ГОДИШЕН ИЗВЕШТАЈ

за состојбите во областа на човековите права во Република Македонија во 2015 година

Raporti vjetor për gjendjen në fushën e të drejtave të njeriut në Republikën e Maqedonisë për vitin 2015

Annual report on the situation in the area of human rights in the Republic of Macedonia for 2015

ХЕЛСИНШКИ
КОМИТЕТ ЗА ЧОВЕКОВИ ПРАВА НА РЕПУБЛИКА
МАКЕДОНИЈА

Annual report on the situation in the area of human rights
in the Republic of Macedoniab for 2015

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I. ILLEGAL WIRETAPPING AND SPECIAL PUBLIC PROSECUTION

From the start of 2015, the opposition started releasing telephone conversations between high government represenatives, including Prime Minister Nikola Gruveski, and revealed information that over 20,000 citizens had been wiretapped by the government, including journalists, human rights activists and representatives of civil organizations. The act of wiretapping constitutes a violation of the human rights from the highest order and absolute abuse of the possibility for interception of communications which jeopardizes the rule of law in the country.

The talks released to the media proved the observations that the Helsinki Committee had highlighted for years back about the partisan nature of the judiciary in the Republic of Macedonia, the non-compliance with the principle of the rule of law and the lack of separation between the branches of government. Some of the released talks referred to the judiciary and the way in which the executive branch influenced the election of judges and public prosecutors, as well as how it arranged the decisions for certain court cases. Furthermore, the released talks provide indications about the connections between the executive power and the public prosecutor of the Republic of Macedonia. These talks are not only disputable from the aspect of the situation with the judiciary, but also from the aspect of the citizens' fundamental rights, in particular the right to privacy, in case the allegations that more than 20,000 citizens of the Republic of Macedonia had been illegally wiretapped prove to be true.

The misuse of power by SIA and the use of the wiretapping system for the purposes of the ruling party was also established in the report of the experts' group of the European Commission, which noted serious setbacks in five areas: the interception of communications, external oversight by independent bodies, judiciary and prosecution services, elections and the media. In the area of the judiciary it was established that there is a selective approach and political influence in all the aspects - from the moment of election of the judges and public prosecutors, to the functioning of the Judicial Council, the transparency of the election and dismissal of judges, the functioning of the system for assignment of cases. In the area of communications, disrespect for professional ethics was established, as well as disrespect for the basic principles of risk management and a lack of knowledge of the sensitivity of the intelligence task at hand within the SIA.

Moreover, a cause for concern in also the obvious lack of a trained service, such as training on complying with data protection rules, as well as not informing the public about the course of the procedures. The Public Prosecution, in accordance with Article 8 from the Law on Public Prosecution is obliged to inform the public about certain cases that is acts on, especially if they are of such nature as to trigger wider public interest or are

of importance for the function of the public prosecution with respect to the prosecution of criminal or other unlawful activities. The fact that the public prosecution failed to conduct investigation into the content of the aired talks as late as six months after their release, serves to prove the inefficiency of the public prosecution in protection of the public interest and the inability to demonstrate independence against the influence of the executive power. The Public Prosecution did not take into consideration the possibility that the recordings might have been obtained through abuse of the authorities of the state security services and abuse of the overall security system in the country. Moreover, this possibility was not even reviewed by the mechanisms for controlling the activities of the state security services. In the case of "RADIO TWIST A.S. v. SLOVAKIA", conducted before the European Court of Human Rights, the Slovak authorities also failed to examine such a possibility. The court found that it was "very surprising, given the fact that the recording refers to a telephone conversation between two high officials and that the suspicion that the tape was obtained through abuse of authority should not be ruled out in advance." In other words, the state can investigate in any direction it wants, but must not, in advance and unconditionally, accept the position of the security services that they had acted solely in accordance with their authority and did not exceed it, in a case when there are obvious clues pointing to it.

Taking into consideration such solid evidence about the connection and involvement of the executive power in the Public Prosecution, a need emerged to form a Special Public Prosecutor's Office for prosecution of crimes related and arising from the content of the illegal interception of communications. On September 15, 2015, pursuant to the Przino Agreement, the Parliament unanimously adopted the Law on Public Prosecution for prosecution of crimes related to and arising from the content of the illegal interception of communications. This law officially predicted the existence of a special public prosecutor that long period was advocated in public. According to this law, apart from the public prosecutor in charge of investigating and prosecuting crimes related to and arising from the contents of unauthorized interception of communications, the founding of a prosecution headed by the main prosecution was also envisaged, which would include public prosecutors elected for this office, investigators, experts, as well as a professional and administrative service.

The Assembly of the Republic of Macedonia proposed Katica Janeva, from the Public Prosecutor's Office in Gevgelija. The proposal was unanimously adopted by the Council of Public Prosecutors and the Special Public Prosecutors took office on 16 September, after being sworn in.

Although the election of the Special Public Prosecutors took place by summary proceedings, the prosecutor's office started working as late as December 2015, mainly due to the obstructions by the Council of Public Prosecutors with regards to the team that the Special Prosecutor required. In fact, the Council of Public Prosecutors spent more than one and a half month opposing the Special Prosecutor's request for her team to have 14 prosecutors by first electing seven, and then electing additional five prosecutors. The hindering of the work of the special prosecution came after the halt in the negotiations for completion of the Przhino Agreement, which leads to reasonable suspicion of political influence over the decision of the Judicial Council. In addition, the legal deadline of 35 days for provision of funds for the work of the special public prosecution was also broken, which additionally hampered its work.

In the course of November, the Special Prosecution submitted a request to the Primary Prosecutor's Office for Organized Crime and Corruption and to the Primary Prosecutor's Offices in Skopje, Bitola and Kumanovo for submission of the established cases related to the wiretapping. The requested cases were submitted by all the prosecutions, apart from the Prosecutor's Office in Kumanovo, for which there is still no certified information as to when they received the request and whether they have exceeded the legal deadline of 8 days to submit the case.

It is a positive circumstance that 12 public prosecutors were elected as part of the team of the Special Public Prosecutor, but without a team of investigators and professional associates and an administrative service, laid down in Article 2, paragraph 3 of the Law on the Public Prosecutor's Office for the Crimes Related and Arising from the Content of the Illegal Interception of Communications. This contributed toward the previous inefficiency of the special Public Prosecution.

On 14 December SPP made a decision to establish subject-matter jurisdiction over 34 cases, including the case "Puch" (Coup), one of the defendants in which is the opposition leader Zoran Zaev. In the meantime, SPP also gave a position opinion to the proposal for lifting or replacing the measure of detention of the defendants Zoran Verushevski and Gjorgi Lazarevski submitted by their attorneys. Based on this opinion, the Criminal Council of the Department for Organized Crime and Corruption in the Primary Court Skopje 1 decided to lift the measure of detention, thereby imposing a ban on leaving one's domicile and temporary confiscation of the passport as a precaution.

II. CIVIL AND POLITICAL RIGHTS

1. INTRODUCTION

In the course of 2015, taking into account the intensity of the political crisis, a lot of public gatherings were organized in order to give vent to the anger accumulated from the policies of the current ruling structure. In fact, prompted by their constitutionally guaranteed right to public assembly, the Macedonian citizens, for various reasons, pointed to the systemic violation of human rights and freedoms in the country, in nearly all of the segments of society.

Media freedoms, the autonomy of the university, labour rights, police brutality, the rights of the members of the LGBTIQ community, were only some of the issues that the citizens consolidated their anger around, i.e. the pressure that they exerted in order to get involved in the process of policy decision-making.

The work of the Helsinki Committee for Human Rights of the Republic of Macedonia also involves monitoring of public assemblies in order to observe the behaviour of the police and the possible violations of the citizens' right to association and peaceful assembly. In this vein, the Committee's team attended all of the notable public assemblies in order to record and react to the reported or observed the police overstepping their authority and other violations of the human rights and freedoms.

The Helsinki Committee for Human Rights established that the police actions during some of the public assemblies were characterized by disproportionate use of force and measures of coercion. This conclusion also emerged during the protests which took place on 5 May, as well as the rallies that followed, when the police officers limited the right to free movement, but also the right to public gathering.

2. PROTESTS 5 - 17 MAY

Representatives of the Helsinki Committee were present at the citizens' rally in front of the Government of the Republic of Macedonia, where the citizens once again expressed their outrage after no responsibility was taken for Martin Neshkoski's murder. By 20:30 hours, the rally went without any major incidents and clashes between the citizens and the police. The first more serious clashes with the police started around 22 hours when the police started pushing the citizens standing in front of the Government back.

The Helsinki Committee observed that while pushing the citizens back, the police used disproportionate and excessive force. The police officers did not limit the use of force solely to those citizens who acted

aggressively towards them, but also indiscriminately hit and stepped over all of the citizens, many of whom were sitting peacefully on the ground holding their hands up. Later, the police proceeded to detain the participants in the protest. While detaining them, the police once again used indiscriminate, excessive and disproportionate force. The detention continued even after the citizens no longer participated in the rally and had headed toward their homes. This is also confirmed by the fact that at 23:30, the police officers forcibly entered several buildings, among which the city library "Brakja Miladinovci" (Miladinovci Brothers), and once again resorted to disproportionate and excessive force toward the youth who happened to be in the library under the pretext that some of them had allegedly participated in the rally.

According to the information available to the Committee, more than 42 people were arrested in the incidents, most of whom were kept for 24 hours in several police precincts in Skopje. The members of the Committee observed that many of the detained were not a part of the group which clashed with the police, and that some of then had not even participated in the protest at all. 15 people were kept in detention, 1 person was sent for house arrest, and 2 persons were at large. 5 of the detainees were students, 2 of whom were representatives of the Student Plenum.

The persons were suspected of Participation in a crowd, which prevents an official person to perform an official act (Article 384, paragraph 1 from the Criminal Code). The sentence for this crime is from 3 months to 3 years, and is consequently considered to be a lesser crime that the measure of detention should generally not be imposed for, and the remaining available measures to secure presence should be used. The Committee believes that these decisions contribute towards limiting the right to protest, especially since the reason for detention was stated to be possibility the detained to repeat the crime considering the fact that new protests had been announced. Furthermore, the decisions for detention and the reason to initiate criminal proceedings against students may be considered a warning to the rest of the citizens who wanted to take part in the rallies held in the course of this period. In comparison, the Committee had its observers during the violent protests against the Municipality of Centar held in 2014, in which no court proceedings were initiated against the participants, which serves to prove the selective approach.

Apart from two of the protesters who were criminally prosecuted, all the others plead guilty and were therefore sentenced to suspended imprisonment of 3 months which would not be effectuated unless they repeated the crime within one year.

Some of the people who were arrested and deprived from freedom 24 hours after the protest turned to the Helsinki Committee with requests for legal aid, as well as persons who had been victims of excessive force, regardless of whether they had participated or not participated in the protest.

Most of the people who had been subject to excessive force by the police were located in a small street next to the Kliment Ohridski Blvd, where a group of about 30 police officers was chasing after the citizens who started hiding in apartment building entrances. Those people who did not manage to escape the police were subjected to excessive force, although according to the citizens' statements they did not resist in any way, nor did they know why the police was chasing them.

Case 1 - 2 persons (male and female) were attacked by a group of 6 police officers and sustained physical injuries all over their bodies, and one of them even sustained injuries on the head. They were then taken to the police precinct and kept there for 24 hours.

Case 2 - 2 persons (male and female) were chased by a group of 4 police officers and therefore took shelter in the basement in the entrance of one of the apartment buildings nearby. After they were discovered by the

police they were forcibly pulled out of the entrance, forced to lie down n the pavement and physically attacked. Then they were released.

Case 3 - 1 person (male), who was not a participant in the protest, was intercepted by a group of police officers on Kliment Ohridski Blvd, was spread out on the pavement and beaten up by the police, whereby he was taken to the police station and kept for 24 hours.

Case 4 - 2 persons (male) on Partizanski Odredi Blvd. in front of the Church of St. Clement of Ohrid, as they were standing with their arms up in sign of peaceful protest, were physically attacked by a group of police officers, detained and kept in the police station for 24 hour.

Case 5 - 1 person, who attended the protest as a journalist, was intercepted by two police officers and was physically attacked sustaining physical injuries to the right leg and the head.

Most of the people who came to the Helsinki Committee to report police brutality refused to initiate proceedings against the police for overstepping their authority and using excessive physical force, due to their distrust in institutions. They believed that their rights would not be protected and that the hypothetical proceedings they would initiate would result in further damage against them or their families. Such statements support the conclusion reached by the Helsinki Committee regarding the citizens' distrust in institutions, especially the judiciary, due to its partisan nature and the inability to oppose and resist the influence of the executive power.

After the protest held on 05.05.2015, the rallies continued until 16.05.2015, every day at 18 hours, organized by the civil movement "Protestiram" (I Protest). In the period between 06.05. until 16.05.2015, there were no clashes between the police and the protesters. However, MoI's practice of not allowing a public assembly in front of the Government building continued until the very end of the rallies, 16.05.2015. Therefore, the group gathered on spots around the Government every day, and proceeded to move toward different state institutions, finishing its route in front of the Parliament building.

Due to the fact that the further limitation to the right to peaceful assembly and public protest was ungrounded, the Committee believes that the Police violated the citizens' constitutional right to a peaceful assembly and public gathering (Art. 21 from the Constitution of RM), which gives grounds for suspicion that the police officers in charge have committed the crime of Preventing or Hindering a Public Assembly (Art, 155 para. 2 from the CC of RM).

From all the listed violation committed by the police, the public prosecution has so far failed to initiate a single ex-officio proceeding against the police officers. According to the findings of the Helsinki Committee, criminal charges were pressed in the Prosecution for the event in the Brakja Miladinovci Library by the Liberal-Democratic Party, while only a single person from those who had been victims of excessive force by the police pressed criminal charges for Mistreatment while performing duty. Despite the gravity of the procedures, the prosecutor's office has not yet informed the public about the outcome of the investigation and whether court proceedings against the suspect police officers will be initiated.

