, Universal Declaration of Human Rights
[2] Article 14, European Convention of Human Rights
[3] Article 6, International Covenant on Civil and Political Rights
[4] Article 6, Convention on the Rights of the Child (UN)
[5] Article 17, Law on Bio-Medically Assisted Insemination, Official Gazette of the Republic of Macedonia No. 37 of 19 March 2008.
[6] Law Amending the Law on the Primary Education, Official Gazette of the Republic of Macedonia No. 51 of 24 May 2007, Article 2, " Article 13 shall be amended as follows: "Religious education shall be organized in primary school as optional subject. ..."
[7] Law on the Maintenance of the Public Cleanliness and Public Areas, Article 8: No parking of vehicles outside designated areas or loading and offloading of vehicles shall be allowed on public and traffic areas, especially at places with street hydrants, manholes and gutters".
[8] Law on the Police, Article 5: "Police work includes actions by Police officers to prevent the commission of criminal offences and misdemeanors, detect and catch the perpetrators thereof, and take other legally prescribed measures to prosecute the perpetrators of these offences".
[9] Law on Misdemeanors, Article 27: "The one who impedes the use of or damages public buildings, public fountains, springs, beaches, parks, walkways or other public facilities and installations, or pollutes them with matters and waste that pollute the environment and the nature, shall be fined with 100-400 Euro in denars counter-value ".
[10] Law on Communal Activities, Article 3: "Communal activities in the meaning of this law include removal and subsequent keeping of unlawfully parked vehicles..... Article 33: "The municipalities, i.e. the city of Skopje, shall appoint communal inspectors for the performance of the duties in the area of communal activities, within their competencies established by law."
[11] - Law on Environment, Official Gazette of the RM No.53 of 5 July 2005.
- Law on the City of Skopje, Official Gazette of the RM No.55/04 of 16 August 2004, Art.10 Para. 3
- Law on the Local Self-Government, Official Gazette of the RM No.5, 29 January 2002, Art. 22 Para. 2
[12] Article 45 Paragraph 1, Law on Labor Relations
[13] Ibid, Article 72
[14] Article 185 of the Law on Criminal Procedure: "The measures that may be undertaken against the defendant for securing his/her presence and for successful conduct of the criminal procedure include invitation, detention, promise made by the defendant not to leave the place of residence/living and other preventive measures to secure the presence of the defendant such as guarantee, home confinement and pre-trial detention".
[15] Article 198, Law on the Criminal Procedure: "The duration of the measure of pre-trial detention must be reduced to the shortest necessary time. It is duty of all authorities involved in the criminal procedure and of the authorities providing them with legal assistance to act with particular urgency if the defendant is in pre-trial detention".
[16] Constitution of the Republic of Macedonia, Article 13: "A person indicted for a criminal offence shall be considered innocent until his/her guilt is established by a legally valid court verdict".
[17] Article 4 of the European Convention on Nationality
[18] The Republic of Macedonia signed the European Convention on Nationality on 6 November 1997.
[19] Article 6, Law on Foreign Nationals
[20] Article 17, Law on the General Administrative Procedure: "The procedure shall be conducted economically and urgently without any delays, with as little as possible expenses and loss of time for the client and for the other persons participating in the procedure, but in such a way that everything that is needed to properly establish the actual situation and to issue a lawful and proper Decision will be collected".
[21] Article 110
"A foreign national that may not be forcibly removed, as well as the foreign national referred to in Article 108 Paragraph 4 of this Law, if he/she has a secured accommodation and means for subsistence in the Republic of Macedonia and if it may be judged from the circumstances of the case that accommodation of the foreign national in the Transit Center is not needed, the Ministry of Interior may issue a Decision whereby they restrict his/her movement only to the place of residence and oblige him/her to report to the closest Police station at regular time intervals."
[22] Official Gazette of the Republic of Macedonia" No.44/95, 24/96, 34/96, 35/97, 82/99, 29/02, 40/03, 42/03, 67/04 and 55/05 - Art.102:"The school board shall decide upon objections and complaints filed by the staff of the school".

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

April 2008

I. PUBLIC EVENTS AND VIOLATIONS OF THE DEMOCRATIC PRINCIPLES

1.1. The implementation of the legislative for anticorruption

In the upcoming period, the State Commission for Prevention of Corruption of the Republic of Macedonia will work in the section of its jurisdictions, which stem from and are related with the financing of the election campaign. This means that its activity will be directed towards determining the eventual abuse of the budget funds and of the public funds for the financing of the election campaign and determining the illegal and anonymous sources for the financing of the election campaign.

In order to say that real progress has been achieved in the section of anticorruption, we must point out that it is not complied only of sturdy legal texts and campaign actions that are directed only to one goal, but it is decisive whether the expected positive effects will be achieved and all sections included, and whether there will be concrete results. The Commission should to do a permanent inspection of the poll papers of the property status of the elected and appointed functionaries from the previous assembly of the government, as well as whether the changes in the property status have been recorded in the legally determined deadline.

If we observe the data of the property status of the already announced poll papers, we will determine that a substantial part of it is incomplete, thus according to the Law on Prevention of Corruption (Article 36), the State Commission and the Administration for Public Incomes (API) have an obligation to pursue a proceeding for the evaluation of the property status.

The Helsinki Committee appeals that the State Commission in accordance with its determined jurisdiction, according to the Law on Prevention of Corruption, continues to record and follow the property status and changes in the property status of the elected and appointed functionaries, of the official persons and of the responsible persons in the public enterprises and other legal persons that dispose with the state capital. The recommendation to rise above the troubles of corruption, which represents a handicap for our fast European future, is heard on a daily basis. At the same time, we hope that the situation that was listed in the Report of the European Commission on the progress made in the Republic of Macedonia in 2007 will not be repeated, according to which: "corruption is widespread and it represents a serious problem, and that the approach in order to handle corruption is not yet all-embracing".

1.2.[1] Inefficacy of the "Request for the Protection of Legality"

The right to an efficient legal remedy, which is regulated in Article 131 of the ECHR, is in the center of the cooperative relations between the Convention and the legal system of the Republic of Macedonia. Along with Article 35, paragraph 1 of the ECHR1, it means that the simultaneous providing of the Convention conditions of efficient national legal remedies and the usage of the same by the persons, before they submit an application to Strasbourg.

The Helsinki Committee, bearing in mind the Recommendation P(2004) 6 of the Committee of Ministers of the Council of Europe, where it is cited that – "The Governments of the member states can primarily, ask the experts to do a study of the efficiency of the present domestic legal remedies in special areas in the aspect of suggesting improvement. The national institutions for the promotion and protection of the human rights, as well as the non-governmental organizations, also can participate usefully in this matter. The disposal and efficiency of the domestic legal remedies should be held under constant consideration, and should particularly be examined during the preparation of the legislative, which refers to the rights and freedoms according to the Convention" , conducted an all-embracing analysis of the usage and efficiency of the request for the protection of the legislative in the criminal procedure.

1.2.2. Request for the Protection of Legality and its usage in the Macedonian Legal System

The request for the protection of the legality is a part-time legal remedy, which serves for the protection of legality, and it is not in favor only to one of the parties, but it has an aim to implement the legal system and with an only purpose to apply the legislative, although at the end it sometimes results with a verdict that is pronounced in favor of one of the parties. This part-time legal remedy in the criminal procedure can be held against effective court verdicts and against the court procedure that preceded these effective verdicts. The public prosecutor of the Republic of Macedonia can lodge a request for the protection of the legality if the law has been violated. The Supreme Court of the Republic of Macedonia makes the decision about the request for the protection of the legality.

The delivered data by the Public Prosecution of the Republic of Macedonia to the Helsinki Committee, concerning the number of delivered requests for the protection of the legality in the criminal procedure to the Public Prosecution in the period from 2000 to 2007, and the number of the accepted and rejected requests in the period looks as follows:

– In 2000, a total of 258 initiatives for application of the request for the protection of the legality have been submitted, 235 of them have been rejected, and 23 of them have been accepted;

– In 2001, a total of 243 initiatives for application of the request for the protection of the legality have been submitted, 215 of them have been rejected, and 28 of them have been accepted;

– In 2002, a total of 261 initiatives for application of the request for the protection of the legality have been submitted, 241 of them have been rejected, and 20 of them have been accepted;[2]

– In 2003, a total of 279 initiatives for application of the request for the protection of the legality have been submitted, 259 of them have been rejected, and 20 of them have been accepted;

– In 2004, a total of 352 initiatives for application of the request for the protection of the legality have been submitted, 314 of them have been rejected, and 38 of them have been accepted;

– In 2005, a total of 386 initiatives for application of the request for the protec-

tion of the legality have been submitted, 349 of them have been rejected, and 37 of them have been accepted;

– In 2006, a total of 439 initiatives for application of the request for the protection of the legality have been submitted, 410 of them have been rejected, and 29 of them have been accepted;

– In 2007, a total of 355 initiatives for application of the request for the protection of the legality have been submitted, 330 of them have been rejected, and 25 of them have been accepted;

By the prior mentioned it can be established that the Public Prosecution rejects 95% of the submitted requests for the protection of the legality in the criminal procedure.

The data at the Department for Punishable Acts of the Supreme Court of the Republic of Macedonia for submitted requests for the protection of the legality of the Criminal Code for the period from 2000 to 2007 are the following:

- In 2000, a total 40 requests for the protection of the legality were in process, 9 of them were rejected, and 23 were accepted;

- In 2001, a total of 40 requests for the protection of the legality were in process, 10 of them were rejected, and 20 of them were accepted;

- In 2002, a total of 36 requests for the protection of the legality were in processing, 7 of them were rejected, and 22 of them were accepted;

- In 2003, a total of 32 requests for the protection of the legality were in process, 4 were rejected, and 16 were accepted;

- In 2004, a total of 68 requests for the protection of the legality were in process, 6 of them were rejected, and 58 were accepted;

- In 2005, a total of 50 requests for the protection of the legality were in process, 7 of them were rejected, and 41 of them were accepted;

- In 2006, a total of 39 requests for the protection of the legality were in process, 12 of them were rejected, and 24 of them were accepted;

- In 2007, a total of 35 requests for the protection of the legality were in process, 5 of them were rejected, and 28 of them were accepted.

By the prior mentioned, as well as with the comparison of the results it can be concluded that there is a rigorously selective, restrictive and indirect application of this part-time legal remedy in the legal system of the Republic of Macedonia.

1.2.3 Request for the Protection of Legality and its proceeding before the European Court

An important aspect of the procedure before the European Court for Human Rights for assessing the permittance of the applications is the fact that the burden of proving that the applicant has not exhausted all his/her legal resorts that were at his/her disposal, that is to say that those legal resorts were available and efficient is on the side of the State whose bodies have done the alleged violation. Therefore, according to the European Convention, as well as the Regulations of the Court, all legal resorts have to be exhausted as a right of the applicant and their practice should depend only on his/her willpower, not on the willpower of some other subject.

The efficiency of the Request for the Protection of the Legality seen through the prism of the precedent law constructed by the Court in Strasbourg is consisted of several elements, among which, are the institutional and executive efficiency. The efficiency should be evaluated in relation with the alleged violation of the Article on Material Law and it should be determined by considering the sum of the procedures that are available in the national law.

The institutional efficiency conditions the bearer of the decision for the acceptability of the Request for the Protection of the Legality to be "independent enough" from the state power, which is held to be responsible for the violation of the Convention. Nevertheless, according to Article 40 of the Law on Public Prosecution1 there is doubt that it is a matter of a dependant body, that much more that in Article 30 of the Law on Public Prosecution2 and the Law on Criminal Procedure, or Article 4031 (where it is regulated that the only authorized proposer of the Request for the Protection of Legality is the Public Prosecution) it is stated that unquestionably there is a "conflict of interests". Better said, one same body can play a double role in the course of the criminal procedure. At the beginning of the procedure, as an authorized body that submits and represents charges before the Courts, and in the procedure for the Request for the protection of the Legality as an authorized body, which evaluates whether to accept or deny the application of a request in favor of the client, for the protection and evaluation of the violations of the law to which the applicant cites on.

The executive efficiency directs that it is not enough for the efficient legal remedy to be available in the national legal system. Its applicant must be in the situation to have an efficient advantage of it. With other words, this legal resort should be available to the applicant, which means that it has to be genuinely available. The Request for the Protection of the Legality can in no way be considered as a legal resort, which should be exhausted as a condition for the permittance of the application before the European Court, only because of a simple reason that its exhaustion depends [3]on the willpower of the public prosecutor, not on the willpower of the client in the dispute.

1.2.4. Recommendation P(2004) 6 of the Committee of Ministers of the Council of Europe

The disposal with efficient domestic legal remedies becomes especially important in the direction of the improvement of the legal system of the Republic of Macedonia, and the quantity and quality effects on the working regulation of the European Court for Human Rights in Strasbourg.

The Recommendation P(2004) 6 of the Committee of Ministers of the Council of Europe encourages the member-states to re-evaluate their respective legal system in the light of the precedent law of the Court and to undertake necessary and appropriate measures with their legislations.

On one hand, the scope of the applications that are to be evaluated should be reduced: fewer applicants would feel forced to start a case before a Court if the evaluation of their complaints before the domestic state powers was not sufficiently thorough;

On the other hand, the evaluation of the complaints by the Court will be relieved if the evaluation of the value of the cases is conducted before by the domestic state powers, owing to the improvement of the domestic legal remedies.

II. VIOLATIONS OF THE ECONOMIC AND SOCIAL RIGHTS

2.1.The case of the dismissed group of air-traffic controllers. How are the money of the State spent?

The Helsinki Committee for Human Rights, appeals with concern whether the unplanned expenditure of the citizen's money persists. The public must be informed of the way in which their money is spent, that is to say the "budgetary" money. The ignorant attitude, ambiguity and irresponsibility of the Government to inform the public of the expenditure of the resorts of the Budget is contrary to the Constitution, as well as the Law on Free Access to Information, as one of the basic postulates of the legislative, responsibility and control over the public of the work of the state bodies, and the elected and appointed functionaries.

In context of the problem, a group of former air-traffic controllers turned to the Helsinki Committee, pointing out their problem, which also represents a problem of the citizens and the whole State.

Namely, the problem is about persons, which on the basis of the Verdict of the Ministry of Transport and Communications, because of an urgent need of air-traffic controllers, a verdict that is made in accordance with a session of the Government of the Republic of Macedonia, that visited and completed training in the Czech Republic, and then completed additional training in the Republic of Macedonia in order to gain internationally accredited licenses, so that they could professionally perform the urgent duties. The overall expenses for the education in our country and abroad in duration of about 3 years were covered by the Budget of the Republic of Macedonia, and it should be pointed out that this is a matter of education and a highly stressful and very responsible mission. These air-traffic controllers, for whose education, accord-

ing to their claims, a sum of millions of euros has been spent, and who performed their "urgent" duties a short period after they gained their internationally accredited licenses, at the end are left on the streets, or better said, their contracts for performing services on the appropriate working places have been canceled. Even more alarming is the fact that according to the claims of the clients, this is a matter of a political game on the basis of party membership, and that in the frames of the Government a new group of air-traffic controllers is being discussed and prepared in order to be educated in our country and abroad, a group for which, again an enormous sum of the national money will be spent, bearing in mind the fact that the Republic of Macedonia has a vast need of air-traffic controllers.

On 10 March 2008, the Helsinki Committee for Human Rights turned to the Agency for Civil Air-traffic, as well as to the Management for Civil Airline of the Ministry of Transport and Communications, in writing, with a request for the information for the veracity of the claims of the clients, the reasons for the cessation of the arrangements of the air-traffic controllers for whose training enormous budgetary resorts have been spent, as well as the need for air-traffic controllers for the Republic of Macedonia, especially if it is required to spend budgetary resorts when there is no need for this, that is to say when for the same cause the State already has professionally trained personnel that can conduct the duties of air-traffic controllers. We regret to say that the response to all of the questions from this correspondence is avoided from both institutions, and this only confirms the fact that the citizens of the Republic of Macedonia should not be acquainted with the way in which their money, or better said the budgetary money are invested/spent.

2.2. The Discriminatory regulation contained in the changes of the Law on Health Insurance is not a cause for evaluation!

The Helsinki Committee for Human Rights of the Republic of Macedonia submitted an Initiative with which it requests the Constitutional Court of the Republic of Macedonia, in accordance with the jurisdictions which it has, to carry out a verdict in order to start a procedure for the evaluation of the constitutionality, and after the procedure is conducted, to carry out a Verdict for the Annulment of Article 5 of the Law on Amending the Law on Health Insurance (more accurately, paragraph 3 of the amended Article 17), which states that: – "... 3) The amount of the compensation of the salary calculated according to Article 16 of this law cannot be higher than the total sum of two average monthly nett salaries paid off in the Republic in the previous year…"

In the explanation of the initiative by the Helsinki Committee, it is stated that the conduction of Article 5 of the Law on Amending the Law on Health Insurance represents a direct violation of the regulations of the Constitution of the Republic of Macedonia and the European Human Rights Convention, ratified by the Republic of Macedonia.

1) With this regulation a violation of the Article 8, paragraph 1, new paragraph 81,92, 34 and 42, paragraphs 1 and 3 of the Constitution is being done.

With the disputed Article from the Law, the right to a compensation of a salary during the absence from work is limited with the upper limit of two average monthly nett salaries paid off in the Republic in the previous year. With this legal resolution, it is obvious that the insured persons that pay higher contributions that is to say that have incomes higher than two monthly average nett salaries paid off in the Republic in the previous year are in an inequitable situation in relation to the other insured persons.

Also, with the passing of this Article, birth, breast feeding and the taking advantage of the whole maternity absence of mothers whose incomes are higher than two average nett salaries paid off in the Republic in the previous year, is being uninspired.

2) With the disputed Article of the Law a violation of Article 141 of the European Human Rights Convention is being done, with which discrimination on any ground is being prohibited and the Protocol No. 122, which anticipates a general prohibit of discrimination and represents an appendage of Article 14 of the European Human Rights Convention.

In this particular case, with the passing of Article 5 of the Law on Amending the Law on Health Insurance, the Republic of Macedonia limits the access to the already envisaged right to a financial compensation, and this limitation concerns only the persons whose salary is higher than the total sum of two average monthly nett salaries paid off in the Republic in the previous year.

3) The Law on Health Protection arranges the health protection of the citizens, the rights and obligations of the health protection, as well as the way in which the health protection is being conducted.

According to Article 12, paragraph 1, item 1 of this law, in the frames of the obligatory health protection a right to a compensation of a salary is being provided, for the time of temporary incapability to work due to illness and injury, and for the time of absence from work because of pregnancy, childbirth and maternity.

However, according to the Law on Health Protection, the realization of the right to obligatory health protection is conditioned with the payment of a contribution for obligatory health protection, with which all insured persons pay a contribution, and only those who have the need use their rights. Hence, it follows that a principle of mutuality between the rights of the insured persons and the payment of contribution for health protection has been set thus, the principle on solidarity and mutuality set with the Law is consisted of the different investments of the insured persons of the Fund.

On this basis, it can be concluded that the sum which follows to the person during the time of illness MUST depend and be calculated on the basis of the investments which are done by the insured persons in the Fund, and in any case the same cannot be limited selectively for a particular number of insured persons because they invested a higher sum of money.

The rights of the insured persons, which come from the health protection, should be equal for all insured persons. In Article 40 of the Law on Health Protection, it is determined that the basis for the calculation and payment of the contribution for obligatory health protection, for the insured persons of which the salary is determined is the gross income and the compensation of the salary. The gross income, in the sense of this law, represents the salary in which, the contributions and the taxes are contained, which are paid from the salary, that is to say the compensation of the salary. However, an upper limit of the basis is not determined, only the minimal limit is determined, which cannot be less than the lowest salary per worker determined by a collective agreement, multiplied with the average coefficient of the complexity of the labor of the employer.

A writing was received by the Constitutional Court with which we were informed that the Court has already decided on the constitutionality of the disputed regulation, and with the Resolution U.No.216/2005 on 31 May 2006, it has decided not to take action for the evaluation of its constitutionality. In the Resolution, the claims that it is a case of discrimination of the insured persons who pay higher contributions have not been examined, that is to say that they have higher incomes than two average monthly nett salaries paid off in the Republic of Macedonia in the previous year, instead there are listed explanations of the previously submitted initiatives.

Also, in the Resolution it is stated that: - "According to the Court, this system of values determined by the Constitution, on whose basis a mandatory health protection is established, should not be related with what is pointed out in the initiative that in the mandatory health protection the principle of "equal value of the giving and receiving" should rule, that is to say in the basis of this health protection a new financial law should rule according to which "the amount of the compensation of the salary should only depend on the amount of the contribution that was individually paid off for the health protection of every insured person and only in the frames of the individual giving and receiving, outside the collective of the other insured persons." Bearing in mind the importance of this matter, the Helsinki Committee appeals to the Constitutional Court to re-examine the decision, and by official duty to repair the error with which discrimination of some of the citizens is being allowed.

III. POLICE AND COURT CASES

3.1. The case of Dancho Arsov

Dancho Arsov was employed in the Ministry of Internal Affairs from 1999. At the beginning, he was placed in Sector for Internal Affairs Skopje, Chair, as a junior inspector for organized crime, and then in 2003, he was promoted to inspector of organized crime in Gazi Baba.

On 6 May 2004, during the period of his sick leave, a Resolution of the termination of his working status was delivered to him, with a notice no. 25555/1. The reason for this was that Arsov stepped over the boundaries.

In the legally determined deadline, or on 28 May 2004, he delivered an objection to the Second-Degree Commission for Resolution of the section for the working relations of the Government of the Republic of Macedonia through the Ministry of Internal Affairs of the Republic of Macedonia.

After the objection was denied, on 10 June 2006, Dancho Arsov submitted a lawsuit for the annulment of the Resolution for the cessation of the working relation with notice no. 25555/1, and returning the case to the Basic Court Skopje II, Skopje.

In the meantime, the Basic Public Prosecution from Skopje, with a prosecution suggestion KO.no. 4144/04 from 08 June 2006, accused Dancho Arsov from Skopje of a criminal act – Abuse of the official status and authorization of Article 353, paragraph 1 of the Law on Penalty. Namely, it is about the same relation between the cause and consequence, because of which, a Resolution for the cessation of the working relation has been provided with a notice no. 25555/1.

The Basic Court Skopje I, Skopje held the main hearing, and after the presentation of evidence, a Deputy Public Prosecutor in his conclusion withdrew the suggestion of the prosecution, evaluating that there is no evidence that the prosecuted Danco Arsov committed the criminal act Abuse of the official status and authorization. According to the above mentioned the Basic Court Skopje I, Skopje as a first-degree court, on 30 January 2007, pronounced a verdict with which the charges were dismissed. In it, it is confirmed that there are no evidence with which Dancho Arsov can be charged for the abuse of the official status and authorization, and with it, it is confirmed that there is no violation and abuse of the given authorizations.

Although, in the Law on Legal Procedure it is predicted that in the cases concerning working relations brought before the first-degree Court must be completed in a period of six months. Beginning from the day of submitting the lawsuit until today, four years have passed. In addition, during this period, in the procedure concerning the working relations, three judges who have been working on the case have been changed before the first-degree court.

The Helsinki Committee believes that in this case there is a violation of the right to a trial within reasonable time, inefficient legal remedies and a violation of the right to work.

3.2. Case: persons taken into custody in the police action "Snake's Eye"

According to a written submission from the relatives of the persons taken into custody in the police action "Snake's Eye", who complained of the conditions of custody, representatives of the Helsinki Committee conducted a visit of the person held in custody and assessed the rooms in the prison Skopje, and they also had a meeting with the director of the prison.

Sadly, the complaints of the persons held in custody were confirmed in a large number with what was seen at the very place and with the remarks of the Report of the Committee for Prevention of Torture.

The persons held in custody are accommodated in rooms with a high degree of humidity, dilapidated material conditions and insufficient light and hygiene, where the restrooms are not separated with a door from the rest of the small room. Although, the Committee for Prevention of Torture has warned the Republic of Macedonia several times of the conditions in the prisons since 2002, the State has still not taken any measures in order to improve the conditions. The persons held in custody also complain of the unavailability of the copy of the House Codex of the prison, which would help them learn their rights and opportunities during the time of their custody. The line of their complaints is also consisted of the slow and inappropriate medical care, the insufficient and low-trained personnel and the limited possibility of one bath during the week.

However, there is no doubt that the biggest problem for the persons held in custody is the numerosity of the persons held in custody, which overcomes twice the capacities of the prison, thus creating inhumane conditions. Six persons are accommodated in a room with four beds, thus two of them sleep on dirty mattresses on the floor, and one half of the mattresses is placed under one of the beds, so they cannot stretch enough, because there is not enough space. In addition, there is not enough space for the personal items.

This condition was discussed with the director of the prison who confirmed that it is overcrowded even more, because of the fact that for the acts of organized crime on the whole territory of the State, only the prison Skopje has jurisdiction, and just in the police action "Snake's Eye" 48 persons were taken into custody.

From the conducted visit of the Prison Skopje, it can be concluded that the condition in the prison is under the average level, the management of the prison, as well as all the relevant institutions are aware of the problem, but there is no proper communication between them, nor there is any will to successfully overcome and solve the problem.

On the other hand, although the defenders of the persons taken into custody in the police action "Snake's Eye" constantly objected to the conditions in the prison, and offered guarantees for a proper replacement of the measure of custody with another measure, and the Helsinki Committee appealed for a restrictive use of the measure of custody, 42 persons were kept in custody in the prison Skopje for four months in inhumane conditions, and after this period, the Court on suggestion of the Public Prosecutor determined that after all, the measure of prison custody can be replaced with home custody. The Committee for Prevention of Torture in all their reports in which, it is being asked of the country to find a solution to this problem also determines the state of numerosity of the persons in custody in relation with the capacity of the prison Skopje.

In order not to violate the humane conditions of living and not to violate the dignity of the person, the Helsinki Committee appeals for a cautious usage of the measure of custody to which, creation of conditions should precede, not its abuse, and it also appeals on the usage of other appropriate measures of security.

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[1] Article 13 of the ECHR states: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."
[2] Article 35, paragraph 1 of the ECHR or Admissibility criteria – 1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision was taken.
[3] Article 40 of the LAW ON PUBLIC PROSECTION Official Gazette of the Republic of Macedonia no.150 of 12 December 2007 – paragraph (1) – "The Public Prosecutor of the Republic of Macedonia, by suggestion of the Government of the Republic of Macedonia, nominated the Parliament of the Republic of Macedonia for a period of six years with a right of re-nomination."
4 Article 30 of the LAW ON PUBLIC PROSECUTION Official Gazette of the Republic of Macedonia no.150 of 12 December 2007
(1) In the realization of the function of prosecution the performers of the criminal acts and violations, the Public Prosecutor:
- has the same jurisdictions as the Ministry of Internal Affairs and other state bodies in order to detect criminal acts and the persons that performed them, and to collect evidence for the criminal pursuit of the persons that performed the criminal acts;
- in the pre-investigative procedure, has authorization to give orders for the appliance of the special investigative measures;
- handles the pre-investigative procedure and disposes of the authorized official persons in the Ministry of Internal Affairs, Financial Police and the Customs Administration in accordance with the law;
- can take over any necessary action in order to discover the criminal act, and to discover and prosecute the person that committed the act for which, by law the Ministry of Internal Affairs, the Financial Police and the Customs Administration are authorized;
- makes decision to undertake or continue the criminal pursuit of the persons that performed the criminal acts;
- can submit and represent charges before the Courts;
- can declare regular or part-time legal remedies against court decisions;
- can submit a request for starting a procedure of offence;
- can conduct other legal actions.
(2) The Public Prosecutor conducts other legal actions for the efficient functioning of the criminal-judiciary system and prevention of crime.
(3) in case of the non-establishment of other state bodies of paragraph (1), new paragraph 1 of this Article, the Public Prosecutor can take over the actions that are conducted by the authorized official persons in the Ministry of Internal Affairs or other state bodies.
5 The law on criminal procedure or article 403 – "Against all effective court decisions and against the court procedure that preceded these effective decisions, the public prosecutor of the Republic of Macedonia can submit a request for the protection of the legality if the law has not been violated."

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

May 2008

I. PUBLIC EVENTS AND VIOLATIONS OF THE DEMOCRATIC PRINCIPLES

1.1. The pre-election campaign foretold the incidents of 1 June

With certainty, the pre-election campaign, foretold the incidents of – until now – the worst organized elections in the history of the Republic of Macedonia.

The legal provision was barely respected, according to which the pre-election campaign lasts 20 days before the day of voting[1]. Practically, since the self-adjourning of the Parliament, an offensive pre-election campaign began, where all available measures were worn out.

Before the official start of the election campaign, the ruling party VMRO-DPMNE distributed their election program in the daily newspapers. Ten days passed before the Government could end its campaigns, pressured by the public, but even after the decision to cease the campaigns, the Ministry of Justice continued to publish advertisements in the following days. The goal was reached – the ruling parties got additional (free of charge) advertisement through the Government campaign.

The Government campaigns were additionally supported with governmental (regular) activities, which contained elements from the pre-election campaign. Keystones, new water supplies, promotion of loans for the self-employment of the unemployed ... everything that has already been established as a pre-election folklore in the State. The announcements were the reason for doubt of serious abuse of the budget means, and the advertisements of vacant posts for pre-electoral employment.

This type of governmental behavior posed the question of the behavior of the Government, from the moment of the announcement of the elections until the day of the elections, and posed a question if the Government behaves as a technic Government, and how much does it forget about this, by making decisions and moves that are ethically questionable.

The campaign video commercials of the Party were on TV and their price was also questionable. After some evaluations, the five political parties and coalitions that took a place in the new Parliament, emitted a paid 68 hour political program on the five televisions that have national concessions, and for this they were required to pay 23 million euros (according to the price cost). This by far, exceeds the legally allowed 1.7 million euros per Party or coalition[2]. Even if an enormous discount had been approved, or even if the television stations gave certain parties advertisement time free of charge, they still have an obligation to pay the value-added tax (VAT).

Although this is a matter of a completely clear case of breaking the laws, having in mind the so far used practice, it is hard to expect that the State Reviser[3] will "catch" some of the larger parties that spent more than the foreseen maximum means predicted for the election campaign determined by law, nor it is to expect that the television stations or the parties, will be pursued by the Administration for Public Incomes (API) for the unpaid VAT of the eventually free time to emit the video campaign advertisements.

The additional cost of these expensive pre-election campaigns is the bondage with the business society that helps the political parties financially, and after the election victory, the business society expects their services to be paid by the Government. Moreover, a mark is put on war, battle… name the attempts to stop corruption as you prefer.

The pre-election campaign is infamously marked with threatening and incidents.

A series of severe incidents marked the pre-elections: attacks on Party headquarters, beating up of Party activists, molestation of elderly persons just because they leased their business premises; during the night Tetovo was colored in red after 1,000 blue flags of the Party of the Democratic Union for Integration (DUI) were replaced with the red DPA flags, and nobody, especially the local police, noticed that... Things got as far as the already familiar "Kalashnikov" was replaced with hand bombs. The shooting at the leader was the climax of the events (or at his car – whatever) of the oppositional DUI.

In many occasions, the opposition mentioned the interference of professional police officers, especially of the special police unit, the Alpha's in the incidents and around the time of the incidents. The state power did not even bother to reply. However, the reactions, especially by the representatives of the international community were confirmed, and the Ministry of Internal Affairs confirmed these allegations and pursued charges, even of their own employees.

The public claims of police visits of homes in Stip during the weekend pre-elections were left without a reply, and the citizens understood this as a pressure to vote for one option, as well as, the charges that the students at the Tetovo University are pressured by some of their professors to vote for DPA. There was information that some Albanian businesspersons were extorted for money, but these claims remain unverified.

In the cities and in the villages, "people that made questionnaires" were present, taking evidence who will vote for who, and how many of their neighbors will vote for sure. The results were vigorously marked on the account of these Party sympathizers as points for the reward in shape of employment or a state service with similar weight, in case their option wins the elections.

During the campaign, the police demonstrated that despite all endless and foreign reforms, it is still what it used to be in the former system – a

Party police. Even worse, the police serving the ruling coalition is divided on ethnic grounds. For the first time, a significant vertical in the Ministry of Internal Affairs is controlled and abused by the Albanian participator in the Government. The warnings that a functionary in the Ministry of Internal Affairs can control the Party activists were barren, and also that the contrary will happen – the whole structure of Party activists in the Ministry of Internal Affairs abuse the Ministry for Party goals.

In the echo of the pre-elections, the state power promoted, day by day, the construction of a new prison in Idrizovo and the renewal of the already existing prison. The arrests from "the list" were very common, and they were always "captured" by the TV cameras, or official video footages were made of the arrests, which by "unknown" ways made their way from the Ministry of Internal affairs to the electronic media.

„By accident", during the campaign, a verdict against one of the leading persons of the oppositional Social Democratic Union (SDU) Jani Makraduli, was made, and threats of criminal report by high Government structures were referred to the leader of SDU, Radmila Sekerinska, and to the chief of the pre-election headquarter of DUI, Izet Mexhiti.

We will probably never know in which way, and how much this threatening resulted with abstinence from voting, which just makes the jobs of the professionals that fill up the boxes with voting papers easier.

It is a fact that in most incidents in the pre-election period and almost all incidents where fire weapons were used, happened in parts of the State where most of the population is Albanian, and that mostly between them the dispute was related between the two major Albanian parties in the Republic of Macedonia. Those that believe that the Albanians and their parties are not grown up to democracy were mistaken and are still mistaken. The price of the incidents that are not ethnically colored is paid by the Republic of Macedonia and by all its citizens.

The unbiased clearance of the incidents, that proved the performers guilty, and the evidence that all this has been done under the command of the heads of the parties as a part of their understanding how to win the elections, should be an introduction in the process in which the Party leaders and the Parties themselves will accept responsibility. If we are already witnesses of some new elections of the multiplication of serious incidents, instead of their disappearance, why then not consider to sanction the proofs of guilt with a prohibition to perform Party duty, or a prohibition of some Party to attend the next elections.

It was more than obvious that the clearance of the incidents in the pre-elections is the best prevention against the incidents at the day of the elections. Because the performers of the incidents and the heads of the Parties that ordered these incidents were not identified, the blurred pre-election incidents only opened the door for more severe incidents on the day of the voting. Because the performers of the incidents were not found, the impression that there is no penalty for this kind of criminal act only got stronger.

As a positive example of the efficacy of the extorted post festum reactions of the authorized state institutions, we will be reminiscent that after the Parliamentary elections in 2006, after almost identical sharp pressure from the representatives of the international community, the authorized bodies started a series of actions against the persons suspected of causing the pre-election incidents. Two years later, the media (after the irony of the case in the echo in the pre-election campaign) announced information that none of the persons received a sentence, and that the only case of a punished person regarding the election incidents in 2006 is the witness that accused another person for an election incident.

The conclusion that the most powerful, especially by the electronic media, are controlled and procured by the (ruling) political parties came edge-on during the campaign for these early Parliamentary elections.

