

The Bimonthly Report on the human rights situation in the Republic of Macedonia for September-October 2016 covers the following topics: The constitutional court of the Republic of Macedonia disregards the Rules of Procedure, The law on free legal aid is completely dysfunctional, Pressures on the work of the Special Prosecutor's Office, Regular Public Prosecutors behave unprofessionally towards the Special Prosecutors, Illegitimate re-election of a President of the Council of Public Prosecutors, The systemic discrimination at borders continues, Discriminatory content in "society" textbook for 4th grade, The inconsistent enforcement of the Law on Prevention of and Protection against Domestic Violence by judges continues, Restriction of the right to permanent financial assistance.

You can download the monthly report from the following link.

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

HELSINKI COMMITTEE FOR HUMAN RIGHTS
OF THE REPUBLIC OF MACEDONIA
SEPTEMBER/OCTOBER 2016

TABLE OF CONTENTS

CONSTITUTIONAL COURT	3
THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA DISREGARDS THE RULES OF PROCEDURE	3
ACCESS TO JUSTICE	4
THE LAW ON FREE LEGAL AID IS COMPLETELY DYSFUNCTIONAL	4
SPECIAL PROSECUTOR'S OFFICE	4
PRESSURES ON THE WORK OF THE SPECIAL PROSECUTOR'S OFFICE	4
REGULAR PUBLIC PROSECUTORS BEHAVE UNPROFESSIONALLY TOWARDS THE SPECIAL PROSECUTORS	5
PROSECUTION	6
ILLEGITIMATE RE-ELECTION OF A PRESIDENT OF THE COUNCIL OF PUBLIC PROSECUTORS	6
THE SYSTEMIC DISCRIMINATION AT BORDERS CONTINUES	6
DISCRIMINATION	7
THE SYSTEMIC DISCRIMINATION AT BORDERS CONTINUES	7
DISCRIMINATORY CONTENT IN "SOCIETY" TEXTBOOK FOR 4TH GRADE.....	8
DOMESTIC VIOLENCE	8
THE INCONSISTENT ENFORCEMENT OF THE LAW ON PREVENTION OF PROTECTION AGAINST DOMESTIC VIOLENCE BY JUDGES CONTINUES	8
SOCIAL PROTECTION	9
RESTRICTION OF THE RIGHT TO PERMANENT FINANCIAL ASSISTANCE	9

CONSTITUTIONAL COURT

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MACEDONIA DISREGARDS THE RULES OF PROCEDURE

On 28.09.2016, starting at 09:00 a.m., the 21st session of the Constitutional Court of the Republic of Macedonia was held.

At the beginning of the session, judge Natasa Gaber-Damjanovska asked to speak and stated that the agenda that had been delivered to the judges was legally invalid because it had been signed by the Secretary-General, whose mandate had expired, which was contrary to the Rules of Procedure of the Constitutional Court. Furthermore, President Goseva also spoke and pointed out that this was not the first time for the Constitutional Court to operate contrary to the Rules and exceptions had been made before, and thus she did not see any reason why this should not be the case. She added that the Secretary-General's mandate shall last until the appointment of a new secretary-general. Judge Gzime Starova also spoke and stated that she had never seen a similar situation in the Constitutional Court, i.e. that the secretary general is always elected by 1 September at the latest. The Court's President deemed the accusation that the court operates contrary to the Rules as outrageous.

The Helsinki Committee believes that such actions by the Court call into question the competence, expertise and diligence of the Court. It is utterly frivolous for the President of the Court to claim that the court makes exceptions from the Rules and that it sometimes does not work accordingly. Helsinki Committee points out that, under Article 95 of the Rules of Procedure of the Constitutional Court, the mandate of the Secretary-General of the Court lasts 4 years and is eligible for re-election.

Moreover, this is a huge oversight on part of the Secretary-General of the Constitutional Court as well, who, under Article 96 of the Court's Rules of Procedure, is obliged to ensure regularity and promptness in active cases and for the preparation of other materials, and for this purpose, to convene and chair the work meetings of the professional service and professional board.