3. STUDENT AND PROFESSOR PLENUM

The academic struggle which led first to the mobilization of the students, and then mobilization of the professors, as well as the founding of plenums and the actions that they led to, continued in 2015 as well.

In fact, provoked by the dissatisfaction with the authorities' irresponsibility, and particularly encouraged by the developments in January after the Assembly of the Republic of Macedonia adopted, and President Gjorge Ivanov signed the changes to the Law on Higher Education, the two Plenums acted in coordination and held to protest rallies exactly in front of the Assembly of the Republic of Macedonia.

After the turmoil was over, a number of media outlets continued with the established practice of labeling the participants in the protests, regardless of their role as organizers or supporters of the cause. Taking into account this media practice which became typical when reporting about any kind of civil discontent, the Committee expressed concern over the unethical reporting about the protests and rallies since their role was exclusively to misinform the public contrary to their constitutional obligation - to receive and spread information in an impartial and objective manner.

Considering the ignorant attitude of the authorities when it comes to the students' and professors' requests, after a line of consultations and constructive proposals, a conclusions was reached that no further negotiations or contacts with the executive authority as a proposer of the changes to the Law on Higher Education, or any other concerned institution, are necessary. In fact, the students made a decision, which was supported by the professors, to declare an "Autonomous Zone" on the premises of the Faculty of Philosophy and the Faculty of Philology "Blazhe Koneski" under the "Ss. Cyril and Methodius" University in Skopje. This concept of so-called "occupation" started to transform into a good practice of showing resistance and became typical for the academic protests in the region and wider, but was inspired as such by the global movement of Occupy. The autonomous zone created by the students, as a space and time which created a halt in the dominant anti-democratic practices, was at the same time also a political community, which upheld the principles of equality, inclusion and solidarity. The content of the Autonomous zone clearly indicated this, considering the topics and issues which were raised within the alternative curriculum, as well as the interaction, discussion, as well as openness towards several kinds of creative challenges.

In spite of the tense atmosphere in the course of the first few days, the overall assessment of the security during the Autonomous zone was solid. Members of the Committee's team had their observers within the entire of the duration of the Autonomous Zone, and a training was also held in order to enhance the security and order at the "occupied faculties". In Skopje and under the "Ss. Cyril and Methodius" University, the following faculties were occupied: the faculties of Philosophy and Philology, the Faculty of Architecture and the Faculty of Mechanical Engineering. The Bitola students from the Student Plenum also expanded this alternative practice of resistance onto the Technical Faculty in Bitola. Although the threats to security in Bitola were more serious because some of the neo-Nazi groups entered the Technical University, as well as the technical problems and the cutting of the electricity supply to the faculty, the Bitola Autonomous Zone contributed towards the overall student engagement and the self-organization during the struggle for better education.

Motivated by the defense of the University's autonomy, guaranteed with the Constitution of the Republic of Macedonia, the student and professors, with their activities which culminated in the Autonomous Zone, highlighted the need of deliberation in society, from practicing direct democracy though to reacting on the basis of the principles of political culture. With this dynamics, the students and professors, through their political engagement, triggered additional civil movements and resistance against the bad public policies of the current governing structure. In fact, through the Autonomous Zone which at the same time also exerted creative pressure on the executive authority which previously refused any cooperation point blank and nullified the visibility of this important social group, the students and professors managed to achieve temporary withdrawal of the draft-changes to the Law on Higher Education. Subsequently, the students and

professors entered negotiations with representatives of the executive authority, mediated by Rector Velimir Stojkovski which resulted in workgroups for drafting of a completely new Law on Higher Education.

Despite the sporadic reactions of the Student and Professor Plenum, related to the process of drafting of the new Law on Higher Education, as well as other topics from the area of academic work and engagement, in the oncoming period, both of the plenums stopped working.

4. HIGH SCHOOL AND TEACHER PLENUM

The month of March marked the announcements for protests organized by the High School Plenums which had been established and had started working against the so-called reforms in secondary education. Consequently, in several towns, the high-school students got organized around the request to have their arguments against the external testing and for restoring the previous system of state baccalaureate heard by the Ministry of Education and Science. However, as early as the start of the protest announcement, high-school students from several towns turned to the Committee saying that they had been threatened and pressured into stopping their activities.

Apart from this kind of pressures, which were unfortunately mediated by the authorities in the high-schools in Skopje, as well as all over Macedonia, the high-school students were not spared from an aggressive smear campaign[1], which was instigated by, for the time being, unknown perpetrators who distributed disturbing content as posters and fliers in those towns where the high-school students demonstrated increased resistance. The strongest pressures were noted in Skopje, Bitola, Veles and Resen. The committee expressed concern over the distributed materials since the fliers and posters contained allegations which served the purpose of identifying alleged organizers presented as corrupted and partisan youth, in order to discredit the entire movement and misinform the public.

Unfortunately, the situation with the pressures was also manifested with direct threats, locking the children up in their school buildings, allegations of bribery and indecent proposals by the ruling party to some of the parents.[1]

With regards to these pressures, the Committee reminded the public that the Constitution of the Republic of Macedonia guarantees the freedom of assembly, expression, as well as the right to hold public gatherings. Furthermore, the Constitution guarantees protection when the citizens' dignity and reputation are violated. Bearing in mind that in this specific case the rights of children who had not yet turned 18 were violated, the provisions from the Convention on the Rights of Children also apply. In fact, Article 14 and Article 15 from the Convention on the Rights of Children state that the children have the right to freedom of thought, as well as freedom of association and freedom of peaceful assembly.

Therefore, it is necessary that the institutions show that they are seriously protecting those rights and they are bound to conduct investigation on the perpetrators in order to identify them, thereby showing the people whose rights have been violated that they will be able to initiate or start appropriate court proceedings and receive adequate protection.

Finally, taking into account the overall situation in which the rights of the high-school students were jeopardized, the Committee believes that these actions constituted the prerequisite for the crimes of endangering the safety of several persons, preventing and hindering a public assembly and violence.

After two months of protests and boycotting of classes the high-school students' anger resulted in setting

[1] http://mhc.org.mk/announcements/272#.VtYCJ8vSldh

up camp across the street from the Ministry of Education and Science by the High School Plenum. However, with the radicalizing of the students' strategies, as well as the harsher rhetoric of their requests, the Committee noted attempts to terminate the boycott and the negotiations by employing various means of intimidation and labeling of the youth in public. Despite the great numbers of students protesting and the legal relevance of proposed changes in the reform offered by the youth, the Ministry of Education and Science decided to keep silent until the protests wore off.

The Committee also expressed its remarks on the negotiations conducted between the representatives of the High School Plenum with the Minister and Deputy Minister of Education Abdulakim Ademi, Spiro Ristovski and Vice Premier Vladimir Peshevski. The attempts to discredit the requests of the youth, as well as degrade their personality and dignity were not taken into consideration. The 20 minutes left to the youth to express themselves, out of the meeting lasting 1 hour and 15 minutes, indicates the officials' ignorance and disrespect for the provisions of the Convention on the Rights of the Child, which stipulates in Article 12 that a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, and those views should be given due weight. At the same time, the Committee reviewed the legal grounds of the youth's requests for termination of external testing as a model and fully supports them. The Committee would like to remind that the states have a positive obligation to protect this children's right and educate the civil and public servants and police officers about the children's right to protest, in order for them to practice this right more easily.[2]

In the course of this past month, the Helsinki Committee received reports with allegations of threats against the high-school students who attended the high-school protest against the bad reforms in education which took place on 21.10.2015. The allegations were submitted by high-school students, as well as their parents. What is especially worrying are the indications that students have been locked inside their schools by school employees, who locked down the doors of the high-schools, as well as the fact that certain media reported that the students had been paid money as a reimbursement for their attendance of the rally, which led to the appearance of graffiti with this type of content in front of two high schools today. This violates the honor and reputation of the children who wish to channel their dissatisfaction against the reforms in education.

After the protests finished and the camp set up across the street from the Ministry of Education and Science was removed, the High School Plenum, with the support of the Teacher Plenum, organized a big high-school march, which the university students also joined in solidarity. After this event, in the course of the second half of 2015, the Helsinki Committee received reports with allegations of threats against the high-school students who attended the high-school protest against the bad reforms in education which took place on 21.10.2015. The allegations were submitted by high-school students, as well as their parents. What is especially worrying are the indications that students had been locked inside their schools by school employees, who locked down the doors of the classrooms and the entrance doors of the high-schools, as well as the fact that certain media reported that the students had been paid money as a reimbursement for their attendance of the rally. This violated the honor and reputation of the children who wish to channel their dissatisfaction against the reforms in education. In addition, locking children inside schools in order to prevent them from attending protest constitutes unlawful deprivation of freedom which is prohibited in accordance with the Criminal Code of the Republic of Macedonia.[3]

[2] The country's positive obligation for special protection of children participating in rallies is also evident in the case law of the European Court of Human Right. In the case Castle and Others vs. Great Britain, the European Court of Human Rights established the children's right to participate in protests, emphasizing that they should be treated as a vulnerable group and therefore the state, especially the police force, need to provide them with special protection when exercising this right.

[3] Article 140, paragraph 3 from the Criminal Code states that "If the unlawful arrest is performed by an official person, by misusing the official position or authorization, he/she shall be punished with imprisonment of six months to five years." Based on this article there is a possibility for the public prosecution to act on hearsay and investigate the information on the deprivation of freedom of high-school students.

III. JUDICIARY

1. INTRODUCTION

The Helsinki Committee is one of the few organizations in the Republic of Macedonia which has long years of continual experience in monitoring of court proceedings. Through its programme for free legal aid, the Committee has the chance to browse the case files which are a part of the court cases. In this way, the Helsinki Committee is able to observe the proceedings from both a scientific and legal, as well as a practical aspect. A total of 50 court proceedings were monitored in the course of 2015, during 132 hearings, from both the Criminal and Civil Law. The monitoring took place in seven court across the country.

The general conclusion is that the systemic problems that the judiciary fails to overcome, overcomes at a slow pace, or even deepens, continue to persist. The main problems consist of insufficient independence of the judiciary due to the interference of the executive in the judiciary branch, insufficient competence and training of the judges, non-transparency of the work of the courts, inconsistence in the case law, unequal treatment of the citizens as opposed to the state authorities when they occur as parties in the proceedings, and lack of efficient legal protection, especially when it comes to access to justice, violation of the right to trial within a reasonable time and the presumption of innocence.

The practice of imposing and extending the measure of detention in a large number of court proceedings, without previously explaining the reasons for this, is worrying. The practice of collective extension of detention for a group of defendants whose names are mentioned persists, without having separate outlines of the reasons why each of the defendants has this measure extended individually. Detention lasts excessively, even after the end of the investigation and the questioning of the defendants. The lack of use of milder measures, such as the guarantee, is worrying.

The citizens in the country are largely uninterested in attending the proceedings in the role of the public. The public is not informed about the way they may exercise their right to be present in the courtroom during judicial proceedings. The practice to have some trials held in inadequate conditions, in the judge's offices, persists. Equitable representation among judges belonging to minority communities has still not been achieved. Some judges have a different attitude towards participants in the proceedings whereby increased closeness with prosecutors and privileged standing of older and more experienced lawyers is noticeable. The practice of judges or lay-judges of leaving the courtroom in the course of the main hearing or questioning is also striking.

Based on the long duration of some of the cases monitored, as well as the repeated complaints by citizens and the decisions that they receive from the Supreme Court of the Republic of Macedonia and the European Court of Human Rights which recognize the violation of the right to trial within a reasonable time and determine compensation, inefficiency of the courts can be established. What is of special concern is that the procedures that are provided as emergency procedures, both in criminal and in civil proceedings, are not treated as such at all, affecting the exercise of other rights established by the Constitution and international treaties. Further down this text, we present the cases where major violation of the rights was established, as well as pressure and interference by the executive authority in the work of the judiciary.

2. THE CASE OF TOMISLAV KEZHAROVSKI

Journalist Tomislav Kezharovski was arrested in May 2014 under suspicion that in 2008, in an article punished in the Reporter 92 magazine, he revealed the identity of the protected witness in the court case of "Oreshe". According to the witness's statement, he was pressured to give the court an already prepared statement by the members of the police. The arrest occurred when Kezharovski was investigating the suspicious accident which led to the death of journalist Nikola Mladenov, despite the fact that in 2008 the witness in the Oreshe case did not have protected status yet. After the spectacular arrest and transfer to the Primary Court Skopje 1 in front of cameras of numerous media, Mr. Kezharovski he was kept in detention. In October 2013 Mr. Kezharovski was sentenced to 4.5 years of imprisonment with a non-effective judgment, while in November 2013, after spending more than 5 months in detention, he was placed under house arrest until the judgment became effective.

After the judgment of the Court of Appeals was announced in January 2015, and reduced the 4.5 years of imprisonment for the journalist Kezharovski into 2 years, on the exact same day, after the adoption of the referral act by the judge for execution of sanctions, MoI took Mr. Kezharovski to serve his sentence of imprisonment without being previously served the judgment. Although the judgment does become effective after it is adopted by the Court of Appellation (Article 127, para 1 from the old Law on Criminal Proceedings, according to which the case was conducted), it is not enforceable before it is served to the defendant (Article 127, para 2, LCC), i.e. the judge for execution of sanctions was not allowed to adopt a referral act for serving a prison sentence.