The media that could not be tamed in this way received the good old-fashioned method with applying pressure and threats. The emitters of Alsat M and TV Art in Tetovo were "stolen" again (and again, the emitters of the other electronic media were not removed).

However, these incidents with the Public Radio Broadcasting service confirm that the daily politics no matter how much MRTV is misfortunate it cannot give up its propagandist services. The second channel of the MRTV (Macedonian Radio Television) received the "honor" of the greatest manipulator with the election information, because the informational programs are held in Albanian.

Detailed aspects of the pre-election campaign are stated in the Report of the Committee of the Parliamentary elections, 2008[4].

1.2. Mountain Storm

On 4 June 2008, the Helsinki Committee received a reply from the Sector of internal control and professional standards, regarding our request for additional information for the police action "Mountain Storm," concerning the video footages that were shown, where the injuries of the persons deprived from freedom by the police officers during the action are clearly visible.

The Sector of internal control and professional standards, informed us that after the detailed investigation concerning the operative action "Mountain Storm", especially about the taking in of persons in police stations, it has been concluded that – "Abuse and violation of the power by certain members of the police force has NOT been established." The reason for this attitude is that – "the physical force used by the police was appropriate and proportionate, justified and necessary, because if not applied, the lives of the civil local population and of the members of the police force would have been in stake."

Moreover, the "Video Footages" from part of the action "Mountain Storm", according to the Sector of internal control and professional standards, have been taken by police workers without authorization who used mobile phones, that is to say – "this is about the self-willing attitude of police workers", and how the footages were distributed to the public has not been determined yet, and – "the process of determining the persons that distributed the footages in the electronic and other medias is still ongoing."

However, it is contradictory how the Sector of internal control and professional standards mixed up the time and the events, and at the end of the same reply claims that – "the police workers that took the footages are suspended from their jobs, and a procedure against them has been started before the Commission for notice of the Ministry of Internal Affairs in order to determine their responsibility."

But this is the least concerning problem. The Helsinki Committee stated in the findings of its mission that it is necessary to investigate the facts5, especially after the showing of the video footages and photographs, and the "hearing" of some of the arrested persons in the police action, pointed towards the fact that from the moment of the arrest of some of the persons to the moment of their entry in the police station, physical force was applied, instead of "appropriate, proportionate, based and necessary force." This can be seen on the photographs and the video footages, which

circulated on the Internet, and it is completely clear that after the part of the information of the Sector of the Police Action in the village Brodec, that after the "arrest and taking to the police station in Gazi Baba in 18:30, a team of the Emergency Unit was called in to perform a medical examination of the arrested persons", and furthermore, "it has been concluded that five persons with injuries of such character are brought in the police station, whose treatment cannot be done with ambulance care, and because of this, the same persons have been transferred to the Emergency Center, so that they could receive appropriate medical care" 6.

It is completely clear that the Sector has misplaced its priorities. In any State where the law rules, the competent bodies would firstly investigate what happened on the video footages, and not who made them. Pursuing those that made the video footages, the Ministry of Internal Affairs wishes to convince us that the condition of the arrested persons would not be like this, and that there would be no video footages and photographs if the employed in the Ministry of Internal Affairs did not behave self-willing!"

These contradictory information, only prove that the Sector, despite its work in relation to some previous times, applies what used to be the greatest pain in the previous Internal Controls – independently from everything, the police never violates the official power!

Concerning this case, we hope that during the trial of the charged persons in the case "Brodec, the Court will be able to appreciate the way in which the confessions are taken and will not permit to be another string the chain in the "solidarity of the police."

1.3. Selective "Snake's Eye"

"Everybody has an obligation to report a criminal act that is criminally pursued by official duty"7, says the Law on Criminal Procedure, thus this kind of obligation exists for the bodies of the State, the institutions that perform public authorizations, and other legal persons, for deeds that they have been informed of, or that they will find about in another way8.

According to the same law, if there is reasonable doubt that a criminal act has been performed, which is to be pursued by official duty, the Ministry of Internal Affairs is obligated to responsibly undertake the necessary measures in order to find the person that performed the criminal act9, and the Public Prosecution has an obligation to pursue the perpetrator of the criminal act10.

It is obvious that these legally binding provisions, at least up till now, do not apply for the institutions involved in the case "Snake's Eye", and at the trial (observed by the Helsinki Committee) where, before the eyes of the Public Prosecution, the Court Council and the public, video footages seized using special investigation measures are shown, where it can be clearly seen that the persons working in the pay tolls do not give out fiscal receipts for the charged services, and the same persons are not on the prosecutors bench along with the other 72 charged persons. For the irony to be even greater, these video footages are used as evidence presented by the Public Prosecutor himself, against the persons that also worked in the pay tolls, but are charged for abuse of their official duty and are put in custody.

The Public Prosecutor is obligated to undertake criminal pursuit if there is evidence that a criminal act has been performed, which is to be pursued by official duty11, even more because the evidence is acquired in collaboration with the Ministry of Internal Affairs and is used in the procedure against the perpetrators of the same criminal act, in the same or similar circumstances.

The Helsinki Committee wishes to remind of the principles of objectivity, impartiality and non-selectivity in the work of the Public Prosecution and of the bodies of the Court, a necessary condition in order to establish a righteous and lawful state.

Because of this, the Helsinki Committee for Human Rights DEMANDS from the competent bodies to completely respect and apply the legal obligations, in order to maintain the dignity and belief in the public institutions, thus of any possible reason, not to bury the lawful state.

1.4. Limitation of the visiting hours for the attorneys determined by the Basic Court in Bitola

A few attorneys from Bitola that requested permission for visiting hours in the prison in Bitola of their clients that are in custody, from the judges of the Basic Court Bitola, informed the Helsinki Committee, that their visiting hours were shortened/limited to only 15 minutes,.

A representative of the Helsinki Committee, along with an attorney from Bitola, visited the prison, and sadly confirmed the allegations made by the attorneys. Although the attorney needed to obtain information in order to make his defense, the Court approved a visiting time of only 15 minutes, contrary to Article 70 of the Law on Criminal Procedure where it is stated that "If the charged person is in custody, the defense attorney may freely and without any supervision write and talk to the confined person..."

The visit was held in the prison's on call premise, in the presence of 4 other authorized official persons from the prison, who in that time period carried out their every day obligations, thus it was impossible to talk with the client.

Based on Article 6 from the European Convention, the right to a fair trial predicts that everyone has a right to have adequate time and facilities in order to prepare his/her defense.

This principle implicates that the defense attorney has an unlimited and a confidential approach to any client in custody in order to discuss all elements concerning the case. Moreover, the prison administration must provide adequate conditions, in order for the visits made by the attorney to be confidential and not to be eavesdropped by the prison authorities.

The Helsinki Committee appeals to the judges from the Basic Court in Bitola, with a remark that all the judges should take the right of the charged person to freely communicate with the defense into consideration, which is believed to have an absolute central place in the concept of a fair trial.[5]

II. POLICE AND COURT CASES

2.1. The case of Robert Popovski

When Robert Popovski from Struga was being arrested by an authorized person – by a member of the special police force – he was hit on the jaw with the rifle butt, although he did not resist the arrest. After he was taken to the prison in Bitola, it was established that he had a fracture of the jaw, and a surgical intervention was performed at the Department for Maxillofacial Surgery at the Clinical Hospital in Bitola, and after the surgery he was transferred to the arresting department at the Clinical Hospital in Skopje.

Representatives of the Helsinki Committee visited the injured person in the prison in Bitola. They were personally convinced of the bad health of the injured person, which was caused by the excessive use of force during the time of the arrest.

Additional problems that Mr. Popovski had to face were the bad conditions in the prison in Bitola where he received the medical therapy. The therapy which was needed for his recovery and for the prevention of any undesired additional consequences. This same condition continues after

his transfer to the prison in Skopje, because even though only a few months ago he underwent a surgical procedure, he still has not been medically examined and has not received proper medical care. Although, the client is in a poor medical condition, he has no bed in his prison cell, and instead of sleeping on a bed, he sleeps on a sleeping mattress.

Having in mind that torture is absolutely forbidden according to international documents and standards ratified by the Republic of Macedonia, the Helsinki Committee for Human Rights of the Republic of Macedonia filed a criminal charge13 to the Basic Public Prosecution in Struga.

The Law on Police14 norms that "In the execution of the police authorizations, the police officer is obliged to treat the arrested person humanely and to respect his/her dignity, reputation and honor, as well as, to respect the basic freedoms and rights of the man and citizen." Furthermore, the Codec of Police Ethics15, states that: "Police officers must not cause, trigger or tolerate any form of torture, harassment, inhumanity or humiliation, or punishment."

The practice of the European Court for Human Rights16 states that, the State is obliged to undertake an efficient official investigation when the person claims that he/she was exposed to severe harassment by the police, and to allow identification and punishment of the persons responsible for the harassment. If it is not approached in this way, the general legal prohibition of torture and other inhumane and humiliating acts will be inefficient in practice and will allow the authorized persons to abuse the rights of those that are under their control, because of the application of their virtual non-punishment.

The obligation of the Republic of Macedonia is to apply an efficient investigation in cases where there are indications of torture; it was established in many verdicts of the European Court for Human Rights17.

The Helsinki Committee appeals to the competent bodies to seriously consider the remarks made by the European Court for Human Rights, to apply an efficient investigation and punish the performers of these criminal acts, and not to pretend that they do not see what has happened, just because the performers of the criminal act are members of the Ministry of Internal Affairs – the special police force.

2.2. The case of hindering in the Public Prosecution and in the Ministry of Internal Affairs

A criminal report about a criminal act has been filed to the Basic Public Prosecution Skopje – theft according to Article 236, page 1, paragraph 1 of the Criminal Code.

Acting according to the filed criminal report, the Basic Prosecution Skopje, with a goal to investigate the alleged criminal report18, filed a Request for gathering necessary notifications to the Sector of Internal Affairs Skopje. However, despite the interference from the Basic Public Prosecution on 5 November 2007, the requested data has not been delivered yet.

Having in mind that there is no written reply sent to the Sector of Internal Affairs, regarding the Request, and also having in mind, the available written documentation for the filed criminal-justice event, the Basic Public Prosecution figured that there is no proof that would eventually confirm that the criminal act has been performed – theft, or the way it is stated in the criminal report by the person that filed it. According to this, on 25 March 2007 the Basic Public Prosecution reached a Resolution with which it dismissed the criminal charges. As a backup of its claims, the Basic Public Prosecution stated that "... this prosecution does not have the data whether this criminal act was registered and turned in to the competent police station, and whether certain measures about the filed criminal act have been undertaken, in the sense of identifying the performer and securing appropriate written evidence...."

In its legal moral, the Basic Public Prosecution advised the damaged person to pursue criminal charges.

The Public Prosecution dismissed the criminal charges filed on the base of Article 152, paragraph 1 of the Law on Criminal Procedure, but forgot about the obligation from paragraph of the same Article. Namely, if the Public Prosecutor does not have an opportunity to evaluate the charges whether or not the allegation of the charges are true, or if the data from the charges do not give a supporting base for the Public Prosecutor to decide whether or not to accept the criminal charges himself/herself or through other bodies, the Public Prosecutor will ask the Ministry of Internal Affairs to collect the necessary notifications and to undertake other measures in order to identify the criminal act and its performer. Even more, paragraph 7 and 8 of the same Article, determines the deadline and the duty of the Ministry of Internal Affairs to act according to the request of the Public Prosecutor.

The Helsinki Committee believes that it is unspeakable that the citizens of the Republic of Macedonia should suffer damage, and not be able to pursue their basic human rights just because the Public Prosecution and the Ministry of Internal Affairs do not cooperate – both are institutions that are obliged to provide the rights of the citizens.

III. VIOLATIONS OF ECONOMIC AND SOCIAL RIGHTS

3.1. Case, 400 employees in the Miner's Electric Works "Oslomej", Kicevo

Four hundred persons employed in the Miner's Electric Works "Oslomej", Kicevo that constantly work in shifts, and after the end of their shift have a weekly rest of only two days, the same as the workers that work in only one shift, appealed to the Helsinki Committee. Since the beginning of the Miner's Electric Works "Oslomej", the second day off work was considered to be the same as the week of the workers of the first shift. When there is a State holiday on their second day off, the same approach as on Sundays, the next day is also considered as a holiday, and is to be paid as a working shift during a holiday.

Although there are not any legal[6] changes in the way of payment since the middle of 2007, this right has been shortened even in the case when there is a holiday on their second day off work, and they do not get any compensation. The employed in the Miner's Electric Works turned to the legal office of the joint-stock that is in charge of the output of electric power "Electric Works Macedonia", and according to the response they received, it turns out that – "on the matter of the worker that works in shifts, if the holiday, that is to say, the day off overlaps the day off confirmed by law, the worker has no right to a compensation of the salary, nor a right to an increased salary", calling upon Article 65 of the collective agreement.

Thus, a question is asked whether Article 3 of the Law on Holidays of the Republic of Macedonia, which states that if the holiday is on Sunday, the next day is considered to be a non-working day. Does this apply to the workers that work in shifts? Also, why is Article 65 of the Collective Agreement, where it stands that – "if the worker works on a non-working day, and on holidays confirmed by law, he/she has a right to a compensation of the salary of 50% for the hours spent at work" interpreted differently?

Having in mind the previously stated, the Helsinki Committee believes that in these cases it is necessary to engage an Economic–Social

Council[7] in order to solve peacefully the collective working disagreements. We would also wish to appeal that with the Amended Law on Holidays there are no changes in the manner of payment.

3.2. The problems of transformation of the employed from full-time to part-time working hours continue

In its monthly report of December 2007/ January 2008, the Helsinki Committee for Human Rights of the Republic of Macedonia, pointed out the legal gap created with the amendments in Article 46[8] of the Law on Working Relations, which constantly causes problems in the practice of its interpretation.

Paragraph 2 of this Article states that if the worker continues to work after the end of four years, in such a case, the working relation from full-time is transformed to part-time working hours. If the employer does not reach a decision to change the contract for employment, the worker may obtain this right before the competent court.

The problems which were caused by Article 46, were acknowledged by the number of received written submissions by the Helsinki Committee filed by persons employed in the educational facilities, and they were regarding the question of fulfillment of the conditions regarding the duration of the working relation – whether the working relation can be considered before the Amended Law on the Law on Working Relation starts? Unfortunately, the reply to this question depends on the arbitrary grade of the court, which of course, in many cases leads to a different approach of the employed persons, which realize their right through court.

In the attempt to solve this problem, the Constitutional Court of the Republic of Macedonia reached a Resolution[9] where it stands that: "The increase of the limit from three (according to the derogated Law on Working Relations) to four years, as a condition for the transformation of the working relation should not represent an obstacle, that is to say, an impossibility for the worker that started a full-time working relation on the base of the previous law, when the condition was three years, his working relation to be transformed from full-time to part-time, after the four years have passed, since the moment of the beginning of the working relation, not since the moment of the starting point of the existing law. The different interpretation and calculation of the deadline of four years would bring to question the legal expectations of the worker, that is to say the rights that he/she possessed until the moment the new law came into force, which would practically represent a violation of the legal safety of the citizens, as an element of the law in ruling. The Court decided that the disputed legal provision cannot be doubted... the period of four years refers to the cases of starting a working relation from the moment of starting, and not from the moment of the start of the ruling of this law."

However, the Helsinki Committee still receives a large number of written submissions regarding this problem, thus this points out part of the Courts before which the citizens claim their rights. This Resolution of the Constitutional Court does not have a relevant interpretation of Article 46, because the different practice is still ongoing, and in a large number of cases, the period spent at the working place before the new law starts, is not taken into consideration.

The case of a worker (whose personal details are not published) who filed a lawsuit in order to transform the working relation stands as a confirmation of this practice. The Basic Court gave a Verdict with which the lawsuit of the plaintiff is adopted, the working relation based on full-time hours is established and transformed to a part-time working relation, and the sued employer is obliged to apply the procedure for the transformation of the working relation of the plaintiff. Acting according to an appeal submitted by the defendant, the Appellate Court Skopje, verified the appeal, and the request of the plaintiff was rejected as unfounded, because: "the legal provision, paragraph 2 of Article 46, is applied in order to regulate legal disputes that might occur after the ruling of the Law has started."

The Helsinki Committee for Human Rights of the Republic of Macedonia regrets this kind of judicial practice, which leads to violations of the right of the workers, where among other things, with their own verdicts, the Court helps to broaden up the space for the self-willful behavior of the employers, and an the unjustified long duration of the full-time working relation.

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[1] Article 74 of the Election Code
(1) The Election campaign begins 20 days before the day set for the elections, and must stop 24 hours before the day of the elections and at the day of the elections.
(2) The Council of Radio Broadcasting is obliged to monitor the programs distributed in the electronic media in the Republic of Macedonia during the pre-election silence and on Election Day.
(3) The Council of Radio Broadcasting is obliged to determine irregularities (agitating, information related to the pre-election campaign, advertisements used to proclaim parties and their symbols), to inform the supervising body of electronic communication after 24 hours of the reception to file an application to authorized Basic Court to deny the procedure for a punishable act.
[2] Article 84 of the Law on Election
During the financing of the election campaign, the organizer of the election campaign may spend 60 denars for a listed elector in the election unit, that is to say, the municipality for which there is a submitted list of candidates, that is to say a candidate list.
[3] Article 71 of the Law on Election
(1) The organizer of the election campaign must be opened by the judges – account with a mark "for the election campaign", in the period of 48 hours after the confirmation of the list of candidate, and in this period of 48 hours, the evidence for the opened account must be delivered to the competent Election Commission.
(4) The organizer of the election campaign must deposit all the means received from the legal or physical persons to the account of paragraph 1 of this Article in order to finance the election campaign.
(5) All the costs for the campaign must be covered with the means from this account.
Article 72
(1) The organizer of the election campaign is responsible for the conduction of the election campaign.
(2) The organizer of the election campaign is responsible for those actions of the election campaign where he/she will authorize other persons.
Article 85
(1) The organizer of the election campaign is obliged to submit a financial report about the election campaign.
(2) The financial report for the election campaign contains information about the total sum of the means, the sources of financing and the costs.
(3) The financial report shall be delivered to the State Organization for Revision, the State Commission on Elections and to the Parliament no later than 30 days starting from the day after the verification of the mandates.
(4) The financial report about the election campaign publicly is declared by the State Commission on Elections, on its Internet web page.
(7) If the State Organization for Revision confirms irregularities in the financial report of the organizer of the election campaign, and that are related with surpassing of the limit for the election campaign or the financing of the election campaign, contrary to the legal provision of the legal code shall inform the competent bodies because of the staring an appropriate procedure.
Article 189
(1) Any offence of a political Party, which will not submit a report of the financing of the election campaign of Article 85 of this Legal Code, shall be punished with a fine of 200,000 – 300,000 denars, that is to say when for the financing of the election campaign are used means according those stated in Article 83 of this Legal Code.
(2) Any political Party that will spend more than the predicted financial means shall be punished with a fine of 200,000 – 300,000 denars, as stated in Article 84 of this Legal Code.
(3) Any authorized person of a political Party will be punished for the actions of paragraphs 1 and 2 of this Article with a fine of 20,000 – 50,000 denars.
[4] http://www.mhc.org.mk/?ItemID=C7F991F506BF02448222722F064FA5B2
[5] Campbelland Fell v. the United Kingdom 28 June 1984.
[6] Law on Holidays of the Republic of Macedonia. No. 21/98 and Law on Amending the Lawon Holidays of the Republic of Macedonia no. 18/07
[7] Article 246 of the Law on Working Relations, Authorizations of the Economic-Social Counicl
"(1) In order to confirm and establish the activities to protect and promote the economic and social rights, that is to say the interest of the employees and employers, the leading of an economic, developmental and social politics, the triggering of a social dialog and the appliance of the collective contracts and their coordination with the measures of the economic, social and developmental politics, an Economic–Social Council is established.
(2) The activities of the Economic–Social Council are keystones of the need for collaboration between the Government of the Republic of Macedonia (further on in the text: The Government), and the syndicates and associations of the employers, in order to solve the economic and social matters and problems.
(3) The Economic-Social Council:
1) follows, studies and evaluates the influence of the economic politics and the measures undertaken by the economic politics, and the social stability and development;"
2) follows, studies and evaluates the influence of the social politics and the measures undertaken by the social politic for establishing economic stability and development;
3) follows, studies and evaluates the influence of the changes in the prices and salaries of the economic stability and development;
4) submits an explained opinion to the Minister of Labor and matters and problems related with the application of the collective contracts;
5) gives suggestions to the Government, employers and syndicates, that is to say to their association on a higher level, the leading of coordinated politics of prices and salaries;
6) gives opinions on suggestions of Laws in the field of labor and social safety;
7) promotes and triggers the need for a three-way collaboration (a social dialog between three parties) between the social partners in order to solve the economic and social matters and problems;
8) triggers a peaceful solution of the collective working disputes;
and
9) submits opinions and suggestions to the Minister of labor concerning the other matters established with this law.
[8] Article 46 of the Law on Working Relations, "Official Gazette of the Republic of Macedonia", no.62/2005: "(1) A contract for full-time employment, for the conduction of activities that last a certain amount of time, with or without interruption of a period to four years can be signed.
(2) The working relation based on the contract for full-time employment, is transformed into a part-time working relation, if the employed person continues to work after the end of the deadline stated in paragraph 1 of this Article, under conditions and manners established by law."
[9] Resolution of the Constitutional Court no.48/2007-0-0, not to pursue a procedure for the evaluation the continuality of Article 46, paragraph 2 of the Law on Working Relations.

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

June 2008

I. PUBLIC EVENTS AND DEMOCRATIC PRINCIPLES VIOLATION

1.1 The number of reported cases of child abuse is increasing – the institutions sleep

One of the basic children's rights is their right to life and development. All types of abuse, violence, misuse or neglect of children which jeopardize their physical or psychological integrity and prevent their development represent a violation of this basic right of theirs.

The protection of the rights of the children implies, first of all, various social activities aimed at preventing these phenomena, as well as organization and direct implementation of protective interventions in specific cases of child abuse and neglect.

The Convention on the Rights of the Child includes special provisions on the rights of the children to physical, psychological and moral integrity, whereby measures are provided for the following:

Protection against physical or mental violence, abuse and neglect (including sexual abuse) – Art.19
Protection against all forms of sexual exploitation and sexual abuse – Art.34
Protection against all other forms of exploitation prejudicial to any aspects of the child's welfare – Art.36

Measures to promote physical and psychological recovery and social reintegration of a child victim – Art.39

The figure of about ten new cases of sexual abuse of children in Macedonia during the month of June only is alarming. Even though the question remains if this is about an increase in the actual number of child abuse cases or in the number of reported cases, it however does not excuse the competent authorities, which over the past years could have and should have taken measures to prevent such abuses from happening.

The Helsinki Committee has gone in public on several occasions with reviews of specific cases[1] and with conclusions that the data indicating an increased number of cases submitted to the Committee was worrisome. Lately, there have been an increased number of publicly disclosed cases in which a violation of the rights of the child was either indicated or incontestable.

One of the most responsible institutions for the protection of the rights of the children is the Ministry of Labour and Social Policy and the Centres for Social Work operating under its jurisdiction. In our reviews, we have already indicated several times that over the past period, neither the Ministry nor the Centres demonstrated that they had the required capacity, knowledge, willingness and desire to actually fulfil the obligations assigned to them in relation to the children.

The Centres for Social Work are services that have a key role to play in the protection of children against abuse. This role is based on their significant functions in the social protection of families and children area, as well as on their legal authorities to protect the rights of the children. They should be the initiators and the coordinators of the overall process of child protection against abuse.

This process involved activities by a number of different state authorities (Police and judiciary), as well as professional institutions (health, social welfare and educational institutions). The distribution of the roles among the participants should put an end to the violence in an efficient manner and provide adequate protection to the children with as little additional traumatic consequences as possible. Starting from the main objective – providing for the best interest of the child – these roles must be intertwined within a unique process of professional recognition of such cases, investigation/securing of evidence, making decisions and carrying out protective interventions.

The Helsinki Committee is of the opinion that much more could and must be done at society level in order to prevent the abuse and neglect of children, and calls upon all competent authorities to IMMEDIATELY take all necessary steps not only to punish the perpetrators of these acts, but to prevent such acts from happening as well.

1.2. The proposal for amending the Law on Health Care pointed to violation of the rule of law concept in Macedonia

Irony is the leitmotif of our public political and social life. The process of legislative changes and transformation of the University Clinical Centre ironically indicated the problems with the sound functioning of democracy and rule of law in Macedonia.

Namely, following the decision of the Constitutional Court to annul the Government's decision on transformation of the University Clinical Centre, the lawyers have diagnosed symptoms of violation of the constitutional principles in the attempts to achieve the planned transformation through the Parliament through the proposal for amending the Law on Health Care put forward by the Minister of Health and at the same time Member of Parliament Mr. Selmani.

This behaviour is contrary to the principle of division of power, which is recognized as a fundamental value of the constitutional order of Macedonia in Art.8[2] of the Constitution of the Republic of Macedonia, as well as contrary to the principle of incompatibility of the offices of Member of Parliament and Minister. The latter is regulated by Art.63[3] and Art.89[4] of the Constitution and by Art.6[5] of the 2002 Law on Election of Members of the Parliament of the Republic of Macedonia.

Functional rule of law State, as an ideal that we are striving to achieve, encompasses legality in the functioning of the state authorities and a government limited by the Constitution and the laws. The fact that the authorities are brutally neglecting the principles recognized in the Constitution, as the highest act in the hierarchy of law, points to severe diseases and deformations in our political system. No state authority is above the Constitution - neither the Parliament which passes the Constitution nor the Government.

The incompatibility between the Government's cabinet and the Parliament members group is a creation of the 1789 French Revolution, a symbol of the new beginning and of the new societal order of liberty, equality and brotherhood. The 1791 French Constitution includes such a prohibition as a preventive measure against corruptive behaviour by high officials from the times of the Ancien regime. Such corruptive behaviour was possible to occur if the Ministers were at the same time Members of Parliament. It is ironical that Macedonia is also in a time of politically propagated regeneration and doing away with the ideas and procedures of the old regime when this issue of violation of this principle of incompatibility between the office of Minister and office of Member of Parliament appears in public.

The basis idea of this principle is very clearly reflected by one very often cited sentence of Charles de Gaulle: It is not pos-

sible to both control and be controlled at the same time. In the name of the political and legal control and for the sake of preserving the legality in the functioning of the state authorities, we hereby point to the unconstitutional and illegal nature of such procedures.

1.3. Public lynch! Which justice should we believe in now?

Principle 10 of the Recommendation (2003)13 of the Committee of Ministers[6] on the provision of information through the media in relation to criminal proceedings provides for prevention of prejudicial influence stipulating that "... police services should abstain from publicly providing information which bears a risk of substantial prejudice to the fairness of the proceedings". But was this observed in the case of the reporter of the newspaper "Utrinski vesnik" from Kicevo Mr. Vlado Tanevski?

Namely, the Ministry of Interior's spokesperson Ivo Kotevski unfortunately gave the following statement for the media – "it is characteristic of all four women that they were of an older age, all lived in the same part of Kicevo, had a low level of education and mainly worked as hygienists. This profile of the victims partially corresponds with the profile of the late mother of the suspect, who had worked as a hygienist in a hospital and whom he had extremely bad relations with, according to documented information". According to the Law on Criminal Procedure, everyone who is prosecuted by the State or by private persons enjoys the right to "presumption of innocence"[7]. This is for sure not the right that we are seeing in Macedonia on a daily basis, where those arrested are filmed as they are brought to a pre-trial detention facility or before an investigative judge, and the event becomes a No.1 topic in all media. This right can not be enjoyed either when the MoI spokesperson speaks in front of the cameras that "they had indisputable evidence" about the arrested individual, thus exerting direct pressure on the independence of the Court.

This was sufficient to have cannonades of epithets in all media holding a common nominator – "serial murderer", which created a negative publicity not only against the now deceased person and his family, but for the general public in Macedonia as well[8], while forgetting the fact that this person was still only a "suspect".

All the above leads up to the question as to the sources that provided the Macedonian public with pictures from the forensic investigation, most probably from the suspect's place of living, photos of the person during the act of arrest, even from different angles - all this culminating with pictures of his dead body and of the toilet facility in the prison room that were shown on the media for days? Whom does this unethical sensation serve, a sensation that ruins the human dignity and all legal rules and norms of a democratic society that the Macedonian one pretends to be?

Therefore, the Helsinki Committee insists on the application of Article 8 of the European Convention on Human Rights, which implies that when providing information on suspected, indicted or sentenced parties to the criminal procedure, their right to protection of privacy should be observed. State authorities and media should pay special attention to the harmful effect of the presentation of information that enables identification of these individuals.

Very disappointed, the Helsinki Committee vigorously condemns the manner in which the Ministry of Interior informed about the case of Mr. Vlado Tanevski, which was seasoned with speculative journalists' epithets employed by certain media. Macedonia witnessed a public lynch of a person and of his dignity, annihilation of the ethical and moral standards and violation of the principle of presumption of innocence as one of the elementary postulates of a State governed by the rule of law.

Another aspect of this whole case is the re-opening of the cases of Risteski and Mircevski who had been sentenced to life imprisonment for the murder of Mitra Siljanovska. Which justice should we believe in now?

1.4. Allowed capriciousness in the religious educational institutions! The State Educational Inspectorate "not having the authority" for supervision?

Pursuant to Article 3 of the Law on Secondary Education: "(1) Everyone has the right to secondary education under equal conditions as established by this law. (3) No discriminations based on gender, race, colour of the skin, ethnic and social background, political and religious affiliation, property situation and status in the society shall be allowed". On the other hand, the Law on the Legal Position of a Church, Religious Communities and Religious Groups (Official Gazette of the RM No. 113 of 20 September 2007) regulates in its Article 22 the possibility for a church, a religious community and a religious group to establish religious educational institutions at all levels of education except for primary education, intended for the education of the future clerics and religious officials, as well as dormitories for the students attending these institutions. There is an important fact that pursuant to Paragraph 2 of the same article 22: "Religious educational institutions are equal to the other educational institutions and their students have the same rights and responsibilities".

Unfortunately, the Helsinki Committee for Human Rights of the Republic of Macedonia came to information that these legal provisions have not found their place in the real life yet, given the fact that the Ministry of Education thinks that the legal provisions do not provide the State Educational Inspectorate with the authority to supervise the work of the religious educational institutions.

Namely, the Helsinki Committee for Human Rights was addressed by the person Sefedin Emini, a part-time student in year 3 in the secondary Islamic school "Isa Beg Medrese" in Skopje, in relation to the termination of his education in this school by the Principal. On 23 January 2008, when he was filing applications for taking year 3 exams, he was informed by the Secretary of the school of his termination, with a plain explanation provided by the Principal that he was allegedly against the Islamic community.

Regarding the application filed by the person Sefedin Emini to the State Educational Inspectorate in relation to his termination, the Inspectorate declared itself incompetent to supervise this school and referred the problem back to the school so that it is solved internally.

The Helsinki Committee for Human Rights sent a letter to the State Educational Inspectorate asking information about the grounds based on which they declared themselves incompetent, as well as information about the competent institution that we could address for this case. In the answer, they are saying that the secondary Islamic school, pursuant to the Law on Secondary Education, is not covered by the system of secondary schools, and that the Ministry of Education and Science and the Inspectorate have no authority to carry out supervision because the school "Isa Beg Medrese" was a religious school and as such it had not been accredited and registered in the Secondary Schools Registry.

Considering this case, the question emerges as to whether this answer is contrary to the above-mentioned Paragraphs 1 and 3 of Article 3 of the Law on Secondary Education and Article 22 of the Law on the Legal Position of a Church, Religious Communities and Religious Groups?

On the other hand, it is indicative that the answer is also in collision with Article 26 Paragraph 2 of the Law on the Legal Position of a Church, Religious Communities and Religious Groups, which clearly stipulates that: "The responsible person in the religious educational institution i.e. in the student dormitory is obliged to put at the disposal of the state authority responsible for educational issues the data required for having an insight into their work and to remove any indicated shortcomings within the period specified by that authority".

Given that the State Educational Inspectorate circumvented the answer to the question which obviously remains unknown for everybody - namely who is responsible to carry out supervision in the religious educational institutions and if maybe the responsible persons in these institutions are allowed capriciousness - the Helsinki Committee expresses great concern over the fact that the Ministry of Education and the State Educational Inspectorate are avoiding their obligations arising from the above-stipulated legal provisions. To this end, the Committee also addressed the Commission for Relations with the Religious Communities and Religious Groups under the Government of the Republic of Macedonia, with a hope to clarify the dilemma as to whether these schools are left on their own and whether maybe they are "floating" in the educational system of our country?

II. VIOLATION OF ECONOMIC AND SOCIAL RIGHTS

2.1. The case of Nebojsa Arsovski and the Association of Croats from the Republic of Macedonia

Person by the name of Nebojsa Arsovski from Skopje and the Association of Croats from the Republic of Macedonia addressed the Helsinki Committee for Human Rights of the Republic of Macedonia.

Nebojsa Arsovski, as well as the Association of Croats from the Republic of Macedonia addressed - each of them individually – the

State Institute for Geodesic Affairs – Sector for surveying and cadastre, with requests for accessing information of public nature. The application filed by the Association of Croats from the Republic of Macedonia is with No.1118/5848 dated 30 November 2007, and Nebojsa Arsovski's application has the same number and is dated 10 November 2007. The subject of the applications is to have a complete insight into the documentation for the structures on KP 2520/1, KO Centar 2, starting from 1995 up to date.

Given that they had received no answer from the State Institute for Geodesic Affairs – Sector for surveying and cadastre, Nebojsa Arsovski and the Association of Croats from the Republic of Macedonia filed individual complaints to the Commission for protection of the right to free access to information of public nature.

On 23 April and 23 May 2008, the Commission for protection of the right to free access to information of public nature adopted two individual Decisions whereby the two complaints were accepted and the State Institute for Geodesic Affairs was ordered to provide the applicants with an insight into the requested information "Complete insight into the documentation, for application 1118/5848 submitted on 3 October 2007 for structures KP 2520/1 – Centar II starting from 1995 up to date", within 15 days from the day of delivery of the Decision.

On 19 June 2008, the State Institute for Geodesic Affairs – Sector for Surveying and Cadastre[9] submitted to the Association of Croats from the Republic of Macedonia and to Mr. Nebojsa Arsovski a Notification letter stating that the State Institute for Geodesic Affairs was unable[10] to act upon the application for the reasons that this file along with all the papers was submitted to the prosecution authorities and up to the present date it was not returned[11] to the Sector for real estate cadastre – Skopje.

This case is about a violation of the right to free access to information of public nature and about a failure of the State Institute for Geodesic Affairs – Sector for surveying and Cadastre to fulfil its legal obligations. Even if the Institute had actually submitted the file with all the papers to the prosecution authorities, it still committed a violation of the Law on Real Estate Cadastre, according to which "The Agency shall provide for the safety of the data in an electronic form in GCIS through measures of physical and technical protection, as well as through dual storage of the data at two physically separate locations".