The Helsinki Committee believes that such conduct is extremely serious and worrying because the Constitutional Court should be a body which protects the legality and constitutionality, one which must operate in accordance with the Constitution, the laws, and according to the Rules of Procedure of the Constitutional Court, and not a body that fails to comply with legal regulations.

Recommendation: The Helsinki Committee urges the Court to convene the Commission for Organization and Personnel Issues as soon as possible, which according to Article 92 of the Rules of Procedure of the Constitutional Court, is responsible for reviewing and proposing the appointment and dismissal of a new Secretary-General, and to elect a new Secretary-General.

ACCESS TO JUSTICE

THE LAW ON FREE LEGAL AID IS COMPLETELY DYSFUNCTIONAL

In October 2016, the Helsinki Committee for Human Rights was addressed by a party who requested legal aid. The party is an unemployed person, a single mother of a child born to unmarried parents who is acknowledged by his/her father. The party asked for legal aid because she found herself in a legal maze while trying to exercise the right to social financial assistance. Namely, the party tried to initiate a procedure for exercising the right to social financial assistance, but upon submitting the request to exercise this right at the Social Work Center, she received information that her request would not be approved until court proceedings are initiated for child support. Through the Helsinki Committee for Human Rights as a registered association for providing free legal aid, the party sent a request for free legal aid to the Regional Justice Department in Skopje for free legal aid and appointment of an attorney that would represent her in legal proceedings for obtaining child support for a minor. The Ministry of Justice, breaking the legal deadlines stipulated by the Law on Free Legal Aid, adopted a negative decision on this request on the grounds that the claimant does not comply with the legal conditions of free legal aid under the Law for Free Legal Aid, i.e. that the party is not a social care beneficiary.

This case best reflects the restrictive nature of the Law on Free Legal Aid and demonstrates that the Law fails to fulfill its purpose, that it does not provide equal access for all citizens to the system's institutions for receiving and providing effective legal aid in accordance with the principle of equal access to justice. In the specific case, the Law on Free Legal Aid does not allow equal access to justice for a materially unsecured and unemployed single mother of a minor child who is a social risk.

Recommendation: We urge for amendments to the Law on Free Legal Aid through the extension of the provisions regarding the persons who may apply for using free legal aid as to include all citizens, who, due to their financial situation, could not otherwise achieve their rights guaranteed by the Constitution, without thereof endangering their own sustenance and support of family members who live in the same household.

SPECIAL PROSECUTOR'S OFFICE

PRESSURES ON THE WORK OF THE SPECIAL PROSECUTOR'S OFFICE

Special Prosecutor's Office continuously faces pressure in the course of its work. On 26.09.2016, Special Prosecutor Katica Janeva walked out of the Parliament Commission session for the political system and community relations, stating that would only attend the plenary session for review of the work of the Special Prosecutor's Office because she was a target of typical mobbing by MPs. Although the subject of review at the session of the Commission on the political system and inter-ethnic relations was the second six-month report on the work of the Public Prosecutor's Office, Special Prosecutor Katica Janeva gave straightforward answers to all questions that were not related to the report.

On 28.09.2016, due to being personally insulted ¹by Council Member Zoran Sulejmanov², Special Prosecutor Katica Janeva left the Council of Public Prosecutors' session at which the report of the Special Prosecutor's Office was being reviewed. Mr. Sulejmanov's insults were on a personal basis, referred to the expertise and capacity of the Special Prosecutor and were in no way connected with the report of the Special Prosecutor's Office.

Recommendation: The Helsinki Committee for Human Rights expresses grave concern about the obstructions and pressure on the work of the Special Prosecutor's Office by state institutions. We call on them to stop and allow the Special Prosecutor's Office to work independently and in accordance with law.