One day after he was taken to the Skopje Prison, the prison manager proposed suspension in the sentence with a duration of 30 days to the Head of the Directorate for Execution of Sanctions due to Mr. Kezharovski's deteriorating health. The proposal was accepted although Kezharovski himself attended the rallies organized against his imprisonment and it was clear that he was in good health. In the meantime, another proposal of the prison manager, for Mr. Kezharovski to be released on parole was accepted by the Primary Court Skopje 1 and adopted a positive decision. The decision was appealed against by the Primary Prosecution Skopje, but the Court of Appeals Skopje dismissed the appeal on 17 February 2015.

The overall court proceeding against Kezharovski was a serious precedent given that no case of journalist being sentenced to such a long imprisonment for doing activities related to journalism had been previously observed in the region. Especially since this occurred in circumstances when the freedom of media and the freedom of expression in the Republic of Macedonia are under a serious threat, and this judgment seems to be another attempt to silence and censor all those who have a critical stance and opinion. One of the key elements that the Public Prosecution should have reacted on time about and initiated new proceedings on,

is verification of the allegations about the protected witness in the "Oreshe Case", since if the claims of the protected witness that his initial statement to the court was fabricated by the police proved to the true, then journalist Kezharovski would have turned out to be revealing a crime, and not committing one.

The course of action taken by the prosecution and the courts resulted in limitation of journalist Kezharovski's freedom for the total duration of 597 days (162 of which in detention, and the rest under house arrest) and nearly two years of psychological pressure on him and his family. In this country's criminal records this journalist will be labeled as a person who has committed a crime, while his investigative story about the police influence over a protected witness and the fabrication of a statement in order to influence the judicial bodies has remained uninvestigated.

3. THE CASE OF JADRANKA KOSTOVA

The last Decision no. 08-214/1 of the Commission for Verification of Facts from 26 March 2015, which lustrated journalist Jadranka Kostova, is another classic act of political revenge against opponents and critics of the current government. The adoption of the decision follows a week after the broadcast of a documentary titled "Macedonia: Behind the facade" aired on Al-Jazeera in which the journalist and editor-in-chief of the weekly "Focus" expressed critical views on developments in the country. The date that the decision was adopted on - March 26 - is the same date that the former editor-in-chief of the weekly "Focus" lost his life in a car accident in 2013 under suspicious circumstances.

In the proceedings for lustration of journalist Kostova, the Commission established that she had voluntarily signed up to be a source of knowledge about the two people whom the service had expressed interest in due to their different political and other affiliation. As arguments in support of this, the Commission submitted the Questionnaire for Audit of a Personal Record from 1967 (at which time the journalist was starting primary education), an Official Note from 1993 and a telephone conversation record from 1996. From these last two documents, the Commission concluded that journalist Kostova, at the time when she worked at MRTV, for political or ideological reasons, deliberately, secretly and continually collaborated with the state security bodies in an organized manner. According to the Commission, the journalist undertook these activities in order to move forward in her career.

As for the official note from 1993, according to journalist Kostova, she called MVR and DSC believing that the person she allegedly informed about is a part of a police provocation aimed at getting her suspended from her position as an editor of the show "Bez naslov no so povod"(Without a title, but with a good cause), as well as termination of the show which dealt with certain taboos, such as the free expression of a citizen's conviction who believed that Macedonians are Bulgarians. The document Reproduction of a Conversation from 1996 involves a telephone call between two people one of whom claimed that the journalist had been in Rome accompanied by the secret services and the other person did not believe this. The findings of the Commission drawn from the reproduction of the conversation are based on "hear-say" allegations and as such are unsuitable for use as evidence, much less as facts.

In the course of the month of April 2015, after obtaining legal aid from the Helsinki Committee, journalist Kostova filed a lawsuit against the Commission's decision to the Administrative Court. The lawsuit contained the abovementioned arguments, as well as 6 (six) notarized statements by colleagues and associates of Ms. Kostova which unequivocally prove that the Commission's decision has been fabricated and that her professional engagement as a journalist may under no circumstances be considered a deliberate, organized,

secret and continual collaboration with the state security bodies. Although more than 10 months have passed after the lawsuit was filed and despite the urgency of the procedure according to the Law on Lustration, the Administrative Court had not reached a decision by the time this report was closed.

Upon the revealing of the scandal with the illegally wiretapped calls, the Assembly of the Republic of Macedonia, at the Government's proposal, suspended the lustration process in July 2015, yet it remained active for all the persons that decisions had been made for by then, until the proceedings come to an effective conclusion. Despite this outcome, the conclusion remains that the process of coming to terms with the past was bound to be based on the principles of lawfulness and fairness. Despite these postulates, the lustration in Macedonia turned into a classic example of an inquisitorial procedure in which the defendants were not heard, and were given no opportunity to defend themselves at all. Consequently, for a range of professions such as journalists, professors and others, the outcome of this procedure is equal to the penal sanction of the Criminal Code - a ban on performing a profession, activity or duty. If the Administrative Court in this case does not provide confidentiality of personal data, protection of personal integrity, respect for privacy, family life, dignity and reputation, the Committee is confident that justice will be served before the European Court of Human Rights, as was the case with the lustrated former president of the Constitutional Court, Mr. Trendafil Ivanovski. [4]

4. THE CASE OF THE ARSOVSKI FAMILY

The Helsinki Committee followed the proceedings for expropriation of property of the Arsovski family in Kratovo that has been European Court of Human Rights (ECHR) runs from 2002. The family property was expropriated at the proposal of a private company that had obtained permission to extract the water located below the property. The possibility to have private companies propose expropriation of private property which is of public interest, was assessed as contrary to the Constitution by the Constitutional Court in 2009 (U.no.200 / 2007) because of the possibility to have certain property be confiscated in favor of the economically more powerful users and the interest of the property holder to be minimized, brining into question the constitutionally guaranteed right to ownership."

After the expropriation proceedings before the national courts in 2005 ended in confiscation of the property by the state in favor of a private company, the Arsovski family was indemnified with 880 EUR, and was not taken into account that the private company will make profits from the exploitation of the water. Dissatisfied with the decisions of the domestic courts, the Arsovski family sent a complaint to the ECHR in 2006.

In 2013, the ECHR passed judgment no. 30206/06 (Arsovski against Macedonia) [5] which found that the State had violated the right to property guaranteed by the European Convention on Human Rights (ECHR). In addition, the ECtHR awarded the applicants 9,000 EUR which the state has paid for intangible costs, while the procedure regarding the non-material costs has been stopped, but has not yet been finished in anticipation that the Judgment will be used to repeat the proceedings before the national courts or possible recovering of the property or equitable expropriation.

Upon receiving the judgment in 2013 the Arsovski family requested a retrial before the competent Administrative Court which upheld the request and annulled the previous effective decision on expropriation (U-2 no. 494/13). During 2014 the company Sileks AD Kratovo joined the proceedings as an interested party

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[4] http://hudoc.echr.coe.int/eng#{"itemid":["001-160219"]}

[5] http://goo.gl/XXTCGj

and lodged an appeal before the Supreme Administrative Court, which upheld the appeal and ordered the Administrative Court to decide again on the request for a retrial (Uzh-1 no. 297/14). The higher Administrative Court, inter alia, stated that "This court finds it undisputed that after the decision of the ECHR, the court to which an application for a change in the decision has been submitted is obliged to act on that request, but depending on the reasons on the grounds of which the repetition of the procedure is requested, it will decide whether to allow a retrial. "

After the procedure was repeated before the Administrative Court in 2014, the Court issued a Decision declaring the Arsovski family's request in part untimely, and in part unhallowed (U-2 no. 1278/14). According to the Administrative Court, and in line with Article 47, paragraph 2 of the Law on Administrative Disputes, no repetition of the procedure could have been required in that specific case, since 5 years had passed since the date when the decision for conducting expropriation in 2005 became effective. The decision of the Administrative Court was upheld by the decision of the Higher Administrative Court in 2015 (U-1 br.199/2015).

The Helsinki Committee expresses concern over the decisions of the Administrative Court and the Higher Administrative Court. In fact, although it is correct that in accordance with the Law on Administrative Disputes repeating an administrative procedure is only possible within 5 years as of the date when the disputed legal act became effective, the administrative courts have overlooked that in accordance with Article 118 from the Constitution of the Republic of Macedonia, the international agreement ratified in accordance with the Constitution are part of the internal legal order and may not be changed by law. In practice, this means that the legal effect of ECHR is above the legal effect of the domestic legislation, i.e. in a situation where there is a conflict between the domestic and internal law, the stated authorities must stick to the provisions of the international law. The provisions referring to the limitation period regulated with the provisions from the Law on Criminal and Civil Procedures and the Law on Administrative Dispute should be amended so that the deadlines for start of the limitation period should be measured starting from the effectiveness of the judgment of the ECHR, and not the effectiveness of the final act before the domestic courts.

5. THE CASE OF JASMINKA ANGELOVA

The Helsinki Committee has been following the court proceedings by the private plaintiff Jasminka Angelova, spouse of the leader of the political party Dostoinstvo, for the crime of bodily injury by a police officer during the protest held on 8th May 2015.

During the procedure, which is still in a phase of conciliation, the court fined the private plaintiff with a fine in the amount of 500 EUR for insulting the court. In fact, the judge found that the published Facebook status on the plaintiff's private profile which stated that the defendant does not appear at the scheduled hearings and that the court is not up to date with the case, is an insult to the court. This decision was further influenced by the fact that the Facebook status was copied and published by the Internet portal Naroden glas (People's Voice) and therefore the judge believed it to be a column.

This decision was appealed by the plaintiff and the Criminal Chamber decided to uphold the appeal and annul the contested decision. In its decision the Criminal Chamber stated that it is unclear in what way and with what words the plaintiff had offended the court, due to the absence of offensive words in her Facebook status, later published on a web portal. Additionally, it is unclear to the Chamber how the judge found that the plaintiff had offended the defendant, especially because it is obvious that there was the web portal Naroden Glas (People's Voice) did not provide her consent before they published the status.

6. VIOLATION OF THE RIGHT TO TRIAL WITHIN A REASONABLE TIME

The Helsinki Committee once against established violation of the right to trial within a reasonable time in a court dispute over the nullification of a decision for termination of employment. In the present case involves a person who, in the role of a plaintiff, conducted a lawsuit for annulment of a decision for termination of employment given by the penitentiary institution that he/she worked in for 3.5 years. Over this period of 3.5 years, the Primary Court Skopje 2 once annulled the contested decision for dismissal, but because this judgment was revoked by the Court of Appeals, a negative judgment for the plaintiff was adopted, which was subsequently upheld by the court of the second instance. The court of the first instance took 1 year and 7 months to reach the first judgment, although the procedures related to employment before the court of first instance must be completed within 6 months of filing the complaint.

The court of the second instance, on the other hand, took more than 1 year and 2 months to act on the complaint of the plaintiff, although the proceedings before the appellate court must be completed within 30 days as of the day of receipt of the complaint or within 2 months if a hearind is held before the court of the second instance. Due to the obvious violation of the right to trial within a reasonable time, the plaintiff filed a request for protection to the Supreme Court of the Republic of Macedonia, which was accepted and the plaintiff was given fair compensation in the amount of 30,000 denars. The Court established a violation of national legislation as well as violation of the provisions of the European Convention on Human Rights. In fact, Article 6 of the European Convention on Human Rights states that "In the determination of his/her civil rights and obligations everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

7. DIFFERENT JUDGEMENTS IN DIFFERENT COURTS FOR THE SAME CRIMINAL-LEGAL EVENT

The case of the victim of domestic violence who was kidnapped from Kriva Palanka, but later became a defendant in the proceeding for false reporting of the crime, gained public exposure. This case is another example of how the victims of domestic violence are victimized by the very system supposed to protect them.

In fact, the victim was pursued by the public prosecution in Kriva Palanka for giving a false statement that her previous partner committed the crimes of rape and kidnapping, although the person occurs as a subsidiary prosecutor for the same crime before the Primary Court in Kumanovo. Acting on this motion, the Primary Court in Kriva Palanka adopted a decision finding the victim guilty of giving a false statement, which was later upheld by the Court of Appeals in Skopje.

In the second procedure on the same event, conducted before the Primary Court in Kumanovo, and in which the victim occurred as a subsidiary prosecutor, the court adopted a judgment finding the same person who occurred as a damaged party in the abovementioned case conducted before the Primary Court in Kriva Palanka, guilty. This judgment is not effective yet.

Due to the abovementioned reasons, the victim has submitted a request for legality to the Public Prosecutor's Office of RM, to which she has not received an answer yet.

The Helsinki Committee expresses concern over these actions of the Primary Courts in Kriva Palanka and Kumanovo for they have adopted completely opposing judgments for the same criminal and legal event, thus violating the principle of legal certainty.

IV. CONSTITUTION AND LEGISLATION

1. LAW ON THE COUNCIL DETERMINING THE FACTS AND INITIATING PROCEDURE FOR LIABILITY OF JUDGES

On February 11, 2015, by summary proceedings and without an expert and public debate, the Assembly of the RM adopted the Law on the Council Determining the Facts and initiating a procedure for accountability of judges. The Council Determining the Facts was founded as a new judicial body, whose aim is to take over some of the work of the Judicial Council of the Republic of Macedonia. The main competence of the Council Determining the Facts would refer to initiating disciplinary proceedings and proceedings for unprofessional and unethical conduct of judges before the Judicial Council of the Republic of Macedonia. The Council Determining the Facts would be entitled to dismiss the initiatives to establish liability whereby such a decision becomes final i.e. the discarded initiatives would not be taken into consideration by the Judicial Council of the Republic of Macedonia at all.