2.2. The case of Risto Zivkov

By means of Decision No. 37-381/7 dated 4 October 2005, the Commission for deciding in administrative procedure in the area of transport and communications and environment, as a second instance authority in the Ministry of Transport and Communications, rejected the appeal of Mr. Risto Zivkov from Skopje as unfounded and confirmed the Approval for construction No. 34-16-1064/9 dated 24 May 2005.

Within the legally prescribed timeline of 30 days after receiving the Decision or more precisely on 20 February 2006, Risto Zivkov filed a complaint for initiating an administrative dispute[12].

Despite the numerous interventions by Risto Zivkov for accelerating the resolution of the case, the latter has not been resolved yet by the Supreme Court[13], or now by the Administrative Court[14].

In the meantime, or on 19 May 2005, Risto Zivkov brought to the Basic Public Prosecutor's Office - Skopje criminal charges against the responsible persons from the Ministry of Transport and Communications – local branch in the municipality of Centar in Skopje, for the criminal offence "Abuse of official position and authorization from Article 353 of the Criminal Code.

So far he has received no answer from the Basic Public Prosecutor's Office – Skopje, but what is surprising is the answer that this institution sent the Ombudsman. The following is included in the answer (quote): "after having received and studied the criminal charges, a request was submitted to the Ministry of Transport and Communications – its local branch in Centar Skopje - for provision of the necessary notifications, and given that by October of the same year the request was not responded to, an intervention request was filed. Following this intervention request, the Ministry informed us that the request had not been submitted to them, so they requested that it be submitted again, which was actually done on 21 November 2005.

On 30 March 2006, the request for collection of all necessary notifications together with a copy of the criminal charges was faxed once again at the request of the Ministry, with the same explanation that they are not in a position to find the file, since another intervention request for updating of the procedure was again submitted at the beginning of March.

In April of 2006, we were informed that the file and the intervention request were referred to the Mayor of the municipality of Centar jurisdiction wise. Since by February 2007 there was no response to the submitted request, an intervention request was submitted to the Mayor of the municipality of Centar and to the Ministry of Transport and Communications – Sector for legal and administrative affairs – so at their request the same request was for the third time faxed to them.

In November 2007, a third intervention request was submitted to the Ministry of Transport and Communications – Sector for legal and administrative affairs. At the same time, a notification letter and a request for updating were submitted to the Minister of Transport and Communications – Mr. Mile Janakievski.

Regarding the behaviour of this particular Public Prosecutor's Office, the municipality of Centar sent us an Information Letter in January 2008 informing us that based upon the complaint filed by Mr. Risto Zivkov through the Administrative Court of the Republic of Macedonia against the Decision No. 37-227/2 dated 27 February 2006 adopted by the Government of the Republic of Macedonia - Commission for deciding in administrative procedure in the area of transport, communications and environment – the file with all the papers was submitted at the request of the second-instance authority on 17 April 2006 in order for it to be forwarded to the Supreme Court for consideration. Until the preparation of the Information Letter, the authority had not received any submission for the Supreme Court to decide upon, due to which they were not able to submit the requested data to us."

The Helsinki Committee expresses concern over this modus operandi of the state authorities involved in this specific case, and is publicly calling upon them to take all necessary measures to protect the rights of the clients in the future.

III. POLICE AND COURT CASES

3.1. The use of the measure of pre-trial detention in the procedure against juveniles

The United Nations regulations on protection of juveniles deprived of their freedom provide that the juvenile justice system should support the rights and the safety and promote the physical and mental wellbeing of the juveniles. The deprivation of freedom of a juvenile must be a measure of last resort and for the shortest possible period of time, and will be limited only to exceptional cases. Pre-trial detention against a juvenile person IN ANY CASE must not last longer than 90 days. Therefore, the procedure against juveniles is special and governed by special provisions.

Based upon the Law on Criminal Procedure of the Republic of Macedonia, the measure of pre-trial detention based on Article 492 may be pronounced on a juvenile person only in exceptional cases.

The pre-trial detention in the preparatory procedure shall be pronounced and revoked by the judge for juveniles, whereas in the court procedure by the court chamber for juvenile persons.

The Helsinki Committee was addressed by the mother of the juvenile NN. During the court procedure before the Basic Court Skopje 1 in Skopje, the measure of pre-trial detention until the time of the sentence becoming effective was pronounced on this juvenile by means of the Decision KM No.24/08.

When pronouncing the measure, the court chamber for juveniles used Article 371[15] of the Law on Criminal Procedure, article that cannot be used for juvenile perpetrators of criminal offences. Article 470[16] of the Law on Criminal Procedure clearly stipulates that special provisions will apply to juvenile perpetrators of criminal offences, while the other provisions of this law will apply only if they are not in contradiction with the provisions of this chapter.

The Helsinki Committee expresses great concern over the fact that the court has made such an omission whereby the rights of the child are directly violated, as well as all international and national documents pertaining to the protection of the rights of the child and the obligation of all state authorities to work so as to cater for "the best interest of the child". We expect this mistake to be corrected in the shortest possible period of time and that the pre-trial detention is reduced to the duration defined in the law.

3.2. Whose interests does the Basic Public Prosecutor's Office of Skopje work for?

The mother of A.N. addressed the

Helsinki Committee for Human Rights of the Republic of Macedonia in relation to the inefficient behaviour of the judicial institutions, especially of the Public Prosecutor's Office Skopje regarding the case K.No.1701/07.

Namely, the client informed us that following a report of rape of a juvenile person, more precisely her juvenile daughter by her ex husband, to the Basic Public Prosecutor's Office Skopje on 12 August 2004, criminal charges for this offence were brought.

After a period of two years in which the case was in a investigation phase, indictment was filed before the competent court against the person suspected of this crime and the trial began as late as on 8 March 2007 with the scheduling of the main hearing.

Even though this is a severe crime, all the more so since it was committed against a juvenile person, and bearing in mind the appalling fact that a case like this was held in a phase of investigation for more than two years, instead of efficiency in the court procedure the clients are faced with a new delay because of reasons associated with the Basic Public Prosecutor's Office, the representative of the indictment, which in this case should be the most interested in ending the procedure soon.

Namely, the Helsinki Committee for Human Rights addressed both the Basic and the Higher Public Prosecutor's Offices in Skopje, as well as the Basic Court Skopje 1 in Skopje (where we have not yet received any notification from), requesting information about the reasons for the delay of the court procedure.

The Higher Public Prosecutor's Office in Skopje sent us a letter informing us of the various reasons for the delay of the main hearing: (i) the adjournment was at the request of the Deputy Basic Public Prosecutor because she was not able to study the case, although the latter spent the two previous years in a phase of investigation; because the Deputy Basic Public Prosecutor had not taken the file papers with her; and (iii) the hearings during the period 24 September 2007 – 2 April 2008 (period of full six months) as well as the last one of 30 June 2008 were adjourned due to the absence of the representative of the prosecution.

If account is taken of the competences and the legal obligations of the Public Prosecutor's Office as the unique and independent state authority prosecuting the perpetrators of criminal offences[17], which is supposed to execute its function in a lawful, unbiased and objective manner[18], based upon the Constitution and the laws – and in particular to see to the efficiency of the criminal law system[19], the question that unavoidably emerges is if the Basic Public Prosecutor's Office – Skopje is fulfilling its legal obligations in this case?

It is very indicative why the representative of the prosecution, who should be interested in proving the guilt of the defendant within a short period of time without any unnecessary procedure delays and thus respond to the obligations arising from his/her function to protect the rights of the injured party, all the more so since the injured party was a juvenile at the moment of the perpetration of the crime, is almost the only reason for the delay of the procedure and with that for the continuation of the injured party's agony?

The Helsinki Committee has noted with concern the irresponsible and negligent behaviour of the Basic Public Prosecutor's Office. Therefore, the Committee CALLS UPON the Basic Public Prosecutor's Office Skopje and the Basic Court Skopje 1 Skopje to keep to the constitutional and legal obligations and to enable a fair trial within a reasonable period of time with a view to protecting the rights and the interests of the citizens and complying with the principles of the rule of law.

Regarding the nebulous answer about the reasons for the delay, the Helsinki Committee thinks that the very avoidance to list the measures undertaken by them represents a sloppily, unlawful and irresponsible behaviour of the Public Prosecutor's Office, which avoids to take measures against the Public Prosecutor who worked on the case or other measures for speeding up the case.

3.3. The case of Cvetan Stojkoski

The person by the name of Cvetan Stojkoski addressed the Helsinki Committee for Human Rights of the R.M. This person had initiated a civil lawsuit requesting that a source of a danger of damage be eliminated.

Namely, since his neighbour had established a big chicken farm at a distance of only 5-6 meters from his house, from where an unpleasant odour was spreading and the waste was dumped close by, Mr. Stojkoski took his neighbour to court on 10 April 2006, requesting as a plaintiff that the farm, i.e. the source of a danger of damage be eliminated.

The Basic Court Skopje 2 in Skopje had several written pieces of evidence presented during the procedure, listened to the witnesses and the complainants, even inspected the location, and after six hearings that were held and after one year and eight months duration of the procedure, the court on 15 January 2008 issued a Decision No. 955/06 declaring itself as INCOMPETENT, and rejected the plaintiff's complaint due to ABSOLUTE INCOMPETENCE.

However, a court procedure with duration of six hearings implies court expenses that the party is obliged to pay, in the amount of 25.584,00 denars.

Taking into consideration the legal obligation of the court to determine ex officio and immediately after the reception of the complaint if it is competent,[20] based on the allegations in the complaint and the facts known to the court[21], it is inexplicable why it had taken the court more than one year and six hearings to understand that it is absolutely incompetent for this case?

The Helsinki Committee also reminds whom it may concern that according to the principle of cost-effectiveness of the procedure: "the court is obliged to make sure that the procedure be implemented without any delay, within a reasonable period of time, and with as little expenses as possible[22]", which is diametrically contrary to the behaviour of the court in this case, which needed to have many pieces of evidence presented before declaring itself incompetent for the case.

Because of cases like this one, the Helsinki Committee REQUESTS the judicial authorities to keep to the legal obligations in order to provide the citizens with a fast access to justice and avoid unnecessary financial burden, thus increasing the trust in the protection provided by the judiciary.

3.4. Mirce Gorancic, Skopje

After the traffic accident that happened on 15 September 1995 in Skopje, a civil procedure for compensation for damage was initiated by the plaintiff Mirce Gorancic against the defendant – insurance and reinsurance company "AD Osiguruvanje i reosiguruvanje Makedonija" – Skopje. The complaint was filed during 1999 in the Basic Court Skopje 2 – Skopje and was registered under No. 1433/99. On 3 May 2000, the Institute of Forensic Medicine developed a Diagnosis and an opinion regarding the duration and the intensity of the suffered pain, suffered fear, if there was a reduction of the general living activity, reduction of the work ability, if he had a need for care by a third person and if the plaintiff Mirce Gorancic suffered from disfigurement.

Based upon the presented evidence during the court procedure, the Basic Court Skopje 2 – Skopje, on 24 October 2000 rendered a Judgment whereby the plaintiff's claim is partially admitted, thus obliging the defendant to pay the plaintiff a compensation for non-material damage[23] in the total amount of 428.000 denars with simple interest starting from the day of rendering of the Judgment (24 October 2000) until the day of the final payment, and to pay him a compensation for material damage[24] in the total amount of 321.570 denars with simple interest from the day of filing of the lawsuit (12 July 1999) until the day of the final payment. This same Judgment rejected the larger claim as unfounded.

The Supreme Court of the Republic of Macedonia, deciding on the revision demanded by the plaintiff, issued the Decision Rev.No. 453/01 at its session held on 12 March 2003 whereby the stated revision is accepted. Moreover, the Judgment of the Appeal Court in Skopje No. 1841/01 dated 31 May 2001 and the Judgment of the Basic Court Skopje 2 – Skopje No. 1433/99 dated 24 October 2000, in the contested part regarding the rejected claim under Paragraph III of the first instance Judgment, WERE REVOKED and the case in that part was returned to the Basic Court Skopje 2 – Skopje for re-trial.

During the re-trial, the court ordered expert investigation to be carried out by an expert witness – agricultural engineer – regarding the annual earnings of the plaintiff from the business of breeding 100 sheep, after deducting the production expenses (profit from lambs, meat, milk, wool, cheese, manure etc. in the period from 16 September 1995 until the day of the expert investigation, as well as in the future).

On 28 February 2005, the Basic Court Skopje 2 – Skopje rendered another Judgment that partially accepted the claim made by the plaintiff Gorancic. The amounts ruled now are visibly higher, as follows: for non-material damage and for expenses incurred for care provided by a third party. Both parties to the case filed appeals within the legally prescribed time-

line, which were accepted at a non-public session by the Appeal Court in Skopje on 21 December 2005, thus the case was returned for another consideration and decision.

During the re-trial, the court accepted that a piece of evidence be generated with a financial expert investigation regarding the limit of the insurance security. In July 2007, an expert witness from the Association of court's expert witnesses provided the requested expert opinion. At a verbal main hearing held on 18 September 2007, the Court issued a Decision allowing the carrying out of a new expert medical investigation proposed by the defendant, with a note that he should submit evidence that 20.000 denars were deposited.

The minutes of the main hearing held on 14 February 2008 include a Decision whereby the hearing is adjourned for an indefinite period of time. In the meantime, towards the end of February this year, the Trauma Clinic within the Medical Faculty of Skopje issued a Certificate that the insurance company QBE – Skopje had not transferred any money for the expert investigation of the person by the name of Mirce Gorancic.

This specific case is about a flagrant violation of Article 6 Paragraph 1[25] of the European Convention on Human Rights, in relation to Article 10 Paragraph 1[26] of the Law on Legal Proceedings and the Articles 6 (2)[27] and 10 (1) Indent 3[28] of the Law on the Courts.

Unfortunately, even previous appeals by the Helsinki Committee for respecting the right to a trial within a reasonable period of time, based on the detection of cases where the procedure was unjustifiably postponed, has not made any essential impact in terms of improvement of the work of the courts. The Helsinki Committee takes this right to once again point to the disrespect and the flagrant violation of the principle of trial within a reasonable period by the court authorities.

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[1] www.mhc.org.mk
[2] Constitution of the Republic of Macedonia, Article 8 Fundamental values of the constitutional order of the Republic of Macedonia include:
- division of the power into legislative, executive and judicial;
[3] Constitution of the Republic of Macedonia, Article 63, Par. 6 A law shall establish incompatibility between the office of Member of Parliament and the execution of other public offices or professions.
[4] Constitution of the Republic of Macedonia, Article 89, Par.2 The President and the Ministers shall not be Members of the Parliament.
[5] Law on Election of Members of Parliament in the Republic of Macedonia, Article 6 Par.1 The office of Member of Parliament is incompatible with the office of President of the Republic of Macedonia, President of the Government of the Republic of Macedonia, Minister, judge of the Constitutional Court of the Republic of Macedonia, judge, public prosecutor, Ombudsman and other holders of offices elected or appointed by the Parliament of the Republic of Macedonia and by the Government of the Republic of Macedonia.
[6] Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings (Adopted by the Committee of Ministers on 10 July 2003 at the 848th meeting of the Ministers' Deputies).
[7] Presumption of innocence means that the person charged with a criminal offence shall be considered innocent for as long as their guilt is not established by a final court sentence, as per Art. 2, Para. 1 of the Law on Criminal Procedure.
Recommendation Rec(2003)13 of the Committee of Ministers, Principle 2 - Presumption of innocence - Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.
[8] Recommendation Rec(2003)13 of the Committee of Ministers, Principle 11 - Prejudicial pre-trial publicity -
Where the accused can show that the provision of information is highly likely to result, or has resulted, in a breach of his or her right to a fair trial, he or she should have an effective legal remedy.
[9] LAW ON REAL ESTATE CADASTRE
Official Gazette of the Republic of Macedonia No.40 dated 26 March 2008
Subject of regulation - Article 1: This law shall regulate the basic geodesic affairs, the surveying of real estate for the purposes of the real estate cadastre, the establishment and the maintenance of the real estate cadastre, the state topographic maps, the register of space units, the contents of and the management of the data from the Geodesic-Cadastral Information System of the Republic of Macedonia, the establishment, maintenance and public access to the national infrastructure of physical space data, as well as the establishment of an Agency for Real Estate Cadastre.
[10] LAW ON REAL ESTATE CADASTRE
Official Gazette of the Republic of Macedonia No.40 dated 26 March 2008
Storage and protection of the data in the Geodesic–Cadastral Information System
Article 31
(1) The data from the GCIS in a written form shall be kept in special premises, conditions and equipment for storage, for the purpose of their permanent protection.
(2) The data from the GCIS in the electronic form shall be stored in special computer systems. Electronic form of the Geodesic-Cadastral Information System
Article 32
(1) The Agency shall provide for the safety of the data in an electronic form in GCIS through measures of physical and technical protection, as well as through dual storage of the data at two physically separate locations.
(2) In GCIS in electronic form, for every change entered into the Real Estate Cadastre, the date and the hour of the change entry shall be regfistered, as well as the person that entered the change.
(3) The electronic system provides for a strictly controlled access to the GCIS with different degree of accessibility.
[11] LAW ON REAL ESTATE CADASTRE
Official Gazette of the Republic of Macedonia No.40 dated 26 March 2008
Use, distribution, access and issuing of date from the Geodesic-Cadastral Information System.
Article 34
(1) GCIS enables use, distribution and access to its data, as well as the issuing thereof.
(2) Data in written form from the GCIS shall be directly accessed in the working premises in the presence of an authorized employee of the Agency.
(3) Use, distribution and access to the data from the GCIS electronic system by the users shall be done through a global electronic network that is connected with the local electronic network of the Agency.
[12] Law on Administrative Disputes that the Parliament of the Republic of Macedonia adopted at its session held on 12 May 2006 No 07-1997/1.
[13] Law on Administrative Disputes Article 66
-"Until the day of entry into force of this law, the procedure relative to the applications for initiation of an administrative dispute before the Supreme Court shall be carried out in the following way:
- the administrative cases that have not been resolved before the Supreme Court by the day of the entry into force of this law shall be taken over by the Administrative Court.
The Supreme Court is obliged to resolve within a reasonable period of time the administrative cases that have come before it through extraordinary legal remedies.
The Minister of Justice shall adopt a Manual on the manner of taking over the cases from the Supreme Court of the Republic of Macedonia at the latest within three months from the day of entry into force of this law".
[14] Law on Administrative Disputes Article 1
-"For the purposes of securing court protection of the rights and legal interests of the natural and legal persons and ensuring legality, the Administrative Court (hereinafter: the Court) shall decide in administrative disputes about the legality of the acts issued by state administration bodies, the Government, other state authorities, municipalities and the city of Skopje, organizations established by law and legal and other persons discharging public authorizations (holders of public authorizations), about the rights and obligations in individual administrative matters, as well as about acts issued in a misdemeanour procedure".
[15] Article 371
(1) When it pronounces a verdict for the defendant to five or more years imprisonment, the Chamber will determine detention if the accused was not detained before.
(2) When it pronounces a lesser sentence imprisonment under paragraph 1 of this Article, the Chamber may determine a detention under conditions of Article 199, paragraph 1, items 1 and 3 of this Code, and will terminate the detention if the accused is already detained, and the reasons for which it was determined do not longer exist.
(3) The Chamber will always terminate the detention and will order the accused to be released if he has been released from the charge or has been announced to be guilty but released from the punishment or has been charged only to a fine penalty, or has been pronounced a court reprimand or a conditional conviction, or due to the calculation of the detention, he has already served the sentence or if the prosecution is denied unless it has been revoked due to the incompetence of the court.
(4) On the determination or termination of the detention, after the announcement of the verdict until it becomes legally valid, the provision of paragraph 2 of this Article will be applied. The decision is brought by the Chamber of first degree court (Article 22, paragraph 6).
(5) Before the decision is brought which determines or terminates the detention in case of paragraphs 2 and 4 of this Article, the public prosecutor will be heard when the procedure is conducted on his request.
(6) If the accused is already detained and the Chamber finds that there are still reasons for which it was determined or there are reasons under paragraphs 1 and 2 of this Article, the Chamber will bring a special decision for the prolonging of the detention. A special decision is also brought by the Chamber when the detention has to be determined or terminated. The appeal against this decision does not keep from execution of the decision.
(7) The detention which is determined or prolonged according to the provisions of this Article may last until the beginning of the serving of the sentence, i.e. until the time verdict becomes legally valid, but at the latest until the expiration of the prison sentence.
(8) When the court pronounces a sentence of imprisonment, the accused who is detained, with the decision by the Chairman of the Chamber may be directed to the institution for serving sentences before the verdict becomes legally valid, if he requests it.
[16] Article 470
(1) The provisions of this Chapter are applied in the procedure against persons who have committed crimes as minors, and at the time of the initiation of the procedure, i.e. at the trial they were not 21 years of age. The other provisions of this Code are applied if they are not contrary to the provisions of this Chapter.
[17] Article 2 of the Law on the Public Prosecutor's Office
[18] Article 5 of the Law on the Public Prosecutor's Office
[19] Ibid
[20] Article 14 Paragraph 1, Law on Legal Proceedings, Official Gazette No.79/05 dated 21 September 2005
[21] Law on Legal Procedure, Article 14 Paragraph 2
[22] Article 10 Paragraph 1, Law on Legal Procedure, Official Gazette No.79/05 dated 21 September 2005
[23] for suffered physical pain, suffered fear, suffered psychological pain due to reduced living activity and for suffered psychological pain as a result of disfigurement.
[24] for lost earnings as a result of reduced work ability, for taxi expenses from the village of Banjani to the medical institutions that provided him with medical services and back, and for the costs incurred for care provided by a third person over a period of six months.
[25] Article 6 – Right to a fair trial
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
[26] Article 10 – Law on Legal Proceedings
The Court is obliged to make sure that the procedure be conducted without delay, in a reasonable period of time, with as little expenses as possible, and to avert any abuse of the rights belonging to the parties in the procedure.
[27] When deciding about the civil rights and obligations and when deciding about the criminal responsibility, everyone has the right to a fair and public trial within a reasonable period of time before an independent and impartial court established by law.
[28] The procedure before the court shall be regulated by law and based on the following principles:
.....
- trial within a reasonable period,

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

July – August 2008

I. PUBLIC EVENTS AND VIOLATIONS OF THE DEMOCRATICAL PRINCIPLES

1.1. Macedonia as a black hole

The summer months this year, unlike the summer months during the past years, (even in the conflict year of 2001) were months of intensive political activity. Not just because of the early parliamentary elections, but more because of everything that happened after the elections passed.

Of course, the Helsinki Committee is mostly concerned about how all of this will reflect or may reflect in the future on the human rights situation in the Republic of Macedonia. Regarding this, we will try to share some of our views with the public.

The new composition of the Parliament began their work infamously. In the situation when the new Government was not elected, it was in session and adopted laws proposed by the old, technical Government. Let us put aside the fact that a technical Government of this kind, anywhere in the world, may rarely propose laws. Also, the most impossible situation for democratic countries happened, where all the members of the old Government proposer were to become members of the new Parliament – the one that proposes and the one that votes for the proposal are to be melted into one person. Nevertheless, this was not enough, therefore the new Parliament began to vote new laws in very short periods of time (depending on the sources, 35-40 seconds per law).

The Parliamentaries have an obligation to articulate the political aspirations of the people, the point of view of the voters. In the brightest case, all of the electors are represented by one or another Party in the Parliament. In the Republic of Macedonia, the Parliament and the Government are directed towards each other, and do not need a consensus when they formulate the basic political decisions, they are carried out unanimously and without delay. During the period of July – August 2008, 172 laws were made in total, 50 of which were voted pro (in July 23, and in August 27), and voted amendments of laws 122 in total (in July 69, and in August 53) – the record was accomplished during three sessions of the Parliament, throughout which 66 laws were voted pro.

In addition, despite the fact that the laws were voted pro without any sort of a discussion by the parliamentarians from the side of the position, they were voted pro in the absence of the opposition, and were not argued previously in the parliamentary bodies (because they were not elected!). Again, there is no justification for the adopted laws that passed the procedure of urgent process (invented as an exception), otherwise an "elegant" solution used previously in order to avoid the three mandatory phases which are needed for the regular procedure (which should be a rule).

For the Committee, whose foundation of the activities is the insistence on the rule of lawe, this sort of bending the law represents an outraged vulgarization of the function of the State legislative home and is a direct attack on this basic principle of the functioning of any state which aims towards democracy. This is because of the fact that relations between the legislative and the executive power are being led to absurd. The abandoning of the parliamentarians from the Parties of the position questions the need of having a Parliament – the majority in the Parliament can amend the Constitution and pass on the right to the Government to propose and adopt laws! (When already the parliamentarians who endlessly support the Government by continuously voting in seconds and without any thought trust the Government, and believe that the essence of wisdom and expertise is by definition consisted in every law proposal made by the Government). Nonetheless, if the majority, which in the new Parliament is held by those who stand beside the ruling Government, is vulgarized incessantly the three phases in adopting laws are a waste of time and energy – why should there be discussions in Commissions when, there too, the majority has majority. Moreover, less time should be spent on the opinions of the opposition, which even after 2006 held back the Government in its unstoppable steps forward, and the efficiency of the Parliament was one of the main reasons for the early parliamentary elections! Of course, this is a legitimate right of those who have the majority of the votes in the Parliament, but sadly it has no connection with a Parliament in any state that respects the rule of law and aims towards democracy.

At the present, it is clear that the reforms in the Judicature have turned opposite of the declared direction. Requested years in a row as a pre-condition by the two addresses in Brussels towards which we allegedly aspire, (EU and NATO) before all, as a guarantee of the sovereignty and expertise in the work of the bodies of judicature, in other words eliminating any influence, especially political influence in their work. They were held back and sabotaged, and all this with the intention not to cut the cord between the daily politics and the Judicature. Then, after in accordance with this, the Court Council was recomposed and they made effort to repaint the same scheme in the Council of the Prosecutors, the Supreme Court was taken under control of the "godfathers", the Public Prosecution, in mild words (read cases with elements of politics), was put under the shade of its Department for Fighting Organized Crime… At this time, making (Party) order is being announced, and this should put in order the Institutions of the Judicature, which so far, have rarely reacted in the direction for the protection of the constitutionality and legality. The President of the Court Council stated that the judiciary is being cleansed of the corrupted persons, however stated in his words, it is done by releasing or giving notice, not with an effective sentencing to a Court that deals with Corruption. The fear of consequences has not been eradicated from the Judicature, but now it seems to be even greater than ever before.

The Police/Ministry of Internal Affairs expectedly did not correct the new Law on Police, and continues to generate fear with the spectacular arrests aired live on TV. Following the recommendation of the legendary Romanian woman – a fighter against corruption and a consultant of the Government called Monica Macovei, the Ministry of Justice suggested through the Government, and the Parliament expressly adoptable amends in laws with which opportunities arised for the Ministry of Internal Affairs, like it is now, to begin to act as a police belonging to a Party. Moreover, it did not consult and respect the warnings of the experts which were hired by her to write laws in this area (for example, the new Law on Criminal Procedure!) And the experts warned that if the Ministry of Internal Affairs receives greater authorizations in the Department for applying special

investigative measures, it can be highly dangerous because nobody can control how low long the eavesdropping lasted and for what purpose it has been done.

The liberalization of eavesdropping, explained as a need for a more efficient fight against corruption, easily goes round the violation of human rights and because of the lack of mechanisms needed for an efficient control of its use. Many times and through many cases, when there were cases where some received exoneration from the Court, the Helsinki Committee unsuccessfully warned of the abuse and of (non-liberalized) the special investigative measures.

To top it all, during the last rebalance of the Budget of the Republic of Macedonia, the Ministry of Internal Affairs, that is to say its Agency for safety and counter-intelligence, received 25 million Euros, which according to the information posted in the daily press will be spent for its own activities – so far the Agency for Safety and counter-intelligence annually, according to the same sources, used to spend 400. 000 Euros! There is no official response on what this Agency will spend these money, but the very fact that the secret police receives funds which it did not spend in these past ten years in total, and for states that do not belong in the same political scheme in which the Republic of Macedonia is at present, is a signal for concern, especially in the field of protection of human rights.

Education for the ruling Party – in the previous partial mandate and according to the announcements, and in the new mandate – is of special importance. A computer was promised for every pupil in the mandatory education, and also high school was declared mandatory...

However, although the computers arrived a year later in the schools, this year serious problems occurred in the high schools, where a large number of pupils did not sign in.

Moreover, the problem with the realization of the constitutional right to an education in the mother language re-occurs, especially in the Albanian Language to that point where almost a whole month of the new school year passes in the sign of (un) successful solving of the problems which should have been solved before the announcement of the applications for admission. A very illustrative example is the Economics High School "Pero Nakov" in Kumanovo, where there are 700 enrolled pupils. They are divided in 24 classes and have only 10 small classrooms. The children visit the school in three shifts.

This kind of problems which re-occur over the years are the most easily transferred problems, and by rule disrupt the interethnic relations, especially in our youngest population.

Another case – the summer adoption of the Law on Amending the Law on Protection of the Children (adopted by the Parliament on 25 July 2008) – will probably have a reflection on the interethnic relations in this State, because it can be rightfully understood as a stimulant for the birth of new members of only one ethnic community. It is left to be seen if it is possible to happen in a multiethnic community as Macedonia. A well-known columnist wrote: "the idea for the salvation of the Macedonian nation from the Albanian supremacy in the near future has caricature dimensions which can become dramatically enormous dimensions". However, the changes in the Law on Amending the Law on the Protection of Children put the (future) mothers in an unequal position, depending on whether they live as "unemployed mothers who live in municipalities with natality below the average or not".

The measures of the population politics in both directions (decreasing or increasing) is always a sensitive and delicate matter where the persons that will feel these measures will be taken care of, and where the basic human rights, which are the most commonly violated rights, will not be violated. Thus, it takes a lot of consideration! It seems that in a State like ours – where stupidity by rule is a "trade mark" – it is an impossible mission to have wise population politics.

In the stampede of adopted laws during the summer months (in an urgent procedure, ironically to the case voted sometime before midnight!) the Law on Lobbying was included as another example of the stupidity of the state power. This law has little to do with the accordance of the European legislature – one of the sub-arguments is the need for an efficient Parliament, because only three European countries have similar laws as ours (Lithuania, Poland, and Hungary). The problem emerges if we bear in mind that the term lobbying is defined as an "activity aimed towards the legislative and executive state power in order to accomplish certain interests in the process of adopting laws and other regulations" (Art.2, pg.1). According to this definition, any and every contact by a citizen or a group of citizens with the state power (or the representatives of the state power) should be considered as lobbying. For this to be legal, in accordance with the new regulations, the citizens will have to register as lobbyists. The firms that will be lobbying will have to register in the Central Register as such. A license for citizen lobbyists, in accordance with the Law on Lobbying, is issued by the General Secretary of the Parliament of the Republic of Macedonia. And this is not all. In order to perform this activity the potential lobbyist must "have a high level education from the area which is to be lobbed for" (Art.7, pg.2). If these requirements are not fulfilled, the person will not receive his/her license and will not be allowed to lobby, and if he/she performs any activities they will be considered to be illegal! Now you can imagine how this can be considered and how it can reflect on the activities of, for example, the Civil Sector!

This is just a part, a very small fragment of what was happening this summer, and which is in the area of evaluating the actual situation of the Human Rights for which the Committee regularly prepares monthly reports. We regret to say that we are aware of the indicated matters and some other matters from the daily politics. We will have to follow and deal with them in the upcoming period with great intensity. At present, with certainty, we can announce the analysis of the effects of the beginning of the religious instruction course in the elementary schools and also, we can announce the more complete analysis of the Amends in the Law in the Protection of Children.

The reactions of international organizations were already established in the public. The European Commission on the Protection of Privacy stated that the arrested persons, the accused persons, the patients, and even passers in public places can be recorded only if they previously give permission. Thus, the Parliamentary Assembly of the Council of Europe precisely warned – they will not re-introduce monitoring in Macedonia, but consequently the post-monitoring dialog will be enforced. The explanation for this is that the Pan European Assembly wishes to help Macedonia with the establishment of the political dialog and the internal integration of the Country. However, if there is no advancement in the deficit of democracy, in a few months monitoring is to be re-introduced as a matter.

These past few months, the situation in our Country was a motive for alarming prognoses at home. "Fascism is knocking at our door". This was a title in the daily newspaper "Shpic", („Шпиц") displayed as a resume of announcements given by experts who believe that "a fertile soil for a 'new arise' of fascism and totalitarianism is being created", that "the power of the secret police is rising and militaristic mentality is being encouraged", and that "the hatred and impatience towards individuality and different opinions is growing". "People are beginning to be afraid to speak in public", (Zarko Trajanoski). The same author will write in a column in the daily newspaper "Dnevnik", („Дневник") – "With Gruevski in the front, the Macedonian society is becoming even more a society of spectacle, a society of collective illusion". Gruevski continues to make political extravagance even after the spectacular early election campaign. He continues to build the spectacular churches and museums. He continued to send advertising letters, causing a political extravagance of the drama of thousands Macedonian fugitives. The Parliament began to make and adopt laws with an enormous speed. The Ministries and the Agencies of the Government continue with their spectacular campaigns. "The family" spectacularly enforced the independence of the judiciary making a "godfather" relation between the parliamentary ruling power and the judiciary power. The Ministry of Internal Affairs continues with spectacular actions and spectacular arrests. Even the declassed opposition began to realize that they live in a society of extravagance, thus they spectacularly left the

Parliament.

In his column in the daily newspaper "Dnevnik", („Дневник") Ljubomir Frchkovski prognoses: "A definition of what is currently happening to us is that our democracy stands before a collapse – faced with a corporative State, authoritative methods of ruling and international isolation. The first temptation of our little monster will be in the fall. If it decides for isolation, without a solution for the name: the system, although not accepting this, will be de-legalized". In his analysis in the daily newspaper "Utrinski Vesnik", („Утрински весник") Nikola Gelevski writes: "The condition of the democracy in the Republic of Macedonia is distressing. The reality is that every possible power and capacity in society is fading. Only the executive power is growing strong, and before all, its repressive mechanisms. Not only that the founding democratic division of the power has almost been revoked (to judicial, legislative and executive), but the executive authority is attacking literally every sphere of social existence. Because of all this, the standard of services that the citizens receive from the State (health, education, etc.) is decreasing dramatically ".

The alienation from the EU and NATO, and the use of the justification for the dispute with Greece about the name as an argument for it, has a daily-political usage value. If this continues, an appropriate price will be paid, because the fact is being marginalized that the membership in the EU and NATO is just a mere security need of the Republic of Macedonia. However, (self) isolation has another price. Put on the other side, in the field of view of Brussels, Macedonia will internally be on a political plan as a softer and more fertile soil where the human rights can be violated and where the autocratic authority can be strengthened.

"After these elections nothing will be the same again" – said Dragan Pavlovic Latas – "The end of transition is beginning where ten oligarchs elected a Government and ministers. Everything further was a question of technique. The era of neo-communists and their domination at the Universities, Courts, Diplomacy, at the Council for Broadcasting Activity, the Syndicate, the Non-Governmental Sector, the Associations of the Journalists, writers, the Macedonian Academy of Sciences and Arts is ending... The National Bank. The process is not finished. In the contrary. Its end is beginning now. It is enough. Who understood this – fine. Who did not understand this will understand on the next elections".