REGULAR PUBLIC PROSECUTORS BEHAVE UNPROFESSIONALLY TOWARDS THE SPECIAL PROSECUTORS

On 25 October, anonymous public prosecutors from the Public Prosecutor's Office Skopje addressed an open letter to the Special Prosecutor Katica Janeva. Considering that the letter was not signed by an authorized person from PPO Skopje nor by any association of public prosecutors, is unclear who drafted it and who was behind the presented allegations of "shameful unprofessionalism, discrediting the prosecutor's profession in general, breaching of the ethical code of prosecutors, creating a climate of disrespect for the laws, violating the principle of presumption of innocence, running a political campaign", etc.

The Helsinki Committee would like to point out that the basic prosecutors' failure to take appropriate actions was the main reason for the establishment of the Special Prosecutor's Office. If the Basic Public Prosecutor's Office had been professional, had enjoyed a good reputation among the public, had respected its code and had created a climate of respect for the laws, the establishment of SPO would not have been necessary. As for the principle of presumption of innocence, the truth of the matter is, although the prosecution is obliged to publicly protect this principle (Article 8, paragraph 3 of the Law on PPO), it had never addressed the public despite the flagrant violation of this principle by political officials and the media.

The Helsinki Committee would like to emphasize that the basic Public Prosecutor's Office is one of the most criticized elements of the Macedonian judiciary. Negative assessments of its work can be found in all the reports of international institutions and organizations monitoring the situation in the judiciary, including in a number of documents of the United Nations and the European Union. These opinions refer to the "selective passivity"; that "raises concerns about the independence" of the Public Prosecutor's Office, particularly because of the failure to act in cases with "a high degree of political corruption";³ We can conclude that this is a new episode of the campaign against SPO because, it is not normal for two prosecutors' offices to work against each

¹The statement by the Special Prosecutor Katica Janeva can be found at the following link: <https://www.youtube.com/watch?v=L-0ptrIxNWg>

²The announcement of the Special Prosecutor's Office regarding the session for review of the report of the Special Prosecutor's Office can be found at the following link: <http://www.jonsk.mk/2016/09/26/26-09-2016/>

³http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_the_former_yugoslav_republic_of_macedonia.pdf

other on political grounds, just as it is not normal for a prosecutor's office to be openly opposed by basic courts and structures of the Ministry of Interior.

Recommendation:

Instead of unscrupulously and unprofessionally making allegations and of criticizing SPO's work, we urge the Public Prosecutor's Office to finally start fighting against corruption and organized crime because it is the only way it can prove that it fulfills its function and contributes to the reforms of the judiciary, which are essential prerequisites for the rule of law, protection of rights and interests of citizens and a step forward towards Euro-Atlantic integration of the country.

PROSECUTION

ILLEGITIMATE RE-ELECTION OF A PRESIDENT OF THE COUNCIL OF PUBLIC PROSECUTORS

On 22 September 2016, during a session of the new Council of Public Prosecutors, by a secret ballot, Mr. Petar Anevski was re-elected for President of the Council. The Helsinki Committee reacted publicly and pointed out that pursuant to Article 8, paragraph 3 of the Law on the Council of Public Prosecutors (Official Gazette of the Republic of Macedonia, No. 150/2007 and 100/2011), the mandate of the President of the Council lasts two years, **with no right for re-election**. For this reason, the Committee calls upon the members of the Council of Public Prosecutors, in accordance with Article 10, paragraph 3 of the Law on the Council of Public Prosecutors, to schedule an urgent session and reconsider its unlawful decision.

After the public reaction, Mr. Anevski told media that it was not true that was elected illegally. According to him, even though he was the President of the Council of Public Prosecutors until August 2016, the re-election is a new, third term of the Council, meaning that he was not re-elected in the same term.

Recommendation: The Helsinki Committee believes that the re-election of Mr. Anevski a serious violation of the principle of legality. This decision calls into question the competence, independence and impartiality of the members of the Council and its main function to ensure and guarantee the independence of public prosecutors in performing their duties.

DISCRIMINATION

THE SYSTEMIC DISCRIMINATION AT BORDERS CONTINUES

The Helsinki Committee for Human Rights was addressed by a party which requested legal aid regarding the limitation of the right to freedom of movement and freely leaving the country, and discrimination based on ethnicity assumed by police officers working at border crossings.

