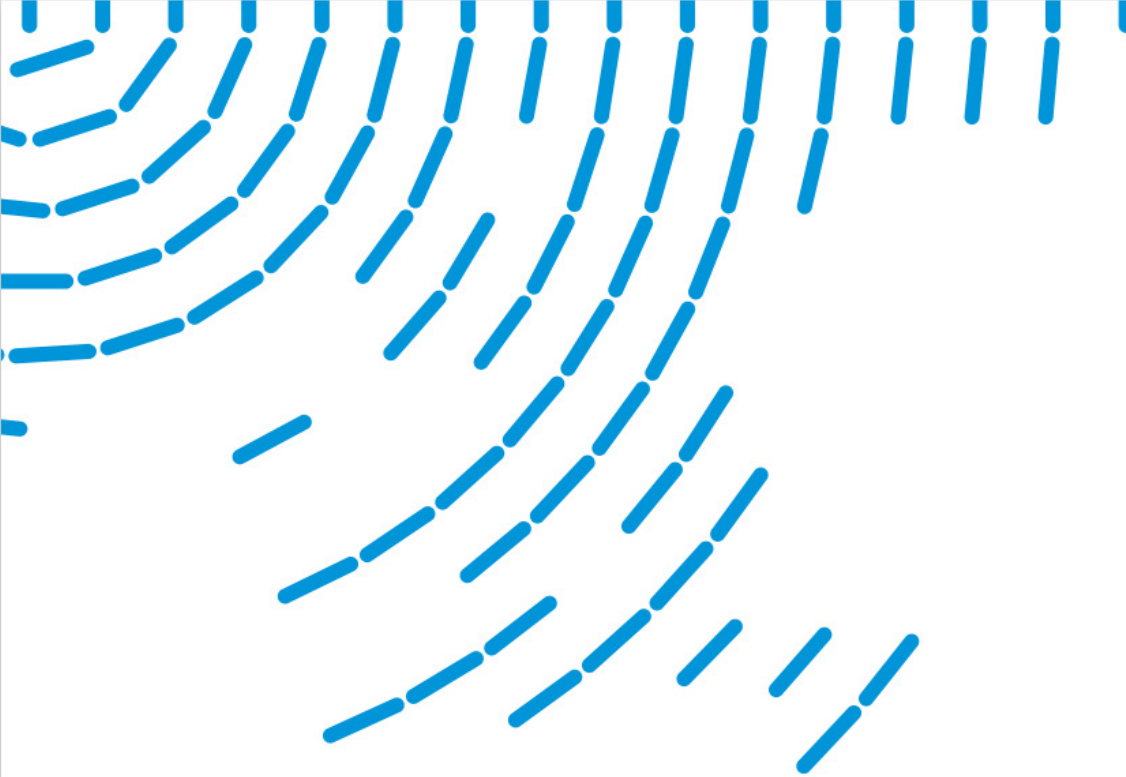




ANNUAL REPORT

on the state of human rights in the
Republic of Macedonia in 2016



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I. CIVIL AND POLITICAL RIGHTS

1. Introduction

During 2016, given the intensity of the political crisis, a number of public rallies were organized in order to express revolt from the policies of the current governing structure. Namely, encouraged by their constitutionally guaranteed right to a public assembly, the citizens, due to for various reasons, pointed out the systematic violation of human rights and freedoms in the country in almost all segments of society.

The protests started in 2015 intensified in 2016, as a reaction to the decision of the President of the Republic of Macedonia, Gjorge Ivanov, for the collective pardon of 56 suspected perpetrators of crimes, against whom criminal charges have been filed and criminal proceedings initiated, and are members and senior officials or close associates of the largest political parties in the country.