Will Macedonia become a black hole, if it has not become one already?

The well-known Francis Fukuyama recently publicly wondered if we are beginning a time of autocrats, bearing in mind Vladimir Putin in Russia, Pervez Musharraf in Pakistan, Hugo Chavez in Venezuela, Robert Mugabe in Zimbabwe... Francis Fukuyama said: "The autocrats today can also be surprisingly weak when ideas and ideologies are mentioned. Nazi Germany, The Soviet Union and Mao's China were particularly dangerous, because they were built on powerful ideas with a potenttionaly universal attraction... Nevertheless, this kind of ideological tyrant no longer exists. Despite the recent authoritative advantages, the liberal democracy remains the strongest, most widely accepted idea in the world. Most autocrats, including Putin and Chavez still believe that they should adapt to the outer rituals of democracy, although it destroys their essence. Even Hu Jintao's China felt forced to speak about democracy during the preparations for the Olympic Games in Beijing. Even Musharraf behaved as a democrat by allowing to be withdrawn from his function under the threat of impeachment".

Will apply for Macedonia as well?

1.2. The last nine verdicts of the European Court for Human Rights represent disrespect of the obligations stated by the European Committee for Human Rights by Macedonia!

In the traditional law on human rights, as well as, in the European Convention for the Protection of the Human Rights, as a regional international instrument, the states are obliged to confine themselves from interfering in certain basic human rights. By this, the State is to respect, promote, protect the personal life of individual; the State must not act inhumanly towards persons, and so on. This obligation for the respect of human rights and the confinement of interference in them is a basic responsibility of every State, not just before the International Community and its institutions, but before its citizens as well.

During the first six months of 2008, the European Court of Human Rights, in nine verdicts established that Macedonia violated the positive obligations to protect the rights from Article 3, Article 6, Article 13, as well as, Article 1 from protocol 1 of the Convention[1]. Also, along the other obligations by these verdicts, Macedonia has to pay 21.035 € in the name of a rightful compensation for some of the applicants, and we hope that the remaining applicants will seek their compensation before the Macedonian Courts.

Namely, in the cases Dzheladinov and others versus the Republic of Macedonia; Trajkovski versus the Republic of Macedonia; Sulejmanov (we regret to say now deceased) versus the Republic of Macedonia, the Court established that there is a violation of Article 3 of the Convention.

In these verdicts, the European Court of Human Rights repeats to and indicates to the Macedonian national authorities that when an individual states a valid statement that he/she has undergone treatment divergent to Article 3 by the police or other similar state officials, that provision, seen in connection with the general obligation of the State, under Article 1 of the Convention "secure to everyone within their jurisdiction the rights and freedoms defined in…Convention" means that there must be an efficient official investigation. This sort of investigation should lead to the identification and punishment of the guilty persons. Otherwise, the general legal prohibition for torture, inhumane and degrading behavior, and punishment, despite its basic importance, in practice would be inefficient and in certain cases it would be possible the state officials to abuse this right with no risk of being punished.

Furthermore, the European Court on Human Rights established that the investigation concerning the severe claims of torture must be thorough. This means that the authorized bodies must take every reasonable step which is at their disposal in order to secure the evidence regarding the incident, including among other, the statement of the witness and the expert opinion. Any flaw in the investigation which is referred to the ability to confirm the reason for the violations or the identity of the guilty persons would be a risk for the non-fulfillment of this standard. The Conclusion of the European Court of Human Rights is that the investigation must be swift. It is left to be seen whether this will happen again or is happening again with the cases of Brodec (http://www.mhc.org.mk) and Sevdailj Gjureci (http://www.mhc.org.mk/WBStorage/Files/Report_2007_07_08_MK.pdf).

The doctrine for the "live instrument" or sociological method[2], displays the complete freedom of the European Court of Human Rights in interpreting the sovereignty of the Convention. However, the courts practice of the European Court of Human Rights should be applied in the results and in the practice of the Courts in Macedonia. A complete advancement in the human rights in Macedonia can only be accomplished with application of the conclusions by the European Court for Human Rights. The unaffected practice and non-applying the practice of the European Court for Human Rights, and the statistics of the legislature represents a violation of the Convention.

The European Court of Human Rights has indicated many times to the fact that – "the general spirit of the Convention is to support and expand the ideals of the democratic society".[3] "The term 'violation of the human rights' is nothing but a more polite expression for the most severe crimes which the State has committed to the citizens. The violations of human rights are crimes which are performed by someone's order, permission or under the protection of Governments, and above all, endanger the inner and outer peace of every country.

1.3. A criminal report for "Torture and other cruel, inhumane or humiliating treatment and punishment" and "Harassment while performing duty" for members of the police in the action "Mountain Storm"

During the morning on 7 November 2007, a police action called "Mountain Storm" was performed by the Ministry of Internal Affairs. Six people were killed during the action, and after the action

was completed thirteen people were taken into custody/deprived of freedom. According to the data given by their relatives, the people that were deprived of freedom were taken into custody around 3 p.m., and according to the data from the official Information from the Ministry of Internal Affairs, after the people were taken into custody they were taken to the police station "Gazi Baba", and this happened around 6 p.m. At 6:30 p.m. an ambulance was called so the people taken into custody can receive a medical exam, and five people were taken to the Emergency Centre so that they can receive appropriate medical help, because they had sustained injuries that needed to be treated in an appropriate medical facility. Every person that was treated ambulatory in the Emergency Centre has evidence for the sustained physical injuries.

In addition, there was a video footage of a person in custody where it was possible to establish that the person has physical injuries on the head, and his identity was hard to recognize.

We regret to say that instead of taking appropriate measures and filing for a criminal charge against the guilty persons who tortured the persons taken into custody, the Ministry of Internal Affairs directed its actions towards the persons that made the video footage, which actually was proof that in this action there was an excessive use of force.

Although, a longer period of time has passed after the police action "Mountain Storm" was performed in the village Brodec, we should bear in mind the fact that for the excessive use of force and the torture done by the members of the Ministry of Internal Affairs to the, now convicted people, not one Body of the State (Public Prosecution or investigative judge) made efforts to respect Article 142 of the Law on Criminal Procedure and to submit formal criminal charges against the persons guilty for this criminal act.

Then and now, the Helsinki Committee calls upon the authorized bodies to admit their mistake, and to really investigate the way the people taken into custody from the police action were treated, and to submit criminal charges against everyone guilty for these criminal acts, without any selective application of the law.

On 30 July 2008, after the received letter consent by four people charged in the case Brodec, The Helsinki Committee for Human Rights of the Republic of Macedonia submitted criminal charges to the Public Prosecution in Tetovo against everyone that is guilty, members of the police who were a part of the police action "Mountain Storm" in the village Brodec and everyone that is guilty, members of the police that were a part of the action in the police station "Gazi Baba" – Skopje, for one criminal act "Torture and other cruel, inhumane or humiliating treatment and punishment" based on Article 142, paragraph 1 of the Criminal Code and one criminal act "Harassment while performing official duty" base on Article 143 of the Criminal Code.

The Helsinki Committee expects that the authorized bodies will perceive the mistake they made, and that they will support, and because the obvious liability of the evidence that they will lead an effective and real investigation, and that they will start a criminal procedure against the accused persons.

II. POLICE AND COURT CASES

2.1. The case of Aleksandar Petrovski

The person Aleksandar Petrovski turned to the Helsinki Committee regarding the unreasonable period of time for the criminal procedure in which he appears as a client, as well as, the persistent disrespect of the directions of the Higher Court by the Basic Court.

In the criminal procedure which began in 1996 a Verdict was made, P.No.2824/96 by the Basic Court in Bitola on 7 July 2003, with which the lawsuit obligate the accused to pay a certain amount of money as a debt with a domicile interest calculated from 1 June 1996, is denied as unbased and the counter-charge request for the payment of another amount of money with a domicile interest until the day of payment is also denied as unbased. Acting according to appeals, the Appellate Court in Bitola made a Resolution No.1244/2004 on 22 June 2004, with which the appeals are accepted, and the first degree verdict is annulled, thus the case has a new trial.

During the new trial, the Basic Court in Bitola, with the Verdict P.No.2824/96 from 30 June 2005, accepted the lawsuit and the counter-charge request. This Verdict was annulled again by the Appellate Court in Bitola, and on 14 September 2006, the Basic Court in Bitola reached a Verdict P.No.2824/96 with which the lawsuit is accepted and the defendant is obligated to pay an amount of money as a debt, as well as, to compensate the process fees in the amount of 203.530,00 Denars. On the other side, the counter-charge request to do a balance of expenses to a certain amount of money and to establish a request against the defendant is denied as unbased. After the Appellate Court in Bitola, with the Resolution No.4902/2006 accepted the appeal of the defendant, annulled the first degree verdict and put the case for trial again. The Basic Court in Bitola reached a completely identical Verdict as the previous one on 12 July 2007, which among other, on 25 April 2008, after 12 years of wondering through the Courts, with a Verdict No.2828/2007, is confirmed by the Appellate Court in Bitola.

The Helsinki Committee believes that these cases should represent a violation of the citizen's rights, and the fact is that the first degree Court forgets about Article 10 [4] of the Law on Litigation Procedure, as well as, Article 366, paragraph 1[5]. On the other side, the Appellate Court 315 forgets about Article[6] of the same law which states that an argument must be held and that the final decision must be made.

The Helsinki Committee, appeals that the inefficacy of the court system and the long periods of time the criminal procedures last, is one of the main reasons for setbacks of the judiciary system, and one of the key points which should be improved during the reforms of the judicial system. Starting from the idea that "late justice is injustice", as confirmed in many other cases, this kind of practice leads to distrust and to losing the credibility of the judicial system, which should represent a core guardian of the human rights, not threaten the safety of individuals and the credibility of the State.

2.2. The case of Rabije Zejadinovska

Article 6 of the European Convention on Human Rights guarantees to every person a trial within a reasonable time. The aim of this guarantee is to protect every client in the Court Procedure from too long procedural delays. Furthermore, the importance of justice to be conducted without delay, which would endanger its efficacy and credibility, is underlined. The meaning of the request for a trial in a reasonable time and through a court decision will put an end to the uncertainty with which the two sides are faced with regarding their legal status, because of the charges made against the damaged side – as well as, a guarantee for legal safety.

This sort of guarantee should be especially valued when we complex cases are concerned, which may have significant harmful consequences on the physical and mental integrity of the clients involved in the procedure, as in the criminal procedure of the damaged Rabije Zejadinovska. The Helsinki Committee empowered its own observers.

Namely, the father of Rabije Zejadinovska turned to the Helsinki Committee for Human Rights of Macedonia and informed us about her case.

The client informed us that regarding the case K.No.1620/07, for the criminal act kidnapping of Article 141 and the criminal act rape of Article 186, in which the damaged side is his daughter Rabije Zejadinovska, a criminal procedure is being led before the Basic Court Skopje 1 Skopje, for which every hearing is being cancelled.

Bearing in mind the weight of the criminal acts and the harmful influence on the future mental and physical development of the damaged person, and if they have really been committed, the Helsinki Committee for Human Rights empowered its own representative with a purpose to monitor the criminal procedure.

Based on the report made by the representative of the Committee, regarding the main hearings on 17 April 2008, then 29 May 2008, and 26 July 2008, it noticeable that the hearings were cancelled because of the same reason, namely,

because of the absence of an expert, from where a conclusion can be derived that during the three months since we began to monitor the procedure, there were no conditions which would enable for the hearings to be held[7]. The fact that the judge in this case stated that at the last main hearing the expert did not justify his/her last absence is even more concerning, but the judge did not have any evidence that the expert was properly informed about the main hearing date, and without taking any appropriate measures[8], the hearing was simply rescheduled for the 11 September 2008.

Based on this report on the hearing, the Committee appealed to the President of the Basic Court Skopje 1 Skopje with a request for data regarding the case and the reasons why no measures have been undertaken in order to proceed with the hearing. In his response, the President of the Court informed is that on 17 April the hearing was cancelled because of the official absence of the expert who informed the Court that he/she will be absent two days before the set date of the hearing, and also on 29 May the expert was officially absent again, but this time the Court was informed about the absence only a few moments before the main hearing. The Court states that the hearing that was to be held on 26 June was cancelled because the Court had no evidence that the expert was properly summoned.

So we ask the question how can the Court not take care to properly inform the expert, if this is the case at all, when twice before the main hearing was cancelled because of the expert's absence?!

The Committee believes that it is about time to overcome these sorts of violations to the right of the client to a trial in a reasonable time[9], especially when there are such complex cases and serious criminal acts.

2.3. Who is telling the truth, The Ministry of Internal Affairs or the Public Prosecution?

In the monthly report for May, the Helsinki Committee publicized a case of non-cooperation between the Public Prosecution and the Ministry of Internal Affairs in the discovery of the criminal act and the person that performed it. This occurrence and phenomena in our society of inefficacy only have harmful effects on the rights and freedoms of the citizens, the goal of justice and integrate legal insecurity and distrust in the institutions of the system.

The Ministry of Internal Affairs and the Public Prosecution, after the announcement of this case in the public, gave us answers in writing.

The Basic Public Prosecution, with a writing from 7 July 2008, for the case registered under the number KO No.1074/07 informed the Helsinki Committee that – "A request was submitted by the Public Prosecution to the Sector of Internal Affairs Skopje in order to collect necessary announcements. Until reaching the final decision and after many delivered interferences for speeding up the procedure by the authorized body to which I applied, no response was delivered. At the same time, additional verifications were performed in the internal evidence which is led in the Basic Public Prosecution, for cases led against an unknown performer, using the data of the person that was reported, during which I came to the conclusion that such an event has not been registered".

However, on 23 July 2008, the Ministry of Internal Affairs informed us that – "in order to solve the case, the Sector of Internal Affairs Skopje has undertaken measures and activities, the performer of the criminal act has been found, and against him on 6 March 2007, a criminal report has been filed under the No. 21.5-236 from the 6 March 2007 to the Basic Public Prosecution, because of the existence of reasonable doubt that he performed a criminal act – serious theft according to Article 236 of the Criminal Code of the Republic of Macedonia. The cell phone was found and it was returned to the damaged person with a receipt for returned objects. At the same time, we inform you that the complete evidence documentation on which this case was solved is delivered to the Basic Public Prosecution Skopje along with the criminal report".

The Helsinki Committee wonders what is the truth? Do the right and the law apply the same for everyone?

Moreover, we insist that the public services should act only if they are authorized to do so, and they cannot adopt this authorization on their own nor can they avoid it. The bondage of the state authority to the right to secure the freedom of the citizen, where there can be interference only on the basis of legal authorization. However, the non-fulfillment of the legal duties by the public services also represents a violation of the rights of the citizens.

2.4. Court translation and court interpreters vs. the case Brodec

A person accused for performing a criminal act in Article 6, paragraph 3, and line e[10] of the European Convention on Human Rights, has guarantees of the right to use free assistance of an interpreter if he/she does not understand or speak the language used in Court.

According to Article 7, paragraph 1, the Court provides oral interpretations on what the person, that is to say the other persons present, as well as, interpretations of the licenses and other written material used as evidence. In the same Article, paragraph 4 it is stated that the interpretations are to be done by a court interpreter[11].

The essence of supplying a court interpretation from the court interpreters during the criminal procedure means that as the European Court made a verdict in the Kamasinski case, securing translation in order for the accused person the understand the procedures which are of vital importance for him/her, and to inform his/her lawyer for any aspect that is to be used as defense, and thus the accused person can receive a fair trial in accordance with the European Convention.

It is more than clear and obvious that the provided interpretation that the Court provides to the accused person most be competent. Regarding this, the European Court announced that in order for the right that is guarantee in Article 6, paragraph 3, line d, to be "practical and efficient", the obligation of the authorized power is not limited only to appointing an interpreter. Moreover is attention is paid in certain circumstances, the obligation can refer to the appropriate degree of control of the sufficiency of the interpretation which is being provided[12].

There must be a court interpretation when during the criminal procedures before the judicial bodies in the Republic of Macedonia, we must confess that the courts are making efforts for this to be formally covered, that is to say, a court interpreter to be present during the main hearing of a court procedure.

So if this was as written, why write this text? The problem occurs when the court interpreters have to simultaneously translate during the procedure before the Court.

The observations of the judicial (criminal) procedures before our Basic Courts, made it possible for the monitors from the Helsinki Committee to see one specific fact that the formal presence of the judicial observer is not enough, the competent, expert, valued, practical and effective interpretation of the text is of great essence.

Namely, although the Helsinki Committee has reacted before, we are allowed to freely write about the inexpert and untidy performance of the duty interpreter, court cases are continuously registered where in the court cases incompetent and inefficient interpretation during the criminal procedures is being tolerated.

A fresh example for inefficient court interpretation by the court interpreters is the case Brodec. During the criminal procedures it was publicly established that the court interpreters do not have sufficient knowledge in both languages (Macedonian Language and Albanian Language), nor have they the enthusiasm needed for an efficient interpretation.

We greet the action of the judge who took over the criminal case and provided the charged persons with court interpretations, and not only during the main hearings, but also for the evidence in writing, but we disapprove the manner in which the text was interpreted during the simultaneous interpretations on the main hearings. The judge is not the one who should do the job of the summoned and paid court interpreters.

The court interpreters should and must be responsible for the way in which they interpret. They should be reminded that because of inexpert, irregular or unconscious performance of the duty interpreter, as well as, for indecent performance of the same duty they will be given notice.

We appeal to the presidents of the Courts, as well as, to the Ministry of Justice, to take better care for the expert education of the court translators and the efficiency while performing the duty interpreter, where they should take into account the domestic and international legal norms that "everyone charged of a criminal act has the right to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him" (6-3-a) ... and "must receive, free of charge, an interpreter if he/she does not understand or speak the language used in Court"(6-3-д).

III. VIOLATIONS OF THE ECONOMIC AND SOCIAL RIGHTS

3.1. Case: Mishevi

The married couple Mishevi from Kavadarci appealed to the Helsinki Committee for Human Rights of the Republic of Macedonia regarding the accusation of the misdemeanors against public order and peace disturbance of the public order and peace by their neighbor Velkov Iftim, who next to their house has a workshop that produces unbearable noise everyday, disrupting the citizen's peace[13].

According to the claims of the clients, despite the appeals to perform measurements of the loudness of the noise, sent to the authorized institutions, the Municipal and State inspectorate for the living environment[14], the condition with the noise remains unaltered for more than seven years, and represents a problem in the lives of the clients.

After the appeal to the Helsinki Committee, we received a formal letter by the Inspectorate for the Living Environment where the undertaken actions by the Inspectorate regarding this case are listed, after the established inactivity by the organs of the local self-management, which according to the legal provisions are competent for this matter. In the same response, as undertaken actions by the State Inspectorate the following are listed: Mr. Iftim Velkov is asked to deliver the results of the measures of the level of harmful noise caused by the activities that are performed in his workshop.

Also, the Helsinki Committee received a response to the request for information delivered to the Mayor of the Municipality Kavadarci. With this response we are being informed that the Municipality does not have the equipment to perform measurements of this type, and that they have not employed an Inspector for the Protection of the Living Environment, as well as, that on 11 April 2008, they received a response from the State Inspectorate for the Living Environment with which they were informed that the private agency "Euro Mak Control" hired by Mr. Iftim Velkov has performed the measurements and controls of the noise in the locksmith workshop, and that it has been established that the produced noise is in the frames of the allowed level.

Using this opportunity, the Helsinki Committee would wish to remind that the Law on Protection Against Noise in Article 31 provides an opportunity to delegate these responsibilities of the Municipality Bodies of scientific, expert organizations and institutions, and other legal persons, under the conditions and manners predicted with the Law, yet the same states that this sort of "delegating" should be performed by the State Body or the Municipality, and not by the person that is the reason for the noise, because of the obvious conflict of interests.

After this, the Helsinki Committee appealed to the Inspectorate why this private company that performed the measurements was hired by Mr. Iftim Velkov, and not by the authorized state bodies for which the Law predicts an obligation and duty to monitor the noise[15] and for the manner in which the State Inspectorate takes insight of the regularity of the performed measurement (manner, method, time) by the private agency, having in mind the claims of the clients that the measurement was performed after 8 p.m., during which they were asked to close all their windows.

The State Inspectorate for the Living Environment answered with the claims that the firm is authorized to perform measurements of noise and that if the clients were not satisfied they should have proven their dissatisfaction with measurements performed by another authorized organization.

The Helsinki Committee wonders why there are Articles on the Protection Against Noise, where it is specifically stated that the bodies of the State Management are obligated to undertake measures for the protection against noise, if they ask the clients to hire firms and perform measurements by themselves, and then reach resolutions based on the same?

3.2. Case: Lazo Arsovski

The person Lazo Arsovksi from Veles appealed to the Helsinki Committee for Human Rights of the Republic of Macedonia. He informed us that on 25 February 1997 he signed a Contract[16] with the Public Enterprise for managing housing and business enclosure – Veles in order to use an apartment, but was forcefully thrown out from it by the person Hristo Malkovski, and because of this he cannot realize his right to use the apartment to this very day.

On the other side, the Basic Court in Veles, for the same apartment, based on a lawsuit from the plaintiffs – the Public Enterprise for managing housing and business enclosure and the Republic of Macedonia – has reached a Verdict[17], later confirmed by the Appellate Court in Skopje[18], with which the charged person Hristo Malkovski is compelled to move out of the apartment that is situated on the street "Vasil Glavinov", К-2 Бисер, apartment No.5. Although this verdict is in force, and an executive procedure has been started[19], the verdict has not been realized for almost two years.

The Basic Court in Veles has made a series of actions in order to realize the verdict, and has come to the Conclusion for realization[20], as well as, to the Order for forceful removal of people and objects, and in the case if the person in debt is not found in the apartment, but of unknown reasons the Public Enterprise for managing housing and business enclosure – Veles, although a creditor in this case, has asked the Court for a delay of the realization (last done on 19 June 2007, with an announcement that the Court will be additionally informed when the realization should be performed).

Because of the delay of the realization of the verdict, the client Lazo Arsovski is damaged, and he cannot realize his right to use the apartment, and furthermore, he has received a notice from the Public Enterprise for managing housing and business enclosure – Veles, that there is a possibility that he can buy back the apartment.

The Helsinki Committee appealed with formal writings to the Ministry of Transport and Communications and to the Public Enterprise for managing housing and business enclosure – Veles. We received an answer that the Ministry obligates the Public Enterprise to inform the person about the undertaken activities for the case in the shortest period possible, having in mind the Interference three years ago (from 31 May 2005), with which the Public Enterprise was obligated to begin a procedure in order to remove the person that had unlawfully entered the apartment, in the shortest period possible.

With the contract from the Public Enterprise – Veles, on 7 April this year, we were informed that the reasons for the delay of the realization of the verdict are of valid nature, and that the same, that is in its ending phase will be realized in the shortest period possible, but unfortunately even four months after these assuring, the person Lazo Arsovski still cannot realize his right to use the apartment, and for the irony to be even greater, because of the creditor (who should aim his interests towards a speedy enlightening of this case).

The Helsinki Committee wishes to express that it is stunned of the behavior of the Public Enterprise for managing housing and business enclosure – Veles, and of the tendency to delay the realization, where the same enterprise is the creditor, but is also reminded of the obligation of the seller to allow full usage of the apartment to the buyer[21], a right which in this case has been taken away from the

person Lazo Arsovski.

The Helsinki Committee appeals to the Ministry of Transport and Communications and to the Public Enterprise for managing housing and business enclosure – Veles, for a speedy fulfillment of its legal obligations, in order to allow the citizens to realize their rights without any disruption.

3.3. Case: Dimche Mihajlovski

For almost 17 years, Mr. Dimche Mihajlovski is leading a lawsuit with the Fund for Pension and Invalid Insurance in order to have the right to compensation because of a smaller pay recognized. Based on the finding, evaluation and opinion No. 352 of 19 August 1986, with the Resolution of the Railway section from Veles No.4-553/2 of 18 April 1991, the plaintiff from the working position "locksmith welder" was assigned to another working position "issuer of spare parts" starting from 1 April 1988. With the resolution No.4-973/14 of 2 July 1991, his right to receive compensation because of a smaller pay delivered from the employer was cancelled, starting from 15 July 1991. He was instructed to realize his right in the expert service of the Fund for Pension and Invalid Insurance in Veles. Mr. Mihajlovski submitted a request for compensation to the regional unit, because of a smaller pay at another working position on 20 September 1991.

After his request was rejected, and afterwards his appeal, subsequent to the submitted lawsuit for an administrative lawsuit, the Supreme Court of the Republic of Macedonia reached the verdict U.no.1527/99 of 30 November 2001, with which the Resolution no.178 of 25 February 1999 has been annulled by indicating that the bodies involved in the procedure did not establish the relevant fact for determining the right to compensation, because of a smaller pay using the reason that the date of the beginning of the invalidity has not been determined with certainty, that is to say the date when the altered working position began, having in mind that there are two findings – No.352 of 19 August 1986, but with different data for the way the altered working position began.

After a few years had passed, the Supreme Court reached a verdict, again, U.No.2417/2003 of 22 February 2006, with which the Resolution Z.No.41-2114/2 of 9 November 2003 has been annulled, pointing out that the bodies did not act according to the verdict U.No.1527/99 of 30 November 2001, and instead of determining the date of the new working capability based on which they will decide whether the plaintiff has the right to compensation because of a smaller pay at another working position, they did not recognize the right to an invalid pension of the plaintiff. Acting according to this verdict, the Appelate Body with the Resolution US.No.43-3091/2 of 1 February 2007, annulled the Resolution I.No.14792 of 24 February 2003 with which the right to an invalid pension was discussed, indicating that regularity of the finding No.352 of 19 August 1986 has not been proven yet, the finding on which it was argued for compensation because of a smaller pay, and still, there are many different data regarding the period the altered working capability began. Thus, the first degree body did not consider the directions from the higher bodies, and rejected his request yet again.

The Administrative Court of the Republic of Macedonia, on 5 June 2008, reached the verdict U.No.4381/2007 with which the lawsuit is accepted, the Resolution of the Government of the Republic of Macedonia is annulled, and thus the case is brought back for another evaluation and a new decision. The Administrative Court established that even beside the two achieved verdicts of the Supreme Court of the Republic of Macedonia, the bodies did not follow the instructions of the verdicts. As stated in the explanation of the verdict U.No.4381/2007 of the Administrative Court of the Republic of Macedonia: "it is unacceptable for the bodies to decide twice on the request for an invalid pension, which has not been indicated by the client, and not to argue on the right to compensation because of a smaller pay".

The Administrative Court of the Republic of Macedonia, with the reached verdict U.No.4381/2007, also found it necessary for the bodies to re-re-evaluate and re-investigate the case, based on the verdicts of the Supreme Court of the Republic of Macedonia. For this verdict the bodies first have to state on the relevant fact – the date of the beginning of the invalidity – the altered working capability of the insurer, based on which fact they will reach a Resolution of the request of the plaintiff, and whether or not he has a right to compensation because of a smaller pay at another working position.

The Helsinki Committee appealed with formal writing to every body authorized to reach a decision in this specific case, and asked to be informed for the undertaken activities by them for a final resolution of this case, and also why it has not been finally decided for this particular case, and why the procedure keeps coming back at the same resolution, thus by all this the right to the realization of the invalid pension and compensation of pay lasts more than 17 years.

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[1] EUROPEAN CONVENTION ON HUMAN RIGHTS
Article 3 Prohibition of torture
- "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".
Article 6 Right to a fair court process
- "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
а) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
б) to have adequate time and the facilities for the preparation of his defense;
в) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
г) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
д) to have the free assistance of an interpreter if he cannot understand or speak the language used in court".
Article 13 Right to an efficient legal remedy
- "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
Article 1 of the Protocol of the Convention for the Protection of Human Rights and Fundamental Freedoms Protection of possessions -
"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".
[2] M. de Blois, "The Fundamental Freedom of the European Court", in: R.A. Lawson & M. de Blois (eds.), The Dynamics of the Protection of Human Rights in Europe – Essays in Honour of Henry G. Schermers, The Hague: Martinus Nijhoff, 1994, pg. 57.
[3] ECHR, 7 December 1976, Kjeldsen, Busk Madsen and Petersen – Denmark (Series A-23).
[4] Law on Litigation Procedure, Article 10 – "(1)The Court has an obligation to make efforts to conduct the procedure without delay, in a reasonable period of time, with as few expenses as possible and to prevent any kind of abuse of the rights which the clients have during the procedure".
[5] Law on Litigation Procedure, Article 366 "(1) The first degree Court has an obligation to look at every litigation actions and to argue every moot point which were indicated by the Appellate Court in the Resolution".
[6] Law on Litigation Procedure, Article 315 "(1)The Appellate Court decides by the appeal, by rule, without an argument. (2)When the Council of the Appellate Court will find that in order to have a rightful determining of the actual situation, it is necessary to repeat the same evidence, and thus will schedule an argument before the Appellate Court. (3) When during a session of the Council it will be determined that the verdict which is under appeal is based on fundamental violations of the provisions of the Law on Litigation Procedure or on a wrongfully and incompletely determined actual situation, and that the verdict was once annulled, the Appellate Court will schedule an argument and will reach a decision".
[7] Article 256, paragraph 5, Law on Criminal Procedure: "After a previously received opinion from an expert, the Court determines the deadline for the hearing and this deadline can be prolonged by the Court, from a request of the expert".
[8] Article 257, Law on Criminal Procedure: "(1) The person that is summoned as an expert is obligated to answer the enticement and give an expert opinion. (2) If the expert has a regular enticement and does not show up, and cannot justify the absence, or if the experts refuses to give an opinion or does not act in the deadline determined by the Court, he/she can be punished financially with the punishment determined by Article 75, paragraph 1 of this Law, and in the case of unjustified absence may be brought to the Court by force".
[9] Article 10, Law on Courts: "The procedure before the Court is arranged by law and based on these principles… a trial in a reasonable time, thriftiness..."
[10] 3. Every accused person has the following rights:
е) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.
[11] The interpreters are persons that interpret speech and writing from the Macedonian Language to a foreign language, or visa versa. The interpreters translate by the request from the Court, a State Body, or another institution or citizen.
[12] Kaminski v. Avstria A 168 para 74 (1989)
[13] Article 9, Resolution on determining in which cases and under what circumstances the citizen's peace is considered be disturbed by harmful noise:
"The citizen's peace is considered disturbed with the usage of mechanical sources of noise (machines, motorbikes, compressors, drilling machines, weaving machines and so on) between 10 p.m. and 6 a.m. on a public spot, that is to say where there is a possibility to disturb the citizens".
[14] Article 31, Law on Protection Against Noise in the Living Environment, Official Gazette No. 79/2007 од 25.06.2007
Monitoring"...(2)In order to perform certain expert matters for the monitoring of noise, the subjects of paragraph (1) of this Article are authorized by the Minister that deals with State Management competent for the matters of the living environment, …"
[15] Law on Protection Against Noise (Official Gazette of the Republic of Macedonia, No.79/2007), Article 19, (2) The bodies of the Management of the State, the bodies of the Municipalities, the city of Skopje and the Municipalities in the city of Skopje are obligated to undertake the following measurements in order to protect the citizens against noise:
- to perform monitoring of the noise in accordance with the programs for monitoring of the state and local networks for the monitoring of noise in the living environment;
[16] Contract No.09-03 with registry No.2545
[17] Verdict P.No.441/05
[18] Verdict No. 8940/06
[19] I.No.2135/06
[20] I.No.2135/06
[21] Article 12 of the Law on Housing, Official Gazette of the Republic of Macedonia No. 21/98 of 8 May 1998.

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

September 2008

SUMMARY

Returning to and processing of the Hague cases by our Judicature have raised numerous dilemmas, characterized with extremely opposed interpretations among the public. These dilemmas and possible resolution, from the aspect of the rule of law principle, of the Hague cases are not a sensitive matter due to the daily-political consequences we are facing at the moment, and as it seems will escalate further, but are rather dangerous exactly because at some point the politics may interfere in and influence on the judicial institutions in favor of own needs, showing off that it still possesses tolls for overriding affect on their work and gain daily-political benefit. Such actions may temporarily meet the current needs of our daily-political scene, but will certainly have extremely negative implications on the rule of law and the credibility of the Judicature in our society.

Hence, the Helsinki Committee believes that at the moment, before entering the irrational daily-political waters, if it is not already late, all efforts should be invested for closing the cases in line of the principle of the rule of law.

The Helsinki Committee considers that there could be no any amnesty for cases of severe violation of the international humanitarian law. It also wishes to point out that the Parliament of the Republic of Macedonia on two occasions has indorsed laws that set the legal framework referring to these cases – The Law on Amnesty and the Law on Cooperation between the Republic of Macedonia and the International Criminal Court for prosecuting persons responsible for serious violation of the international humanitarian law on the territory of the former Yugoslavia. The provisions of these laws clearly say that the right of determining whether there are elements for prosecuting war crimes has been transferred to the International Criminal Court for prosecuting persons responsible for serious violation of the international humanitarian law on the territory of the former Yugoslavia (hereinafter the Hague Tribunal), and set precise rules about what should be done when the Tribunal hands over cases of its jurisdiction to a national Judicature. It is perfectly clear that in such situation there must be an order of the Hague Tribunal Trial Chamber or a decision of the Hague Tribunal Prosecutor (or the Tribunal itself) on the fact in which stage is the criminal procedure that is being transferred for ruling to the domestic courts. Everything beyond these clear provisions is a daily politics and abuse of the law and its objectives.

Unfortunately, the domestic public has been deprived from the basic information on these cases – i.e. how and in which stage the four so-called Hague cases have been returned to the Republic of Macedonia? The Hague Tribunal official document responding to this question has not been presented to the public yet, despite the fact that the cases are already under processing.

The Helsinki Committee, being aware of the negative implications in terms of the rule of law, keeps trying to shed light on this crucial moment regarding the future fate of the Hague cases.

The other parts of our monthly report on the situation of human rights unfortunately, whether they refer to public events, violations of the democratic principles or individual cases, speak very clearly about the level of human rights respect in the Republic of Macedonia. The Committee, carrying out its monitoring role, will soon present individual and general examples of human rights violation to the public.

The full monthly report:

I. PUBLIC EVENTS AND VIOLATIONS OF THE DEMOCRATIC PRINCIPLES

1.1 The Hague cases

After the end of 2001 conflict, the Parliament of the Republic of Macedonia on 07.03.2003 adopted an Amnesty Law[1]. The Article 1, Paragraph 1 of the same law says: 'This law regulates the exemption from prosecution, termination of criminal proceedings and full exemption from serving the prison term (hereinafter: amnesty), of citizens of the Republic of Macedonia, persons with legal residence, as well as persons that have property or family in the Republic of Macedonia (hereinafter: persons), for whom there is a reasonable doubt to have prepared or committed criminal acts related to the 2001 conflict, by September 26 of 2001.'