The Council Determining the Facts shall consist of 9 members who shall be bound to be from the ranks of retired lawyers, more specifically, 3 judges, three prosecutors, two professors of law and 1 lawyer. Apart from the requirement that all members should be retired, they also need to have continuous years of service spanning over 15 years, outstanding results in their work and no disciplinary sanctions stated against them. The mandate of the elected members lasts four years without the right to re-election. At least 1/3 of the members are scheduled to be from among the members of the non-majority communities in the Republic of Macedonia. The candidates from the Council Determining the Facts apply to an public announcement, and are elected by all judges at direct and secret elections.

On 10 July 2015, at the voting for election of the members of the Council Determining the Facts, voted 535 out of a total of 594 judges, while 160 of the ballots were invalid. 7 member of the Council were elected, and one more was elected on 28 December 2015, when 502 out of the 573 judges signed in the election registry voted, while 67 ballots were invalid. By the time this report was closed, the last, ninth member, who is supposed to be from the line of retired professors, member of the non-majority communities, has not yet been elected. The high number of invalid ballots clearly indicates the standpoint of a large number of judges who disagree with the establishing and functioning of the Council Determining the Facts in this manner.

The adoption of this Law, and the work of the Council Determining the Facts is disputable from two aspects. Firstly, the possibility of the Council Determining the Facts to reject initiatives and this decision to be final is contrary to Amendment XXIX of the Constitution which stipulates that the Judicial Council of

the Republic of Macedonia is authorized to monitor and evaluate the performance of judges and to decide on their disciplinary liability. In fact, the Judicial Council of the Republic of Macedonia will not be able to review the rejected initiatives whereby the complaints against a large number of judges will end before the Council Determining the Facts. This role of the Council Determining the Facts is unconstitutional, given that this body, unlike the Judicial Council of the Republic of Macedonia, is not stipulated with the Constitution. As a result of this law a part of the constitutional authority of the Judicial Council of the Republic of Macedonia will be suspended. Secondly, the requirement that only retired judges, prosecutors, professors and lawyers may be members of the Council Determining the Facts is equivalent to direct discrimination on grounds of age and is contrary to Article 32 of the Constitution which stipulates that anyone, under equal conditions, is eligible for any position.

The constitutionality of this law was contested before the Constitutional Court, which in November 2015, with Decision U. 23/2015, rejected the initiative and did not take action on grounds that the assessment of the suitability of this legal decision is the responsibility of the legislator and not of the Constitutional Court, which is solely competent to assess whether the existing laws are in accordance with the Constitution. However, Judge Natasha Gaber Damjanovska, in her dissenting opinion stated that "This legal decision does not possess reasonable justification and produces inequality i.e. discrimination against the category of persons who have not yet acquired the right to pension and potential candidates for the public office of a member of the Council Determining the Facts versus the category of persons who are already retired.[6] In addition, in late 2015, the Venice Commission, which analyzes the Law, called for a full review of the legal framework for disciplinary measures and dismissal of judges. Although the Council Determining the Facts was to begin working in January 2016, by the time this report was closed, that had not yet occurred.

2. UNCONSTITUTIONAL APPOINTMENT OF THE MINISTER OF INTERNAL AFFAIRS

On 12 May 2015, as a result of the scandal with the tapped phone calls, the President of the Government of RM, delivered a letter to the Assembly of the Republic of Macedonia informing about the resignations of the minister of internal affairs and the minister of transport and communications. The letter also contained a proposal for selection of a new minister of internal affairs, and the person proposed for the office was Mr. Mitko Chavkov, former Head of the Public Security Bureau under MoI. It was evident from Mr. Chavkov resume that in the period from April 2012 to May 2013 he worked at the position of "Chief of the Central Police Service at the Public Security Bureau under MoI".

In accordance with Article 97 from the Constitution of the Republic of Macedonia, the bodies of the state administration in the area of defense and police are headed by civilians who, immediately prior to their appointment in those offices, had been civilians for at least three years. MoI is a body of the state administration in the area of police, while its Chief is the Minister of Internal Affairs. According to this, in order for him to be appointed a minister, Mr. Chavkov would have had to be a civilian as early as April 2012. Bearing in mind that he had been a police superintendent until May 2013, it turns out that Mr. Chavkov does not meet the condition stipulated in Article 97 from the Constitution of the Republic of Macedonia.

The Helsinki Committee reminds that back in 2004, we contested the selection of Mr. Siljan Avramovski as Minister of Internal Affairs before the Constitutional Court of RM. The reason to object Mr. Avramovski's appointment was his working engagement first as assistant director, and later on (in the course of the 3 years

6http://goo.gl/IG0p4q

prior to his appointment) Head of the Administration for Security and Counter Intelligence. Unfortunately, with Decision U. no. 127/2004, the Constitutional Court declared itself incompetent to decide on this matter, emphasizing that it is the Assembly's right to elect the Government Ministers and that the appointment decision in its character and content constitutes a singular act, which does not regulate the relations between an undetermined number of subjects in a general way and as such it does not constitute a regulation.

The Helsinki Committee believes that accepting the Prime Minister's proposal by the majority of the MPs was a clear, conscious and unequivocal violation of the Constitution of the RM. The Committee points out that the decision of the Constitutional Court referred to in the previous paragraph should not have been used as an excuse for the unconstitutional selection of the future minister of internal affairs.

V. CLOSED INSTITUTIONS AND POLICE TREATMENT

1. INTRODUCTION

By monitoring the situation with the closed institutions and the police treatment, the Helsinki concluded that no progress in the protection of the rights of people placed in closed institutions has been achieved in the course of this year too. On the contrary, we have witnessed systematic violation of the rights, physical integrity and dignity of the citizens by the state bodies. Although the Helsinki Committee's access to prisons is still a problem, the information about the conditions and treatment were obtained through the inmates who had turned to the Helsinki Committee for legal aid. The findings in this area are also based on court judgments, statistic indicators and cases covered by the media that the Helsinki Committee checks and follows.

The prisons and psychiatric institutions, as institutions of closed type, face substandard living conditions, contrary to many international and domestic documents. One of the main problems which has persisted for many years is the overcrowding, affecting privacy, and also violates the dignity of the people, leading to inhuman and inhumane living conditions in detention facilities. The mechanisms for supervision of these institutions are almost non-functional, although their jurisdiction envisages taking significant steps to improve the conditions and protection of the rights of the persons in those institutions. Moreover, the treatment these people receive is often inhuman it is contrary to the principle of absolute prohibition of torture by the institutions. Furthermore, the perpetrators of torture remain unpunished, which not only does not curb this behavior but also further encourages it.

A significant increase in the use of excessive physical force by police officers has been observed, which is further corroborated by the fact that the European Court of Human Rights stated five decisions against the Republic of Macedonia in the course of 2015. In the judgments, it can be noticed that there have been violations to the procedural and substantive protection provided by Article 3 of the European Convention on Human Rights. In other words, not only sis the police officers resort to inhumane and degrading actions towards the citizens, but the mechanisms of internal control did not manage to establish unlawful conduct of police officers and conduct an effective investigation in a single case. This situation is also a consequence of the excessive employment of new police officers in the Ministry of Interior, the purpose of which was an increase in quantity at the expense of the quality of the staff.

The observed situation in this area in the course of 2015 leads to the conclusion that the absolute prohibition of torture is not complied with in the Republic of Macedonia. The Helsinki Committee urges for increased attention to be devoted to the closed-type institutions, as well as urgent and essential changes to be taken for increased training of the officers who exercise authority, hand in hand with sanctioning of all the cases of unnecessary and excessive use of force.

2. THE CASE OF LEON RAPOSKI - INHUMAN TREATMENT BY PU INSTITUTE FOR PROTECTION AND REHABILITATION "BANJA BANSKO"

The case of the deaf and mute child - victim of inhumane treatment by the Public Institution for Protection and Rehabilitation "Banja Bansko" stirred the public and was the subject of particular attention on the part of the Committee.

The findings on the case were obtained from the report of the Ombudsman, who during a visit of the Public Institution for Protection and Rehabilitation "Banja Bansko", found inhumane treatment of the child who was found tied to a bed with the explanation that he cannot be controlled in any other way.

the Helsinki Committee pressed criminal charges to the Primary Public Prosecution Strumica, against the Director of the Center for Social Work Bitola, the Director of the Institution for Rehabilitation "Banja Bansko" and against the people who had been directly responsible for Leon in these institutions, for the criminal acts of Torture and other Cruel, Inhuman or Degrading Treatment and Punishment and Harassment while Being on Duty. The Primary Public Prosecution in Strumica rejected the pressed changes with the explanation that that the reported acts were not prosecuted ex officio, and that the tying up of the child was justified, for security reasons. This decision was also upheld by the Higher Public Prosecution in Shtip. For these reasons, the Helsinki Committee submitted a request for criminal prosecution to the Public Prosecutor of the Republic of Macedonia, which failed to establish violation of the rights of the child and inhumane treatment and upheld the previous decisions of the prosecution.

For these reasons the Helsinki Committee submitted an application to the European Court of Human Rights on behalf of Leon Raposki for violation of Article 3 from the Convention which refers to the prohibition of torture and inhumane treatment and Article 13 from the Convention which refers to the right to an effective remedy. The application was accepted by the court, and the proceeding is under way.

3. INITIATIVES FOR ADOPTION OF A LAW ON PARDON

The collection of 10,000 citizens' signatures in order to initiate a civil initiative for adoption of a Law on Pardons started in the court of the month of September. The Draft Law provides for exemption from serving 40% of the prison sentence for all convicted persons, full release of persons who have been first sentenced to imprisonment of up to six months, the exemption of 50% for a sentence of six to twelve months and full release of convicts who have turned 75. The initiative was successful and the necessary votes were collected in less than a month. However, the Parliament did not adopt the proposed law in November 2015, and in December 2015 the proposal for a Law on Pardons by MPs Pavle Trajanov and Liljana Popovska was also not adopted.

The last Law on Pardoning Convicted Persons in the Republic of Macedonia was adopted 1999 (Official Gazette of the Republic of Macedonia no. 6/99), i.e. more than 17 years ago. In the West Balkans region, laws on pardoning the general prison population were adopted in Serbia (2012), Kosovo and Montenegro (2013). Depending on the country, those laws referred to exemption of 25% of the prison sentence, but did not cover certain crimes such as more serious murders, production and sale of narcotic drugs, crimes related to sexual abuse, organized crime and corruption offenses contained in international charity law.

Taking into account the long period after the last Law on Pardons, the high overcrowding in prisons and the non-compliance with the basic human rights of convicts, the Helsinki Committee believes that adopting a Law on Pardons would be an adequate and necessary measure. However, we believe that in order to adopt

such a law, it would be necessary to have a wider public debate which is bound to involve all the stakeholders, including the state, scientific and civil institutions and organizations. The public discussion should strive towards finding the most adequate modality for amnesty, assessment of the risks from the possible increase in recidivism, as well as establishing the reasons for the overcrowding, the dysfunctional resocialization policy and improvement of the conditions under which the prison sentence is being served.

4. 600 NEW POLICE OFFICERS EMPLOYED AT THE MINISTRY OF INTERIOR

On 10 July 2015, MoI published an employment advertisement for 652 officers, 600 of which for the position of "police officer". The advertisement followed after the employment ads of 300 police officers in 2012 and 400 police officers in 2013. According to this, in three years, MoI occurred as the employer or 1,300 new police officers. In November 2013, the Helsinki Committee sent a request for information to MoI about the total number of employees in the Ministry. According to the answer, this number amounted to 10,755, 6,579 of which were uniformed police officers, while the remaining employees are plain-clothes, authorized personnel, civil servants and technical staff.

Bearing in mind that these data refer to the number of employees before the signing of the employment contracts with the cadets announced in 2012 and 2013, the number of uniformed police officers is 7,297 at the most (the real number of probably slightly lower, taking into account that some of the police officers have met the retirement conditions in the past year and a half). If to this number we add the newly planned 600 police officers, the total number of employees in MoI will exceed 11,000, while the number of uniformed police officers will be around 7,900.

These numbers lead to the conclusion that MoI is the biggest employers in Macedonia, and that an approximate number of 395 police officers would be hired to every 100,000 citizens (according to the 2002 census). According to the research of the United Nations, the average value of this ration in the world is 300.[7] When it comes to the overall number of employees in MoI, according to Eurostat's statistics, the Macedonian MoI is on the third place according to the number of employees.[8] The statistics refers to 38 European countries, and only Cyprus and Montenegro have more employees.

What is particularly concerning is the fact that when publishing the ads, MoI does not offer any explanation as to what the need for an increase in the already excessive number of employees is. In addition, the citizens are not informed about the financial implications of these employments which largely burden the state budget. MoI, apart from not consulting the community, does not even act in accordance with the Police Reform Strategy of the Government of RM from 2003, and its Annex from 2004 which envisaged a decrease in the number of employees to 7,200 persons, 6,000 of whom would be uniformed police officers.

All of this, along with the unsatisfactory 12 month training for the cadets which is insufficient and is mainly directed towards mastering the theoretical knowledge, points to the extreme policization and partisan nature of MoI. For all of the above reasons, the Helsinki Committee urged MoI to withdraw the published article and to commit to profesionalization of the police instead of boosting the quantity and employing party staff and align the number of employees with the numbers envisaged in the Police Reform Strategy. Despite the appeal, on 4 August 2015, MoI announced that over 2,600 candidates had applied at the advertisement, thereby starting the official selection of the new officers.

[7] UN: Twelfth United Nations Congress on Crime Prevention and Criminal Justice, Salvador, Brazil, 12-19 April 2010, State of crime and criminal justice worldwide, p. 19.

[8] EUROSTAT: File:Police officers, average per year, 2007–09 and 2010–12 (per 100 000 inhabitants).