2. Protests

2.1 Protest and counter-protest in front of the Constitutional Court

During 2016, several protests were organized in response to the decision of the Constitutional Court to open a procedure for assessing the constitutionality of the amendments to the Law on Pardon from 2009. The protest that was supposed to take place on 15th March 2016, just before the decision of the Constitutional Court, was prevented by another group of citizens - counter-protesters, led by the leader of the political party GROM, Stevcho Jakimovski. Given the fact that the planned protest was duly announced at the Ministry of Internal Affairs and published in the media, and then the place of the protest was taken by other people with a completely opposite purpose, it can be concluded that there are serious indications of committing a crime. Prevention or obstruction of a public protest - Article 155 of the Criminal Code. In this case as well, the Public Prosecutor's Office did not inform the public whether it had acted ex officio and opened an investigation against the organizer and the participants in the counter-protest.

2.2 Protests against the decision of the President of the RM for a collective pardon.

Starting from 13th April 2016, until the end of July 2016, protests known as the Colourful Revolution were held, in response to the decision of the President of the Republic of Macedonia, Gjorge Ivanov, for the collective pardon of 56 suspected perpetrators of crimes, against whom criminal charges have been filed and criminal proceedings initiated, and are members and senior officials or close associates of the largest political parties in the country.

From the information available so far to the Helsinki Committee regarding the protests of the Colourful Revolution, to this point 37 people who took part in these protests have been criminally accused of participating in a mob that intended to commit a crime. Additionally, more than 50 people are facing financial penalties for violating the Law on Public Hygiene and the Law on Misdemeanours against public order.

Police officers repeatedly prevented citizens from protesting at certain locations or institutions, restricting their right to move. Because of this, it can be concluded that there are serious indications for committing a crime - Prevention or obstruction of public protest, Article 155 of the Criminal Code. In this case, as well, the Public Prosecutor's Office did not inform the public whether it had acted ex officio and opened an investigation against police officers.

3. Criminal justice protection of the citizens' freedoms and rights

Regarding the citizens' awareness of the possibility for criminal protection of their freedoms and rights, especially regarding the excessive use of force by police officers or the unfounded prevention or obstruction of a public gathering, we can conclude that it is on a low level.

Namely, according to the data received by the Ministry of Internal Affairs, there are no charges for some of the crimes, and among them are the crimes under Article 138 - "Violation of the right to use the language and script", Article 150 - "Unautho-

rized disclosure of a secret “, Article 153 - “Violation of the right to submit a legal remedy”, Article 154 - “Prevention of printing and throwing away printed material”, Article 155 - “Prevention or obstruction of a public gathering “, and Article 156 - “Violation of the right to strike”.

Among the crimes that have only a few reports are the crimes under Article 137 - “Violation of the equality of citizens” (one report in 2014), Article 142 - “Torture and other cruel, inhuman or degrading treatment and punishment” (nine reports in 2010, three reports in 2013, and two reports in 2014), Article 146 - “Illegal search” (one report in 2013 and one report in 2016), Article 147 - “Violation of the secrecy of letters or other shipments” (one report in 2012), Article 148 - “Unauthorized publication of personal records “(one report in 2013), Article 151 -” Unauthorized wiretapping and audio recording” (one report in 2015), and Article 157-v - “Piracy on a phonogram” (two reports in 2010). Such data are repeated in the Public Prosecutor’s Office, which, in turn, has no practice of initiating proceedings ex officio to determine criminal liability for violation of human rights and freedoms. It is astonishing that there is a complete absence of reports of some crimes or their number is very low, given that some occurrences are considered very critical, such as the example of unauthorized wiretapping, which has been a notorious problem for years, the problem of equality of languages to which national minorities are sensitive, and the problem of torture and ill-treatment in the service, which is noted in a series of reports of human rights violations by domestic and international bodies and organizations, as well as verdicts of the European Court in Strasbourg.