The amnesty also applies for persons that have prepared or committed criminal acts related to the 2001 conflict before January 1 of 2001. The amnesty exempts from prosecution for criminal acts according to the Criminal Code or other law of the Republic of Macedonia, terminates criminal proceedings according to the Criminal Code or other law of the Republic of Macedonia, fully pardons from serving imprisonment sentence for criminal acts under the Criminal Code or other law of the Republic of Macedonia the persons for whom there is a reasonable doubt to have prepared or committed criminal acts related to the conflict by September 26 of 2001, and finally removes the verdicts and terminates their legal effect conclusively with September 26, 2001.

Paragraph 2 of the same Article of the above mentioned law says that the provisions of the paragraphs 1,2 and 3 do not apply to persons who have committed criminal acts related to the 2001 conflict that have been under the jurisdiction of and for which the International Criminal Tribunal for prosecuting of persons responsible for serious violation of the international humanitarian law on the territory of the former Yugoslavia since 1991, will start a procedure.

The Republic of Macedonia has handed over five criminal procedures to the International Criminal Tribunal for prosecuting of persons responsible for serious violation of the international humanitarian law on the territory of the former Yugoslavia (hereinafter the Hague Tribunal). The case in which Ljube Boskovski and Johan Tarculoski[2] appeared as accused came to a closure before the Hague Tribunal. The other four so-called Hague cases have been transferred to the Republic of Macedonia in the course of 2008 for 'proceedings before the authorized courts of the Republic of Macedonia' as stated by the relevant institutions (the Ministry of Justice, Public Prosecution's Office of the Republic of Macedonia)…

In 2007 the Parliament of the Republic of Macedonia adopted the Law[3] on cooperation between the

Republic of Macedonia and the International Criminal Tribunal for prosecuting of persons responsible for severe violation of the international humanitarian law on the territory of the former Yugoslavia. The Article 7 of this law says that the Republic of Macedonia recognizes the real, territorial and periodical jurisdiction of the Hague Tribunal, stipulated in the Tribunal's statute. The Republic of Macedonia is obligated to proceed the transferred Hague cases in line with the Article 8, paragraph 3[4] of the Law on cooperation of the Republic of Macedonia with the Hague Tribunal.

Further on the Article 12[5] of the same law stipulated the possibilities under which the criminal procedures in the Hague Tribunal jurisdiction against same person and same criminal act may resume in the Republic of Macedonia, i.e. only if one of the following conditions are fulfilled:

1. The Hague Tribunal prosecutor opened a prosecution act and if afterwards the Trial Chamber of the Hague Tribunal issued an order that the prosecution against the accused person or persons was being deferred until commencing the procedure before the authorized courts of the Republic of Macedonia.

2.The Hague Tribunal Prosecutor launched an investigation and the Trial Chamber afterwards issued an order, saying that the investigation against the accused person or persons was being deferred until commencing the procedure before the authorized courts of the Republic of Macedonia and

3. The Hague Tribunal issued an order and declared itself as unauthorized.

The processing of cases transferred by the Hague Tribunal to the relevant state institutions of the Republic of Macedonia is regulated in the Chapter V (Articles 25-28) of the Law on cooperation of the Republic of Macedonia with the Hague Tribunal. The Article 25, paragraph 1 of the same law says that the Hague Tribunal prosecutor or the Hague Tribunal, when it will decide to return the case for further proceeding to the authorized state institutions of the Republic of Macedonia, shall transfer it to: 1) the state institution it has taken it over from, and if the Hague Tribunal has done nothing further in regard to this case; or 2) to the relevant institution authorized to act in the stage the procedure has been interrupted or terminated before the Hague Tribunal.

It is important to determine that for all three above mentioned conditions there must be an order of the Hague Tribunal Trial Chamber or a decision of the Hague Tribunal Prosecutor (or the Tribunal itself) on the fact in which stage is the criminal procedure that is being transferred for ruling to the domestic courts.

The question how and in which stage the four so-called Hague cases have been returned remains open. The Helsinki Committee expects to get an answer from the Hague Tribunal and domestic state institutions to already posed question: IN WHICH MANNER AND STAGE THE HAGUE CASES HAVE BEEN HANDED OVER TO THE REPUBLIC OF MACEDONIA?

1.2. The detention measure and the double standards

The detention measure, as the most serious one for providing a presence of the defendant in a criminal procedure, is regulated under the Law on Criminal Procedure[6].

The Helsinki Committee has been pointing out in numerous occasions on the need for the court authorities to respect the standards of application the detention measure as an instrument for providing the presence of accused persons, which at the same time is the final measure being applied if the goal has not been achieved by a milder one[7]. Unfortunately, court bodies keep abusing the detention, applying it as a necessary measure for providing the defendant's presence in the course of the criminal procedure.

The Helsinki Committee for Human Right has in several occasions criticized the abuse of the detention measure, and by its monthly reports appealed to the court bodies to consider alternative measures on equal basis as the detention (custody), because it is an instrument for providing the defendant's presence and not a punishment, and to not forget the presumption of innocence as a constitutional principle.[8]

The Helsinki Committee believes that, when particularly decisions on restricting of person's freedom of movement is being reviewed, which is one of the fundamental human rights, careful approach is necessary in terms of applying or extending the detention measure that should be based on legally grounded, elaborated arguments.

'Lipkovo Dam' is one of the Hague cases Macedonia has taken over from the Tribunal. DUI deputy Hajrula Misini is the defendant in the criminal case, registered in the Basic Court Skopje I-Skopje. The Court's Investigative Judge has decided that it was sufficient for Mr. Misini to appear before the court, give statement on the criminal case, promise to not abandon his residence, hand over his passport, and thus deserve an annulment of the detention measure, imposed earlier.

The Helsinki Committee considers as encouraging the fact that relevant investigative judges have come to understand the essence of detention measure and do not apply it only because it exists and is part of the legal standards. But another problem in this respect comes to surface?

Now we are asking about the sentiment of all other detained persons[9], who thus far have offered promise and guarantee to not run away and to appear before the court whenever summoned. However, the investigative judges have persistently applied the detention measure for them only by extending the validity of the previous decisions on such measure, saying that the motion is in line with the Law on Criminal Procedure – Article 199[10], without offering any detailed explanation.

The Helsinki Committee urges for appropriate, equal and legal application of the detention measure and encourages the judicial bodies to apply other proper security measures, thus preventing a violation of the human conditions and person's dignity.

NEVERTHELESS, THE DILEMMA ON DOUBLE STANDARDS IN REGARD TO THE APPLICATION OF THE DETENTION MEASURE WILL REST WITH THE PUBLIC?!?

1.3. 'Begging' action

The Helsinki Committee has been monitoring the action of the Ministry of Interior Affairs in cooperation with the Ministry of Labor and Social Policy, codenamed 'Begging', launched on September 10, 2008.

Wishing to get more detailed information about the campaign, we have addressed both the Ministry of Internal Affairs and the Ministry of Labor and Social Policy, asking them to brief us on their activities, namely where are the children and if they are sheltered in some institution. Considering the fact that we are talking about a socially vulnerable group, for which the begging activity is one of the possibilities to earn money for living, we have ask for on information whether certain financial benefits are being foreseen for these people, above all financial aid for covering daily living expenses, and an additional one that will allow to these persons to send their children to school?

The fact that most of these people are under social financial support is insufficient, as it is obvious that this allowance cannot even cover the everyday expenses, let alone the ones, necessary for enrolling their children in school.

Of all relevant institutions only the Ministry of Labor and Social Policy responded to us, which, inter alia, says: 'The Ministry of Labor and Social Policy, through the JU Inter-Municipal Centre

for Social Work of the City of Skopje, has been engaged in terrain activities, namely direct control of the families of children and their registering…During these direct contacts and talks with parents of the children that posses personal documentation, the obligation to enroll their children in the regular educational system has been pointed out…"

But very little is being done in dealing with the main problem – grave financial situation of these families – the main reason for the begging activity. The response to our request reads: 'By the changes and supplements to the Law on Social Care a possibility is being reviewed for conditional money transfers, as a special stimulant for regular education of children of poor families and for reducing the trans-generation poverty.' BUT WHAT TO DO IN THE MEANTIME?

Unfortunately, the fact that providing for free textbooks and social aid is not the solution to this problem has been avoided again. In addition to textbooks, other funds are necessary to allow the parents to send their children to school, and all threats addressed to them are groundless if they have no financial means to do so.

The Helsinki Committee welcomes the effort of relevant institutions to reduce the number of children that do not go to school, but believes that the realization of this goal requires for these institutions to grant assistance to these families in concrete financial aid, thus preventing possible return of children to the streets; however this solution should not in any case wait for the changes to the Law on Social Protection, which is still in preparation. Launching an activity which final success depends on changes to a law that are not even adopted yet will just create an additional problem for these families.

1.4. The necessity of passing the Law on Anti-Discrimination

The Helsinki Committee for Human Rights of the Republic of Macedonia has presented its position on the need of adopting a Law on Anti-Discrimination, which would be a substantial contribution to the legal, institutional framework for fighting the discrimination, in numerous occasions for the last few years and again uses this opportunity to express its consistent approach. The Committee's monthly reports have been pointed out the necessity of urgent adoption of this law in several occasions.

As a result of frequent debates and meetings on the draft text of the law, worked out by the Ministry of Labor and Social Policy, the Committee cannot be indifferent to the serious flaws and lack of elaboration, created in the text as a result of erasing key provisions. To this effect the Committee calls on the Ministry of Labor and Social Policy and all involved actors in the process of its adoption to carefully consider all relevant issues, and avoid the usual practice of urgent passing of laws without a debate.

First of all the text lacks a definition of discrimination, which is a must and should be formulated in line with the international documents, such as: the EU Directives no. 2000/43/EC (racial directives); EU Directives that introduce equal treatment in employment and vocation no. 2000/78/EC and the Protocol 12 to the Council of Europe Convention for Human Rights and Fundamental Freedoms. The definition may be applied to all laws, i.e. the overall legal system for both the public and private sphere; it should stipulate precise mechanisms that will offer proper, effective protection to the victims of discrimination; and enable determining of the state's affirmative action (positive discrimination) for the purpose of its proper implementation and prevention from abuse.

Setting up of a special body in charge of the implementation of these regulations is part of the EU directives, aimed at ensuring an effective protection from discrimination and further development of the system of values that should provide for a non-discrimination atmosphere. Institutionally, the existing system for protection of human rights will be enriched with another body: 'Committee for Non-Discrimination.' The new body will set fresh basis for fighting discrimination and cooperate with existing institutions. However, we believe that the Committee's founder should be determined (considering the indication of possible politicizing of the Ombudsman's institution). Such Committee would certainly be no different from the Ombudsman's Office if it was founded and elected by the Government or Parliament of the Republic of Macedonia.

It is also necessary to define a protection of the administrative procedure, without leaving room to question who is submitting the appeal (authorized person, head of the sector of higher-ranked body of the hierarchy), and what are the competences related to the appeal, considering the large network of institutions within the state administration.

Furthermore, it is rather important for a motion of setting conditions to a participation of certain person in whatever activity to be considered as an act of discrimination.

Taking preventive measures is also necessary, as it is the case with additional defining of the responsibility of authorized persons; higher level of cooperation between institutions and civil sector, responsibility, i.e. sanctioning of media, which via their programs stimulate discrimination; education and improving of media sensibility, regional cooperation and exchange of experiences to that effect…

As the draft fails to mention in any of its provisions the acts of multiply, long-lasting or repeated discrimination, it should be done by taking the example of Croatia's law that treats such acts as a serious form of discrimination, something that the court is going to take into consideration in determining the misdemeanor penalty and the amount of compensation for non-material damage.

Therefore, the Helsinki Committee advocates continuous activity and pressure for incorporating and implementing of these recommendations in the draft law, considering the fact that it should protect and promote equality as the most precious value of the constitutional system of the Republic of Macedonia.

1.5. Related recommendations after several visits of detention institutions in the Republic of Macedonia

The Helsinki Committee for Human Rights of the Republic of Macedonia on June 29-30, 2004 visited several detention institutions[11]. The visiting delegation included non-governmental organizations engaged in dealing with human rights problems.

The Helsinki Committee published a report on the realized visits, describing the situation in each institution along with concluding recommendations[12]. Then the Helsinki Committee pointed to the:

- Overcrowded prisons;
- Poor living conditions in the old building of 'Idrizovo' Prison;
- Poor living conditions in 'Skopje' Prison – Skopje;
- The need of urgent improving of living conditions of patients, particularly in the 5th and 6th wards of the Psychiatric Hospital in Demir Hisar;
- The need of urgent renovation of the sanitary facilities in the wards;
- The need for improving the living conditions in wards of patients suffering from severe mental disability in the Neuro- Psychiatric Hospital in Negorci.

The detention institutions are also frequently monitored by international organizations – the Committee for Prevention of Torture, the Council of Europe via the visit of the High Commissioner for Human Rights, domestic NGOs engaged in this sphere, as well as Ombudsman's Office. The latest visits have been made to that effect.

1.5.1. Visit of the Council of Europe

Commissioner for Human Rights

Namely, the Council of Europe Commissioner for Human Rights, Mr. Thomas Hammarberg, paid an official to the Republic of Macedonia in February of 2008. One of the problems the Commissioner has depicted in his report[13] refers to the conditions in detention institutions.

He has notified that in general the prison cells are substandard and overcrowded. In the report, the Commissioner advises the Government of the Republic of Macedonia to allocate sufficient funds to improve the worrying and substandard situation in prisons. Every prisoner should have at least 4m2, decent material conditions and access to health care and a lawyer. Outdoor facilities need to be accommodated to allow everybody at least one hour of outdoor exercise…

The Commissioner also visited the Special Centre in Demir Kapija, an institution for persons with disabilities, finding out that the material conditions there are of very low standard, even if some renovations have been undertaken recently. The old buildings are not suitable for persons with reduced mobility and the Commissioner's team was informed that persons who are considered 'immovable' hardly left neither their room nor their bed.

In regard to the two psychiatric hospitals in (Demir Hisar and Negorci), the Commissioner's report says that both the unit with the persons who are sentenced to the hospital by a court and the 'chronic unit' are overcrowded and suffered from bad material conditions. The material conditions in the Negorci Hospital are very bad with sanitary facilities in the chronic unit dilapidated, unhygienic and in urgent need for renovation.

1.5.2. Visit of a delegation of the Council of Europe Committee for Prevention of Torture

Mauro Palma, President of the Council of Europe Committee for Prevention of Torture (CPT), on September 10, 2008, noted that CPT representatives this year (June-July – 2008) again visited the same facilities as in the previous one to find out that the conditions there remained unchanged. Human rights monitors of the Council of Europe sent the latest report on torture to and by a special letter called on the Government of the Republic of Macedonia to address the report's recommendations. The latest report says that CPT was partially interested in three segments: action taken to combat impunity; conditions in prisons' detention wards and the treatment of and care for the vulnerable groups. CPT has given a period of one to three months to the Republic of Macedonia to meet the recommendations for improving the country's penitentiary legislation.

The Helsinki Committee welcomes the above mentioned move of CPT, in particular the strict request for meeting the recommendations within a time limit.

1.5.3. Visit of the Ombudsman Ixhet Memeti and EU Ambassador Erwan Fouere

This September[14] the Ombudsman of the Republic of Macedonia, Ixhet Memeti, and the European Union Ambassador to the country, Erwan Fouere, paid a visit to the prisons 'Idrizovo' – Skopje and 'Skopje' – Skopje. 'The conditions in 'Idrizovo' prison are substandard. Overcrowd and poor hygiene in Macedonian prisons present a serious threat to the human rights', the Ombudsman said after the visit, pointing out that the 'conditions and treatment of persons deprived from freedom are counter to the international laws.'

1.5.4. Helsinki Committee's visits of detention institutions

In August of 2008, the Helsinki Committee visited several detention institutions, namely the Psychiatric Hospital – Demir Hisar, the Institute for Protection and Rehabilitation Banja Bansko (Bansko Spa) – Strumica, the Special Centre for Disabled Persons – Demir Kapija and the Neuro- Psychiatric Hospital in Negorci.

The visiting missions have determined that the material conditions in the Hospital in Demir Hisar, the Centre in Demir Kapija and Neuro-Psychiatric Hospital in Negorci are generally in rather bad situation and raise concern for the dignity of each patient/ward.

In the near future the Helsinki Committee will publish reports on all visits of detention facilities (facilities for involuntary placement of mentally ill and mentally disabled persons), including the one to the Psychiatric Hospital 'Bardovci" – Skopje.

However, the Helsinki Committee may conclude with great concern that the Republic of Macedonia has not been working sufficiently on improving the material conditions in the above mentioned institutions, despite the fact that the relevant domestic, foreign organizations have observed and pointed to the matter in numerous occasions.

II. POLICE AND COURT CASES

2.1. Robert Popovski[15], Struga

The Helsinki Committee for Human Rights of the Republic of Macedonia, on behalf of Robert Popovski from Struga on April 16, 2008, filed criminal charges to the Public Prosecutor's Office in Struga against NN perpetrators. As pointed out in the criminal charges, on February 1 of 2008 at 06:30h a special (police) unit visited the home of Robert Popovski with an arrest warrant. In the course of the arrest, one of policeman punched Robert's jaw with a riffle butt. As Robert complained for being injured, he was subjected to a medical check after being arrested. Because of a broken jaw, Robert underwent an operation at the Maxsillofacial Surgery at the Clinic Hospital in Bitola, and was afterwards transferred to the Prison Ward of the Clinical Centre in Skopje under the decision Ki.no.19/08 of 06.02.2008 of Bitola Basic Court.

As the Public Prosecutor's Office for a longer period of time failed to inform us about the progress in processing the criminal charges, and considering the Article 39 of the Law on Public Prosecution, which reads: 'The Public Prosecutor is obliged in the shortest possible period, not more than 30 days from the date of receiving the charges, to take action bestowed to him/her by law', we contacted the Office again and on 09.09.2008 got an astonishing answer, namely that in the past period of five months, the authorized persons (policemen) were invited to give a statement on the case ONLY ONCE, and they failed to appear. They will be summoned for hearing again in the near future (WE HOPE THAT IT WILL NOT TAKE ANOTHER FIVE MONTHS).

The damaged party, Robert Popovski, also gave a statement. We asked for a report from the Basic Court on whether the legality of Popovski's arrest was officially investigated, but got no response thus far.

The Helsinki Committee ONCE AGAIN calls on ALL relevant bodies to issue an order for efficient investigation and punish the perpetrators of these criminal acts, and to avoid the usual practice of leniency only because they (the perpetrators) are employees of the Ministry of Internal Affairs – the special police force.

2.2. Case Blaga Nedelkovska, Gevgelija

Mrs. Blaga Nedelkovska, from Stojakovo village – Gevgelija, appealed to the Helsinki Committee. Upon a letter of request we have been informed that her husband logged a complaint to the Basic Court in Gevgelija on 28.07.2005, registered as P.no. 282/5, seeking compensation of 20,000 Denar for material damage from DPU 'Repromet' – Skopje.

The plaintiff, Antonije Nedelkovski (50), an experienced beekeeper and producer of honey, wax, pollen, royal jelly etc, says in his complaint that on 21.04. 2005 his wife purchased 16 kg of wax foundations, necessary for produc-

tion of honey and other products, from the above mentioned company. The wax foundations were immediately transferred to Stojakovo village, and in the course of May all preparations were done, but the inspection of the progress of building the honeycombs to the plaintiff disappointment proved for the entire process to be unsuccessful.

The plaintiff immediately turned to the beekeepers' association 'Nektar' – Gevgelija, asking it to make an inspection on the spot and evaluate the damage. A Commission of three persons conducted the inspection and in a written report of 01.06.2005 notified that the plaintiff did suffer damage. Afterwards, the plaintiff submitted a copy of this report to the accused, asking for a negotiated solution and thus avoiding a court procedure. However, the defendant refused to admit the damage and the possibility of an agreement.

On 06.04.2006, Mrs. Nedelkovska turned to the Agricultural Inspection Office in Gevgelija – the Inspector of Apiculture, Fishery and Water Supply, asking for an expert supervision of the beehives.

On 18.12.2006, the University 'Kiril & Metodij' – Faculty of Veterinary Medicine – Skopje sent the inspection results and opinion under the ref. P.no. 282/05 to the Basic Court in Gevgelija, which reads: the tests of submitted samples of wax foundations have shown that pure bee wax was not used for their production. The opinion reads: On the basis of conducted expertise , we believe that the sold wax foundations are of suspicious quality, i.e. the bee wax is being falsified with paraffin. Furthermore it says: We believe that the owner suffered a damage due to hindering of the normal development of bee colonies, which means that his lost profit should be compensated.

Although the complaint was filed in the course of 2005, the Bacic Court in Gevgelija has not yet made its decision on the matter. The client is afraid that the court procedure has been deliberately delayed.

The Helsinki Committee for Human Rights on several occasions (on 10.06.2008, 25.07.2008, 22.09.2008) asked the Basic Court in Gevgelija to answer about indications that this case has been processed for a rather long period before the first degree Court, i.e. about the reasons why the Basic Court in Gevgelija has not yet come to a decision.

In line with Articles 77[16] and 78[17], the president or appointed judge should start processing the requests and proposals that citizens submit to the Court, and after reviewing their content to respond to the submitter within 30 days from their reception. The obligation of state bodies to respond to filed demands is also stipulated in the Article 24, Paragraph 1[18] of the Constitution of the Republic of Macedonia, but nevertheless in this particular case the Helsinki Committee, even after several months, has gotten no response, while the Basic Court in Gevgelija keeps failing to respond to the filed request, thus violating the provisions of the Court Rules of Procedure.

The Helsinki Committee in regard to this concrete case points out to the continuous disrespect of the rule – a trial in a reasonable time – stipulated precisely in the Article 6, paragraph 2[19] and Article 10, paragraph, line 3[20] of the Law on Courts, Article 10, line 1[21]of the Law on Litigation Procedure and Article 6, paragraph 1[22] of the European Convention on Human Rights.

III. VIOLATIONS OF THE ECONOMIC NAD SOCIAL RIGHTS

3.1. Case Mite Gjorgjiev, Veles

Mr. Mite Gjorgjiev from Veles was employed in AD 'Porcelanka' – Veles from 1975 to June 25, 2000, when he was dismissed as the company entered a bankruptcy procedure. Dissatisfied with such decision, Mite Gjorgjiev filed two complaints to the Basic Court in Veles, demanding to be returned to his post and payment of a debt, deriving from non-received salaries. The two complaining procedures resulted in two Resolutions of the Appellate Court - Skopje[23], which confirm the Resolutions of the Basic Court – Veles that reject Mite Gjorghiev's complaints as baseless.

The Basic and Appellate Courts base their denial of Mite Gjorghiev's complaints on the certificate of the Central Register of RM of February 2006, which says that the debtor AD 'Porcelanka' – Veles has been erased. In favor of the above mentioned, the Appellate Court in its decision no.-5375/06 of September 7, 2006 says: 'This Court, acting within its competences, finds out that by the appealed Decision the first degree court has not significantly violated the provisions of the litigating procedure of the Art. 343, Par. 2, line 13 of the Law on Litigation Procedure, because it (the Decision) is clear, comprehensive, and certainly contains sufficiently elaborated reasons for the facts the first degree court has taken into consideration in the ruling process, and in this respect is fully suitable for evaluation.

In a complaint, which denies the appealed decision, the client says that the debtor is not erased from the court and central register, as he possesses the debtor's tax and account numbers, submitted by the Central Register's Office in Veles. This Court has appreciated these appealing notifications and found them to be groundless as the first degree court, relaying on the presented evidence during the procedure, rightfully concluded that the debtor AD 'Porcelanka' – Factory for production of porcelain and ceramic tiles – Veles was erased from the central trade register, thus making the right decision on denying the client's proposal in accordance with the Art. 74 of the Law on Litigation Procedure and in regard to the Art. 13 of the same law.'

In this agony to exercise his labor rights, Mr. Mite Gjorgjiev on February 18, 2007, turned to the First Instance Court Skopje I, asking for a public information, namely whether AD 'Porcelanka' has been erased from the register of this Court. On February 27, 2008, the the First Instance Court Skopje I[24] informed Mr. Gjorgjiev that the registration file of the legal entity AD 'Porcelanka' - Factory for production of porcelain and ceramic tiles – Veles in bankruptcy, str. 'Industriska' no.66 – Veles is listed and the mentioned legal entity exists in the court register. The letter of the First Instance Court Skop I - Skopje also reads: 'On the grounds of an insight into the registration file …we inform you that the mentioned legal entity is not erased from the register of this court.'

The Helsinki Committee points out that the legal security in the Macedonian society calls for an existence of sufficiently accessible and precise provisions in the national laws, which meet the essential needs of the 'law' concept. In addition, it should be implemented in the practical application of the law by the judicial authorities. In the cases related to labor rights, the existence legal security and lawfulness[25] is not less important in the processes of their resolving.

3.2. Case Zoran Bozinovski, Skopje

Zoran Bozinovski has appealed to the Helsinki Committee informing it that he filed a request to the Karpos municipality for issuing of conditions for construction of roof on already built tennis courts, which as such have been functioning for a certain period. The Karpos municipality denied the request of Zoran Bozinovski[26], because by the general spatial plan the Zlokukani settlement is specified as a city construction land. Dissatisfied with this decision, Bozinovski filed a complaint to the Government's second-degree Commission, which denied it as groundless.[27] But the complaint of Zoran Bozinovski to the decision of the second-instance authority body was accepted by the Supreme Court of the Republic of Macedonia[28], which annulled the disputable decision and returned the case to re-processing. Following the Supreme Court's decision, the second-instance Commission concluded that the complaint should be accepted and returned to the Karpos municipality for re-processing during which the first-instance authority – the Karpos municipality was obliged to act

in line with the remarks and directions of the Supreme Court and once again rule on the case. But, counter to all previous guidelines, the Karpos municipality made the same decision that denies the client's demand, not even trying to offer a different explanation.

For the same case – building a roof construction on existing tennis courts – the client filed a new demand, this time seeking an Approval for urban and reconstruction measures, which was denied by the Karpos municipality[29]. The second-degree Commission however accepted the complaint[30], annulled the argued decision and presented its opinion on how the case should be resolved. The first-degree body once again denied the demand for urban and reconstruction measures[31], without altering its explanation. The Ministry of Transport and Communications annuls the same decision[32] on two additional occasions, saying that the first-instance authority seriously violated the procedure, but the municipality has been persistently passing the same decision and offering the same explanation[33].

In this endless game, the Ministry of Transport and Communications, on the client's request, obliged on 01.10.2007 the Karpos municipality and its Mayor Andrej Petrov to take all necessary legal measures within seven days and act on the case in accordance with the guidelines of the second-instance Commission and the Supreme Court, but to no avail. In order to put an end to this ping-pong situation the Helsinki Committee for Human Rights asked information from the Karpos municipality and relevant Ministry, which said it obliged the municipality to report on the taken measures regarding this case.

In compliance with the regulations of the Republic of Macedonia, the administrative procedure is being conducted in a thrifty, urgent manner, without delay, with as few expenses as possible and wasting of the client's time[34]. In accordance with these provisions, if a case is being returned to the first-instance organ for another procedure, it is obliged to act in line with the second-instance decision and do it without delay, and within 30 days at latest after the date of the case's reception to make a new decision[35]. The law also stipulates a possibility for the second-instance authority to annul the first-instance decision and resolve the matter by itself[36].

Unfortunately, it is not difficult to notice that neither the one nor the other legal obligations are fulfilled in this case for which the client has been conducting a procedure for almost five years (since 03.11.2003) in order to cover the already existing tennis courts. It should be also mentioned that such cases are overcrowding the Court for Human Rights in Strasbourg, under whose verdicts all citizens of this country pay for the irresponsibility of the administration bodies.

By this example the Helsinki Committee logically poses the question – what kind of law rules in the justice-oriented Republic of Macedonia when local and state authorities violate the regulations on the account of a client, wasting his/her time and imposing him/her to unnecessary expenses, without bearing any consequences. To what kind of legal security the citizens of this country may count on?

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[1] Published in the Official Gazette no. 18/02 of 07.03.2002
[2] The Hague Tribunal first degree verdict acquitted Ljube Boskovski from all charges and sentenced Johan Tarculovski to 12-year imprisonment.
[3] Published in the Official Gazette no. 73/07 of 13.06.2007
[4] Article 8
If the Hague Tribunal does not make a final decision or put an end to the procedure and decides to transfer the case for ruling to the authorized public prosecutor or court of the Republic of Macedonia, they are obliged to accept it and immediately resume the procedure.
[5] Article 12
The authorized court in the Republic of Macedonia will not start a criminal procedure against a person already being on trial before the Hague Tribunal for the same criminal act. The criminal procedure, transferred by the Hague Tribunal, may resume in the Republic of Macedonia against the same person and same criminal act, only if one of the following conditions is met: 1) The Hague Tribunal prosecutor opened a prosecution act and if afterwards the accused person or persons was being deferred until commencing the procedure before the authorized courts in the Republic of Macedonia; 2) The Hague Tribunal Prosecutor launched an investigation and the Trial Chamber afterwards issued and order, saying that the investigation against the accused person or persons was being deferred until commencing the procedure before the authorized courts in the Republic of Macedonia; 3) The Hague Tribunal issued an order and declared itself as unauthorized.
[6] The detention measure is regulated by the Articles 198 to 208 of the Law on Criminal Procedure.
[7] Article 185 of the Law on Criminal Procedure
Measures that may be applied for providing the presence of defendant and successful course of the criminal procedure include supine, arrest, defendant's promise to not live his residence and other preventive measures, such as guarantee, house arrest and detention.
[8] Article 13 of the Constitution of the Republic of Macedonia
Indicted person for punishable act shall be considered innocent until proven guilty by court decision.
[9] The freshest example is the defendant, Pande Lazarov, for whom guarantees for real estate, worth Euro 511,000, passport and promise to not leave the country have been offered.
[10] Article 199 – Law on Criminal Procedure
If there is reasonable doubt that certain person has committed a criminal act, a detention measure against that person may be applied if:
1) He/she is hiding, his/hers identity may not be disclosed or there are other circumstances, indicating to a danger of escape;
2) There is a justified fear that the person will destroy evidence of the criminal act, or certain circumstance indicate that he/she will hinder the investigation by influencing the witnesses and accomplices, and
3) Special circumstances that justify the fear he/she will repeat the criminal act, complete the attempted criminal act or commit a criminal act he/she has been threatening to perpetrate.
[11] The institutions being visited in 2004 were divided in two groups:
1. Institutions under the authority of the Ministry of Justice: Bitola Prison, Tetovo Prison, Skopje Prison 'Idrizovo', Juvenile Prison in Ohrid, Stip Prison, 'Skopje' Prison – Skopje and the House for Correction of Juveniles – Tetovo.
2. Institutions and institutional units for involuntary placement of mentally disabled persons under the authority of the Ministry of Labor and Social Policy and the Ministry of Health: Psychiatric Hospital in Demir Hisar, Neuro- Psychiatric Hospital in Negorci and the Special Institution for Severe Mental Illness in Demir Kapija.
[12] www.mhc.org.mk
[13] Report by the Commissioner for Human Rights, Mr Thomas Hammarberg
[14] September 22, 2008
[15] www.mhc.org.mk/maj2008
[16] Article 77 of the Court Rules of Procedure
The President or appointed judge to start processing the requests and proposals of citizens immediately after reviewing their content, and within 30 days from their reception responds to the submitter.
[17] Article 78 of the Court Rules of Procedure
The President or appointed judge will provide for access to necessary data and explanations to relevant state bodies for those requests and proposals submitted to them, and on their demand will report on overtaken measures.
[18]Article 24, paragraph 1– The Constitution of the Republic of Macedonia
Each citizen is entitled to file requests to the state bodies and other public services and get response to them.
[19] Article 6, paragraph 2 - Law on Courts
In determination of the civil rights and obligations or when a subject of any criminal charge, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
[20] Article 10, paragraph 1, line 3 – The Law on Courts
The Court procedure is regulated by the law and is based on the following principles:
Trial in a reasonable time.
[21] Article 10, line 1 – Law on Litigation
The Court has an obligation to make efforts to conduct the procedure without delay, in a reasonable period of time, with as few expenses as possible, and to prevent any kind of abuse of the rights the clients are entitled to during the procedure.
[22] Right to a fair trial
In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
[23] The Decision of the Appellate Court – Skopje – GZ.no.4074/06 of May 24, 2006 and GZ.no.5375/06 of September, 2006, and the Decision of the Appellate Court – Skopje – GZ.no.5375/06 of September 7/2006
[24] In accordance to the Law on Free Access to Public Information (Official Gazette of RM, no.13-06
[25] Article 32 – the Constitution of the Republic of Macedonia
Each person is entitled to work, free choice of employment, protection at work and material security during temporary unemployment.
Everybody has access to each working position under equal conditions.
Every employee is entitled to appropriate earning.
Each employee is entitled to paid daily, weekly and annual holiday. These rights are something employees cannot give up.
[26] Decision UP no.16-4951/2 of 08.12.2003
[27] Decision UP.no.31-293/2 of 10.06.2004
[28] Verdict UP.no.1812/2004 of 08.06.2005
[29] Decision UP.no. 16-1287/03 of 29.04.2004
[30] Decision no.37-466/1 of 18.02.2005
[31] Decision no.08-787/2 of 13.03.2006
[32] Decision no.28-333/2 of 15.06.2006 and Decision no.28-303/1 of 26.02.2007
[33] Decision no.08-787/6 of 27.07.2006
[34] Article 17 of the Law on General Administrative Procedure
[35] Article 242, Paragraph 2 of the Law on General Administrative Procedure
[36] Article 243 of the Law on General Administrative Procedure

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

October 2008

I. PUBLIC EVENTS AND DEMOCRATIC PRINCIPLE VIOLATIONS

1.1. The Presumption of Innocence Principle Ignored Again

In June 2008, the Helsinki Committee for Human Rights published a Press Release[1] regarding the continued disregard of the presumption of innocence principle, requesting the relevant authorities to cease violating the basic human rights and freedoms. Regretfully, in October too, similar practices by the Ministry of the Interior could be witnessed.

Printed and electronic media outlets reported about the Kumanovo businessman Bajrus Sejdiu and his associates arrested in the "Pepel" (Ashes) action. "We could rightfully say that this criminal gang is of mafia like structure. It has a clearly hierarchically established structure, with clearly defined rules and obligations, clearly defined hierarchy and, manner of issuance and receipt of working instructions and execution orders" stated Gordana Jankulovska, Minister of the Interior

However, the Minister seems to forget that it is a matter of persons that are only suspected of having committed a crime, while the court is the only competent body to establish their guilt, not the Ministry of the Interior.

An again, as in the past months, persons apprehended by the Ministry of the Interior are filmed and then broadcast publicly, without taking due account of the presumption of innocence and the right to privacy, dignity and reputation of the person, guaranteed under the Constitution and numerous international documents.

These constitutional commitments are further elaborated in the Law on the Police, as well as in the Code of Police Ethics which obligate all police officers to respect the dignity, reputation and honor of persons in the performance of their duties.

According to the Law on Criminal Procedure, any person prosecuted by the state authorities or under a private lawsuit, enjoys the right to "presumption of innocence". However, the Committee would like to yet again underline that such right cannot be exercised if footage of the apprehended persons is broadcast on TV and their full names are repeatedly stated.