The event took place on 08.09.2016 when the party wanted to pass the border crossing at the Alexander the Great Airport and travel to Switzerland to visit her sister-in-law. At passport control, the border police officer asked how much money she had for a trip to Switzerland. The party that responded that she did not have any money because she would be staying with her sister-in-law, who would support her during her stay in Switzerland. The police officer told her that he could not allow her to cross the border because she did not have any money on her. After taking her passport and performing a computer check-up, the officer repeated that he could not let her cross not only because she did not have any money, but also because in 2014 she had requested asylum in Norway and thus violated the visa-free regime of the Republic of Macedonia. The officer suspected that the party would try to request asylum yet again, this time in Switzerland, and refused to allow her to cross the state border. After they returned her passport, the party noticed that it was marked with two lines.

This situation was particularly upsetting for the party because of all the passengers who were flying to Switzerland, she was the only one who was prevented from traveling. Degrading and distressing was the presumptuous attitude of the police officer at the border crossing at the Alexander the Great Airport, who addressed the party arrogantly. In addition, she suffered a financial loss for the bought plane ticket, which was non-refundable.

Such discriminatory behavior on part of the police officers at the border crossing at the Alexander the Great Airport gives reasonable doubt that she was the victim of direct discrimination on grounds of presumed ethnic origin, i.e. the police officers did not allow her to cross the border assuming that she is Roma, judging from her name and surname. Police officers often assume that the Roma who travel to European Union countries are potential asylum seekers, so they limit the right to freedom of movement, i.e. stop the Roma from crossing the border, while at the same time they mark people's passports with two lines as an indication that these people were not allowed to cross the border, which represents a problem for them to cross the border in the future and thus results in repeated discrimination by border police. Such actions are contrary to the provisions of the Law on Border Control and the Law on Prevention of and Protection against Discrimination. Additionally, the party had been discriminated against on the basis of social status, since police officers had not allowed her to cross the border due to lack of money.

Recommendation: The practice of systemic discrimination based on ethnicity and racial profiling of Roma at border crossings must stop, regardless of personal biases and prejudices of the authorized officials.

DISCRIMINATORY CONTENT IN "SOCIETY" TEXTBOOK FOR 4TH GRADE

The Helsinki Committee for Human Rights together with other organizations of the Network for Protection against Discrimination considers that the 4th grade "Society" textbook contains discriminatory texts on the basis of marital and family status, as well as on the basis of religion.

Many parents stated that the textbook exercise which requires students to stick a photo of their parents' wedding and even to explain whether they got married in a church or at the Registrar's Office is extremely disturbing, excluding and stigmatizing to those children and parents who live in non-traditional family unions. This exercise and its text represent discrimination for children living in single-parent families, which may occur through the divorce of spouses, death of parent/s, children living in families with other relatives, and even to parents who live in extra-marital unions or parents who have concluded a civil marriage, but did not have a wedding. Apart from the exercise in question, the rest of the textbook where children learn about marriage and family also includes content that excludes and stigmatizes non-traditional families. Such content in the textbooks, not only discriminates and stigmatizes entire groups of children and parents and negatively influences children's development in unconventional families, it also denies access to accurate and relevant information for each student by portraying a prejudiced idea of what a "normal" family is, making it impossible to learn about diversity and allowing the negative stereotypes among students from the 4th grade.

As part of the Network for Protection against Discrimination, we refer to the anti-discrimination provisions of the Law on Primary Education, Law on Prevention of and Protection against discrimination that explicitly prohibits discrimination on the basis of family and marital status, as well as the Family Law which explicitly prohibits discrimination against children born out of wedlock.

Recommendation: We urge the competent institutions such as the State Education Inspectorate, the Bureau for Development of Education, the Ministry of Education and Science, the Ombudsman and the Commission for Protection against Discrimination to take action under their jurisdiction for the removal of such content and replace it with appropriate content which will present all types of families and communities, and it will fulfill the objectives of education in compliance with the laws of the Republic of Macedonia.