5. IMPUNITY OF TORTURE IN PRISONS AND WHEN ITS COMMITTED BY THE POLICE

Во текот на 2015 година, Европскиот суд за човекови права во Стразбур донесе рекордни 5 (пет) пресуди што се однесуваат на Член 3 од Европската конвенција за човекови права - Забрана на мачење. Во сите пресуди се работи за тортура извршена од страна на државни службеници, но и покрај тоа што овие случаи биле пријавени во обвинителството, за нив или воопшто немало никаква истрага, или истрагата била целосно неефективна поради што оштетените во дел од случаите поднеле приватни тужби кои или биле отфрлени или недоволно разгледувани од страна на судовите. Поради ваквото постапување на обвинителствата и судовите, потешко биле повредени правата на жалителите, а Република Македонија само по овој член од конвенцијата беше казнета со околу 50.000 ЕУР, средства што треба да се исплатат како оштета за жртвите.

In the course of 2015, the European Court of Human Rights in Strasbourg adopted record 5 (five) judgments referring to Article 3 of the European Convention of Human Rights - Prohibition of Torture. All the judgments are related to torture committed by civil servants, yet although these cases were reported to the prosecution, there was either no investigation for them at all, or the investigation was completely ineffective which is why in certain cases the damaged parties filed private lawsuits which were either rejected, or insufficiently examined by the courts. These actions of the prosecutions and the courts constituted serious violations of the rights of the plaintiffs, and the Republic of Macedonia was fined with approximately 50,000 EUR in accordance with this article from the convention only, funds that are to be paid as an indemnity to the victims.

In the case Asllani v. Macedonia (Application no. 24058/13), an employee at a bakery in Resen, in 2008 was taken to the police station in Resen by a police officer, due to alleged illegal work of the bakery. At the police station, Mr. Asllani had been degraded and tortured psychologically and physically and he had been inflicted bodily injuries. One of the police officers in the case later became Mayor of the Municipality of Resen. Although the case was reported to the competent prosecutor's office and the Sector for Internal Control and Professional Standards, an effective investigation never took place and consequently there was no trial. In this case Macedonia was fined with 11,700 EUR of indemnity to the plaintiff.

In the case of Hajrullahu vs. Macedonia (Application no. 37537/07), in 2005, Mr. Hajrullahu was abducted and held in isolation for three days in a house, an unusual place for detention outside any judicial framework, which was secretly organized and committed by the security forces of the Republic of Macedonia. There he was tortured by the police, and although the case was later reported, there was no effective investigation into his allegations of abuse, nor into the allegations that his conviction was based on a confession obtained under duress. In this case Macedonia was fined with 8,010 EUR of indemnity to the applicant.

In the case - Andonovski v. Macedonia (Application no. 24312/10) The European Court of Human Rights adopted another judgment which established that Macedonia had violated the Convention on Human Rights because it does not provide protection against torture and inadequately and ineffectively deals with cases of torture on its territory. This case concerns the surgeon from Kumanovo who was beaten by police after it suffered numerous physical injuries. Although this case criminal charges, the Public Prosecution Kumanovo dismissed due to alleged lack of sufficient evidence. And though Mr. Andonovski then filed a private lawsuit, the courts attached primary little attention to his case reportedly ended with the withdrawal of his claim after he had to pay all costs of the proceedings. European Court ruled that country could not justify excessive and unjustified force used by the police, and given the fact that the prosecutor's office refused to prosecute was injured Article 3 (protection against torture) of the European Convention. In this case Macedonia was fined 15,000 EUR indemnity for the plaintiff.

The case Kitanovski v. Macedonia, involves a victim of police torture. The opened fire against the victim and afterwards he was brutally beaten because he refused to stop during traffic control. After the filing of criminal charges by the Ministry of Interior against Mr. Kitanovski he was convicted, and his criminal lawsuit against the police officers was not been processed by the Public Prosecutor's Office Skopje. The European Court concluded that the prosecution failed to take all investigative measures and made no attempt to question the applicant, the officers or any other person who could provide relevant information in order to clarify the facts of the case. In this case Macedonia was fined with EUR 10,000 of indemnity for the plaintiff.

The case Ilievska vs. Macedonia, again involves a victim of police brutality over Mrs. Ilievska during her escort from Kriva Palanka to the Psychiatric Hospital in Bardovci. As in the previous cases, the plaintiff filed lawsuits against the police officers, but it was rejected by the Public Prosecution Kriva Palanka, after which the plaintiff filed a private lawsuit that the court found had insufficient evidence against the police officers. In this case Macedonia was fined with 5,000 EUR of indemnity for the plaintiff.

Although these events occurred between 2004 and 2009, in the past 3 years the Helsinki Committee has registered a dozen similar cases that resemble the events described above and that the prosecution did not conduct an effective investigation for. Examples include torture of three detainees from Albania who were handcuffed to radiators[9], the beaten detainee who was ordered to strip naked in the bathroom of the detention center[10], the citizen brutally attacked by the police on a street in Ohrid[11], the convicted person who after an attack by prison officer lost a kidney and his spleen[12], the attack by a large number of police forces against citizens of the Roma community in Topaana[13], the beating of an innocent boy at the police station in Demir Hisar[14], beatings of juvenile Roma by the "Alfa" police unit[15], binding the juvenile Leon, placed in a psychiatric institution, the use of contaminated water in the Prison Kumanovo[16] etc.

The Helsinki Committee calls on the authorities to implement a policy of zero tolerance for acts of torture by officials. The passivity of the public prosecution in cases of torture, especially when it is committed by police officers, results in citizens' distrust in the judicial system and unwillingness to report these crimes. It is high time we faced the phenomenon of impunity and the "solidarity" between the Public Prosecutions and the judiciary with the police. The main focus must be directed towards the victims of torture that the state still does not provide adequate legal, medical, psychological and social support for. To achieve this goal, the Committee appeals for most urgent implementation of EU Directive 2012/29 in order to establish the minimum standards for the rights, support and protection of victims of crime.

6. THE APPELLATE COURT IN BITOLA STANDS IN PROTECTION OF POLICE HARASSMENT

Starting from August 2013, the Helsinki Committee followed the case M.V. (victim of police violence and harassment), against T.A. (police officer at MoI Bitola). In June 2013, M.V. was summoned by a police officer from the Police Station Demir Hisar for an informative call, without being given a reason for this. According to M.V.'s testimony, immediately upon entering the premises, a police officer started shouting at him and offending

[9] Helsinki Committee, Quarterly report (October - December 2012): http://www.mhc.org.mk/reports/99

[10] Helsinki Committee, Monthly report – March 2013: http://www.mhc.org.mk/reports/124

[11] Helsinki Committee, Quarterly report (April - June 2013): http://www.mhc.org.mk/reports/145

[12] Ibid

[13] Ibid

[14] Helsinki Committee, bi-monthly report (July - August 2013): http://www.mhc.org.mk/reports/149

[15] Helsinki Committee, bi-monthly report (April - May 2014): http://www.mhc.org.mk/reports/219

[16] Helsinki Committee, , 20 October 2014: http://www.mhc.org.mk/announcements/254

him, accusing him of theft of car batteries. Then T.A. entered the room and kicked M.V. in the ribcage area with his knee which was followed by blows to the head and kicks all over his body.

The attack brought M.V. down to the floor, whereby the police officer lifted him up and took him to another room where there were juveniles. The children were suspected of stealing car batteries. T.A. started threatening them, and pressuring them into admitting that M.V. was also with them when they were stealing. Despite the pressure, the children refused to corroborate this theory. At the end T.A. informed M.V. that his truck has been searched and that no stolen car battery was found in it, whereby he was released. Together with his father, M.V. was immediately sent to the hospital in Demir Hisar, and then was taken to the surgical ward at the Public Healthcare Institution in Bitola. Due to the pain and injuries sustained, M.V. was held for a two-day treatment. M.V. possesses the medical notes, medical findings and the forensic-psychiatric expert examination for non-material damage.

M.V.'s legal representatives filed a private lawsuit at the Primary Court in Bitola for the crime of "Bodily Injury", whereby the Court initiated proceedings which were fully monitored by the Helsinki Committee. According to Article 49, paragraph 3 from the Law on Criminal Proceedings (LCP)),[17], the Primary Court was to establish that the reported crime ("Torture and Other Cruel, Inhuman or Degrading Treatment") is prosecuted ex officio, not upon submission of a private lawsuit, and redirect the lawsuit to the Primary Public Prosecutor Bitola. This did not take place, so the trial proceeded contrary to the Law on Criminal Procedure.

In the course of 2014, the Primary Court adopted judgment K-432/13 which found the police officer guilty and he was sentenced to probation for a period of 30, with a re-evaluation scheduled after a year. Acting on the appeal of the sentenced police office, the Appellate Court Bitola revoked the judgment of the Primary Court with Decision KZh-684/14 and returned the case for a re-trial. According to the Appellate Court it was not clear how the injuries sustained by the victim had occurred. In the course of the retrial, bearing in mind the guidelines of the Appellate Court, the Primary Court adopted Judgment K-564/14 acquitting the defendant. Upon the victim's appeal, the Appellate Court, by adopting Judgment KZh-277/15 upheld the acquittal of the Primary Court.

Upon monitoring all the court hearings and reviewing the case files, the Helsinki Committee expresses regret and concern over the actions of the Primary Court Bitola which could not have acted on a private lawsuit. The case should have been redirected to the Primary Public Prosecutor. What is particularly worrying is the standpoint of the Appellate Court, which, through its guidelines to the Primary Court, stood in protection of police violence and recklessness. Due to all of this, the Helsinki Committee will represent the victim before of the European Court of Human Rights.

7. RUBBER BULLETS THREATEN CITIZENS' RIGHTS

On 02.03.2015, the Parliament of the Republic of Macedonia adopted the Law Amending the Law on Police with 59 votes in favor and three against, which gave the police legal grounds to use new means of coercion when dispersing violent protests. Among the new means of coercion are electrical paralysers, rubber bullets and explosive-pyrotechnic means (Article 91, paragraph 2 item. 3, 5 and 8). The new law also provides a new Article 91-a, which prescribes the conditions for use of the new means of coercion against a group. The electric paralysers are to be used for temporary purposes, temporarily disabling and bringing in obedience aggressive people when they cannot be brought into obedience by use of other means; The rubber bullets are to be used

[17] Official Gazette of the Republic of Macedonia 15/2005 (consolidated text)

to temporarily disable people from a mob who are actively disrupting the public order and peace; while the explosive pyrotechnic means are flash, shock and stun grenades used for restoring public order and peace, drawing people out from closed spaces, distracting the attention or solving hostage situations.

However, these provisions are contrary to the relevant international standards, practice of the European Court of Human Rights and pose a great danger to the life and health of the people they are applied against and are completely unnecessary in the process of law enforcement in the country.

When dealing with dangerous offenders, a growing tendency can be observed among the police service in Europe of applying so-called nonfatal weapons, among which are the new means of coercion provided for in the Law on Police. However, the difference is in determining when, or under what circumstances, the police officer may apply these means and what is the correct procedure, i.e. the procedure for their application.

The European Committee for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment (CPT), in its standards[18], clearly and unequivocally states that the Electrical Discharge Weapons (EDW) may only be used only when there is "an imminent threat to life or risk of serious injury". Further on, the CPT continues with the statement that "the application of these weapons only in order to ensure compliance with the order is unacceptable." The new article 91 also provides that electrical paralysers will apply when the person may not be brought into obedience by other means, but at the same time does not stipulate whether there should be an immediate threat to the life of a person or an imminent risk of injury. Without any grounds, our legislator reduces the threshold of the conditions necessary for the application of this tool to simple aggression in the person that the tool will be applied against. In practice, this general provision would lead to a highly subjective and broad interpretation of what behavior of individuals can be considered aggressive, and which, according to the law may, or may not be a direct threat to life or risk of serious injury. Finally, CPT itself concludes that the use of these weapons is accompanied by a significant health risk to the person that it is applied against, and the police officer who applies it must be trained to give first aid in case of occurrence of side effects. Again, the insufficiently clear determination of the conditions under which this measure can be applied, carry an unacceptable risk to the life and health of citizens as well as practical and real danger that in cases of breach of public order and peace to a greater extent, the police officer who applied electric paralysers to a group of persons will not be able to react timely if he inflicts serious damage to the life and health of the targeted person.

Rubber bullets are also highly controversial means of coercion when keeping public order and peace. In its judgment in the case Kiorkan and others. vs. Romania (Application no. 29414/09 and 44841/09), the European Court of Human Rights clearly states that rubber bullets can be applied only when their use is "absolutely necessary" within the meaning of Article 2, paragraph 2 of the European Convention on Human rights, or in situations when legal action against human life is permitted. Although firearms can be applied in legal actions aimed at breaking down clashes or riots, the act of disturbing the public peace and order, which according to the new Article 91-a is the only condition required for the application of this measure, does not meet the standards for use of firearms. Research shows that the problem with the rubber bullets is that they can be lethal when shot from a short distance and that they can cause serious injuries when shot from a long distance, and there is a serious danger of a ricochet, which makes them very imprecise when used.

At the same time it must be noted that the moment in which the legislature decided to broaden the spectrum of means of coercion that can be applied against the group in this way is also symptomatic. As the CPT itself states, the decision to grant the state power authority to apply such weapons must be the result

[18] CPT/Inf/E (2002) 1 - Rev. 2015

of a thorough debate in the country on the legislative and executive levels. In Macedonia, there was no such a debate. The Assembly reading of these amendments that seriously and directly interfere in the life of the citizens, went without a broader social debate, without presenting relevant research and in circumstances when the MPs from the opposition out of Parliament. In addition, these amendments were passed in the peak of peaceful and non-violent public gatherings of citizens far. The isolated cases of disturbing public order and peace to a greater extent, which occurred during several violent protests in 2014 are not sufficient to justify this expansion of the means of coercion against a group of persons. Furthermore, the law stipulates that the bylaws were to be adopted within six months, but this legal deadline was not complied with, and those acts have not yet been adopted. This means that there is a legal option that allows the use of the new means, without them being thoroughly regulated, which opens the way to increased use and subjective assessment of when to use thus type of force by the police and the authorities, resulting in an increased fear of the police on the part of the citizens.

