HELSINKI COMMITTEE FOR HUMAN RIGHTS
ХЕЛСИНШКИ КОМИТЕТ ЗА ЧОВЕКОВИ ПРАВА НА РЕПУБЛИКА МАКЕДОНИЈА
KOMITETI I HELSINKIT PËR TË DREJTAT E NJERIUT I REPUBLIKËS SË MAKEDONISË
MAKEDONYA CUMHURİYETİ'NİN HELSİNKİ İNSAN HAKLARI KOMİTESİ
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HELSINŠKO COMITETI BAŠO E MANUŠENGERE NEJAMIJA KI REPUBLKA MAKEDONIJA
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Monthly Report on Human Rights in the Republic of North Macedonia

APRIL 2019

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MAY 2019

JUDICIAL MONITORING

MONITORING OF ONGOING CASES

The Helsinki Committee continued its monitoring during this month of the court proceedings that are of importance for the protection of human rights in the country.

In April, the trial of the defendants for the murder of Nikola Sazdovski ended, as motivated by the ethnic background of N.S. The young member of the fan group "Komiti" passed away after being beaten by three members of the "Shvercerat" fan group in June 2018. Two of the perpetrators were found and indicted and following the evidence session, they were sentenced to 19 years imprisonment. The third suspect is still on the run. Such verdict thereby sends a message that hate crimes shall not be tolerated by the authorities.

This month the evidence session in the criminal case against Milenko Nedelkovski resumed due to a reasonable doubt of committing a criminal offence under Article 394-d of the Criminal Code of the Republic of North Macedonia (Spread of racist and xenophobic materials through a computer system). Some of the evidence of the defence was presented. Hence, the defendant Milenko Nedelkovski is charged with this offence, because in the summer of 2018, when a deadly fire broke out in a suburb of Athens, he posted a status that spreads hate speech against the fatalists from the Republic of Greece.

The Helsinki Committee has also been monitoring the case of the indicted medical staff and Health Insurance Fund employees, who were accused for the death of Tamara Dimoska. In April, the hearing of Tamara Dimoska's mother, Zaklina Dimoska continued, but has not ended yet, as the trial was postponed due to competitive commitments of some of the defendants. The observers of the Helsinki Committee noted that the defendants during the proceedings were undisciplined, did not behave respectfully towards the court and the victim, they were eating and drinking in the courthouse during the trial (candies and coffee) and making loud comments on some of the testimonies of the witness Zaklina Dimoska, and the court did not reproach them about such behaviour.

DISCRIMINATION

ANOTHER DISCRIMINATION OF ROMA IN A COFFEE BAR IN PRILEP

During the month of April, the Helsinki Committee received a complaint on discrimination based on ethnic background and colour in access to goods and services. Namely, few friends, all Roma community members, in the evening hours went to a place in Prilep. Once they entered the place and sitting at the table, the employees told them that they needed to leave, because there was a private party going on, although nothing insinuated any ongoing private party, and the rest of the guests were freely entering the coffee bar and sitting at their tables. Although the victims were given the opportunity to report the case to the Commission for Protection against Discrimination, unfortunately, they did not want to put it forward. This is not the first case of discrimination against Roma in coffee bars in Prilep registered by the Committee. During the year 2018, in the course of testing a situation in a coffee bar in Prilep, Roma testers were not allowed to enter the coffee bar, while the control testers obtained access to the coffee bar. The Helsinki Committee filed a complaint to the Commission for Protection against Discrimination, which further accepted the testimonies and found that restriction of access to ethnic Roma by the coffee bar in Prilep, based on their ethnic background and colour constitutes direct discrimination in access to goods and services.

Access to goods and services is important segment in the social life of persons from all ethnic communities, and it is a particularly integral part of the social life of persons belonging to the Roma ethnic community, since it should enable social inclusion of these people. Restricting the access for Roma to goods and services is a violation of the right to equality of Roma in comparison with other ethnic communities, and it represents continuation of the stigmatisation and segregation of Roma, as well as it opens possibility of discriminatory practices, if such treatment is solely oriented towards Roma people.