II. JUDICIARY

2.1 Lack of impartiality and independence of the Judicial Council

At the beginning of January, the European Court of Human Rights announced the decisions in the cases of five dismissed judges against the Republic of Macedonia (Gerovska-Popchevska v. the Republic of Macedonia, application no. 48783/07, Jakshovski and Trifunovski v. the Republic of Macedonia, application no. 56381/09 and 58738/09, and Poposki and Duma v. the RM, application no. 69916/10 and 36531/11). In all five cases, the Court found a violation of Article 6 Paragraph 1 (right to a fair trial) of the European Convention on Human Rights, which confirms the allegations of lack of independence and impartiality of the Judicial Council.

In the first case, judge Gerovska Popchevska complained about the participation of the President of the Supreme Court and the Minister of Justice (who are ex officio members of the Judicial Council) in the Judicial Council's decision to dismiss her, when both of them had already formed and expressed negative opinion of her. In the other four cases, the individual judges were dismissed by a unanimous decision of the Judicial Council, in which the proposer of such a measure was a member. Appeals against dismissal before the Supreme Court Appeals Chamber were rejected by all judges.

These cases have particularly influenced the Judicial Council to receive harsh criticism from the professional and international public for the influence of the executive on decisions on disciplinary liability and dismissal of judges. Because of these reasons, changes were made to the entire procedure for determining disciplinary responsibility and dismissal of judges, as well as the formation of a new body - Fact-Finding Council, which can initiate a procedure for determining the responsibility of a judge before the Judicial Council. Such legal changes were adopted in a fast and shortened procedure, without consultations with stakeholders and without public hearing and because of this reason, they contain numerous shortcomings in terms of unclear legal solutions, especially in the part of the establishment of the Fact-Finding Council. In such a situation, it can be concluded that the goal of improving the independence and autonomy of the judiciary has not been achieved and the establishment of the new Fact-Finding Council does not achieve the goal of ensuring independence in decisions.

2.2 Illegal re-election of the President of the Council of Public Prosecutors

On 22nd September, during a session of the new composition of the Council of Public Prosecutors of the Republic of Macedonia, in secret ballot, Mr. Petar Anevski was re-elected President of the Council. The election took place despite the fact that according to Article 8 paragraph 3 of the Law on the Council of Public Prosecutors (“Official Gazette of the Republic of Macedonia” no. 150/2007 and 100/2011), the mandate of the President of the Council lasts two years, without the right to re-election. For that reason, the Helsinki Committee called on the members of the Council of Public Prosecutors of the Republic of Macedonia, in accordance with Article 10 paragraph 3 of the Law on the Council of Public Prosecutors, to schedule an urgent session to review their illegal decision. After the public reaction, Mr. Anevski told the media that it was not true that he was elected illegally. According to him, despite the fact that he was the president of the Council of Public Prosecutors until August 2016, the re-election is in a new, third term of the Council, which meant that he was not re-elected in the same term.

2.3 Inefficient process for selection of candidates for initial training in the Academy for Judges and Public Prosecutors

In November 2015, the Academy for Judges and Public Prosecutors announced an advertisement for admission of 30 students for initial training at the Academy for Judges and Public Prosecutors. According to the statement published on the website of the Academy on 4th July 2016, the public was informed that after conducting the written and oral part of the exam, the Commission for entrance exam determined a list of grades of the candidates from the written and oral part of the entrance exam. Following the publication of the list, a total of 44 complaints were submitted to the Commission of Entrance Examination, against which 29 complaints were subsequently submitted to the Board of Directors of the Academy, 9 candidates initiated proceedings before the Administrative Court, and some of them to the Higher Administrative Court.

Despite the short legal deadlines for deciding on complaints, appeals, and lawsuits of dissatisfied candidates for admission to the Academy for Judges and Public Pros-

ecutors, the time frame for completing the entire procedure was exceeded several times. Although according to the Law on the Academy for Judges and Public Prosecutors, the entire appeal procedure could not last for more than 2 months, the whole procedure was being delayed until February 2017, and the new generation of candidates for judges and public prosecutors started the training in March 2017. Therefore, the new candidates started the training with a delay of 6 months, which is another indicator of the inefficiency of the judicial system in implementing judicial reforms, which provide for all newly appointed judges and public prosecutors to complete the training at the Academy.