8. PSYCHIATRIC INSTITUTIONS

In the course of the month of October, 2015, representatives of the Helsinki Committee visited two psychiatric institutions, PHI Psychiatric Institution Skopje, located in Bardovci, and PHI Demir Hisar. The visits to all of the institutions of this kind shall continue to the conducted in the course of 2016 as well.

The Psychiatric Hospital "Skopje" is the largest facility of this kind, the accommodation capacity of which is about 1,000 beds and the number of personnel is 353 employees. During the visit it was determined that, although there is a slight improvement in the conditions in the institution, numerous deficiencies still observed. With the exception of the renovated units (acute unit and the "hostel"), the living conditions in the other parts are substandard. The personal hygiene of the patients is poor and most of them seem to be completely neglected. The hospital has a serious lack of rehabilitation programs and a minimum number of activities designed to engage the patients, such as work in the kitchen, art and music activities or arts and craft. The majority of patients spend their days watching TV and sleeping, which negatively affects their health.

In the psychiatric institution in Demir Hisar, although the capacity at the moment of 80% filled, overcrowding was observed in most of the parts and generally there are no conditions to provide respect for the privacy of patients. In general, the living conditions are below the established standards, the walls in the facilities are damp, and the hygiene is not satisfactory. It is a closed-type institution and therefore all the departments are constantly locked. This is a hospital which also treats juveniles, i.e. persons aged 16 to 18 years, who are not accommodated separately, but together with the adults. Most of the patients are involved in activities that involve physical exercise, art, individual and group therapies. However, it is obvious that the staff treats the patients as completely incapable, which badly affects their progress.

Two common problems were observed in both of the institutions. The first is the non-compliance with the deadlines for involuntary placement in the institution, which is regulated in such a way that from the moment of involuntary admission in the institution, the court is bound to make a decision within 48 hours. Instead of following the deadline, the court needs more than 4 days to issue the decision. In the absence of a court decision, the persons who are forcibly admitted have their freedom unlawfully restricted, putting in danger and physical integrity and mental health. Therefore, the Helsinki Committee emphasizes that it is necessary to respect the legal provisions and deadlines for voluntary and involuntary hospitalization.

The second problem that was observed, is in the implementation of the interim measure for protection against domestic violence. According to the Law on Prevention and Protection against Domestic Violence,

with a court decision, the perpetrators of domestic violence are placed in psychiatric institutions under the measure "compulsory treatment in cases of abuse of alcohol, drugs and other psychotropic substances or in cases of a mental disorder".[19] However, a conclusion was drawn from the visits that some of the persons admitted under this measure are not addicted to alcohol or drugs, nor do they have a psychiatric disorder. In an individual case, the measure was imposed without the judge even seeing the perpetrator's face. The Helsinki Committee believes that putting perpetrators of domestic violence in this type of institutions is a serious violation of their rights, and it also has significant adverse effects on their health. Therefore, the Helsinki Committee appeals that the Law on Prevention and Protection against Domestic Violence be amended as soon as possible and the court not to impose this measure without the judge first seeing the person or getting an opinion from a medical institution.

[19] Закон за превенција, заштита и спречување семејно насилство, член 35 точка 9, Службен весник на РМ, бр.138 од 17.09.2014, кој се применува од 01.01.2015 година

VI. DISCRIMINATION

1. INTRODUCTION

The Helsinki Committee for Human Rights actively followed the situation with discrimination in the Republic of Macedonia in the course of 2015 by monitoring the court proceedings started on grounds of discrimination, by receiving applications from the citizens - victims of the discrimination and by initiating proceedings before the equality bodies and the courts. In addition, the Helsinki Committee, along with the remaining members of the Network for Protection against Discrimination submitted a Shadow Report about the Discrimination against the Roma to the Committee on the Elimination of All Forms of Racial Discrimination, part of the United Nations, which established violation of the rights of the Roma and discrimination in several areas and provided recommendations for their overcoming.

Based on information from the competent institutions for citizens' protection against discrimination and the cases that were reported to the Committee, it can be concluded that although five years have passed since the of application of the Law on Prevention and Protection against Discrimination and the founding of the Commission for Protection against Discrimination there can still be no discussion about effective protection in the area of discrimination, especially when it comes to marginalized groups. The main points which refer to the access to justice for victims of discrimination, i.e. the exemption from court fees necessary to initiate a court procedure for protection against discrimination, independence of the Commission for Protection against Discrimination and inclusion of sexual orientation and gender identity as grounds for discrimination, remained unchanged.

In late 2015 the procedure for election of new members of the Commission for Protection against Discrimination started, which opened an opportunity for substantial change in the structure of the Commission and possible engagement of prominent experts in the field of non-discrimination. However, the Assembly decided to elect members, most of whom have no previous experience in working with vulnerable groups, while some of them are linked to the ruling coalition or are public supporters of the policies of the government, especially the policies that do not provide equal treatment of ethnic minorities in the country. This choice indicates a clear tendency for an even greater politicization of this body, which should be independent according to the international and domestic standards. In addition, we believe that the structure of the Commission is evidently not in the spirit of respect for diversity, especially since there is only one woman and there are no members of the smaller ethnic communities are.

The findings that judicial protection against discrimination is starting to be increasingly used, indicate the increased awareness among citizens about the possibilities of legal protection in cases of discrimination. However, most of the initiated litigation is supported by civil associations that provide legal assistance in

cases of discrimination, as because the Law on Prevention and Protection against Discrimination does not provide exemption from legal costs when initiating court proceedings. For these reasons it may be concluded that access to justice for court protection from discrimination remains limited.

Acting on complaints submitted by citizens and monitoring the situation in society and in the media, the Committee concludes that most of the complaints are related to discrimination based on ethnicity, political affiliation, sexual orientation, gender identity, sex and gender, while those most exposed to discrimination were the Roma. This conclusion is a result of the systemic discrimination that is persistently practiced against members of the Roma community by the Ministry of Interior limiting their right to freely leave the country, as well as the segregation of the Roma children in education. The Committee on the Elimination of All Forms of Racial Discrimination of the United Nations also took note of this situation and highlighted the restriction of fundamental freedoms and rights and their ineffective protection, especially when it comes to the freedom of movement of the Roma, the fact that many of them do not possess personal documents, the situation with the Roma children on the streets and the segregation in education. According to the concluding observations of the Committee on Elimination of Racial Discrimination of the United Nations, it is obvious that the state has failed to improve the situation of the Roma as members of the most marginalized ethnic group in the country. The Committee expressed concern about the problem of the housing of the Roma and their poor social status, noting that the Roma ethnic community is the most exposed to poverty, unemployment and social exclusion. For all these reasons, we demand from the Government to respect the Convention on the Elimination of All Forms of Racial Discrimination and to take immediate measures to implement the recommendations of the Committee on Elimination of Racial Discrimination.

In the area of discrimination on grounds of political affiliation, reports of cases of discrimination in the area of employment were reported to the Committee, related to the practice of not hiring medical workers and doctors as they did not belong to the parties of the ruling coalition. These cases confirmed the ongoing practice of not hiring persons who are not party supporters of the ruling coalition, which is a systemic problem in our society.

LGBT people remain subject to systematic discrimination due to the inaction of the Public Prosecutor after the multiple attacks on the LGBT Center and the omission of the sexual orientation and gender identity from a number of laws which are aimed at providing effective protection against discrimination and inclusion of the LGBT people in society.

2. RACIAL PROFILING AT THE BORDER CROSSINGS AND LIMITATION TO THE RIGHT TO FREEDOM OF MOVEMENT

2 new cases of discrimination against Roma at border crossings were reported to the Helsinki Committee in the course of 2015 that the Helsinki Committee provided judicial protection for. The first case involved a Roma family which was prevented from leaving the country and travel to Germany by police officers at the airport Alexander the Great, while in the second case one person was prevented from leaving the country and traveling to Italy by police officers at the border crossing Tabanovce.

3. KINDERGARTENS DISCRIMINATING AGAINST A CHILD WITH INTELLECTUAL DISABILITY

A parent of a 4-year old child with intellectual disability turned to the Helsinki Committee with a request for protection against discrimination, due to inaccessibility of preschool education - kindergarten, for the child. In this specific case, a hyperactive child with mild intellectual disability and speech impairment was

in question. According to the opinion of the Mental Health Institute - Skopje, the child should start speech therapy and special education session, but be involved in regular preschool groups.

By April 2015, the child did attend kindergarten, but due to the pressures of the employees, the inadequate care and the lack of human resources trained to work with children with intellectual disability, the parents were forced to take him out of kindergarten, in order to find a kindergarten (public or private) which would have both the physical, as well as human resources to accommodate children with mild intellectual disability. Since then the parents made multiple attempts to include the child in both a public, as well as a private preschool facility, but none of those attempts were successful.

This is a systemic deficiency which is particularly reflected on children with intellectual disabilities and restricts or may restrict their right of access to kindergartens. The problem results from the fact that Article 64 of the Law on Protection of Children stipulates that the regular groups can include a child with mild mental or physical disability, in which case the number of children in the group is to be reduced by two. In addition, this provision is rarely followed, because most kindergartens, especially in the municipalities of the City of Skopje accommodate a larger number of children in the groups than the stipulated standards, so that more children can taken care of and involved in the education process in kindergartens. Therefore, we come to the conclusion that the poor physical and human resources of kindergartens affect the access to preschool of children with intellectual disabilities, who have different needs compare to children without disabilities.

We believe that this systemic problem leads to unequal treatment of children with intellectual disability as opposed to children without disabilities in accessing kindergartens. For these reasons, the Helsinki Committee the past two years, especially working on access to kindergarten for children with intellectual disabilities. The committee undertook a testing situation using telephone calls to investigate potential discrimination by kindergartens of children with intellectual disabilities. One objective of the testing was to determine whether the poor physical and human resources of kindergartens influence the access to preschool of children with intellectual disabilities. A total of 70 kindergartens in the whole country were tested, 56 state-owned and 14 private kindergartens. Based on the collected data it can be concluded that there is neither space nor human resources in kindergartens to provide care and education to all preschool children who need to enroll in kindergartens. Moreover this study identified several cases with reasonable suspicion of direct discrimination against children with mild intellectual disabilities, which is why on 15.12.2015 the Helsinki Committee submitted a complaint to the Commission for Protection against Discrimination, to which no response has been provided yet.

4. DISCRIMINATION ON GROUNDS OF POLITICAL AFFILIATION

After the local elections in Gostivar in 2013 and the change of local government, a large number of cases of discrimination based on political affiliation were reported, some of which in the utility company Komunalec. In fact, after the change of Managing Director of the utility company Komunalec Gostivar, the managers of the separate departments were immediately dismissed by the newly appointed Acting Director. Court proceedings for protection against discrimination were initiatied for this case, which is now effectively closed and the decision is negative. Due to this, a request for protection of the rights and freedoms was submitted to the Constitutional Court, which decided to hold a public hearing after the expiration of more than 6 months, which is contrary to the principle of efficiency which should be complied with particularly in cases of requests for protection of the freedoms and the rights of citizens. The inaction of the Constitutional Court only serves to reaffirm its inefficiency in protecting citizens' rights.

VII. HATE SPEECH AND HATE CRIMES

1. HATE SPEECH

In the course of the year, the Helsinki Committee followed and documented the situation with hate speech in all social spheres. The monitoring was conducted by means of several methods, i.e. through the occurrences reported on the www.govornaomraza.mk platform (established in 2014), by daily monitoring of the social networks, the internet portals and the remaining public spaces, as well as through the statistical data from the competent state bodies in charge of prosecuting and dealing with hate speech.

In the course of 2015, 33 cases of hate speech were reported on the www.govornaomraza.mk platform, 26 of which were verified, and the remaining 7 were not verified due to incomplete information. The most frequently stated grounds for hate speech in the reported cases are sexual orientation and gender identity, which take the first place, the ethnicity and religious affiliation come second, followed by political affiliation as the third most frequently stated reason for hate speech. From the reported cases it is evident the hate speech is most prominent on social networks, but the internet portals, i.e. the internet-based media do not lag behind as well. It is highly concerning that hate speehc is increasingly more frequent in columns and texts of the internet media, thereby breaching the ethical standards and principles of journalism, which is also evident from the numerous decisions of the Council of Media Ethics of Macedonia[20].

In January, hate speech with Nazi content i.e. drawing of a swastika was observed on a monument in the center of Skopje, i.e. in the courtyard of the high school. It took several days before it was spotted and reported, and then a few more, before action was taken by the competent institutions and the drawings were removed. During the months of March, April and May, threats and calls for violence against the opponents of the government were observed among public figures, supporters of the government policies. The political crisis (abuse of power, the airing of the wiretapped talks in public) and the numerous socio-political events (protests, marches) held in the course of the year significantly contributed to the spreading of hate speech on grounds of political affiliation.

The celebration of Pride Week and the separate events during that week, were the target of homophobic expressions, threats and incitement to violence by individuals and groups on social networks during the month of June. Taking into account the numerous cases of hate speech and physical violence against the LGBT community in previous years, this phenomenon was not surprising. One of the more significant cases was observed in November, when a poster containing hate speech based on religion and belief was shared on the social network Facebook. In fact, the poster called for “protest against the Islamization of Kriva Palanka”.