Recommendation: We appeal to all catering and other facilities offering goods and services, to proceed doing so out of discrimination on any grounds. In addition, we call on all citizens who have felt discriminated against access to goods and services on any basis, to report such cases to the Helsinki Committee.

SOCIAL PROTECTION

UNPRINCIPLED ACTION OF THE CENTRE FOR SOCIAL WORK WHEN DECIDING ON THE EXERCISE OF THE RIGHT TO SOCIAL FINANCIAL ASSISTANCE

The Helsinki Committee for Human Rights was approached with a request for free legal aid lodged by a socially endangered person, who needs to exercise his right to social financial assistance.

Namely, the person informed us that in November 2018 he submitted a request for exercising the right to social financial assistance. In March 2019, that is, after the expiration of four months since the request was submitted, the Public Institution Inter-municipal Centre for Social Work - Gazi Baba passed a decision terminating the procedure for exercising the right to social financial assistance, until the foregoing matter was resolved, that is, until completion of the necessary documentation.

Pursuant to Article 95 of the Law on General Administrative Procedure, if the public authority running the procedure encounters an issue the resolution of which is a precondition for deciding on the subject matter thereof, and it is an independent legal matter for which the court or another public authority is competent (hereinafter referred to as: foregoing matter), the public authority running the administrative procedure shall interrupt the procedure until the foregoing matter has been resolved and inform the party thereof.

Completing the documentation for a particular subject and collecting data ex officio from the competent institutions is neither a foregoing, nor a legal matter. Collecting data ex officio is precisely that - commitment and obligation of the institution deciding upon the request for the exercise of a certain right of the party.

Recommendation: Having in mind the principle of service orientation of public authorities, pursuant to Article 9 of the Law on General Administrative Procedure, when public authorities decide upon administrative matters, it is necessary to orient service so as to the exercise the rights and interests of the parties, especially in cases relating to the exercise of the rights of social protection of parties, whose existence is additionally worsened due to the unprincipled behaviour of the authorised institutions.

HATE CRIME

DOUBLE THE NUMBER OF INCIDENTS DUE TO HATE

In April 2019, a total of 30 incidents motivated by hate were registered, of which 21 were committed due to ethnic background, 7 due to political affiliation, one incident is due to religion, and 1 incident was committed due to the victims' colour. Most incidents were registered in Skopje (18), and all criminal charges (5) were raised for the criminal act of spreading racist and xenophobic materials. Again, significant part of the persons involved in these incidents either as victims and/or as perpetrators are children (persons below 18).

For this month we shall distinguish the case of violence committed due to race hate. Namely, on 18.04.2019 at 21.40 hrs, M.A.M. (38) from Skopje, reported to the police station Centar that the same day, around 18.20 hrs, at the Macedonia city square, her 13 years old son, who was together with his brother and sister, was physically attacked by two unknown persons. The case was registered by the police as offence against public order and peace (Article 12 of the Law on Offences against Public Order and Peace), but, since it contains elements of the criminal act Violence, the Helsinki Committee, upon the consent of the victim's mother, shall lodge criminal charges before the Prosecutor's Office in charge.

HATE SPEECH

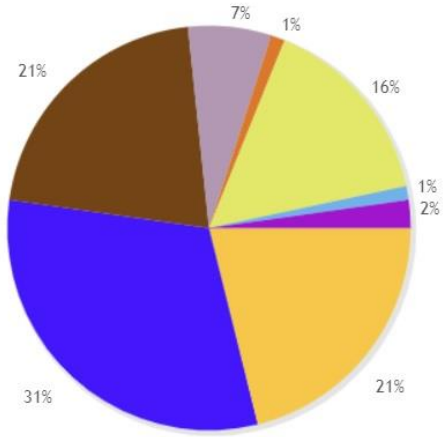
Provocative rhetorics in the speeches of the presidential candidates