Article 6(2) of the Human Rights Convention envisages that everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law. Not only courts, but other state authorities as well are obligated to respect the presumption of innocence principle. In the case Allenet de Ribemont against France, while in police custody, the applicant was mentioned at a press conference by a high ranking police officer as an inciter of a murder. The European Human Rights Court has established that when a person is charged with a crime, Article 6(2) applies not only to courts, but also to other state bodies.

Furthermore, the Committee yet again points to the Journalist Code of Ethics and the duty of journalists to respect the presumption of innocence principle, and not to incite hatred, violence and discrimination on any grounds.

Besides the violations in the "Pepel" (Ashes) action, an even more shocking violation was perpetrated by a journalist who in the Vecer daily newspaper published an article entitled "The Roma are asked not to do Gypsy staff", presenting in the said article data about a minor (16 years of age) suspected of a crime, while the other person also charged with the same crime was referred to by the initials.

The Helsinki Committee insists on the application of Articles 6 and 8 of the European Human Rights Convention, which in regard of providing information about suspected, charged or convicted persons requires respect for the concerned persons' right to protection of privacy.

The Committee once again emphasizes that the state authorities and the media are to pay special attention to the detrimental effect of presenting information that enables identification of the persons who are only suspects, and not proven, convicted perpetrators of crimes.

1.2. The Adequately and Equitably Established Culture Council

Article 11 of the Law on Culture[2], defines the Culture Council as an "expert and advisory body to the Minister of Culture": "A Culture Council shall be established at the Ministry of Culture as an expert and advisory body to the Minister of Culture. The Council members shall be appointed by the Minister of Culture, from the ranks of renowned artists, professionals in the area of culture and public life, following the principle of expertise and competency and the principle of adequate and equitable representation of citizens belonging to the communities, to serve during the Minister's tenure."

The Ministry of Culture announced that on 27 October 2008, the Culture Council held its constitutive meeting.

Academician Cvetan Grozdanov was elected for Chairperson of the Council, while the conductor Borjan Canev, was elected Deputy-Chairperson of the Council. The other members of the Council are: Ljubisa Georgievski, Artistic Director of the Macedonian National Theatre, Mitko Hadzi Pulja, architect, Pasko Kuzman, Director of the Department for Protection of Cultural Heritage, Aleksandar Stankovski, painter, Rade Siljan, writer, Tanja Vuisic-Todorovska, prima ballerina, Ilindenka Petrusevska, film critic, Episcope Clement of Heraclea, Milco Mancevski, film director, Dragisa Zdravkovski, archeologist and Oliver Belopeta, Director of the Skopje Jazz Festival.

At the constitutive meeting, Mrs. Elizabeta Kanceska- Milevska, Minister of Culture stated that "the members have been selected in a way that provides for equal representation of all artistic areas, while the Council also includes representatives of the Macedonia Academy of Arts and Sciences as the most renowned institution in the country, as well as a representative of the Macedonian Orthodox Church, Father Clement, whom the Commission for Relations with Religious Communities has delegated to be a member that would work on behalf of all religious communities in Macedonia". (Appointing a clergyman as a member of the Council with an odd duty to represent all religious communities, regretfully prompts the impression that opting for such and similar solutions, this Government calls too much in question the separation of the state from the church).

After the reaction by the Association of Albanian Writers, the Associations of painters (Art Vision), of historians and of writers- Albanians and upon the reaction of the Center for Promotion of Culture - "Skopje" and the Association of Albanian Publishers, as well as following the reaction in certain Albanian language media outlets, the Ministry and the Minister additionally informed that Mr. Abdilakim Ademi, Deputy Prime Minister was invited as a Council member and that another unnamed employee of the Ministry of Culture was also included as a member. On 18 November the Committee received written information that the person in question was Mr. Gjuler Nebi.

However, this intervention in respect of the composition of the Council, which clearly signals the intention to additionally include the constitutional principle of adequate and equitable representation causes another related problem of disregard of the principle of professionally and competence. If indeed a politician and a

civil servant are members of the Council, it would be very difficult to explain why the ethnic community they are to represent within the Council is not represented by renowned personalities in the area of culture, unless it is considered that there are no such personalities among the ranks of the said community.

The Helsinki Committee asks whether the other ethnic communities registered in the Republic of Macedonia do not have among their ranks renowned artists, professionals in the area of culture and public life, that would fulfill the set forth conditions and who during the tenure of the Culture Council could offer opinions, suggestions and advice on issues within the competences of the Minister of Culture.

The Helsinki Committee expects that Mrs. Kanceska-Milevska would realize that the law that the Ministry is to apply has been disregarded and that she has neglected other ethnic communities living in the Republic of Macedonia and that she would appoint new members of the Culture Council, taking into consideration all necessary conditions envisaged by law.

1.3. The Religious Secondary School "Hovers" Over the Education System - No one to Assume Supervision Responsibility

In its June Report, the Helsinki Committee informed the public about the oppressive practice at the Isa Beg Madrassa – Moslem Secondary School in Skopje.

In summary, it is a matter of the case of a part time pupil of the third class in the said school- Sefadin Emini, whose secondary education was terminated on 23 January 2008 by the responsible persons in the school, when he was registering exams he was to take, with the simple explanation by the School Principal that this pupil was allegedly against the Islamic Community.

As stated earlier, in its reply to the Committee's communication, the State Education Inspectorate, has informed that in pursuance with the Law on Secondary Education, the secondary Islamic school is not covered by the system of secondary schools, and that the Ministry of Education and Science and the Inspectorate do not have the competence to supervise the school, in light of the fact that the Isa Beg Madrassa was a religious school and as such has not been certified and entered in the registry of secondary schools.

Even at that period, the State Education Inspectorate most probably disregarded the provisions contained in Article 22 of the Law on the Legal Status of a Church, Religious Community and Religious Group[3], according to which: „(1) A church, religious community and religious group shall have the right to establish religious education institutions at all levels of education, except at the primary education level, to educate clergymen and religious servants, as well as to establish pupils' and students' dormitories to accommodate persons educated at those institutions; (2) Religious education institutions are equal with the other education institutions and their pupils and students shall enjoy the same rights and obligations".

It is surprising that the State Education Inspectorate and the Ministry of Education and Science seem to forget that upon the adoption of the Law Amending and Supplementing the Law on Secondary Education, dated 18 April 2007, Article 1, paragraph 3 of the Law on Secondary Education was amended and according to the amended paragraph: „Secondary education is compulsory for each citizens under equal conditions set forth in this Law", while pursuant to paragraph 3 of the same Article: „Discrimination on grounds of gender, race, color of skin, national and social origin, political and religious conviction, property and social status shall be prohibited".

On the other hand, Article 23 of the Law on the Legal Status of a Church, Religious Community and Religious Group prescribes that: „(1) A church, religious community and a religious group shall be obligated to submit the founding documents, establishing the religious education institution, the documents envisaging the goals and the internal organizational set up of the school and the curricula and education programs, in pursuance with the provisions of this Law, to the body competent for matters regarding the relations between the state and the religious communities within 90 days at least, prior to the day set for commencement of the work of the said institution", while Article 26, paragraph 2 clearly envisages that: „The responsible person at the religious education institution, the pupils' or students' dormitory shall be obliged to make available to the state administration body in charge of matters regarding education, data necessary for the inspection of the institution's work, and to eliminate within the period such body has determined the eventually established deficiencies. "

Regretfully, following the communications to the Education Development Bureau, to the Commission for Relations with Religious Communities and Religious Groups at the Government of the Republic of Macedonia and to the Principal of the Isa Beg Madrassa, the Helsinki Committee for Human Rights of the Republic of Macedonia must conclude that the above referred to legal provisions are just words on paper, and are evidently contradictory, creating an important collision of the said laws and a legal vacuum in the education system, at the detriment of the citizens' rights, leaving pupils in religious school at the mercy of the good or bad disposition of the responsible officials in these institutions.

Namely, as the State Education Inspectorate has replied that the Inspectorate does not have the competence to supervise, referring the pupil to resolve the matter of his violated rights within the school together with the responsible persons who in fact carry the blame for such a violation, and as the Commission for Relations with Religious Communities and Religious Groups informed in its reply that the professional supervision at secondary schools is done by the Education Development Bureau, and considering that the secondary school is under the obligation of facilitating the unimpeded professional supervision and inspection of the education-school records kept at the secondary school, and the inspections are made by the State Education Inspectorate, hence the Commission does not have direct competences to resolve the said case, so has the Bureau for Education Development in its reply submitted to the Helsinki Committee proclaimed itself as lacking competence, transferring the responsibly to the Ministry of Education and Science and to the State Education Inspectorate. As different from the illogical and conflicting answers of these bodies, the School Principal is silent to the question raised in the communication the Committee has sent.

In such a situation, in May 2008, the pupil decided to protect his right to education before the courts. The Skopje II First Instance Court, Skopje has still not undertaken any action upon the lawsuit, but the Helsinki Committee hopes that finally there will be an answer to the question raised in June- namely who is competent to supervise the religious education institutions and whether the responsible persons in these institutions are allowed to engage in oppressive practices.

The Helsinki Committee again expresses its concerned with the fact that the Ministry of Education, the State Education Inspectorate, the Commission for Relations with Religious Communities and Religious Groups and the Education Development Bureau shrink the responsibility which they are to exercise in accordance with the above referred to legal provisions, and leave the secondary religious school to "hover" above the education system in the country.

1.4. Travesty of the Snake's Eye case

The Snake's eye case, which started almost a year ago, is featured as the largest scale action in which criminal charges have been raised against 72 persons against abuse of official position and authorities. However, in light of the large scale character of the case, the procedure turned into a circus, which the court did not manage to control.

The Helsinki Committee monitored the entire court proceedings through its monitors and is able to conclude that the climate prevailing in a significant part of the procedure infringes upon the dignity and reputation of the court, damaging thus the image of the Republic of Macedonia. The Helsinki Committee once again emphasizes that the Public Prosecutor does not have a privileged position in a court case, being only a party to the case.

A special feature of the entire procedure are the numerous points of vagueness in respect of the expert witnesses' evidence and the "presumed" damage, due to which there have been three separate expert witnesses' opinions ordered- all contradicting each other.

Namely, during the main hearing, there was an expert witness opinion consisting of economic and technical parts. The expert witness opinion was contradictory in itself since the expert witness in the technical area stated the damage, while the expert witnesses in the financial

and economic area found no damage, and they established positive results and a surplus yielded in 2006 and in 2007.

Despite the fact that the expert witnesses in the financial and economic area have established a situation different from the "expert witness" in the technical area, they signed the prepared expert witness opinion, which established minimum damage?! Aiming to resolve the dilemmas regarding the expert witness opinion, the expert witnesses clarified that their opinion regards only the economic and not the technical aspects, since they had not taken part in the technical area, i.e. that they had placed their signatures warranting the economic parts, while the "expert witness" about the technical part stated that he did not understand the financial expert opinion, but agreed with it and signed it?!

Furthermore, it must be underlined that the expert witness opinion regarding the technical part in fact was not prepared by an expert registered in the expert witness list, which was confirmed by the expert witness himself, who clarified that he was not an expert witness.

On several occasions it was underlined that the Regional and National Road Fund did not claim damage, but at the end a damage of 169 million MKD or 2.7 million EURO was claimed, an amount established according to the questionable expert witness opinions. However, the expert witness explained that the opinion regards the balance for 2006 and 2007 and covers the entire work of the company, since the indicted persons could not be separated from the other employees.

In the course of the main hearing, the lack of decisiveness of the Regional and National Road Fund was more than obvious, and the lack of a firm position on the existence or non-existence of damage was confusing for all. In the course of the procedure, on several occasions "presumed damage" was mentioned, damage which is abstract and its existence is presumed. However, the Fund turned such damage in a concrete one, the existence of which is to be established through immediate legally relevant evidence, which were not presented by the Fund.

The question everybody asked is why the court is so inter and does not take into consideration the obvious legal provisions[4] in respect of these issues and does not order another expert witness opinion to be given prepared by other expert witnesses, accepting instead the already given expert witness opinions despite their inconsistencies.

The Helsinki Committee sincerely hopes that the Court will take due account of the deficiencies and inconsistencies of the expert witness opinions in deliberating a judgment in this case, since the fate and life of 72 persons indicted in these proceedings are at stake.

II. POLICE AND COURT CASES

2.1. The Case of Mirce Gorancic, Skopje

The Helsinki Committee informed about the case of Mirce Gorancic in its June 2008 Report[5]. At that time, the Helsinki Committee underlined that in respect of the civil law proceedings[6] in which the plaintiff was Mr. Mirce Gorancic, there were orders for a retrial issued on two occasions by the Court of Appeals in Skopje[7]. In the course of the proceedings there were several expert witness opinions delivered, while the defendant requested one last forensic medical opinion (Qbe Insurance Company Skopje), which was entertained by the Skopje II First Instance Court, Skopje. The allowed expert witness opinion was entered in the minutes of the main hearing held on 14 February 2008, when the civil law proceedings in this case were postponed indefinitely.

Taking into consideration the fact that even after several months the defendant had not paid the required deposit for the expert witness opinion, and the court did not react, on two occasions[8], the Helsinki Committee addressed the President of the Skopje II First Instance Court, Skopje requesting information about the reasons why the court did not act pursuant to Article 147, paragraphs 1 and 3[9] of the Civil Procedure Law, i.e. why the court did not react and thus tolerated the defendant who even after 5 months had not paid the determined advance payment, due to which the proceedings were postponed and delayed.

On 23 September, 2008, the Helsinki Committee received a reply informing that the funds for the expert witness opinion had been paid by the defendant on 28 September 2007 and the case was referred to expert witness opinion on 9 October 2007 at the Public Health Care Institution – Clinical Center, Skopje. Furthermore, the reply states that owing to the above stated, the trial judge undertakes the necessary measures in order the expert witness opinion is delivered in the shortest possible period.

The Helsinki Committee hopes that it will not be necessary that another several months pass in order that the required forensic medical opinion is given and a new hearing is scheduled at the Skopje II First Instance Court in Skopje.

In addition it must be underlined that the Court does not need to wait five months for the defendant to fulfill his/her obligation. In the case at hand, the court must take into consideration that in line with the Law the Courts, it has the right to cancel the presentation of evidence, if the amount requested for covering the costs is not paid within the terms set by the court, while with its actions the Court directly contributes to the long duration of the proceedings, i.e. to a many times delayed trial.

In the specific case there are indications of gross violations of Article 6, paragraph 1[10] of the European Human Rights Convention, as related to Article 10, paragraph 1[11] of the Civil Procedure Law and Articles 6, paragraph 2[12] and 10 paragraph 1 , subparagraph 3[13] of the Law on Courts.

Regretfully, the hitherto appeals by the Helsinki Committee for respect for the right to a trial within reasonable time, by detecting cases in which the proceedings have been delayed without any grounds, have not produced any substantive effect in terms of improved work of courts, and the Helsinki Committee is thus free to again point out the disrespect and gross violations of the principle of trial within reasonable time by the courts.

2.2. The Case of Saso Kostadinovski, village of Tromegja- Kumanovo Region

The Helsinki Committee observed the case of Saso Kostadinovski as early as 2003 and 2004[14]. Hence, ever since the beginning until presently, several questions come to the surface – "Is the principle of equality before the law consistently applied in Macedonia? ", - "Are the authorities responsible for the failure to "ensure" the rights of the individual, by not providing efficient legal protection against "ill-treatment in the performance of duties" by the employees of the Ministry of the Interior?"- "Do the employees of the Ministry of the Interior have privileged status in society and are they not under the obligation to appear after court summons and is the administration of justice not their obligation?"

Namely, in 2002, Mr. Kostadinovski was deprived of freedom by an officer of the Kumanovo Internal Affairs Sector, without any court decision, without being informed about the reason for his deprivation of freedom and without being informed about his rights. At the police station he was beaten and ill-treated, was not brought before an investigative judge and no criminal charges were brought against him, and he was released after an hour and a half from the police station, bleeding from the mouth and nose.

The Kumanovo Basic Public Prosecutor's Office instituted an indictment against the involved officer at the Kumanovo Internal Affairs Sector, against the crime "Ill-treatment in the performance of duties" under Article 143 of the Criminal Code.

In 2005, the Kumanovo First Instance Court delivered a judgment under which the indicted persons were pronounced guilty, punishing them with a 6 month prison sentence, replaced by the court with an alternative measure - a suspended sentence (the sentence will not be executed if the convicted persons do not perpetrate another crime in period of two years).

In 2005, processing the instituted appeals, the Court of Appeals in Skopje, adopted a Ruling returning the case for a retrial by the Kumanovo First Instance Court.

The Kumanovo First Instance Court adopted a convicting verdict[15] against the indicted persons and again pronounced the same sentence.

Under a Ruling No. KZ 1304/08, the Court of Appeals Skopje again annulled the verdict of the Kumanovo First Instance Court ordering "that the new main hearing is held before the first instance court in a completely different composition ".

The impartiality of the court is brought under suspicion by the fact that in this specific case the court "had" great difficulties finding the indicted persons and bringing them before the court, and often the proceedings were delayed due to this, without any additional explanations.

The Helsinki Committee considers that such trivial conduct in dispensing justice is a result of the lack of will to resolve such cases by the courts in Macedonia. Persons subjected to ill-treatment by persons who are "under the guardianship of the state" necessitate efficient protection.

2.3. The Blagoja Angelovski Case, "Diligent" Work of Courts

For 12 years now, Mr. Blagoja Angelovski from Skopje has been in written communication with the institutions aiming at establishing the real reason why the factory in the village of Zlokukani, owned by him, has never thus far been released for operation, considering the fact that he received a credit from the International Bank of Reconstruction and Development, through the Commercial Bank, Skopje. Yet based on reasons unknown to the factory owner, the credit was cancelled without any appropriate and substantiated explanation.

In addition, the Skopje I First Instance Court opened a bankruptcy case, and adopted a Ruling[16] on 2 December 2003, instituting a prior procedure to establish the reasons for institution of a bankruptcy procedure for the debtor- the Factory owned by Mr. Blagoja Angelovski.

On the other hand, on 16 September 2004, official persons of the Skopje Internal Affairs Sector, under a Certificate of temporarily ceased objects, seized the motor vehicle of Blagoja, without any explanation and without a court warrant stating that the vehicle is temporarily seized on grounds of a finding of the Skopje I First Instance Court, Skopje. In addition, on several recent occasions, there have been seizures or attempts for seizure of objects from the factory on grounds of payment of overdue debts, without presenting an enforcement decision, i.e. a court finding.

In light of the above stated, and especially taking into consideration the allegations of Mr. Blagoja Angelovski that except for the decision to institute prior proceedings he has not received any other writs from the Skopje I First Instance Court or from the later competent Skopje II First Instance Court, regarding the further proceedings, the Helsinki Committee first addressed the Skopje Internal Affairs Sector regarding the fate of the temporary seized motor vehicle. The Sector replied that on 17 September 2004 the vehicle was taken to the court enforcement officer from the Skopje I First Instance Court based on a Court finding[17].

Furthermore, the Committee forwarded written communication to the President of the Skopje I First Instance Court and to the Skopje II First Instance Court, asking information in accordance with the Instructions on Transfer of Cases, about the veracity of the allegations by Blagoja Angelovski, then about the course and outcome of the bankruptcy procedure. Unfortunately, the First Instance Courts have submitted several replies in which for example the Skopje II First Instance Court stated that the Committee should contact the Skopje I First Instance Court, while the Skopje I First Instance Court stated on several occasions that the Committee should contact the Skopje II First Instance Court, since according to the Court, the Skopje II First Instance Court was the competent court in this case.

The suspicion regarding the establishment of the truth in this case was intensified when after the Committee's communication to the President of the Skopje I First Instance Court regarding the seized vehicle, the Committee received a reply that after the examination of the case file[18] it had been established that the person Blagoja Angelovski from Skopje was not a party to the referred to case, and there was a request that the exact number was stated for the case to which the allegations referred to. Despite the fact that the Committee again sent a written communication containing the exact data from the official records of the Skopje Internal Affairs Sector, the Skopje I First Instance Court further maintained the position that other persons appeared as parties to the case. The Committee asks: Based on what case and on what grounds the motor vehicle has been impounded and where is the case????

The Helsinki Committee addressed the Judicial Council of the Republic of Macedonia in respect of this case, referring to the "diligent" work of the courts hoping that the reasons for such actions will be established, especially hoping that the error in the case based on which the vehicle has long been impounded from Mr. Angelovski, will be corrected, a case in which according to the Skopje I First Instance Court other persons appear as parties to the case.

After such replies by the courts, when inevitably it can be concluded that the Skopje I and Skopje II First Instance Courts cannot decide or do not know where the case of the instituted bankruptcy proceedings is, all of a sudden the case appeared at the Skopje II First Instance Court so that the Court could inform in detail about the thus far course of the proceedings.

The Helsinki Committee expresses its regrets over such lack of diligence of the first instance courts, which leads to the conclusion that in the case of Blagoja Angelovski an error has been made by the courts, or the first instance courts have faced great difficulties in implementing the amendments to the Law on Courts,[19] when certain cases were simply lost or misplaced. Such conduct runs contrary to the legal obligations of courts for orderly, efficient and diligent conduct of their work[20], being more importantly a threat to the right to legal protection of citizens.

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[1] http://www.mhc.org.mk/?ItemID=6F2C84109F368E439246B7E0370D8833
[2] Official Gazette of the Republic of Macedonia No. 59/03, dated 18 September 2003, (Consolidated text)
[3] Official Gazette of the Republic of Macedonia No. 113, 20 September 2007.
[4] Law on Criminal Procedure, Article 264 „If data provided in the expert witnesses opinion substantively differ and if they lead to unclear findings, or are incomplete, or are inconsistent or contradictory to the established circumstances, and such deficiencies cannot be eliminated by hearing the expert witnesses again, the expert witness opinion will be repeated by the same or by other expert witnesses."
Article 225
(1) The expert witnesses shall be appointed from the existing list of expert witnesses by the Court based on their expertise, experience in a given area, technical equipping, renown in the profession and other circumstances of import for the presentation of an objective expert finding and opinion.
[5] www.mhc.org.mk/juni2008
[6] No. P 1433/99.
[7] No. GZ. 1841/01, dated 31 May 2001 and No. GZ. 5353/05, dated 21 December 2005.
[8] 25 July 2008 and 22 September 2008.
[9] Article 147
When a party to the proceedings proposes evidence, upon an order of the court, the same party shall be obligated to make an advance payment of the amount necessary to cover the costs incurred upon the presentation of evidence.
When both parties to the proceedings propose evidence or when the Court orders presentation of evidence, the court shall determine the amount necessary to cover the costs to be equally divided between and paid by the parties. If the court proposes presentation of evidence, the court may determine that the costs are paid by only one party. In this case, in light of all circumstances and upon its own opinion, the court shall assess the importance of the fact that the party to the proceedings has not paid the amount necessary to cover the costs.
The court shall withdraw from presentation of evidence if the amount necessary to cover the costs has not been paid within the term set by the court.
As an exception to provisions referred to in paragraph (3) of this Article, if the court ex officio orders presentation of evidence aiming to establish the facts of relevance for the application of Article 3, paragraph 3 of this Law, the court shall order the parties to the proceedings to pay the set amount in the given term.
In case neither of the parties to the proceedings has paid the set amount, the costs for the presentation of evidence shall be paid from the funds of the court, and after a final decision has been adopted in the case, the funds shall be compensated in accordance with Article 148 of this Law.
[10] Article 6 – Right to a fair trial
In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
[11] Article 10 – Civil Procedure Law
The Court shall endeavor that the procedure is conducted without delays, within reasonable time, with the least possible costs and shall prevent any abuse of rights that the parties to the proceedings have.
[12] In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
[13] The procedure before the court shall be regulated by law and shall be based on the following principles:
.....
- trial within reasonable time,
[14] www.mhc.org.mk/dekemvri2003_januari2004 and www.mhc.org.mk/mart2005
[15] No. K. 392/03 dated 21 November 2007.
[16] No. ST 709/03.
[17] Court findings[17] No. I 5263/97, dated 24 February 1998.
[18] Case[18] No. I 5263/97
[19] Article 32, paragraphs 3 and 4 of the Law on Courts , Official Gazette of the Republic of Macedonia No. 58/06, dated 11 May 2006: "(3) The Skopje I First Instance Court is a criminal law court with basic and expanded competence ... (4) The Skopje II First Instance Court is a civil law court with basic and expended competence."
[20] Article 2 of the Court's Rules of Procedure.

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

November 2008

I. PUBLIC EVENTS AND DEMOCRATIC PRINCIPLES VIOLATION

1.1. The strike of the Independent Trade Union in Education, Science and Culture

The events related to the strike organized by the Independent Trade Union in Education, Science and Culture, to say the least, was another unpleasant surprise by the current authorities.

This is primarily owed to the attempt to deny the right to strike of the workers in education, science and culture. The right to strike is most probably one of the most costly paid rights of workers. The first recorded strike dates from the times of Ramses III in the XII century B.C. Modern strikes originate from the times of the industrial revolution, as protests against the conditions for work in the then mines and industry. This right was legalized as late as the XIX and XX century. Mexico was the first country worldwide which in 1917 ensured constitutional guarantees of the right to strike. Being the strongest weapon of trade unions, this right today is an inseparable part of democracy, and no democratic authorities would even think of interfering with this right in any way. Hence, the right to strike is a constitutional category in the Republic of Macedonia[1]. The right to strike is also guaranteed under the Law on Labor Relations, which elaborates in greater detail the rights and obligations during the strike. It is quite clear that according to the provisions of the Constitution of the Republic of Macedonia, the right to strike may be limited under law only in respect of the armed forces, the police and the state administration bodies.

Therefore, the calls by Government representatives that the strike was unlawful since it was in violation of Article 38 of the Law on Primary Education and Article 25 of the Law on Secondary Education were quite inappropriate[2]. The "intrusions" of the Education Inspectorate, in the attempt to sanction the alleged non-application of the said laws by the strikers, was even less valid. The in-line Minister will be remembered for his statement: "The Constitution gives them the right to strike, but this does not mean that they should stop fulfilling their tasks"

However, what was most concerning during the last strike was the fact that the Trade Union was subject to a wide variety of threats coming from all levels in order that the strike was immediately interrupted. Mayors (affiliated with the ruling parties) threatened to replace the school principals (who were appointed on partisan policy grounds), threatening also to fine the schools with 2500 up to 3000 EURO, then school principals threatened the school staff especially those working under temporary employment contracts. Teachers who after long years of waiting finally had got the chance of working even under one school year contract survived genuine small personal tragedies. There were "spontaneous" counter-protests of parents organized, of citizens that did not approve the strike, there were visits to homes, private "advisory" recommendations to leave the strike... The pressure was increased through the instrumentalized of the media, paid government media announcements, which as it was shown were full of semi-truths.

And again the impetus to calm down and reason came from the outside upon the visit by the representatives of the International Education Trade Union, the member of which is the Independent Trade Union in Education, Science and Culture. It became more than clear that the series of negative assessments of the developments in the country would be supplemented with new ones, which would have been prompted by the continuation of the strike and the undiminishing pressures for its interruption.

And as one of life's ironies, immediately before the start of the strike, Freedom House published the Report "Freedom of Association Under Threat: The New Authoritarians' Offensive Against Civil Society" which states that "political parties, human rights organizations, women's advocates, independent trade unions, groups that investigate corruption or monitor abuse by security services, organizations that seek legal reform, groups that champion minority rights or religious freedom—those, in other words, who seek to provide ordinary people with a voice or an influence on public policy—have come under growing pressure from regimes that are determined to marginalize or eliminate all perceived sources of opposition and dissent." The Republic of Macedonia which has not been analyzed separately in this Report is ranked the last among the Central/East European countries with a score of 7 (of the maximum 12 points). Bosnia and Herzegovina, Albania, Montenegro, Serbia, Romania and Lithuania are ranked before the Republic of Macedonia. According to the analysis, Macedonia is in the same group with Georgia, Kirgizstan, Congo, Lesotho, Mozambique and Tanzania.

The Independent Trade Union in Education, Science and Culture, which withstood all pressures with dignity, accepted a compromise, now must fulfill the obligation towards itself and for the sake of all future strikes in this area to fight in order that all those that prevented the trade union members to exercise their constitutional right be appropriately punished. Therefore, the Helsinki Committee supports the Independent Trade Union in Education, Science and Culture in the endeavors that the 15 school principals most voiced in the efforts to prevent the strike are at least replaced.

1.2. Report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT)

A delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to the Republic of Macedonia from 30 June to 3 July 2008. The main objective of the visit was "to examine the steps taken by the national authorities to implement the recommendations made by the CPT after the May 2006 and October 2007 visits." The Report of this visit was published on 4 November 2008.

At the beginning of the Report it is stated that "In the light of the persistent failure by the national authorities to address certain fundamental shortcomings in the treatment and conditions of detention of persons deprived of their liberty, the President of the CPT informed the national authorities, by letter dated 19 December 2007, of the decision of the Committee to set in motion the procedure provided for in Article 10, paragraph 2, of the European Convention for the Prevention

of Torture and Inhuman or Degrading Treatment or Punishment "[3].

The parts of the Report, regarding which the Helsinki Committee published its considerations in its monthly reports and analyses, are highlighted in this Monthly Report. In respect of the law enforcement bodies, which were not the primary focus of the visit by the CPT Delegation, it is stated that "A considerable number of people interviewed in the course of the 2008 visit alleged that they had been ill-treated by law enforcement officials. The alleged ill-treatment consisted mostly of kicks, punches and blows with batons or the butts of pistols or various other objects, apparently often inflicted prior to and during questioning, either with a view to obtaining a confession or information or as a punishment. The delegation also received a credible allegation of sexual abuse of a person held overnight in a police station by a uniformed officer, after which the detained person was said to have been hosed down in his cell by two junior police officers. Certain allegations also referred to the use of excessive force at the time of arrest." In this context, in its Report the CPT concludes that "It should be noted that in many cases the allegations of ill-treatment concerned, once again, non-uniformed police officers, in particular members of the Special Mobile Police Units (more commonly known by their acronym "Alfa")"

As regards the Sector for Internal Control and Professional Standards (SICPS) at the Ministry of the Interior, the Report establishes that "the CPT is not convinced that the Sector for internal control and professional standards in MoI can be considered as an authority independent from the police" and that " when it comes to investigating allegations of ill-treatment by law enforcement officials, the SICPS cannot be considered as an independent body which is able to carry out prompt, thorough and effective investigations."

"As regards the above-mentioned "Mountain Storm" operation, the CPT received documentation in February 2008 about the alleged ill-treatment of persons detained in the course of that operation. The CPT Delegation had an opportunity to interview relevant persons and to be informed about the outcome of the investigation into the allegations of ill-treatment carried out by the SICPS. The CPT wishes to be provided with a copy of the investigative acts and of the formal conclusion of the investigation. The following is stated in respect of the police action in the village of Brodec: "Nevertheless, given the necessity for such investigations to be independent and to be seen to be independent, the CPT recommends that a fully independent investigation be carried out into the allegations of ill-treatment of persons detained in the course of Operation Mountain Storm."

In its concluding part the Report states the following: "In conclusion, the fact remains that, whenever allegations of ill-treatment are not investigated - or are not seen to be investigated, in an effective manner, a message of impunity will be propagated. The CPT recommends that more strenuous efforts be taken to stamp out ill-treatment, including through ensuring that all allegations of ill-treatment are properly investigated by a truly independent body."

In the conclusions it is stressed that "Ten years after it first visited the Republic of Macedonia., the quality of the CPT's relationship with the national authorities remains, in many respects, profoundly unsatisfactory..... The stark conclusion is that the national authorities do not appear to take seriously their fundamental obligation to provide protection for persons deprived of their liberty" and that "The responses received by the Committee are, on occasion, dismissive. Attempts to gloss over the very real deficiencies identified,....., and to provide unreliable information (when information is forthcoming in the first place) are not the way forward if preventing ill-treatment is the goal." At the end of the Report the CPT states the following: "The CPT is conscious of the many challenges facing the country and has patiently sought to promote a constructive dialogue. Such an approach has not been replicated by the national authorities, and the Committee has been left with a clear impression of indifference. A country committed to the rule of law and to the protection of human rights, as is the case of the Republic of Macedonia., cannot forsake its international obligations to cooperate with treaty bodies such as the CPT.

The CPT desires to have honest and constructive relations with the national authorities based upon mutual trust and understanding. This requires those authorities to improve consistently the quality of their dialogue with the Committee, through implementing its recommendations. Of course, it is also essential that the CPT receives complete, accurate and reliable responses to its visit reports. The CPT trusts that this will be the case when the response to the current visit report is submitted."

1.3. "Mixing the Pots" or Threats against Judges and Prosecutors

At the meeting with Presidents of courts and with the judges of the Supreme Court, held in mid November, elaborating the issue of diligent work of courts, the Minister of Justice gave the following statement: "Part of the responsibility will be born by Presidents of courts owing to bad organization, and judges that will not resolve the back-logged cases until June next year and who will continue working in this manner will certainly be held accountable and responsible before the Judicial Council . Whether they will be fined or dismissed it remains to the Council to decide."

Regretfully, this has not been the first "lapse" by the Minister of Justice, who although being only an ex officio member, often makes promises that the Judicial Council will discuss a certain issue, or even worse makes announcements that the Judicial Council will sanction judges with whose work he is not satisfied.

About ten days before this statement by Mr. Mihajlo Manevski, the Government of the Republic of Macedonia had for days broadcast via certain TV stations an announcement in which (1) it reminded citizens that in case of long delays of the proceedings they could file a complaint to the Supreme Court and (2) if they considered that certain judges and prosecutors had damaged them they had the right to file criminal charges against them.

Recently the press has published claims that the Government is preparing black lists of judges- allegedly final judgments for sexual abuses of children have been considered at a Government session, and the pronounced punishments under the judgments have been assessed as inappropriate, and the Government has recommended to the Judicial Council to undertake relevant measures to call upon responsibility judges that have pronounced such lenient punishments.

The establishment of the Judicial Council and the Council of Prosecutors, bodies which are to be independent and autonomous, is an important part of the justice system reforms which are (or were) to prevent political influence on the justice system.

Of course the independence of the judiciary and of the Prosecutors' Offices could not be an alibi for irresponsible and bad work of judges and prosecutors. However, there are bodies and procedures within the justice system relevant in this respect. The Law on Courts contains detailed provisions on the disciplinary responsibility of judges.[4] There is a similar procedure for the Prosecutors[5]. The dismissal of judges and prosecutors (except for the Public Prosecutor of the Republic of Macedonia who is dismissed by the Assembly of the Republic of Macedonia) is done by the Judicial Council and by the Council of Prosecutors, respectively. These provisions do not envisage that the Minister of Justice can discipline or punish judges or prosecutors[6].