On 29th August 2016, the Academy announced a new announcement for admission of 60 students for initial training - candidates for public prosecutors. Having in mind that the process for the previous announcement was not finished, the candidates who applied for that announcement did not have the opportunity to apply for the new announcement for admission of candidates for public prosecutors.

2.4 Special Public Prosecutor

On 15th September 2015, the Parliament of the Republic of Macedonia with 111 votes in favour passed the Law on Public Prosecution for Trial of Criminal Offenses related to and arising from the content of illegal interception of communications. The prosecutor Katica Janeva from the Public Prosecutor's Office in Gevgelija was elected head of this institution, a choice that then at least seemingly satisfied all parties on the political scene. The establishment of this institution was the key part of the Przino Agreement, the main rail on the way out of the political crisis. Janeva's team was completed with 12 other prosecutors, including Fatime Fetaj and Lence Ristovska, the two junior prosecutors completing the now-popular justice trident to clear up the incredibly complicated and tangled suspicions of crime and corruption by senior state officials who emerged from "bombs" of the opposition.

As of 15th March 2017, the SPP conducted pre-investigation proceedings against 112 people, and 50 people are subject to investigative proceedings. Meanwhile, the prosecution team reaches 117 people, including the investigative and prosecution team. As of the date of submission of the second six-month report (15th March 2017), the content of 272,950 audio files was analysed, i.e. 45% of the total number

of audio files available to this Public Prosecutor's Office are being processed.

From the beginning to the end of this report, the SPP faced obstacles and sabotage from several institutions whose cooperation is crucial for achieving the expected results. The Security and Counterintelligence Directorate has not cooperated with the SPP for a long time and does not receive mail, so the prosecution is forced to seek information and materials through the Ministry of Internal Affairs. After obtaining a court permit, the prosecution conducted a search in the premises of the UBK. The Primary Public Prosecutor's Office for Prosecution of Organized Crime and Corruption also delayed the handover of cases that fell under the jurisdiction of the SPP.

The biggest obstacle the SPP is facing is the Primary Court Skopje 1. The court rejected almost all requests for detention and precautionary measures requested by the SPP, and controversial distributions of judges in the organized crime department were also conducted. In public, these distributions were qualified as "purges" of "ineligible" judges who would decide (or have already decided) positively on the SPP proposals.

There was also a precedent in the 72-year operation of the Court. The former acting President Tatjana Mihajlova, a trial judge in one of the two prosecution cases for which charges had already been filed, fined prosecutors Janeva and Fetaj 2000 euros each for contempt of court.

In the meantime, this Public Prosecutor's Office receives open support from the international community, primarily from EU and US representatives, who as patrons of the Przino Agreement consider the smooth work of the SPP (with a legal deadline until June 2017 to deliver charges) as the main condition to activate the country's long-frozen process of Euro-Atlantic integration.

As of March 2017, through press conferences, the SPP presented 16 cases:

1. TITANIC (ТИТАНИК) - The first case of the SPP dealt with suspicion that a group led by ex-ministers of the Ministry of Internal Affairs, the Ministry of Labour and Social Policy, and the Secretary of the Government committed election fraud. Some of the acts are illegal issuance of ID cards, violence, bribery, inserting a ballot and more.

2. TNT (ТНТ) - A case of illegal demolition of the Cosmos building owned by the businessman Fiat Canovski. The suspects are a former Prime Minister, a former Minister of MTSP, and the current mayor of Gazi Baba.

3. TRANSPORTER (ТРАНСПОРТЕР) - According to the SPP, the municipality of Bitola paid for “perhaps the most expensive transportation for students in the world”. The suspects for damaging the budget are the mayor of Bitola, who was under house arrest for a while, as well as the chairman of the municipal procurement commission.