[20] Decisions and opinions of the Complaints Committee under the Council of Media Ethics of Macedonia http://semm.mk/komisija-za-albi/odluki-i-mislenja

Apart from the text which explained when and where the protest will be held, the poster also had an image where five Islamic religious buildings - mosques were crossed over. The protest was a result of the speech by the Mayor, who at a press conference on the construction of a church in the city center, expressly stated that as long as he holds the office of mayor, only Orthodox religious buildings would be built in the town. Encouraged by this, the citizens started an initiative to collect signatures against the construction of a mosque in the city, which later on took the shape of a protest. The announced rally which was attended by about 1,200 people, took place in good order, with the exception of a few chants containing hate speech which were quickly cut off by the protest organizers. However, later that night, unknown persons demolished the facility designed for prayers of the Muslim religious community. The event was reported to the police, who inspected the site and took measures to solve the case. The Helsinki Committee noted down the act as a hate crime, which serves to additionally prove the dangerous and harmful consequences of the use of hate speech in public spaces. The sharing of the poster containing hate speech was harshly condemned in a press-prelease by several NGOs (the Platform against Hate Speech), and a report was submitted to the Ministry of Internal Affairs, the Electronic Crime Department, for spreading hate speech by electronic means. Shortly after, the poster was removed from the social network.

The Helsinki Committee has observed increased dissemination of hate speech in the public sphere and expresses concern over the use of hate speech by public figures. The observed occurrence comes as a direct result of a decade of conservative, autocratic rule, which has intensly promoted the traditional and religious values as the basis of society, emphasized the importance of the Macedonian people in a multiethnic environment and has indirectly percieved the political (party) affiliation as an inseparable trait of the individual and a necessary prerequisite for social life.

Despite the increasing prevalence of hate speech in the public and everyday life, a relatively low number of reported cases of hate speech has been observed. The fact that these cases are not being reported can be percieved as an outcome of two factors. The first one is the failure to recognize hate speech and its basic elements, as well as the citizens' unclear understanding of the grounds for hate speech. At the same time, there is also the citizens unfamiliarity with the institutions' competences and obligations to act on cases of hate speech. The second, by far more significant factor is the low number of cases of lawsuits initiated on grounds of hate speech by the public prosecution and the low, virtually non-existent number of people convicted an punished for resorting to hate speech. In fact, in the course of the year before the 21 primary courts that the Helsinki Committee recieved an answer from, a single proceeding was conducted before the Primary Court Skopje 1, for an act from Article 417 from the Criminal Code (Racial and other Discrimination) which contained elements of hate speech[21]. This devastating number discourages the victims of hate speech from pursuing justice in front of the competent institutions, and further eradicates any possible expectations for an adequate judicial protection in case of violation of their rigths.

The Helsinki Committee calls for urgent and serious steps towards a change in this situation. In order to achieve that goal, it is necessary that the public prosecution and courts show zero tolerance towards persons who use hate speech and adequately prosecute and sentence those cases within the scope of their jurisdiction. Public figures and high political representatives must absolutely refrain from resorting to hate speech and denounce its use with every possible opportunity. The ethical and professional standards in journalism should be complied with persistently, which would in turn prevent the use of hate speech in the media.

[21] The Helsinki Committee sent Requests for Access to Information of Public Character to all, 27, primary courts in the Republic of Macedonia, whereby answere were provided by 21 court. In the course of 2015, a single criminal proceeding was conducted before Primary Court Skopje 1, after Article 417 from the Criminal Code, on which there is no effective judgement yet.

2. HATE CRIMES

In the period from January 1 to December 31, 2015, the Helsinki Committee registered a total of 44 hate crimes. Most of the incidents were registered after they were reported by the media or published by the Ministry of Interior while four (4) incidents were reported by the observers of the Helsinki Committee. 31 of all incidents were verified through letters to the Ministry of Interior, the daily bulletins of the Ministry of Interior, reports from the media and meetings with victims of those offences. 13 of the registered incidents were not verified but were documented due to the existence of bias, including: the perception of the victim/witness; comments on the crime scene; the difference between the victim and the perpetrator on ethnic grounds; pattern/frequency of prior incidents; the nature of violence; absence of other motives; location and timing. To be more accurate, the unverified incidents were covered because of information received regarding the location of the incident (e.g. ethnically mixed neighborhoods and schools, bus routes used by members of different ethnic communities, places where hate crimes had already occurred in the past and so on), the type of incident (for example, when a large group of juveniles attacked one or more victims without provocation, group fights, attacks on a bus or at a bus stop etc.), time of the incident (after a previous fight as a payback, after school hours, during or after a sporting event etc.) and the property damaged during the incident (such as religious buildings). The verified and unverified incidents are marked with green or red on the portal of the Helsinki Committee - www.zlostorstvodomraza.mk

Compared to the incidents registered in 2013 and 2014, the biggest difference is with regards to the victims, most of whom are refugees. 21 out of 44 incidens (48%) in 2015 are related to attacks of refugees during their transiting through the country. During these incidents, at least 58 of the victims (46% of all the registered victims) were citizens of Syria, Afghanistan and Morocco. The other major, but positive discrepancy is in the number of incidents due to the Macedonian or Albanian ethnicity of the victim, i.e. the offender. In 2013 these incidents made up for 84% of all the incidents (98 out of 116), while in 2014 this number amounted to 61% (53 out of 87). In the course of the 2015 only 15 incidents (34%) between ethnic Macedonians and Albanians were registered.

The majority of the hate-crimes were committed by robbers and youth. The most common crimes were Robbery (23), Violence (21), Injury (17) Destruction of property (6). Most of the incidents occurred in Skopje (18) and its surroundings. There were 10 incidents in Gevgelija and 6 in Kumanovo. The hate-crimes against refugees usually occurred along the highway which is part of the Pan-European Corridor 10. At least 125 victims and 174 perpetrators of hate-crimes were registered. The majority of victims are refugees and youth of Macedonian or Albanian ethnicity. In 33 of the 44 incidents the perpetrators acted as a group. From the received written responses from the Ministry of Interior, police discovered the perpetrators in at least 20 incidents. The police were notified about another 20 incidents and they were under investigation.

VIII. ECONOMIC AND SOCIAL RIGHTS

1. INTRODUCTION

In 2015 the Helsinki Committee registered a multitude of complaints for violation of the economic and social rights, which is first and foremost due to the high rate of unemployment in the country, the impoverishment of the population and the violation of the workers' rights, social rights and health rights.

It is a general conclusion that the Health Insurance Fund of the Republic of Macedonia and the Ministry of Health do not act in accordance with the positive legal regulations and do not follow the legal deadlines for drafting of the solutions, and their inaction directly threatens the rights of the rights of citizens under the Law on Health Care and Law on Health Insurance.

The centers for social work as a public service to the citizens, have failed to serve their purpose, especially when it comes to facilitating the access to social rights of citizens at social risk. The users of the rights to social care are often faced with decisions revoking some of their rights precisely due to the general confusion related to the registration of financial changes in their transaction accounts and consequently, because the dysfunctional professional services in the centers for social work. In fact, in many cases the right to social welfare was terminated, regardless of the fact that the unreported amounts deposited on the citizens' accounts were insignificant. Despite the initiated complaints procedure, as well as the proceedings before the Administrative Court of the Republic of Macedonia in the field, of social protection because of the lengthy procedures and the inefficient work, the citizens are still prevented from exercising their economic and social rights.

2. THE INSURANCE FUND DOES NOT PROTECT THE RIGHTS OF THE INSURED PERSONS

A complaint was submitted to the Helsinki Committee for Human Rights of the Republic of Macedonia by Zhaklina Dimovska, for not being able to exercise her rights granted with the Law on Health Insurance. In fact, Zhaklina Dimovska, as an insured person, filed a request for her underage child, Tamara Dimovska, to be sent for treatment abroad, with all the necessary medical documentation enclosed. However, the Healthcare Insurance Fund decided to reject the request as ungrounded, despite the information obtained from all the medical institutions which confirmed that they do not possess the necessary technical and medical equipment to go ahead with the surgery. However, the body of the first instance decided that the possibilities for treatment within the country have not been exhausted, serving this as a motivation for its negative decision.

Due to the negligence and the unlawful actions of the competent institutions, this case ended with a tragic outcome, i.e. the underage insured person, Tamara Dimovska, passed away on 09.02.2015. The Helsinki Committee for Human Rights prepared and submitted criminal charges against the directors, the president and deputy president of the Managing Board and the members of the first and second instance medical commissions for reasonable suspicions of unprincipled operation within the service, as well as against the Minister of Health, Nikola Todorov, for misuse of the official position and authorization. By the time this report was completed, the Primary Public Prosecution had still not raised an indictment against the suspects.

As a result of the huge media coverage of this case, more citizens facing the same institutional obstacles with the Healthcare Insurance Fund and the Ministry of Health of the Republic of Macedonia have addressed the Helsinki Committee for Human Rights of the Republic of Macedonia. In fact, from the documentation submitted to the Helsinki Committee, the Committee's legal team found that juvenile insured persons were in question, who needed a surgical intervention which was to be performed outside the country, since there was no possibility or conditions for it to be done in the Republic of Macedonia. The decisions adopted by the medical commissions under the Healthcare Insurance Fund are contrary to Article 30, paragraph 1 from the Law on Healthcare Insurance which regulates the medical treatment of insured persons abroad.

In fact, Article 30, paragraph 1 from the said law stipulates that an insured person may use medical treatment abroad, with the Fund's approval, if a disease which cannot be treated in the country is in question, while the country that the insured person is sent to offers possibility for successful treatment of the said disease. Upon performing insight into the entire submitted documentation, the Committee's legal team concluded that the first and second instance decisions of the Health Insurance Fund are identical for all of the insured persons, i.e. they had all been denied treatment abroad, without the Fund considering the submitted documentation and following the instructions and guidelines from the consultative opinions of the healthcare professionals, thereby directly violating the insured persons' rights under Article 30, paragraph 1 of the Law on Health Insurance.

Some of the persons who addressed the Committee had filed complaints against the decisions of the second instance to the Administrative Court of the Republic of Macedonia as well, but they faced an institutional problem there too, because the Administrative Court did not rule on the merits and remitted the case for retrial thereby lengthening the proceedings and preventing the plaintiffs from exercising their rights.

With these actions, or failure to act on the part of the Administrative Court, the insured persons waste their precious little time through legal labyrinths, while in the meantime facing deterioration and possible complications to their health. Due to the severity and scope of the problem, the Helsinki Committee of the Republic of Macedonia suggests that the competent institutions, the Health Insurance Fund and the Ministry of Health should act in accordance with the positive legally prescribed provisions and to comply with the deadlines laid down therein, in order for the citizens not to have future problems in practicing their rights.

3. RETROACTIVE EFFECT OF A RULEBOOK, AT THE EXPENSE OF THE CITIZENS

In the month of February, the Helsinki Committee received applications reporting the termination of the right to social assistance of some citizens because they had received monetary transfers on their accounts. While reviewing the received documents and decisions for termination of the social monetary assistance attached to the documentation, the Helsinki Committee found that in these decisions, the Centers for Social Financial Assistance had called on to Article 4, paragraph 1, item 7 from the "Rulebook on how to establish the

financial standing, property and property rights of the household, the establishing of the right holder and the documentation necessary for the entitlement and use of the right to social assistance", which was adopted on 02.01.2015 year and entered into force with its publication in the Official Gazette. Namely, these changes to this specific Rulebook state that funds in the amount exceeding 50,000 MKD received over wire money transfer shall be considered income.

Taking into account that the changes to this article came into force after the adoption of the decisions by the Centers, thus terminating the holders' right to social financial assistance, the Helsinki Committee established that retroactive application of legal provisions was in question which is contrary to Article 52 from the Constitution of the Republic of Macedonia. Namely, Article 52 of the Constitution of the Republic of Macedonia stipulates that laws and other regulations may not have retroactive effect, except as an exception, when it is more convenient for citizens, which does not apply to the present case. On the contrary, due to the retroactive effect of the Rulebook, the already unfavorable social status of these citizens is placed under additional burden.

Due to the above stated, the Committee provided free legal assistance in more than 10 cases, and at the same time submitted an opinion to the Ministry of Labour and Social Policy for inadequate application of the legal provisions from the Rulebook, underscoring the ban on retroactive application of the regulations, guaranteed with the Constitution of the RM.

Grasping the problems that emerged from the unlawful application of this Rulebook, the Ministry of Labour and Social Policy, on the 25 January 2016, amended the rulebook by deleting the contested provision in order to protect the users from being denied the granted right to social assistance due to a wire money transfer in the amount up to 70,000 MKD. This change improved the standing of the users for social welfare so they can now receive funds via wire transfer, which they can later use for their needs according to their social standing and health (long-term medical treatments, buying an orthopedic medical device) without it being considered property used to sustain themselves. Also, we would like to appeal to the Ministry of Labour and Social Police, to strive towards an increase in the amount of the social welfare in future, so that the users may be able to cover for their monthly expenses and satisfy their basic life needs.

IX. GENDER BASED VIOLENCE

1. INTRODUCTION

In the course of 2015, the Helsinki Committee registered 5 new cases of femicide - i.e. women murdered by their present or former spouses or intimate partners. One of the most brutal murders took place in October 2015, when a woman was axed by her husband. In the daily-news bulletin, the Ministry of Internal Affairs cited damaged family relations as a reason for the murder, while, off the record, the event was preceded by an argument. Only two days after, the media covered an event in Kochani in which a man took his life by hanging himself, after the previous night he had physically abused his wife and stabbed her with a knife in the arm.