Despite the fact that there is no doubt that the genuine wish in this context is to help citizens (through more efficient work of courts and by informing them about their rights in case of errors by courts and public prosecutors damaging the citizens and

preventing a scourge such as pedophilia), yet, the Minister and the Government have "mixed the pots", forgetting that the rule of law, as the basis of each modern democracy, consistently respects the division of power, and the ensuing independence of the judiciary and of prosecutors. States worldwide which aspire to call themselves democratic would categorize the above referred to instances as a pressure of the worst kind on the justice system by the executive authorities, while the expert circles would not hold back assessments that this is an attack against judges and prosecutors and their independence and autonomy.

In fragile democracies such as the one in the Republic of Macedonia, such messages by the executive authorities accompanied with bombastic media presentation, of course create the climate of fear and uncertainty among judges and prosecutors.

Taking into consideration that the Minister of Justice has rich professional career in the justice system, it is surprising that he makes these verbal escapades with such easiness, not being clear whether he is doing this as a member of the Government Cabinet or as a member of the Judicial Council. In both cases such statements are ruinously arrogant: if the statement has been made in his capacity of a Government Cabinet member, then the principle of division of power has been completely neglected, and if the statement has been given in the capacity of a member of the Judicial Council, it should not be forgotten that the Minister of Justice is only an ex officio member and such position is far from enabling the Minister to represent the Council or present –statements-threats on behalf of the Council.

1.4. New Prosecutor's Office for Organized Crime – Old Dilemmas

When, by the end of July, in line with his then competences, the State Public Prosecutor, Mr. Ljupco Svrgovski, adopted a decision reassigning to new jobs three Deputy Prosecutors of the Department for Prosecution of Perpetrators of Organized Crime and Corruption, he denied the public speculations that he undertook this measure because of the dissatisfaction with the results achieved, especially by his two colleagues Mrs. Gordana Gjeskoska and Mrs. Vilma Ruskoska. These Deputy Prosecutors represented the Public Prosecutor's Office in a series of high profile cases (the cases of the mayors of Strumica and Aerodrom – Mr. Zoran Zaev and Mr. Kiril Todorovski, the Jug case, the Zmej case, the Ohis case, the Bacilo case, the Snakes eye case, the Taiwan credits case….).

The media have broadcast the information that unnamed diplomats from Brussels expressed their dissatisfaction with the change (their expression was quoted -degradation) of the two prosecutors, before the start of the work of the Council of Public Prosecutors, which had as its first task election of prosecutors for the Department for Organized Crime and its reorganization into a separate Public Prosecutor's Office. On that occasion, Mr. Svrgovski, Public Prosecutor of the Republic of Macedonia, in his statement given to Dnevik daily newspaper stated that the reason for the change of Gjeskoska and Ruskoska were "their unprofessional conduct in the performance of their tasks" avoiding to give any more details.

The new Law on Public Prosecutors, which entered into force at the beginning of this year, transfers the competence for election and dismissal of all public prosecutors in the state to the newly established 11 member body, which encompasses elected prosecutors, representatives of the Assembly, as well as the State Public Prosecutor and the Minister of Justice on ex officio basis. Despite the initial rejection, both Gjeskoska and Ruskoska applied at the competition.

The two former Public Prosecutors at the Department for Organized Crime were elected as Public Prosecutors at the session of the Public Prosecutors' Council held on 25 November, despite the objections of the State Public Prosecutor, Mr. Ljupco Svrgovski, under whose decision they had been previously dismissed. The election of the last three prosecutors completes the 10 member composition of the new Prosecutor's Office for prosecution of perpetrators of organized crime and corruption. In his statement for the Utrinski Vesnik daily newspaper, the State Public Prosecutor Svrgovski did not hide his disappointment with the decision of his colleagues in the Council[7]. He confirmed that he voted against the election of Ruskoska and Gjeskoska. The Minister of Justice, Mr. Mihajlo Manevski and the Chairperson of the Council, Elena Gesovska publicly stood behind the two Public Prosecutors, which has proven the speculations that the dismissed Deputy Public Prosecutors would not be left in the lurch by their mentors.

One does not need to be second-sighted to see the thus far practice of all "attractive" court cases (those for which there could be suspicions raised in terms of influence by daily politics on the justice system) entering the courts through the former organized crime department, now the separate Public Prosecutor's Office, and then consistently, according to the indictment, being processed by judges who adjudicate on grounds of organized crime. After all, cases processed by the old-new public prosecutors for organized crime are per se the best examples of such controversies.

The dilemma remains whether and how the Public Prosecutor of the Republic of Macedonia, Mr. Ljupco Svrgovski, will defend the principle of subordination and hierarchy (just to remind that this was one of the major dilemmas owing to which the draft Law was delayed long in the Assembly procedures), in other words how he would deal with the tendency of the new Public Prosecutor's Office fleeing (which will have competence on the entire territory of the country). The changed status of the Department for Organized Crime, established under the new legislative framework on the Public Prosecutor's Office at the beginning of this year, is to ensure these Public Prosecutors greater independence and efficiency in their work.

1.5. Lack of Cytostatics

Health care, i.e. the duty of the state to ensure each citizen the right to health care is a constitutional category in the Republic of Macedonia. This right has been further elaborated in the Law on Health Care, under which citizens are insured under a compulsory health insurance which provides them with health care protection that inter alia should provide for availability of medicines.[8]

Even more, the same Law explicitly sets forth the obligation of the state to provide cytostatics for all citizens of the Republic of Macedonia, qualifying this as one of the general interests of the society[9], and even more there are misdemeanor proceedings regulating this procedure[10].

Regretfully, in the last period there has been the prevailing impression that the Republic of Macedonia has neglected its obligations to provide medicines. Thus, patients at the Oncology and Radiology Clinic cannot get the required cytostatics, especially those for treatment of breast cancer. For a longer period, the Oncology Clinic, as the representatives of the Helsinki Committee could witness, lacks cytostatics, which patients get on monthly basis for their daily and long term therapy.

Cytostatics for treatment of breast cancer are late for more than two weeks, during which period patients are left without therapy, and when they are procured, they are procured in small qualities, while the medicine is distributed on first come first served basis.

At the surprise of the Helsinki Committee, the allegations for lack of cytostatics circulating in the public were categorically rejected by the responsible persons at the Oncology and Radiology Clinic, claiming that they had regular supply of cytostatics, considering such allegations only as disinformation. After this there was a reaction by the Minister of Health and his assurances that the situation would be examined and that the problem

would be overcome, have produced no results, since according to the findings of the Helsinki Committee the cytostatics for treatment of breast cancer are still late.

The Helsinki Committee reminds the Oncology and Radiology Clinic of the duty to ensure conditions for patients necessary for the exercise of their rights, following the principle of accessibility of health care services[11] for all patients on equal basis and calls upon the Ministry of Health to react in accordance with its legally defined competences and obligations in order to resolve this problem which threatens the health of an especially vulnerable group of patients.

II. POLICE AND COURT CASES

2.1. The Case of Arben Lala

Arben Lala, temporarily residing in Tetovo, contacted the Helsinki Committee for Human Rights, regarding the procedure following the application for admission into the citizenship of the Republic of Macedonia. Arben Lala is a national of the Republic of Albania, living in the Republic of Macedonia since 2003, while his wife bought an apartment in 2005 which is her property, as it can be confirmed by the Decision No. UP 1203/DN, No. 4633 issued by the State Geodetic Works Institute, Department /Sector for Measurement and Cadastre- Tetovo.

In September 2006, Mr. Lala filed an application for the admission into the citizenship of the Republic of Macedonia in accordance with Article 9 of the Law on Citizenship of the Republic of Macedonia. In 2007, he was informed [12] on several occasions that the procedure for granting citizenship was still pending. At the same time Mr. Lala was asked "to show understanding about the duration of the procedure since it is a matter of a specific procedure which involves a series of official activities regarding which the Ministry of the Interior has still not received the response."

On 26 March 2008, i.e. after 1 year and 6 months, the Ministry of the Interior adopted a Decision No 17.9.1-52906/1-2006, rejecting the application for admission into the citizenship of the Republic of Macedonia explaining that his admission to the citizenship would threaten the security and defense of the Republic of Macedonia, without offering details on the reasons on the basis of which the Ministry of the Interior adopted the Decision. Processing the appeal filed within the envisaged period by the concerned person, the Government of the Republic of Macedonia –Commission for second instance administrative procedure in the area of internal affairs, judiciary, state administration, local self-government and affairs of religious character adopted a Decision No. UP II 35/11-169/1-2008, dated 12 May 2008[13] accepting the appeal. Hence, the first instance decision was annulled and first instance reexamination of the case was ordered. After six months Mr. Lala again received a document[14] containing the same the same explanation as the previous ones given in 2007.

After the intervention by the Helsinki Committee, the Ministry of the Interior, Skopje Sector for Administrate Supervisory Affairs, informed about the that far course of the procedure, which is an undisputable fact in accordance with the submitted document. At the end of the reply it is stated that "There is a procedure under way for establishing the fulfillment of conditions under Article 9, referring to Article 7, paragraph 1, item 8 of the Law on Citizenship of the Republic of Macedonia."

The Helsinki Committee is astonished and therefore puts forth the question: How is it possible that the Ministry of the Interior adopted a decision rejecting the citizenship application without previously undertaking the procedure to establish whether the conditions under Article 9 referring to Article 7 paragraph 1, item 8 of the Law on Citizenship are fulfilled, and Mr. Lala waited for the decision a year and a half.

Furthermore, Article 7, paragraph 5 of the Law was not respected and applied in the course of the procedure. This provision envisages that "The decision rejecting the application for citizenship of the Republic of Macedonia on grounds of naturalization in pursuance with paragraph 1, item 8 of this Article[15] of the relevant body shall explain the reasons upon which the decision has been adopted, taking due account of the protection of the public interest.

In the specific case, the Ministry of the Interior adopted a decision without applying the above referred to Article, adopting only a decision rejecting the application by Mr. Lala, without explaining the reasons for such a decision, to which the Ministry is obliged under the above stated Article.

The Helsinki Committee expects that the error made and the disrespect for the Law on Citizenship of the Republic of Macedonia will be remedied by the Ministry of the Interior upon the reexamination of the application, expressing at the same time the hope that the Ministry of the Interior would not require another 2 whole years to implement the procedure for the establishment of conditions under Article 9, referring to Article 7, paragraph 1, item 8 of the Law on Citizenship of the Republic of Macedonia. The Helsinki Committee has again addressed the Ministry in respect of this case, and is expecting an answer.

2.2. Full-Aged Persons Serving Prison Sentence in a Juvenile Prison

On 6 November 2008, a Delegation of the Helsinki Committee visited the Ohrid Juvenile Prison. During the visit the staff informed that upon an order by the Ministry of Justice, 3 persons who were not sentenced as minors were serving their sentence at the Ohrid Juvenile Prison.

Although the Committee has not received information about the type of crime for which these persons were convicted, this, after all, is of no relevance. In accordance with the international regulation, and the national legislation, a full aged person that has been convicted while of full age may not in any case serve the sentence in a juvenile prison.

The Rules of the United Nations on protection of juveniles deprived of freedom envisage that the system of juvenile justice is to support the rights and security and is to promote the physical and mental well-being of juveniles.

The Law on Enforcement of Sanctions of the Republic of Macedonia (Article 24 an, 40 and 259[16]) envisage that minors sentenced to juvenile imprisonment shall serve their sentences separately from persons of legal age.

The decision of the Ministry of Justice, dated 8 August 2008, assigning the convicted persons and juveniles determines that only younger persons of legal age and minor males convicted under a final judgment to juvenile imprisonment shall be assigned to serve the sentence in the Ohrid Prison.

Several days after the visit to the prison, the Prison Director informed the Committee that the persons had been transferred to the Struga Prison. Yet there remains the fact that on the day of the visit it was established that full-aged perpetrators of crime serve their sentence in a juvenile prison and if had not been for the Committee reaction, it is a question whether the concerned persons would have been transferred or would have remained in the Ohrid Prison.

The Helsinki Committee contacted the Ministry of Justice requesting information about the reasons and legal ground for assigning the three full aged people to the Juvenile Prison in Ohrid.

2.3. The Case of Selim Jusufi

In October the Committee could witness another case of violence perpetrated against a citizen, who regretfully claims was attacked by those who should protect the public peace and order- police officers.

Namely, as the public has already

been informed, the person Selim Jusufi from Ljuboten complains of police brutality perpetrated by officers of the special police unit -ALFA who according to his allegations brutally beat him, without any reason, inflicting injuries on his entire body.

According to the information submitted to the Helsinki Committee, the event took place on 5 October 2008, about 17.40 hrs. at the Palma Pastry Shop in the settlement of Cair, where the person was physically attacked by an unknown person and three relatives of that person, who according to the allegations of the attacked person were officers of the Alfa Special Police Unit (the identity of two of those persons is known to the attacked person).

According to his allegations, he was attacked for more than 10 minuets with chairs, kicks and pistol butts, being also subject to offenses and threats by persons who he claims are officers of the Alfa special police unit. After the attack and the suffered bodily injuries, he was left in the Pastry Shop after which with the help of the passers-by he was transferred to the City Hospital for treatment.

After his bodily injuries had been treated, he was taken to the Bit Pazar Police Station where he informed the police officers about the case and later the same day he was interviewed also by officers of the Sector for Internal Control of the Ministry of the Interior. According to the attacked person, none of the Alfa officers identified themselves, then there were no visible insignia that they were police officers and he was not aware of the reason for the incident.

Considering that according to the facts of the case, there were serious indications that the officers of the Ministry of the Interior had abused their competences in the performance of their duties[17], the Helsinki Committee contacted the Sector for Internal Control and Professional Standards at the Ministry of the Interior, requesting information about activities undertaken in respect of the case.

The Sector forwarded a reply in which it confirmed the previously described facts of the case, but claiming that the Alfa police officers came to the place of the event after the incident and with their guns pointed they went into the Pastry Shop where the injured person was and without getting information about the event itself, left the facility in pursuit of the perpetrators.

After the additional interviews at the Ministry of the Interior with some of the persons present during the incident, it has been established in an official note that they did not want to explain whether at the time of the event there were police officers present. However, in the reply, the Sector for Internal Control claims that the physical attack was perpetrated by persons who are not officers of the ALFA special police unit, stating later in the text of the reply that " after the conducted interviews it cannot be established with certainty whether police officers met the perpetrators of the crime."

The Sector furthermore established the family relations between the perpetrator of the attack and one of the police officers, but it could not be established whether this has influenced the professional performance of official duties by the police officer.

However, considering that the police officers showed little engagement in the performance of the tasks, i.e. did not provide first aid to the injured person and did not ensure sufficient information about the perpetrator of the attack, the Sector informs that disciplinary measures have been instituted against the officers.

As it can be noticed, the reply of the Sector for Internal Control and Professional Standards at the Ministry of the Interior abounds in confusions, contradictoriness and lack of facts that can prove that the Alfa police officers did not perpetrate the offense; however, the same persons are categorically amnestied from responsibility for the offense. It is not clear whether this is owed to the inefficient investigation or other reasons.

In any case the Helsinki Committee would like to once again emphasize the obligations of the Ministry of the Interior to conduct thorough and efficient investigations in cases of indications that a crime has been perpetrated, especially when there is possible involvement of police officers[18], because if not this would be just another case in the series of violations of Article 3 (torture) of the European Convention for Human Rights in the Republic of Macedonia.

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[1] Article 38 of the Constitution of the Republic of Macedonia
The right to strike is guaranteed.
The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.
[2] The Articles of both Laws contain an identical paragraph according to which "the educational work must not be interrupted during the academic year, except in emergency situations (natural disasters, epidemics, etc.) as decided by the founder, upon a prior consent by the Ministry."
[3] Article 10 paragraph 2 reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter"
It is underlined that such a statement the tone of which is undoubtedly utterly negative for the country it applies to, according to information of the Committee has been given 6 times.
[4] Entities that may institute disciplinary proceedings against judges are: (1) a member of the Judicial Council; (2) the President of the Court; (3) the President of the higher instance court, or (4) the general session of the Supreme Court. The procedure shall be urgent and confidential and shall be pursued by specially established five member disciplinary panel composed of members of the Judicial Council.
[5] The Council of Prosecutors shall determine the termination of the office of Public Prosecutor and shall decide in the second instance in the procedure for establishment of disciplinary responsibility of Public Prosecutors. The first instance establishment of responsibility is within the competences of a five member panel established by the Public Prosecutor.
[6] The Minister has one vote in the said Councils, and when it is a matter of a request for change of the Public Prosecutor of the Republic of Macedonia upon the initiative of the Government, the opinion of the Council of Prosecutors is obligatory, while neither the Public Prosecutor of the Republic of Macedonia nor the Minister of Justice take part in the session deciding on this matter.
[7] "I cannot see what could have changed from this summer to this day that would make me change my decision. I claimed then and I claim today that the two colleagues do not possess the required expert capacity to work at the specialized Public Prosecutor's Office against Organized Crime", stated Svrgovski for the Utrinski daily newspaper. On that occasion too he did not want to go into assessments of the expert level of the two Prosecutors and whether it was true that the motive for their change was their alleged too close links with the Ministry of the Interior.
[8] Article 11 , paragraph 8 of the Law on Health Care
Primary Health Care
Under the compulsory health insurance, insured persons, based on the principles of mutuality an solidarity, are provided the right to primary health care, which encompasses the following:
8) Medicines, auxiliary agents serving for administration of medicines and medical material required for treatment according to the list of medicines established by the Ministry of Health…
[9] Article 33 , paragraph 9 of the Law on Health Care
Guaranteed rights and established needs and interests of the society
All citizens of the Republic of Macedonia shall be ensured the exercise of their rights guaranteed under this Law, as well as the established needs and interest of the society as follows:
9) provision of cytostatics, insulin and growth hormone and …
[10] Article 191 , paragraph 2 of the Law on Health Care
A fine of four to 15 average salaries paid in the last month in the country (hereinafter salaries) shall be applied against the health care organization if:
... 2) it does not ensure conditions for continued urgent medical assistance or if it does not provide medicines (Article 46, paragraph 2);
[11] Article 3 of the Law on Protection of Patients' Rights, Official Gazette of the Republic of Macedonia No. 82/08, dated 8 July 2008.
Principles of Protection of Patients' Rights
... 3) The principle of accessibility shall be based on:
1. Health care services which are continually available and accessible to all patients on equal basis and without any discrimination…
[12] No. 17.9.1-52906/1-2006 dated 23 January 2007; No. 17.9.1-52906/1-2006 dated 14 March 2007; No. 17.9.1-52906/1-2006 dated 16 August 2007 and No. 17.9.1-52906/1-2006 dated 20 November 2007
[13] The second instance decision was submitted to Mr. Lala on 1 September 2008.
[14] No. 17.9.1-52906/1-2006 dated 25 September 2008 – Mr. Lala is asked for understanding about the duration of the procedure since it was a matter of a specific procedure which involves a series of official activities regarding which the Ministry of the Interior has not received an answer, informing him as well that in the decision making process the application would be attached priority.
[15] Consolidated text of the Law on Citizenship of the Republic of Macedonia, Official Gazette of the Republic of Macedonia No. 45/04, dated 7 July 2004.
[16] Article 24
Convicted minors shall serve their sentence of juvenile imprisonment in a special institution for minors.
Article 40
(4) Minors sentenced to juvenile imprisonment shall serve their sentences separately from persons of legal age sentenced to imprisonment until they reach the age of 23.
Article 259
(1) Minors shall serve a sentence of juvenile imprisonment in special institutions for the enforcement of juvenile imprisonment ("juvenile institutions") and shall be kept separate from persons of legal age until age 23.
[17] Article 32, paragraph 2 of the Law on the Police
In the performance of police competences, the police officer shall be obliged to act in humane manner, respecting the dignity and honor of persons and the basic human rights and freedoms.'
[18] Article 37, Code of Police Ethics, 4 June 2007
"The police cannot cause, encourage or tolerate any type of torture, inhuman or humiliating treatment or punishment", while Article 56 of the same Code envisages that "Members of the police are obliged to respect the personal dignity and the individual needs of the person who is called, detained or deprived of freedom when there is a reasonable doubts for perpetrating criminal act."

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

December 2008
January 2009

I. PUBLIC EVENTS AND VIOLATION OF DEMOCRATIC PRINCIPLES

1.1. Prohibition of abortion or a way to theocracy?

Is Macedonia faced with a trend where instead of respect and development of human rights and democratisation it starts to enter a period of theocracy[1]?

Namely, for the second time we see an anti-abortion campaign, almost parallel to the campaign of the Government of the Republic of Macedonia for a third child. Astonishing, but also insulting, is the fact that those who organize, implement and support this campaign, even though allegedly the organizer is still not known, seem to have forgotten that birth-rate is not a state or anyone else's tool that could be changed over night, to be maintained or to be increased on the account of human rights, and especially the right to a choice and dignity for the woman.

Immediately afterwards most of the NGOs expressed their disapproval, with the exception of the NGO "Revita", which persistently fights for prohibition of abortion using false data and failing to check the state statistical data that are available to all the citizens at the official web site of the competent institutions.

Taking into consideration the Law on Pregnancy Termination, the Rulebook on the work of the physician, the first and second-instance commissions for approving pregnancy termination, the numerous national and international ratified conventions on human rights protection, especially the rights of the women, the Helsinki Committee for Human Rights supports the reactions of the Coalition for the Promotion and Protection of the Sexual and Health Rights of Marginalized Communities, the special reaction by the Association for Health Education and Research, as well of all the others aimed against the abortion prohibition campaign.

Namely, the pregnancy termination is comprehensively regulated in our country with a special law where the very Article 1 from the Law on Pregnancy Termination expressively stipulates that: "Termination of pregnancy is a special medical intervention for which the woman decides freely. The right to pregnancy termination can be limited only due to health concerns concerning the pregnant woman." All the reasons for limiting the pregnancy termination due to health concerns concerning the pregnant woman are strictly regulated in the articles that follow in the above mentioned law. On the other hand, the way and the conditions in which the physician and the first and second instance commissions need to work in these cases are more specifically and strictly regulated in the Rulebook adopted for this purpose which among other things regulates that: "The physician in a health care facility performs pregnancy termination after confirming that the woman is not more that 10 weeks pregnant from the day of conception and if s/he has no doubts that the termination could have negative consequences on the health of the woman".

With such an existing and precise regulation during which adoption the legislator took into consideration the health of the woman, her right to a free choice and dignity, all the campaigns for its amending aimed at complete prohibition of abortion have no grounds, even more since the ratified international documents that bind the Republic of Macedonia say the opposite. One should only mention the Universal Declaration of Human Rights and freedoms, the Convention on Elimination of All Forms of Discriminations against Women, the European Social Charter, and the International Pact of Economic, Social and Cultural Rights and especially the UN CONFERENCE Recommendations of the Expert Group Meeting on Population Growth and Demographic Structure stating: "In recognizing the rights of couples and individuals to choose the number and spacing of their children, the Expert Group urges Governments and the international community to give high priority to increasing the quantity and quality of comprehensive reproductive health-care". It is important to mention also the UN CONFERENCE Recommendations of the Expert Group Meeting on Population and Woman where in the Recommendation No.8 it is stated that: "Women who wish to terminate their pregnancies should have ready access to reliable information, sympathetic counselling and safe abortion services".

The teenagers admit that they do not have anybody to openly talk to on issues related to sexual life and reproduction health, and the parents are in most of the cases not ready to accept that the children are sexually active, so they avoid those type of talks. Hence, it would be better for the state to dedicate more time to finding new alternative ways for reducing the unwanted pregnancies, especially by stimulating young married couples to plan their families, finding ways to increase the awareness among teenagers, offering educational programmes on sexual health and ways of contraception in stead of working on measures for forceful increase of the birth-rate by violating the fundamental rights of the woman.

Another astonishing thing is the fact that only few months after the adoption of the Strategic Assessment of the Policy, Quality, and Access to Contraception and Abortion in the Republic of Macedonia, a document prepared by the Ministry of Health and the Republic's Health Protection Institute, steps are made which are completely opposite to the principle goals and objective envisaged in the document. According to the official data from the State Statistical Office in 2006 the birth-rate in Macedonia was 11.1 per 1000 inhabitants and the mortality rate was 9.1 per 1000 inhabitants, which shows an annual population growth of 2.0 per 1000 inhabitants. They also show that in Macedonia in the past period the number of registered abortions is in constant decline, thus in 1991 the number of abortions was 665.1 per 1000 live-born babies compared to 2006 when this number was reduced to 272.9 per 1000 live-born babies. Other encouraging data is the fact that Macedonia marks a significant fall in infant mortality rate, as well as fall in the maternal mortality rate.

Even if it is not so, the Government of the Republic of Macedonia should always respect the human rights, especially the right to a free choice, and in compliance with the Strategic Policy in cooperation with the Ministry of Health to continuously work on the plan for identifying the state of affairs, the problems and finding proper solutions by engaging all the relevant institutions in the country that would improve the sexual and reproductive health. To achieve the principle objectives through coordination as the main reason for the adoption of the Strategic Policy and namely we would only like to remind them that those are: how to reduce the need for abortion, and not to prohibited it; how to improve the access and availability of contraception; how to improve the quality of the abortion services and to protect the right of the women to reproductive health, and not only to introduce measures that will only increase the illegal abortion services endangering the health of women.

On the other hand, it is true that every child has a right to life, but the right to dignity and happy life, fulfilled with love and family warmth and not a life with a filling of rejection and being unwanted. Especially since the Republic of Macedonia has failed to create an adequate system for looking after the children with no parental care and children rejected by their families which number, one can predict, that will increase in a situation when the abortion is prohibited.

The Helsinki Committee for Human Rights urges the competent state bodies and institutions to make efforts for consistent implementation of the objectives envisaged in the recently adopted Strategic Policy and to redirect its activities mostly towards the promotion and improvement of the reproduction health among women, with a special emphasis on the adolescent population and the women in the rural areas, by health– educational activities and advices for protection from unwanted pregnancy and safe sexual behaviour.

1.2. Allocation of funds from the Budget of the Republic of Macedonia to citizens associations and foundations

On 25 December 2008 the Official Gazette of the Republic of Macedonia published information that the Government of the Republic of Macedonia had a meeting on 2 December 2008 at which they adopted a decision for allocating funds from the Budget of Macedonia to citizens associations and foundations. The competition was published at the end of February 2008 with a deadline for submitting the applications by 7 March 2008.

Even though the Government published a strategy for cooperation with the NGO sector as well as an Action Plan for 2007-2011; also in order to ensure transparency and to establish the fundamental organisational criteria for efficient monitoring of the financial support for the citizens associations and foundations there is a Code of Good Practice in the field of the financial support of the citizens associations and foundations; and one of the recommendations of the EU Report on the progress of Macedonia is enhancement of the cooperation with the NGO sector and increasing the transparency in allocating funds … just like before, the funds were again distributed to 83 organisations but not in a transparent manner and with no clear allocation criteria.

One of the organisational criteria published in the open call stated: "To be involved in activities and projects of public interest". It is questionable how many of the organisations that got funds have experience with projects of public interest, and how many with local development, especially since with the decentralisation the local associations got an opportunity to apply for funds from the local self-governments. In this context, at least according to the titles of the projects, some of the projects definitely are in the domain of other ministries (Mathematical Olympics, cultural and sporting events, etc.)

According to the Code, in the open call there was no methodology on evaluating the draft projects so it seems that was the reason why the organisations that were refused did not get even an explanation what was the reason for being refused so that in the future they could improve the quality of their applications.

The citizens of Macedonia have the right to know how their money is spent. So far the Government has not published either financial or narrative reports on the projects they spent money on in the previous years. This year, again the decision and the information on the web site state only the name of the organisation, the projects titles and the amount of allocated funds. As citizens of Macedonia we have a right to know if we have some kind of problem and if we want to get involved in some of the activities that the Government supports who we should contact.

In this sense we asked for answers from the General Secretariat of the Government and we got a letter in which the Secretary General practically gives no answer to any of the essential questions.

With no further analysis once again we will repeat the position of the Committee which is the same as last year:

The NGO exist to help the citizens in fulfilling their needs that the state cannot fulfil. In the Republic of Macedonia unfortunately there is still no mechanism for the NGO sector to get support based on objective criteria that will ensure evaluation of the activities of the NGOs without any political influence by those in power. This is especially necessary in a time when the foreign supporters of the NGO sector are slowly but definitely withdrawing their support for the Macedonian citizens associations and foundations or have exit strategy for the coming years. The Government of the Republic of Macedonia which publishes a strategy for cooperation with the NGO sector in a parading manner, as well as the 2007-2011 Action Plan by establishing these mechanisms and in no other way can assist the NGOs to find their place and to achieve their objectives in our society. The Government should respect the documents it adopts as an example of the rule of law.

1.3. The Venice Commission confirmed the position of the Helsinki Committee on the anti-discrimination legislation in Macedonia!

Even though the Helsinki Committee in the past five years has been pointing out the need of urgent adoption of a special ant-discrimination law which would be clear and unambiguous and in compliance with the international legislation and the needs of the citizens of Macedonia; even though the Helsinki Committee in 2005 drafted and submitted such a draft law to the Parliament; even though the Helsinki Committee kept alarming the Macedonia public about the need of normative shaping of this sphere as well as about the presence of legal gap and inability for the Macedonian citizens to be protected… the Macedonian authorities have remained deaf to this issue and have been looking for ways of postponing this process.

In a letter dated on 16 June 2008, Mr. Meskov in the capacity of a Minister of Labour and Social Policy asked for an expertise from the Venice Commission about the anti-discrimination draft law. Consequently representatives from the Venice Commission visited Macedonia on 24-26 November and carried out a fact-finding mission in the field of the anti-discrimination legislation. Furthermore, they had meetings with representatives from the Government, the civil sector and with some experts in this field. The remarks and information collected during this mission were incorporated in a report which was presented at the 77th Plenary Session of the Venice Commission (Venice, 12-13 December) at which an "opinion" on the anti-corruption draft law was adopted incorporating the conclusions about Macedonia. In its "Opinion" the Venice Commission welcomes and encourages the intention of the Government to draft a general anti-discrimination law and it believes it is an important step in fighting discrimination and improving the legal protection against discrimination in Macedonia. However, it also believes that the draft law does not incorporate the international standards and the national needs for effective protection from discrimination. The Venice Commission recommends for

the Macedonian Government to modify the current draft law before its adoption by the Parliament, and in doing so to take into consideration the remarks by the Venice Commission as well as to actively involve the civil sector in redefining the draft law. Furthermore, one of the many recommendations is for the draft law to be clearer and more precise.

The Helsinki Committee sincerely hopes that the Macedonian citizens will get the Law they deserve and that the Macedonian government will make efforts to direct its activities for the adoption of the anti-discrimination law in compliance with the recommendations by the Venice Commission.

1.4. If the dawn heralds the day…

At first sight three unrelated events from the period covered with this report of the Committee only strengthen the impression that maybe – when the media independence, the freedom of the NGOs to act, the reforms in the field of the criminal law and the MOI reforms are being finalised – the situation continues to deteriorate. The details from the events are sufficiently evident and clear that they do not need any additional explanation or comment. We mention them only to ease our conscience – we should worn where they might lead.

Messages from Brussels – Ambassador Erwan Fuere urged the Macedonian Government to stop stigmatising the media and marginalising the NGO sector in the country because both are necessary for a healthy democratic society. This request was uttered from the speaker's platform at the European Parliament at the meeting of the Committee on Foreign Affairs at which they were supposed to vote for the Report on Macedonia. He said that the Government needs to make more efforts to involve the NGO sector. The Government should listen to criticisms, and not marginalise them, according to Fuere, in front of the EU MPs, presenting the crucial challenges for Macedonia in the coming year, mostly related to the next elections. According to him enormous efforts need to be made by judiciary in order to sanction the perpetrators from the June elections, before the next elections sending a message that this kind of behaviour is inacceptable. He also pointed out as crucial the fulfilling of the OSCE recommendations concerning the elections, as well as the competences and the resources of the Broadcasting Council for monitoring the media objectivity.

Professor Kalajdziev removed from a seminar – At the end of January, as the newspaper Dnevnik reported "The Head of the Justice Department of the US Embassy in Skopje, Cynthia Lee forced Professor Gordan Kalajdziev from the Law Faculty to leave the training seminar for the Macedonian judges and prosecutors with a justification that with his presence he was imposing pressure on the representatives of the third pillar of power. The US Embassy Security threw Kalajdziev out of the hotel where the seminar was held, last Thursday".

Dr. Kalajdziev apart from being a Professor at the Law Faculty at the state University in Skopje, he also heads the group at the Ministry of Justice working on the amendments to the Law on Criminal Procedure, which was also the topic of the seminar and he is one of its authors, and as a representative of the Penal Law Association and of the Ministry he had a duty to monitor the project and the discussion on the law, while the associations of judges and the international organisations, such as OPDAT, had a duty to ensure that.

As far as we know this is the first case made public where it is evident that even the foreign facilitators of our reforms have their own interests, as well as efficient ways of fulfilling them.

The Directorate for Security and Counterintelligence will control itself – The Media reported and the Interior Ministry did not deny it that amendments are being drafted for the Law on Internal Affairs according to which "the Directorate for Security and Counterintelligence will continue to function with no control as in the developed democratic states". Truth of the matter is that the same sources also reported that it is possible this to be done by the competent parliamentary committee and the Ombudsman but with no possibility for any kind of investigation.

The Directorate for Security and Counterintelligence has already got broader competences for using the special investigative measures and significantly increased budget both last and this year.

1.5. Ignoring of legal obligations and duties by the Public Prosecutor's Office and First Instance Court Skopje 1- Skopje)

Even though the report from the last visit between 30 June -3 July by the Delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommends – "that a fully independent investigation be carried out into the allegations of ill-treatment of persons detained in the course of Operation Mountain Storm", there have not been any results.

There is no doubt, and the entire Macedonian public was a witness, that the individuals Tafil Dauti, Flurim Ameti, Nevzat Ziberi and Hebib Ameti, all of them from the village of Brodec, were subjected to torture, cruel, inhuman or degrading treatment and punishment by the members of the police responsible for the actions in the course of the police operation called "Mountain Storm". However, Public Prosecutor's Office (PPO) and an investigative judge from the First Instance Court Skopje 1 – Skopje have been ignoring the legal obligation stipulated in Article 142 Paragraph 1 and 3[2] from the Criminal Code.

The Helsinki Committee has written to the above mentioned institutions asking them what the reasons were for not initiating formal procedure, i.e. why criminal charges had not been brought for a crime of "torture and other cruel, inhuman or degrading treatment and punishment". There has not been any answer, yet!

After receiving written permission by the four defendants in the Brodec case the Helsinki Committee brought criminal charges before the Public Prosecutor's Office in Tetovo against unknown perpetrators, members of the police who participated in the police operation "Mountain Storm" in the village of Brodec and at the Police Station in Gazi Baba-Skopje for the crime of "torture and other cruel, inhuman or degrading treatment and punishment" based on Article 142 Paragraph 1 from the Criminal Code and a crime of "ill-treatment while performing official duties" based on Article 143 from the Criminal Code.

The Helsinki Committee still hopes that the competent bodies will realise the mistake they made and that they will support the criminal charges due to the evident validity of the evidences; that they will carry out an effective and real investigation and criminal procedure will be initiated against the perpetrators. Otherwise this silence and failure to fulfil the legal obligations in the future could only increase the excessive use of force.