4. FORTRESS (ТВРДИНА) – This is one of the two cases for which there is already an indictment and court hearings. A Former Minister of Interior and two chiefs of UBK are accused of illegally destroying communication monitoring systems that were used for illegal interception of communications, which damaged the budget of the Republic of Macedonia for about 10 million euros.

5. TORTURE (ТОПУРА) – Criminal charges against 7 people who were involved in the arrest of the former Minister of Internal Affairs and the President of the United for Macedonia party, Ljube Boskovski. Six of them are members of the police unit “Alfi”, while the seventh is the former chief of UBK

6. TREASURY (ТРЕЗОР) - A case of abuse of official authority in the procurement of communication systems. The suspects are three managers in the UBK and one from the Ministry of Internal Affairs. The SPP believes that these people damaged the budget for over 862 thousand euros for personal enrichment.

7. ТОРЛИК (ТОПЛИК) - It refers to the “Sunny City” project, where there is a suspicion that the budget was damaged by over 1,4 million euros. The abuse, according to the SPn, was committed in the Ministry of Transport and Communications, and six people from that ministry are suspects.

8. TENDERS (ТЕНДЕРИ) - the SPP suspects that a tender was arranged for the construction of the building of the VMRO museum. The first suspect, a manager in the Ministry of Culture, informed the company Beton - Stip by phone to work on the final works of the facility, although the tender will be announced later.

9. TARGET (ТАРГЕТ) - A case that will help solve the dilemma who ordered the wiretapping. The SPP suspects a total of 10 people, including former senior officials, that were coordinating the mass wiretapping conducted by the UBK. The prosecution claims that at least 4286 telephone numbers were monitored without a court order.

10. TANK (ТЕНК) - An investigation has been opened against two people from the Ministry of Internal Affairs. The SPP finds them suspects that they participated in the illegal procurement of an official “Mercedes” worth 572,000 euros, for the needs of the former Prime Minister Nikola Gruevski.

11. TARIFF (ТАРИФА) - It refers to a procedure for a public procurement of a software for the needs of AD ELEM where seven people from the public enterprise are suspects, who, according to the SPP, by abusing their powers, caused damage to the budget by several hundred thousand euros.

12. TRUST (ТРУСТ) - A case in which three individuals and three legal entities are suspected of manipulating a tender procedure for excavation of tailings and coal in Suvodol. The investigation so far has shown that a consortium with forged documentation won a tender, thus obtaining an illegal property gain of one billion and 60 million denars or more than 17 million euros. The SPP in this investigation finally received a positive decision for detention of the owner of the consortium, but he was on the run until the closing of the report.

13. BLACKBOARD (ТАБЛА) - It is about abusing the official position of the principal of a primary school in the village of Zajas and his decision to build a new primary school without respecting the legal regulations. In this case, the damage is about 200 thousand euros, as much as the contract signed without public procurement, for the construction of a school in the village of Strogoviste.

14. THREE HUNDRED (ТРИСТА) - In this case, the Assistant Minister from the Ministry of Internal Affairs is suspected of having made a public procurement for 300 vehicles for the Ministry. In the period from 2008 to 2012, the suspect procured 300 vehicles violating the legal regulations for public procurement, which damaged the state budget by 453 thousand euros.

15. TOTAL (ТОТАЛ) - Tax evasion is the extended criminal offense for which there are reasonable suspicions in this case, in which one person is suspected. The owner of several companies for marketing and consulting services, Total, Media Mak, Total Marketing, Media Center, in the period from 2008 to 2015 evaded paying taxes worth about 180 thousand euros.

16. TIFFANY (ТИФАНИ) - Tax evasion again and the suspect is the owner of the marketing and consulting companies Smart Centar and Smart Grup. In this case, too, there is a reasonable suspicion that in the period from 2008 to 2014, the companies and the owner partially evaded paying taxes by providing false data on liabilities.