DOMESTIC VIOLENCE

THE INCONSISTENT ENFORCEMENT OF THE LAW ON PREVENTION OF PROTECTION AGAINST DOMESTIC VIOLENCE BY JUDGES CONTINUES

The Helsinki Committee for Human Rights was addressed by a party which requested legal aid as a victim of physical and psychological domestic violence. Namely, the husband inflicted physical violence on the aforementioned party for a longer period of time, beating her and insulting her with abusive language. The physical violence culminated on 21.07.2016 when she asked her husband if he had finished the field work, after which her husband, without any cause and reason started to insult her, slapped her and tried to strangle her. After being physically violated, the party

went to a health facility to get medical help, where bodily injuries were found – a swelling and redness on the face, as well as a swelling and red marks on the neck. The party is in possession of the medical records of the attacks that had been happening for the past two months, and as a result, she had suffered swelling and bruises the area above the knees, above the elbows, the back, the stomach, and the loins. Apart from the said physical violence, she had also undergone economic and psychological violence. Namely, her husband forbade her to leave the home, to move freely, to use the phone and the credit card, etc. For these reasons, via her lawyer, the party submitted a request for imposing several temporary measures for protection against domestic violence to the Basic Court Vinica and submitted the medical records of the injuries inflicted by her husband. The Basic Court Vinica decided to reject the proposal of the party for imposing provisional measures of protection against domestic violence on the basis of a statement by her husband, while not considering the submitted medical documentation. Dissatisfied with this decision, the party appealed to the Appellate Court in Stip. Even more concerning is the fact that the Appellate Court in Stip rejected the appeal on the grounds that the party had not submitted evidence of reasonable grounds for determining the requested provisional measures, despite the fact that the party had submitted complete medical records of the sustained bodily injuries.

Recommendation: The Helsinki Committee for Human Rights reported on the inconsistent and incorrect enforcement of the Law on Prevention of and Protection against Domestic Violence by the judges in the last Monthly Report as well. Again, we urge judges to effectively, consistently and correctly start applying the Law on Prevention of and Protection against Domestic Violence, in particular, the provisions regarding the imposition of provisional measures of protection in order to provide the best protection and remove immediate and serious danger to life and physical integrity for victims of domestic violence and their family members.

SOCIAL PROTECTION

RESTRICTION OF THE RIGHT TO PERMANENT FINANCIAL ASSISTANCE

In September 2016 the Helsinki Committee for Human Rights was addressed by a party, who requested legal aid due to a rejected request for permanent financial assistance. Namely, the PI Inter-Municipal Center for Social Work Skopje-Cair adopted a decision which rejected the party's request for permanent financial assistance. The Center's decision to reject this request is based on the previous debt of the party for unfounded received funds, affirmed by a Decision which became final after the ruling of the Higher Administrative Court.

With this Decision, the right to social protection is being limited, which is contrary to the Constitution of RM, while in accordance with Article 213, paragraph 2 of the Law on Social Protection, the Centre should have summoned the applicant and offered an agreement on the amount, manner and time limit for the return of received funds, and not to make the debt a basis for the rejection of the application. The person was summoned in the Center and verbally required an agreement on the way that he/she would be granted the right to permanent financial assistance, with the commitment to settle the debt via monthly payments. Instead, the party was offered to sign a statement claiming that he/she could not settle the debt at the time.

The Helsinki Committee drafted a complaint on behalf of the party, after which no reply has been received at this time.

Recommendation: The Helsinki Committee expresses concern over the unprofessional behavior of the Center for Social Work, especially because it fails to take into account the incapacity for work and the material insecurity of persons applying for the exercise of certain rights of social protection. The Helsinki Committee recommends that the Centers for Social Work, upon deciding on requests from parties, be guided by the principles of legality and active assistance for the party. Lack of knowledge or ignorance of the party participating in the proceedings should not be to the detriment of his/her legal rights and interests.