The Helsinki Committee regretfully reminds that these two events are only new episodes in the saga of multiple acts of gender-based violence and domestic violence which have led to tragic outcomes in the past two year. In fact, in May this year, an elderly woman was found dead in her home in the Skopje residential area of Przhino with visible traces of violence, whereby the main suspect was her son. In January, a pregnant woman was killed at the Children's Clinic in Skopje and her body was dumped from the roof by the murderer. In the course of 2014 the state law enforcement authorities have failed to prevent as many as 5 cases of gender-based violence which resulted in tragic outcomes. At the beginning of May 2014, a dead woman was found in Kavadarci and her husband was accused of the murder. Near the end of the month, a man from Skopje killed the partner that he was having a love affair with, with firearms, and then he killed himself. The victim had been repeatedly warning that he would kill her if she dared to leave him. Towards the end of July, a man from Skopje killed his partner and her sister with firearms, whereby he committed suicide. Only three months later, in November, we witnessed the triple murder in Kavadarci, where a man killed the mother, father and sister of the spouse he was divorcing. The victim had reported the offender for domestic violence on several occasions, yet the institutions provided no protection to the victims. Furthermore, near the end of the month of November another triple murder took place, in Zletovo, where a man killed the parents of the spouse he was divorcing, as well as an acquaintance of their, the uncle of a man that the murderer suspected was having a romantic relationship with his ex-wife. The offender had also already been reported to the competent authorities for domestic violence.

During the reporting period, the Helsinki Committee provided legal aid to 10 cases of gender-based violence, including a case of a girl being stalked by her former intimate partner. This situation is particularly worrying, especially of it is taken into consideration that the state does not provide special protection for all forms of gender-based violence, nor does it take into account the cases of femicide. Consequently, it can be concluded that the state still fails to fulfill the minimum standards which need to guarantee efficient protection from

violence against women. The absence of an adequate reaction by the police and the centers for social work, the low number of shelter centers for victims of domestic violence, the absence of shelter centers for victims of sexual violence are only some of the systemic problems which lead to the conclusion that the state fails to meet the conditions to provide adequate protection of women-victims of gender-based violence. These conditions are laid down the Istanbul convention, which is the first comprehensive international document for protection of women against violence, that the Republic of Macedonia has signed, but has not ratified yet.

In case it ratifies this convention, the state will be bound to align the national legislation with the international standards, it will have an obligation to implement several campaigns or programs for awareness-raising, it will improve the preventive interventions on the part of the state and the programs for treatment of the victims and offenders, it will be bound to open more shelter centers that will be functional, it will introduce aggravating circumstances for the perpetrators stipulated by the Convention, the measures for victim protection should be functional and easy to implement in practice. Therefore, the state should start with the process for ratification of the Istanbul Convention and providing minimum standards for efficient protection of women-victims of violence, as soon as possible.

2. TRIPLE MURDER IN KAVADARCI

Towards the end of 2014, the public learned about the multiple murder of the family members of a woman-victim of domestic violence in Kavadarci, committed by her former husband with a firearm. This was another case in which the competent institutions failed to provide protection to the victim of the violence that she and the members of her family had been suffering from for a longer period of time by her ex-husband.

Due to the inefficient and negligent work of the institutions in this case, the public prosecutor's office launched an investigation against the police officers and employees of the Centre for Social Affairs, who acted on the case.

The police officers and the employees at the Center for Social Work Kavadarci were convicted for negligent work during service for not taking any action to protect the victim. The victim was not invited to take part in the proceedings, although she was damaged with the negligent work of the police officers. Due to the limitation to the right to participate in the proceedings as a victim, i.e. damaged party, as well as due to the fact that the police officers should have been charged with a more serious crime, the Helsinki Committee provided legal aid to the victim in order to file a Request for Protection of the Legality, which has already been submitted to the Public Prosecutor of the Republic of Macedonia. In its response, the Public Prosecutor of the Republic of Macedonia informed the victim that the request for protection is ungrounded, considering the fact that there had been no violation of the law, or an international agreement ratified in accordance with the Constitution of the Republic of Macedonia.

These actions by the Public Prosecution of the Republic of Macedonia, i.e. the fact that the victim was not involved in the court proceedings against the police officers for their failure to act at the victim's request to seize the weapon, is a blatant violation of the rights the victim, which serves to prove the inefficient protection of women who are victims of domestic violence.

The Helsinki Committee believes that the involvement of the victims of domestic violence as damaged parties in the court proceedings against police officers who failed to act in accordance with the law is necessary if we want to talk about efficient protection of the victims of domestic violence. Therefore, we recommend that

in future the public prosecution pays special emphasis on the fact that the victims are also damaged due to the negligent work of the people authorized to provide protection in cases of domestic violence.

3. HARASSMENT AND JEOPARDIZING OF THE SECURITY BY A FORMER INTIMATE PARTNER

Towards the end of 2015, person X asked for legal aid by the Helsinki Committee, as a victim of harassment and jeopardizing of the security by a former intimate partner. In fact, her former intimate partner, by using a weapon - knife, seriously threatened that he would attack her life and body and the life and body of a person close to her. The victim called the police who filled in an official note, and took statements from the appellant, as well as the witness. After more than 45 days passed after the reporting of the abovementioned event, the appellant went to the local branch of MoI Skopje Centar to ask about the case, whereby she was orally informed that the case was closed as a complaint, and the suspect was invited by the police and was warned.

The police authorities were informed that the suspect had been previously reported by the appellant for similar events, and he was also previously effectively convicted, and the fact that the suspect had previously threatened the life and body of the appellant and her present boyfriend, which can be proved with written text messages and reports to the police for the separate events.

Due to the inaction of the police officers, the appellant filed criminal charges to PPO-Skopje for the specific event, which proceeded to file charges for the crime according to Article 133 from the CC - Threatening with a dangerous instrument during a brawl or a quarrel. After holding the public, main and oral hearing, the Primary Court Skopje 1, Skopje adopted a verdict which found the defendant guilty of the above-mentioned crime and sentenced him to imprisonment of 4 months.

Although the perpetrator has already been convicted, he continues to harass and threaten the appellant, thus continually jeopardizing her security and upsetting the appellant and her family.

X. REFUGEE CRISIS

Towards the end of 2014, and the start of 2015, Macedonia witnessed a previously unseen inflow of refugees transiting across the territory of the country towards the EU member countries. Since the beginning of registration by the state in June 2015, by the end of the year around 390,000 refugees were registered, 210,000 of whom male, 95,000 children and 65,000 female. The majority of the refugees were citizens of Syria, Afghanistan and Iraq. Bearing in mind that the registration only started in June 2015, and that for several months a large number of refugees entered Macedonian territory unregistered, the real number for 2015 is much higher than the registered one. The refugees refused to stay in Macedonia and seek asylum, so out of all the registered refugees, only 86 submitted asylum requests. Most of these asylum-seekers stayed in the country only briefly, continuing on their way to the European Union even before the asylum procedure had started. Unfortunately, the state underestimated the refugee crisis and started the preparations for organized reception which resulted in numerous violations of the refugees' rights.

a) *Victims down the railroad*

Considering them to be "illegal migrants", the Republic of Macedonia did not allow the use of free transport, and forced the refugees into walking along the entire territory of the country in an attempt to reach Serbia. On their way, they most often travelled down the railroad from Gevgelija to Tabanovce. On 24 2015, in the vicinity of Veles, a train killed 14 migrating refugees, at least six of whom were juveniles. In the period from the end of 2014, until May 2015, at least 29 refugees were killed, including babies, children and women. Article 29 from the Constitution of the Republic of Macedonia stipulates that foreigners enjoy rights and freedoms guaranteed with the Constitution, under conditions laid down with the law and international agreements. The Republic of Macedonia, as a party/signatory to the European Convention on Human Rights, was bound to take adequate steps to protect the lives of the people transiting through its territory. Unfortunately, although the Ministry of Internal Affairs was acquainted with the dangers and risks that the refugees were subject to, the state took very few adequate measures to protect their basic human rights.

b) *Reception center for foreigners - Gazi Baba*

Until June 2015, the state kept the refugees witnesses and victims of human trafficking in the only reception center for foreigners in Gazi Baba. Some of these people were under the security check of the Security and

Counterintelligence Directorate. The procedure of detention was carried out unlawfully. According to Article 108, Paragraph 3 of the Law on Foreigners, the Ministry of Interior adopts a decision on temporary detention of a foreigner, while paragraph 5 stipulates that a foreigner has the right to appeal first to the State Commission for deciding in administrative procedure of the second instance, and then to the Administrative Court and the Higher Administrative Court. According to Article 19, paragraph 3 of the Law on Administrative Procedure, the participants in the proceedings who are not citizens of the country and do not understand the Macedonian language and the Cyrillic alphabet are entitled to an interpreter. Article 61, paragraph 5 stipulates that the bodies that the administrative procedure is conducted before should respond in Macedonian and in the official language used by the party. The unlawfulness of the detention procedures consisted of not providing an interpreter by the Ministry of Interior, whereby the migrant-refugees were not able to either understand or appeal against their detention. In the first half of 2015 the reception center in Gazi Baba was overcrowded and dilapidated and was closed to the civil associations and the media. After the reaction of the bodies for protection of human rights of the United Nations, the Ombudsman, NGOs and activists in the summer in 2015 all detained refugees were released, but the prosecutors continued the practice of sending witnesses to the Centre, although in much smaller numbers.

c) *Expressing asylum intent*

In the course of the month of June, the Assembly of the Republic of Macedonia adopted the changes to the Law Amending the Law on Asylum and Temporary Protection. The proposed solution made it possible to the refugees to express intent to submit a request for recognition of the right to asylum to a police officer. This gave them a deadline of 72 hours to submit the said request. In the period after they expressed intent until they submitted the request, they were not considered illegal migrants, which gave the temporary freedom of movement and legal use of the means of public transport. This solution cut down the number of smugglers who posed a huge problem before.

d) *Crisis*

On 19 August 2015, the Government of the Republic of Macedonia adopted a decision to declare a crisis on the southern and northern border of the country, related to the increasing influx of refugees to the country. With a decision of the Assembly of the Republic of Macedonia, the crisis was extended up until June 2016. After the Government of the RM declared a crisis, it was evident from the published media clipping[22] and the direct observation of the representatives of the Helsinki Committee who were present at the Southern Border that the special police officers treated the refugees in an inhumane way, by using means of coercion, teargas and stun grenades, in an attempt to prevent the refugees from crossing over on the territory of the state.

e) *Medical protection*

In general, medical protection was provided by the Red Cross, and a small number of refugees were given medical treatment in several public healthcare institutions, solely in urgent and more serious cases. In the course of the month of August, 23 out of a total of 25 private healthcare ordinations from the municipalities of Gevgelija, Valandovo, Dojran and Bogdanci, through a petition signed by doctors, informed the Healthcare

[22] http://www.makdenes.org/media/video/27200964.html

Insurance Fund (FZOM) that they will not comply with the order for shift work in the ordination set up for migrants located on the premises of the police station at the Railroad Station in Gevgelija. Through the petition they stated that they do not accept shift work in the ordination because they had no such legal or contractual obligation. According to them, the so-called adapted ordination did not provide basic conditions to provide medical services, no medical equipment, devices, disposable medical materials, etc. This rejection was not in line with Hippocratic oath, translated into the doctor's oath contained in the Declaration of Geneva from 1948. According to these oaths, the doctors would consecrate their life in the service of humanity and practice their profession with conscience and dignity. In practicing their profession doctors may not have any prejudice against age, disease or disability, ethnic origin, gender, religion, nationality, or race, intervene between their duty and their patient.

f) *Smuggling and robberies*

A large number of refugees who had entered the country illegally, became victims of the smugglers and hate crimes. On a weekly basis, the media reported about a large number of incidents related to smuggling, while the Helsinki Committee registered 21 incidents of robbery. In these incidents, at least 58 of the victims were citizens of Syria, Afghanistan and Morocco. The robber's attacks had similar characteristics, i.e. the victims were either offered false transport, or were intercepted, whereby the perpetrators, with serious threats, or by claiming to be police officers, with cold weapons (sometimes even with firearms, as well as electric bats), scare, attack, hurt and rob them. More details on each separate attack, as well as other registered attacks are available on the Helsinki Committee hate crime registration portal - www.zlostorstvaodomraza.mk.

g) *Transit camps*

Due to the chaotic admission and transport of refugees, the residents of Gevgelija objected against the large number of refugees in their town. In September 2015, the transit of refugees started to take place in an organized manner by means of improvised transit camps set up south, in immediate vicinity of Gevgelija (Vinojug) and north, in immediate vicinity of Kumanovo (Tabanovce). The camps were set up further away from the residential areas, next to the railroad, at 500 meters distance from the border with Greece, i.e. Serbia. The camps were being upgraded every day, and the transit took place in an organized manner by registering the refugees near Gevgelija and transporting them directly with a special train route by Macedonian Railroads.

h) *Discrimination when using railroad transport*

PE Macedonian Railroads HC Transport, made a correction in the price of the tickets for refugees transiting through Macedonia twice in a short period of time. The price of every individual ticket for these users is 25 EUR, which is 3.5 times higher than the regular ticket price which around 7 EUR. The regular discounts for children, families and groups do not apply. By increasing the price of the tickets for the refugees, PE introduced a practice of unequal treatment of the refugees, and violated the rights contained in Article 29, paragraph 1 from the Constitution of the Republic of Macedonia which reads: "Foreigners in the Republic of Macedonia enjoy freedoms and rights guaranteed with the Constitution, under conditions stipulated with the law and international agreement". According to the explanation of Macedonian Railroads, the higher price was due to the special services and the allocation of additional funds and employees in order to enable this transport.

***3**) Racial profiling*

The month of November 2015 marked the start of the discriminatory selection for admission of the refugees based on their country of origin at the entrance to Slovenia. This practice spread like a chain reaction through all the border crossings along the Balkan route. As a consequence, only refugees originating from Syria, Afghanistan and Iraq were allowed to transit through Macedonia, while the refugees with documents proving origin from another country were not allowed to cross. This situation led to illegal crossings of the state borders by all the refugees who were not citizens of one of the above mentioned countries. In order to prevent the illegal crossings, the state built a barbed wire fence along the border with Greece.

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