1.4. Visit to the public institution Inter-Municipal Centre for Social Affairs in Makedonski Brod and the foster families in the village of Manastirec

Representatives of the Helsinki Committee for Human Rights visited the Centre for Social Affairs in Makedonski Brod on 25 December 2008. The expert service of the Centre employs only two people - a social worker and a psychologist, and the latter is also the Director. The technical staff consists of four people with full time employment: a treasurer, an accountant, a driver and an operator for entering data. According to the Systematisation Regulation currently the Centre lacks a pedagogue, a lawyer and a special education teacher. Due to the evident problem with the lack of professional staff, and contrary to the Law on Social Protection[3], the Centre informed us that they had submitted to the Ministry a form with the employments they need, more than once, but so far they had not been realised. At the Centre there is no proper space for meetings even though this is envisaged as one of its activities of the centre. There is no separate room to work with minors at risk, so the activities are organised at the Director's office. Furthermore, we were informed about

the problem with the vehicle donated by UNICEF, which they cannot use due to problems with its registration.

Accommodation in foster families is one of the forms of extra-institutional protection of children and adults which is realised within the system of social protection. The Centre monitors and coordinates the accommodation and care for the individuals in foster families. The foster family is obligated to act in compliance with the directions provided by the Centre for looking after the individual in their care and to timely inform the Centre about all the changes and needs of the accommodated individual. The Centre could accommodate in one foster family at the most five persons, taking into consideration the accommodation conditions and the possibilities of the family. In Makedonski Brod and in the village of Manastirec there are 32 foster families out of which 20 families are currently active (7 in Makedonski Brod and 13 in the village of Manastirec). The children accommodated in these families are usually children with special needs, and most of them are with cerebral paralysis and Down syndrome. The age of the children accommodated in these families is between 1 and 20 years of age. The children's nationality is mixed, even though most of them are Macedonians there are also Roma and Albanians. All the children have a family physician in Makedonski Brod and if there is a need to consult a specialist they go to Prilep or Kicevo. For emergencies they call for an ambulance from Makedonski Brod. A construction of a policlinic is planned in the village of Manastirec, and at this moment a physician visits the village once a month. In the village of Manastirec a Child Centre was formed where a social worker on a part-time contract is employed.

From the conversation with the foster families we got information that the representatives from the home centres visit the children when necessary, but usually between one and three times annually. They regularly contact the families by phone. Only as an example we would like to point out that the mothers we talked to informed us that even though in the past they used to be very much engaged, the specialist team from Veles had not visited them for a year. One of the foster families did not even receive free school books for the child so they had to buy them. The second family that has taken in a child through the Centre for Social Affairs in Kavadarci informed us that they asked them to come and visit them on several occasions, but they told them that they were too busy. Most of the complaints were addressed to the Centre for Social Affairs in Skopje, concerning the visits as well as the attitude and cooperation. The mothers informed us that the visits from the Centre in Makedonski Brod are almost on daily bases.

Generally the visit to the foster families left us with a good impression, however the Helsinki Committee believes that there is a problem with the supervision and the control that need to be implemented by the home centres for social affairs. Even though neither the law nor the rulebook state how many times a child should be visited, still more frequent visits are in the best interest of the child. Furthermore, the Centre for Social Affairs in Makedonski Brod urgently needs its expert team to be fully staffed, to get the space they need for their work and to get an operating motor vehicle.

II. VIOLATIONS OF THE ECONOMIC AND SOCIAL RIGHTS

2.1. The case of Gjorgji Biljanoski

The individual Gjorgji Biljanoski in 2006 addressed the Building Inspectorate at the Municipality of Ohrid reporting unlawfully constructed loft by his neighbour. Based on his petition the building inspectorate at the Municipality of Ohrid responded that a Decision was adopted for demolition of the construction[4] as well as a conclusion on the upgrading[5] of the loft by the neighbour. Furthermore, the party was informed that the documents were already forwarded to the Enforcement Department.

Ever since, in the course of the past two years Biljanovski has been in contact with the competent state and local institutions in Ohrid concerning the building of his neighbour which is located in the protected urban area of Star Del of the City of Ohrid which is under a special regime. But, even after two years, the building for which there is a Demolition Decision forwarded to the Enforcement Department nothing has been done.

Concerning this case the Helsinki Committee contacted the Executor's Department of the Municipal Building Inspectorate in Ohrid and they informed us that the investor initiated a legalisation procedure for this building even though the top of the roof of the disputed building is 35 cm higher than the approved height.

Taking into consideration the fact that the building is in an area under a special protection regime, the Helsinki Committee contacted the Institute for Cultural Heritage Protection asking for information whether they have issued a permit for the construction of the disputed building and the answer was negative.

Still, regardless of this answer and the factual situation where the neighbour of the party built a construction higher than the approved one, in a protected area and without a permit from the Institute for Cultural Heritage Protection he is still undertaking a legalisation procedure?!

After more than two years the disputed construction has not been demolished and the institutions are silent.

The Helsinki Committee is amazed from the attitude of the institutions (the Municipal Building Inspectorate in Ohrid), their inertness in implementing the laws, especially when we have a protected area of special national interest, as well as protection and unlimited use of one's property. The Helsinki Committee urges the competent authorities to fulfil their legal obligations in order to insure rule of law.

2.2. The Payment Operations Law violates the social rights of the citizens

In its monthly report for February 2008 the Helsinki Committee warned that there are dilemmas and ambiguities regarding the practical application of the Payment Operations Law. Article 22 from the Payment Operations Law envisages that if a certain person (legal or private) does not have enough money on his/her account in the given bank for which a court decision needs to be enacted for compelled payment of his/her duties on various grounds, his/her bank should inform all the other banks to freeze the bank accounts that that person opened in those banks. In general this decision is legally grounded and justified. However, the problem that might emerge is whether that decision can apply for accounts where the debtor- a natural person appears as somebody's guardian, legal representative, a proxy of the account holder for using his/her pension. In brief this provision requires a more detailed regulation in the context of taking into consideration the social actions.

The Helsinki Committee appealed to the competent institutions to clarify these and similar dilemmas by adopting separate guidelines for the operative implementation of the Payment Operations Law. Unfortunately nothing has been done so far and in the practice we already have some specific cases.

2.2.1. The case of Milka Simonovska

Milka Simonovska is a pensioner who on 29 May 2008 got an Enforcement Order establishing a prohibition for 1/3 of her pension. Two months later or specifically on 22 June 2008 she got a second order for a payment of 93.240,00 MKD to be made from the same transaction account.

Even though there is a legal obligation for limitation in executing payment orders from pensions up to one third of the pension according to the Law on Enforcement, Milka Simonovska was left without its regular income for her daily needs.

2.2.2. The case of Milos Naumovski

The Appellate Court in Skopje adopted a decision rejecting the appeal by Milos Naumovski in the capacity of a debtor as ungrounded, in which Naumovski complained that his account had been blocked since 15 June 2008 and that was the account on which he

received his pension. However, the Appellate Court in Skopje in the elaboration of its decision stated – "Hence, the order shows that it refers to Komercijalna Banka AD-Skopje and it does not state that the funds will come from the pension that the debtor receives. Namely, from the provided evidences submitted with the appeal one cannot establish that the reason for blocking the debtor's transaction account at Prokredit Banka, where he receives his pension is the disputed enforcement agent's order".

And nobody is interested whether Milos Naumovski was left without his regular income for his basic daily needs.

III. CASES INVOLVING THE POLICE AND THE COURTS

3.1. Serious violations and misuse of detention

The issue of apprehension and detaining a person is regulated with the Constitution of the Republic of Macedonia, the Law on Criminal Procedure, the Law on the Police and the Rules of operation within the MOI. Specifically in Article 12 Paragraph 4[6] from the Constitution of the Republic of Macedonia, Article 3 Paragraph 3 from the Law on Criminal Procedure, Article 204 Paragraph 6[7] from the Law on Criminal Procedure, Article 50 Paragraph 1[8] from the Law on the Police and Article 44 Paragraph 5[9] from the Rules of operation within the MOI.

In December 2008 the Helsinki Committee registered two very particular cases when police officers failed in performing their police competences.

3.1.1. The case of Goce Todorovski, Blagojce Aleksovski and Saso Velkovski

Ms. Tatjana Todorovska and Ms. Lidija Velovska, both from Bitola, informed us about the case/event that happened to there sons, Goce Todorovski and Saso Velkovski, as well as to Blagojce Aleksovski.

We were informed that on 26 October 2008, sometime around midnight, at a gas station at the regional road Kratovo-Probistip, during a routine check the traffic police officers took into custody the individuals Goce Todorovski and Saso Velkovski, as well as to Blagojce Aleksovski and they were taken to the Probistip Police Station where they were kept in custody as suspects who committed a serious crime of robbery in Probistip.

These three men were taken into custody and they were held at the Probistip police station. On the next day, on 27 October Saso Velovski was taken with a car to the Police Forensic Department in Skopje and brought back around 9 P.M. on the same day. According to the statements by the mothers of these men, after the legal period of 24 hours from the moment when they were taken into custody was over, they were taken to a police station in Kocani without being broughtbefore a Judge. At this police station they were also interrogated and kept for 24 hours after which the next destination was the Police Station in Stip.

On 30 October 2008 they were finally taken before an investigative judge at the First Instance Court in Stip and they were given 30 days of pre-trial detention. After the detention measure was uttered the detainees were taken to the Prilep Prison to serve the pre-trial detention measure.

3.1.2. Katerina Petro, Skopje

On 20 December 2008 in the early morning hours a special police unit entered the home of Mrs. Katerina Petro by breaking here front door. According to the statement by Mrs. Petro the police officers that entered the home of Mrs. Petro had no search warrant for her house. After two hours of interrogation in the house and carrying out the search warrant she was taken into custody to the Gazi Baba Police Station. Mrs. Petro was held there from. 6.00 A.M. until 11.00 P.M. Afterwards she was taken to the Cair Police Station and held additional 10 hours.

The police confiscated from Mrs. Petro two cell phones and a laptop computer for which she got some kind of receipt but they still have not been returned to her.

The Helsinki Committee, after registering and reviewing the two cases, realised that there are indications that the custody procedure has not been fully complied with by the competent enforcement agency, in this given case the Ministry of Interior, i.e. the police stations where the parties were taken to one after the other.

In all the above mentioned laws, bylaws - the Rulebook and the Constitution of the Republic of Macedonia it is clearly stated that the "person deprived of his/her liberty should be immediately, and within 24 hours from the moment when s/he was deprive from his/her liberty at the latest taken before a court, which should immediately with no delay decide whether the apprehension was legal" (Article 3 Paragraph 3 from the Law on Criminal Procedure) or "after the end of this period the authorised officer from the Ministry of Interior is obligated to release the person held in custody or to act in compliance with the legal provisions (Article 204 Paragraph 6 from the Law on Criminal Procedure).

In the first case the gentlemen were held three times for 24 hours which is absolutely unacceptable according to the legal regulations, and in the second case Mrs. Petro was held 19 hours at the Gazi Baba Police Station and additional 10 hours at the Cair Police Station. In order to find out what are the reasons for that the Helsinki Committee contacted the competent institutions[10] and in each individual case asked to be informed in details about the reasons for the illegal multiple detention.

We asked from the Internal Control Sector to inform us whether they were familiar with the case (even though the parties had already contacted them), whether an internal control and investigation was carried out, and if so what was the outcome. The Helsinki Committee asked to be informed whether the Sector initiated a procedure against the police officers who obviously failed to comply with the legal provisions and the apprehended person/persons deprived of their liberty were held at the police stations for more that 24 hours and they were not taken before an investigative judge after the end of the first 24 hours, i.e. on 27 October 2008, in the first case with the three gentlemen, and Mrs. Petro on the next day before being transferred to the Cair Police Station or to be released as the legal provisions envisage.

We asked the police stations to inform us about the reasons why the persons that were held in custody were not taken before an investigative judge within the envisaged period of time, but they were handed over to their colleagues in other police stations. The police stations that took on the detained persons and held them additional 24 hours i.e. additional 10 hours in the case of Mr. Petro, were asked to inform us about the reasons for accepting these detained persons knowing that they already had been in 24 hour custody. And finally we asked all the competent institutions to inform us whether procedures were initiated against the police officers that ignored the legal provisions.

In reference to our letters concerning the first case we got answers from the Probistip and Kocani Police Stations informing us that the case was investigated by the Internal Control Sector and they told us to contact it for additional information, something we had done at the very beginning.

In regard to the second case we received an elaborate response[11] from the Ministry of Interior pointing out the efforts of the Government in fighting crime, the transparency of the Ministry and its accountability. Furthermore, the Ministry in its letter unnecessarily offends the Director of the TV station TV AlsatM talking about the experience and the activism of the Director in the fields of journalism and the NGO sector.

The Helsinki Committee expects that the Internal Control Sector and the Ministry of Interior will restrain from presenting their personal and political achievements and instead will respond to the specific questions, what are the reasons for holding the three men and the lady in custody for more than 24 hours, transferring them from one to

another police station.

The Helsinki Committee demands and expects that after the investigation the Sector will impose sanctions against the police officers who failed to comply with the law and we hope that these sanctions will not come down to monetary fines through disciplinary procedure, but they will also be criminally charged for a crime of "unlawful deprivation of liberty" according to Article 140 Paragraph 4vv and paragraph 1[12] from the Criminal Code.

3.1. The case of Vanco Georgievski

The individual Vanco Georgievski from Kocani has a court decision[13] from the Kocani First Instance Court obligating the accused Promet i uslugi "Tutun" AD Skopje to pay him, on the grounds of unpaid salaries for the period between 1 November 1997 until 28 February 2007, an amount of 637,926.00 MKD as well as the pension and disability insurance contributions for the same period. This court decision was final and enforceable on 10 July 2007.

Furthermore, with the court decision[14] which became final on 24 April 2006 the Appellate Court in Stip imposed an obligation for the defendant to cover the expenditures of the plaintiff Vanco Georgievski for the court procedure in the amount of 173,420.00

Since both court decisions are final the plaintiff in compliance with the regulations submitted an Enforcement Request[15] to the enforcement agent appointed for the area that the Kocani First Instance Court covers. However, even though the enforcement agent is legally bound[16] and has the means to act upon the Enforcement Request and after the duly paid administration tax by the party, he has not received his money, yet, two years later.

Since the account of the debtor was blocked according to the report of the enforcement agent, he asked for information from the Interior Ministry – Skopje Directorate for Internal Affairs if the debtor had the motor vehicles registered to his name. Even though the MOI informed him that there are eight motor vehicles registered to the name the debtor, the enforcement agent made inventory and evaluation of the movable items that were with a third person. When the registration cards were checked the enforcement agent came to a conclusion that two of the vehicles were owned by a third party, while about the remaining vehicles listed by the MOI, the manager of the company stated that they were not in the motor pool of the company and that he had no knowledge where they were. With this the enforcement agent finalised the procedure on this case which had gone through a long court procedure to get to an effective court decision, accompanied by court expenditures, lawyers expenditures, expenditures for the enforcement tax for the enforcement agent but there was no enforcement!

In this case the competent enforcement agent not only failed to act upon the request for the worker-plaintiff to go back to work, but he did not even try to collect information about the property owned by the debtor, its movable property and especially the real estate even though the company-debtor is still active, which is HIS legal obligation[17] [18]. The absurd is even greater since the above mentioned enforcement agent made the inventory and the evaluation of the movable property only based on the statement by a third party that he did not know where the other vehicles were, failing based on the official information by the MOI to find and confiscate the debtor's vehicles.

Unfortunately this is not a unique example in the legal labyrinth of the state which imposes the question whether the citizens of the Republic of Macedonia enjoy legal safety that would convince them that even after long wandering around the courts they will still be able to have their claims satisfied?! Or maybe all the legal reforms are made on behalf of the citizens and justice but only on paper?!

The Helsinki Committee with this case would like to remind everybody that the Law on Enforcement gives the enforcement agents huge authorities in order to achieve greater efficiency in the process of enforcement and not to provide them with greater personal disposition. Hence, we urge the Ministry of Justice to be more efficient and to actively monitor the work of the enforcement agents, so that the clients would not be left alone and to the will of the enforcement agents.

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[1] Theocracy is a form of a state order where God rules though the priesthood or through some secular ruler as its representative. In general, the faith i.e. religion plays the main role in the process of decision-making and in governing with a theocratic society.
[2] Article 142 Paragraph 3 – Law on Criminal Procedure
Everybody is obligated to report a crime which is prosecuted ex officio.
[3] Law on Social Protection (revised text)
Article 77
The Centre for Social Affairs (hereinafter The Centre) is established as a public institution for social protection with public competences for performing activities in the field of social protection.
The Centre could be founded if general condition for establishing a public institution for social protection are fulfilled in compliance with Article 55 from this law and it should at least employ the following educational profiles: a social worker, a psychologist, an educator, or a special prevention and re-socialisation pedagogue and a lawyer.
The individuals with education background as presented in Paragraph 2 of this Article should have at least a University degree.
The Centre could be founded for the area of one or more municipalities.
[4] A Decision for demolition of a construction with the Adm. No. 25-1734/6 from 1 February 2006
[5] A conclusion for enforcement with the Adm. No. 25-1734 from 2 February 2006
[6] Article 12 Paragraph 4 – Constitution of the Republic of Macedonia and Article 3 Paragraph 3 from the Law on Criminal Procedure
Persons detained shall be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention, and the legality of their detention shall there be decided upon without delay.
[7] The detention cannot be longer than 24 hours, calculated from the moment when the person was taken into custody. After this period the officer from the Ministry of Interior is obligated to release the detained person or to act in compliance with the legal provisions.
[8] The police officer could take into custody a person for whom there are grounds for suspicion that s/he committed a crime which is prosecuted ex officio, according to the conditions and in a way established with a special law and the detention could be 24 hours at the most.
[9] The detention could be 24 hours at the most after which the authorised officer should release the detained person or to take him/her before the competent investigative judge.
[10] In the case of the three men from the first case, the Helsinki Committee contacted the Internal Control Sector at the MOI – Skopje, the Probistip, Kocani and Stip police stations, and for the case of Mrs. Petro the Helsinki Committee contacted the Internal Control Sector and the Gazi Baba and Cair police stations.
[11] The letter was also forwarded to the Broadcasting Council, H.E. Erwan Fuere – the special EU envoy to the Republic of Macedonia and H.E. Philip Reeker, the US Ambassador to the Republic of Macedonia.
[12] Unlawful depravation of liberty – Article 140 – Criminal Code
(4) If the unlawful depravation of liberty is done by an official misusing the office or competences, s/he shall be sanctioned with a sentence imprisonment in the duration between three months and five years.
(1) A person who unlawfully takes into custody, keeps detained, or in some other way takes away or limits the freedom of movement of another, shall be punished with a monetary fine, or with a sentence imprisonment of up to one year
[13] P.br. 241/2006
[14] GZ br.2959/05
[15] Article 27, Law of Enforcement, Official Gazette of the Republic of Macedonia No. 35/05, from 18 May 2005
Submitting an enforcement request
(1) The enforcement request of the enforcement document is submitted by the creditor to the enforcement agent.
(2) The enforcement agent is obligated to act upon the enforcement request.
(3) By handing over the enforcement document which needs to be executed, the enforcement agent is authorised to choose the means of enforcement and the items of the debtor for complete execution of the enforcement document.
[16] Article 27, Law of Enforcement, Official Gazette of the Republic of Macedonia No. 35/05, from 18 May 2005
Submitting an enforcement request
(1) The enforcement request of the enforcement document is submitted by the creditor to the enforcement agent.
(2) The enforcement agent is obligated to act upon an enforcement request.
(3) By handing over the enforcement document which needs to be executed, the enforcement agent is authorised to choose the means of enforcement and the items of the debtor for complete execution of the enforcement document.
[17] Article 40, Law of Enforcement, Official Gazette of the Republic of Macedonia No. 35/05, from 18 May 2005
"(1) The enforcement agent undertakes the following actions:
…- collects data about the property of the debtor for the purpose of enforcement;…
- does inventory, evaluation, seizure and sale of the movable property, rights and real estate, receives money from the debtor, transfers of ownership …;
- carries out moving out and other enforcement actions necessary for carrying out the enforcement as regulated by law and bylaws;…
- carries out other actions envisaged by law…"
[18] Article 24, Law of Enforcement, Official Gazette of the Republic of Macedonia No. 35/05, from 18 May 2005
Subject of the enforcement
"A subject of enforcement in order to provide payment of the monetary claim could be any item or property right of the debtor, which are not exempted from the enforcement by law, i.e. if the enforcement on them is not limited by law."

REPORT ON THE WORK OF THE YOUTH GROUP IN 2008

The project "Human Rights School" is a longstanding project carried out as part of the Helsinki Committee of Human Rights of the Republic of Macedonia. Many things have been done since 2007 in order to set right and extend the Youth Group, which is de facto the basis of the school. In this respect, in 2008 the Youth Group has worked really hard to realize the foreseen activities and projects. In addition to implementing this project on local level, it is also part of the activities of the other groups on regional level and is realized in the West Balkan countries: Serbia, Bosnia and Herzegovina, Croatia and Kosovo. In the course of 2008, four Human Rights Schools were held in Macedonia - in June, July and two parallel schools in August. The activities of the Human Rights Schools are funded by the Norwegian Helsinki Committee of Human Rights.

Schools in Macedonia

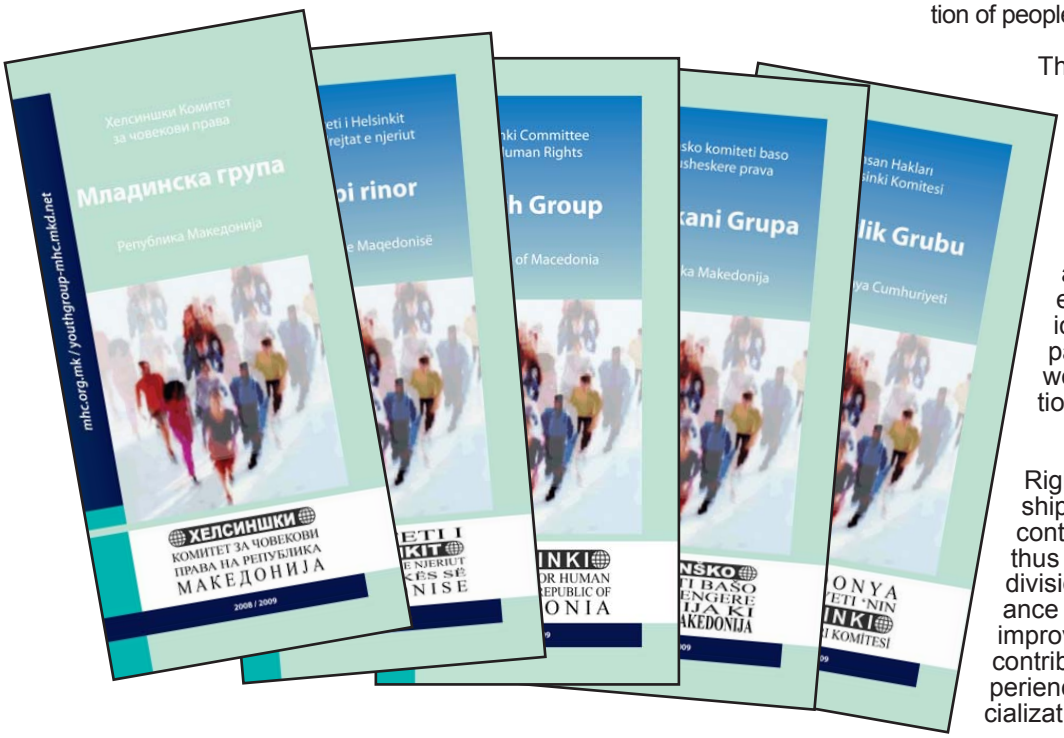
Eighty high school students (16 – 18 yrs.) from different towns in Macedonia, Skopje, Gostivar, Kumanovo, Struga, Debar, Bitola and Kocani took active part in the Human Rights Schools.

The schools covered various topics on human rights, including the basic concept of human rights and freedoms and their protection on local and international level, respect of differences, tolerance, equality and constructive resolution of conflicts, monocultural and multicultural society.

The participants also learned more on the gender equality, LGBT rights, children rights, topics which were very interesting for the participants as they still provoke stereotypes and prejudices.

In order to cover the topics, several university professors and top professionals were involved, who have unselfishly transferred their knowledge to the students and inspired them to think on certain topics.

The issues on the European Court of Human Rights, the Council of Europe, the UNICEF and the UN also found their place in the school. In addition, the participants also discussed the sexually transmitted diseases and the discrimination of people living with STDs.



The working methods included presentations, games, workshops, debates and discussions, where everyone had a chance to express the opinion, the personal attitudes and to talk openly about the subject. For each of the presented topics, the participants prepared own presentations, worked in groups, simulation games and discussed.

As a result of the Human Rights Schools, new friendships were built and new contacts were established, thus overcoming the ethnic divisions and building tolerance among the young people, improved communication and contributing for exchange of experiences, cooperation and socialization both during the work-

shops and in the leisure time after the sessions.

Other local activities

The Youth Group within the Helsinki Committee also worked on a project targeting the students in order to find out more about the student rights at the universities in the Republic of Macedonia (both state and private), whether the teachers respect student rights, whether there are lectures dedicated to human rights, how much the students know about the ECHR and the rights included in this Convention.

Anonymous questionnaires were prepared with various questions on the above mentioned topics. The questionnaires were distributed to the students, but besides this formal polling, informal talks were held with the students, where they fearlessly pointed out the problems they face, the divisions made by the professors on the grounds of the social position, ethnical belonging, the corruption at the universities, the work of the institution tasked for taking care of the student rights, etc.

In addition, questions were also prepared for the deans in order to examine their opinion on the state of human rights at the universities. The interviews with the deans were recorded and were used in the short documentary, prepared after the completion of the project. The short documentary also included the answers of the students, so it was possible to compare the opinion of the students and deans.

Although most of the universities allowed the distribution of the questionnaires, some faculties forbade us to conduct the survey, without any explanation.

The findings showed that there are numerous violations of student rights, highlighting the illegal work of some of the faculties and the general finding was that few students know about the ECHR and its importance.

Another ongoing project of the Youth Group is the “Use of Religious Symbols in the Secondary Schools and how they Affect the Relations among the Students and between Students and Professors”. The purpose of the Youth Group was to examine the use of the religious symbols by the students and teachers in the secondary schools. An additional incentive for this research was the introduction of religious classes as optional subject in the schools in September 2008. The idea was to explore the attitude of the students on the public display of religious symbols by their classmates and teachers and the feelings aroused by this; whether the religious symbols are abused by certain groups with destructive intentions to draw more supporters for spreading hatred, religious and ethnic intolerance among students or this is a way for bringing the students closer together.

The idea was to realize this project in two phases. The Youth Group completed the first phase or the pilot survey. Eight high schools were selected and the questionnaire was administered. The members processed the results and we have the preliminary findings.

In the following period, the Youth Group will go on with the second phase, including the surveying of the other schools.

Regional Schools and Activities

Last year, the Youth Group took part in two regional Human Rights Schools and one school on wheels. The 12th Human Right School focused on writing project proposals was held in Tivat from March 13 to 20 in Tivat.

The 13th Human Rights School was held in Bosnia and Herzegovina and Croatia from May 26 to June 2. This school is also known as school on wheels as several conflict affected places were visited and museums attended. The participants also talked with the young people from these

areas and shared their experiences.

The 14th regional Human Rights School was held November 12 – 17, 2008 in Brezovica, Kosovo focused on "Kosovo as a Newly Established State". During the school, the members of the Group learned more about the history of Kosovo, the developments in the Eighties and Nineties, the international and regional aspect of Kosovo's independence. They also had an opportunity to talk to the residents of Kosovo, to visit Serbian enclaves and to talk about the problems of the people living there. The participants also met the international representatives, visited the towns of Prizren and Mitrovica, while during the visit of Prishtina they staged a street protest conveying messages for peace and solidarity.

In order to maintain the contact with the participants from the local Human Rights Schools, the Youth Group hosted two meetings with the members of the Group from the other towns of the country, interested in the Group's work. They discussed on several topics related with the work of the Youth Group and the impressions from the Human Rights School, as well as whether this experience has changed something and how they transfer the knowledge.

The objectives of these meetings were met and the results are evident: the young people have a feeling that they belong to a group that is functioning; they have continued the communication and friendship created during the schools; they are motivated to be active in several activities that contribute for resolution of their problems; have a feeling that their ideas and suggestions draw attention and they are part of the society; a space is created where they can openly share their opinions and options.

The Group, supported by the regional team, has celebrated December 10, i.e. the 60th anniversary of the Universal Declaration of Human Rights also known as the Human Rights Day. The main event was on the City Square in Skopje, where the members have distributed declarations on the Human Rights Day, balloons with different messages and some of the members carried posters in order to get the attention from the citizens. The citizens fully supported this activity, while the reactions were different.

Provoked by the increasing number of articles in the printed media containing the hate speech and the passivity of the authorities on this issue, with particular focus on the article "Roma people are asked not to do Gypsy Business", the members of the Youth Group together with the NGO INFO Centar and Youth Education Forum have organized a public debate on "Why Roma people are still Gypsies in the Public". The participants of the debate included guests from different areas: journalists, media outlets, representatives of the Broadcasting Council, members of the NGOs, while two members of the Youth Group were the keynote speakers. The members clearly expressed their opinions and stimulated a fruitful debate.

During this entire period, the members of the Youth Group distributed the manuals "You are Right" throughout the secondary schools in Skopje and the other towns in the Republic of Macedonia.

The Youth Group of the Helsinki Committee has prepared a brochure with a purpose to promote the group and to disseminate information to all interested parties. The brochure includes information on the establishment, goals, priorities and characteristics of the Youth Group. It also elaborates the activities, the previous and ongoing projects implemented by the Group.

The brochure also refers to the "Human Rights Schools", how to become a member of the group etc. It is published in Macedonian, Albanian, Turkish, Roma and English language and is distributed in the secondary schools throughout the country.

The main purpose is to attract new members that will join the group and actively contribute for its work.

‘PROTECTION OF THE REASONABLE EXPECTATION OF THE PRIVACY VERSUS EFFICACY IN THE BATTLE AGAINST THE CRIME AND CORRUPTION IN THE LEGAL STATE’

In organization of the Helsinki Committee for human rights in the Republic of Macedonia, round table on the subject “Protection of the reasonable expectation of the privacy versus efficacy in the battle against the crime and corruption in the legal state “, was organized on 25.11.2008. The aim of this round table was share of different opinions and arguments among the state organs, expert public and the civil sector regarding the legal frame and practical implementation of the special investigation techniques as well as other similar methods used by the organs with special authorities analyzed from the aspect of the requests of one modern legal state in which the rule of law is common principle. Participants in this event were the representatives of academic circles, MoI, lawyers and public prosecutors, Directorate for protection of personal data, Intelligence agency, telecommunication providers as well as civil sector.

HELSINKI COMMITTEE FOR HUMAN RIGHTS OF THE REPUBLIC OF MACEDONIA

REPORT ON THE ROUND TABLE ABOUT THE RECOMMENDATIONS OF THE COMMITTEE FOR THE PREVENTION OF TORTURE RELATED TO THE MINISTRY OF INTERIOR OF THE REPUBLIC OF MACEDONIA

Organized by the Helsinki Committee for Human Rights of the Republic of Macedonia together with the Ministry of Interior held on 24 April 2008 in the hotel "Arka" in Skopje

The round table was attended by 15 representatives of the authorities (Ministry of Interior, Ministry of Justice, MARRI), the civil society, the Office of the Ombudsman, the Police Academy and the Office of the High Commissioner for Human Rights.

The primary goal of the meeting was to encourage an open and inclusive discussion about the weaknesses that have been repeating from one year to another regarding the work of the Ministry of Interior, and to find a way to implement the recommendations of the Committee for the Prevention of Torture related to this Ministry as urgently as possible.

In this context, the participants also discussed about the ratification of the Optional Protocol to the Convention on the Prevention of Torture and about the establishment of a National Mechanism for Prevention within a transparent process in which the NGO sector must be included, with a view to exerting a preventive influence on the official personnel in the Ministry of Interior and reducing the possibility for cases of torture or another mistreatment of suspects.

The following conclusions were adopted at the roundtable:

- there is a need for urgent implementation of the recommendations made by the Committee for the Prevention of Torture related to the Ministry of Interior of the Republic of Macedonia;

- there is a need to prevent in a timely manner cases of exceeding of Police officers' authorities, and to monitor the ways in which the Police officers treat suspects in a Police station;

- the material conditions in the 38 Police stations serving the purpose for detaining the suspects should be improved in terms of providing for hygiene(clean and decent conditions for satisfying the physiological needs and conditions for personal hygiene), lighting(natural and artificial light), air ventilation, availability of food and notification of the families of the detained persons;

- the police officers should be obliged to inform the detained persons for their rights and especially to respect the three fundamental rights-according the expressed preference of the detainee a.to inform a third party for the detention b. right of access to a lawyer c. right of access to a doctor;

- attention should be paid to the security of both the suspects and Police officers (installation of alarm systems, taking minutes of the interviews, setting up recording cameras in Police stations);

- a special record for each detainee in the police station must exist, which will be accurately and presicely filled with information;

- the maximum legally set time limit for restrictions on the freedom of movement of the detainees must not be exceeded;

- there is an urgent need for professional training and special training sessions for the Police officers in the MoI (at all levels), and especially of the person in charge of reception – the shift leader;

- there is a need to prepare handbooks about the way of conducting an interview with a suspect and the electronic (audio or video) recording of the interview is recommended;

- procedures for work with vulnerable groups should be established: children, elderly people, disabled people etc.;

- measures for punishing Police officers and implementation of the strategy for proper conduct in a Police station;

- there is a need for regular meetings between the MoI, the Ombudsman and the NGOs with a view to discussing and solving specific problems;

- ratification of the Optional Protocol to the Convention on the Prevention of Torture;

- establishment of a National Mechanism for Prevention within a transparent process in which the NGO sector must be included;

Helsinki Committee for Human Rights of the Republic of Macedonia

(May 2008)

HELSINKI COMMITTEE FOR HUMAN RIGHTS

ХЕЛСИНШКИ КОМИТЕТ ЗА ЧОВЕКОВИ ПРАВА НА РЕПУБЛИКА МАКЕДОНИЈА

HELSINKIT PËR TË DREJTAT E NJERIUT I REPUBLIKËS SË MAQEDONISË

HELSINKI İNSAN HAKLARI KOMİTESİ MAKEDONYA CUMHURİYETİ'NİN

HELSINKI TI- NDREPTULI-A OMLUIDIREPUBLICA MACHEDONIA COMITET DI

HELSINŠKO COMITETI BAŠO E MANUŠENGERE NEJAMIJA KI REPUBLKA MAKEDONIJA

ХЕЛСИНШКИ КОМИТЕТ ЗА ЉУДСКА ПРАВА РЕПУБЛИКЕ МАКЕДОНИЈЕ

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Annual Report 2008