The Helsinki Committee also monitored the campaing of the presidential elections in both rounds. During this period, the Committee noted hate speech in the addresses of the presidential candidates and had neither continiuous, nor noticeable occurrences of inflamatory rhetorics in the discourse of the campaigns of both candidates.[1] Nevertheless, use of negative messages and personal insults were noted during the campaign in the debates of the second round between the candidate Stevo Pendarovski and the candidate Gordana Siljanovska Davkova. Provocative rhetorics was also noted in the speeches of political party representatives. Although candidates would not directly use hate speech, still, hate speech was registered on social networks in the public discourse, which the Helsinki Committee documented accordingly.

Discriminatory speech and hate speech based on ethnic background and political affiliation were noted on Facebook and Twitter social media by the general public. Between 1 April 2019 and

[1] Both presidential candidates had paid political advertisement in Macedonian and Albanian languages.

inclusive of the last day of the second round of the presidential elections, the web portal: wwww.govornaomraza.mk registered total of 69 cases of hate speech.



Говор на омраза поради етничка припадност	28
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Текстот во графиконот:

Hate speech due to ethnic background
Hate speech due to political affiliation
Hate speech due to sex and gender
Hate speech due to sexual orientation and gender identity
Foreign citizens subject to mocking
Hate speech due to race/colour
Hate speech due to religion and belief
Representatives of international organisations subject to mocking

The largest number of verified cases was related to hate speech due to ethnic background (31% of the total number of reports), hate speech due to political affiliation and due to sex and gender (by 21% each of the total number of reports) and 14 reports of hate speech due to sexual orientation and gender identity (16%). As may be seen from the histogram chart of reports received on hate

speech, the greatest part were registered during the political campaign. After the end of the presidential elections, dramatically reduced number of hate speech reports was noted.

LABOUR RIGHTS

A PREVIOUS PROCEDURE FOR PROTECTION AGAINST HARASSMENT AT THE WORKPLACE WITHIN AN EMPLOYER

During April, the Helsinki Committee documented 13 cases of labour rights violation, relating to:

- Harassment at the workplace;
- Unregistered and unpaid overtime hours;
- Unpaid salaries and remuneration for health and pension insurance;
- Verbal cancellation of employment contract;
- Inobservance of the stipulated legal deadline of 30 days, within which the courts of appeal need to pass a decision relating to appeal in the procedure on work relations disputes.

Seven of the registered cases of labour rights violation were reports lodged by workers who consider themselves to be victims of harassment at the workplace – mobbing.

Mobbing may be manifested in an unlimited number of forms, such as constant mockery and disgrace at the workplace, imposition of degrading duties and/or continuous shout and insult, which directly affects the dignity of the employee.

The Law on Protection against Harassment at the Workplace provides for two procedures through which the protection against mobbing may be achieved. By means of a foregoing procedure in which the protection of the employee or the person hired under a contract, as well as through a court protection proceeding would be achieved. The procedures are not conditioned by one another and there is no priority in their use.

Foregoing procedure on protection against harassment at the workplace within an employer

The objective of the foregoing procedure, which is internal in nature, is to ensure protection against mobbing rapidly and efficiently within the work environment, as it is developed directly within the premises of the employer.

This procedure shall be raised by written request filed by the worker who consideres to be victim of mobbing, addressed to the person commiting mobbing, by notifying the latter that such behaviour is inappropriate, unacceptable and undesired. The written request should also contain a warning that if such behaviour is not put to an end, the potential victim shall be compelled to seek legal protection.

In cases when the initial written request fails to bring upon any results, that is, it shall fail to prevent the harassment at the workplace, the written request of the person suffering mobbing shall be submitted to the employer. Exclusion of this foregoing procedure shall be the case when mobbing perpetrator shall be a managing body. In such case, right after the previous written warning to the harasser, with no foregoing procedure, a dispute shall be raised before the competent court, by lodging a plaintiff. Having in mind that harasser may be any person or group of persons, regardless of their capacity, that is, regardless if it is about an employer as a natural person, a responsible person or worker, if it is not related to the mentioned exclusion, the request shall be filed before the responsible person at the employer. Such written request, during the foregoing procedure, shall be submitted within six month following the day when the last behaviour was conducted, which is considered to represent mobbing, or else, the right to protection within the foregoing procedure shall expire.

In the first part of the foregoing procedure, the employer's responsible person shall be liable to immediately, and at the latest 8 days following the receipt of the request for protection against mobbing, propose to the parties a mediation, as a manner of resolving the dispute, as well as they shall select a person from among the list of mediators. If such an accord is not achieved between the parties and the authorised person of the employer relating to selection of a mediator, the authorised person shall be obliged to, within eight days, submit a written note to both parties that no mediator was selected. From the day of submission or non-submission of the written note, the deadline of 15 days shall start for lodging a plaintiff to the competent court regarding protection against harassment at the workplace.

The mediator may approach the procedure in various manners: run joint or separate talks with the parties, under a consent obtained from one party, convey and submit a proposal and views to the other party, relating to separate matters, or hold talks with other persons, proposed as witnessess. He/she shall be obliged to draft a report relating to each action undertaken within the agreement procedure, which shall deliberate all the actions undertaken regarding the specific matter and he/she shall have at disposal maximum 15 days to complete the entire procedure. Depending on the success

of the mediation, the mediator shall have a deadline of three days to conclude an agreement with recommendations (if the mediation is successful), or draft a written note that no agreement has been achieved (if the mediation is unsuccessful) and refer the parties to judicial dispute resolution.

Recommendation: In addition to all these legal resolutions, the state may not boost itself with any considerable practice in this field. Both manners of resolution of disputes that occur as a result to mobbing, in conditions of high degree of unemployment, resulting in hard economic situation, presently do not represent any legal institutes with broader practical and theoretic meaning. Nevertheless, part of the blame for such circumstances shall fall on the unawaraness of the employees regarding the opportunity to get protected against mobbing. In that light, the Helsinki Committee hereby encourages the workers who consider themselves to be victims to mobbing, to use the mentioned protection mechanisms, as only their utilisation shall indicate to the mobbing perpetrator that such behaviour is inapproriate, unacceptible and undesired and it shall make it clear to the perpetrator that you have a court protection at disposal, which you are planning to use if he/she does not rectify his/her behaviour. Consequently, the written correspondence may have impact on the mobbing perpretrator so as to review his/her behaviour at the workplace, and this does not happen, the correspondence may be used as evidence in the procedure against him or her.

FEMALE TEXTILE WORKERS

FEMALE TEXTILE WORKERS WORKED UNDER A FIXED-TERM CONTRACT FOR MORE THAN 5 YEARS

The Helsinki Committee was notified that in a textile manufacturing facility in Shtip, there are female workers working under a fixed-term contract for one to three months, and yet, they have been working for longer than five years, and part of them have been working for ten years with the same employer. Pursuant to the Law on Labour Relations, an employment contract may be concluded for a fied-term for performing same activities, with interruption or without, within a period of up to five years. The labour relation based on a fixed-term employment contract shall be transformed into a labour relation for indefinite term, if the worker continues to work after the expiration of five years.
Therefore, the Helsinki Committee requested the State Labour Inspectorate to, under legal powers, to conduct an extraordinary inspection and examine if within the stated textile manufacturing facility in Shtip, the female and male workers have been working under a fixed-term employment contract for longer than five years, and some of them for more than ten years with the same employer, without having their labour relation transformed into undefinite labour relations.

Recommendation: Such violations of labour rights are frequent in the textile, leather and shoes industry. We thereby call on all female and male workers, who confront such violations of labour rights, to report their cases to the Helsinki Commmittee.