2.5 The Public Prosecutor's Office does not protect the rights and freedoms of citizens

In recent years, the Helsinki Committee has continuously monitored the work of the Public Prosecutor's Office by filing criminal charges and by requesting the Public Prosecutor's Office to initiate ex officio proceedings for violations of citizens' rights reported by the media.

In the period from 2013 to 2016, the Helsinki Committee has filed or provided legal aid for filing more than 30 criminal charges for violations of citizens' rights and for hate speech and crime. In most cases, there is no response at all for the course of the investigation by the Public Prosecutor's Office, while the other charges are rejected with the explanation that the crime is not conducted ex officio.

Additionally, the Helsinki Committee repeatedly called on the Public Prosecutor's Office to initiate ex officio proceedings in cases of mass violations of citizens' rights, but the public was never informed of such a step.

Namely, the Public Prosecutor's Office was passive in conducting investigations when the public was informed about the massive violation of citizens' rights due to the illegal wiretapping.

The Public Prosecutor's Office did not initiate any proceedings for the excessive use of force by police officers against citizens who protested on 5th May last year, although excessive use of force was noted by the Ombudsman and numerous domestic and international organizations, including the Helsinki Committee. On the contrary, the Public Prosecutor's Office has not acted for almost 2 years after the only criminal charge that was filed - Harassment in the performance of duty, filed by a person injured by the police at the protest on 5th May 2015, who was then held at the police station for 24 hours.

The Public Prosecutor's Office did not initiate any proceedings for the unfounded restriction of the right to protest of the citizens who protested peacefully in 2015 and 2016, although according to Article 155 of the Criminal Code, preventing or obstructing a public gathering is a crime.

The Helsinki Committee regularly registers hate speech cases and informs the

public about it, but so far, the Public Prosecutor's Office has not initiated any ex officio investigation to initiate the establishment of criminal responsibility of the perpetrators. On the contrary, even in cases where the Helsinki Committee files criminal charges for hate speech, the Public Prosecutor's Office decides not to initiate proceedings, allowing such crimes to be repeated. The only positive exception are the proceedings against Milenko Nedelkovski for the crimes of Inciting hatred, discord, or intolerance on national, racial, religious, and other discriminatory grounds; Spreading racist and xenophobic material through a computer system; and Racial and other discrimination. In this case, the Higher Public Prosecutor's Office in Skopje returned the case to the Primary Public Prosecutor's Office in Skopje 3 times, which refused to recognize elements of hate speech and to file charges for the indicated criminal acts. Due to this, the public prosecutor who was acting in the case was replaced and a new public prosecutor is currently conducting the investigation.

The Public Prosecutor's Office also failed in the case of Tamara Dimovska, who due to the huge error and illegal actions of the Health Insurance Fund, died on 9th February 2015.

After Tamara's death, the Helsinki Committee for Human Rights prepared and filed criminal charges against those responsible, due to suspicion of committing crimes under Articles 353 Paragraph 1 and 2 of the Criminal Code of the Republic of Macedonia, i.e. abuse of official duty and Article 353-v Paragraph 1 and 2 of the Criminal Code of the Republic of Macedonia, i.e. negligent work in the service.

The criminal charges were filed with the Primary Public Prosecutor's Office on 19th February 2015 and to this date, the Committee has not received any response from the Public Prosecutor's Office Skopje, although more than 2 years have passed.

Although the new Criminal Procedure Code set a time limit of 6 months for conducting an investigation procedure from the day the order was issued, this deadline has not been met in any of the cases handled by the Helsinki Committee. This inaction only confirms the non-functionality of the Public Prosecutor's Office in protecting the rights and freedoms of citizens.

III. CONSTITUTION AND LEGISLATION

1. Constitutional Court

In the past five years, and especially from 2013 to today, the Constitutional Court of the Republic of Macedonia has recorded a reduced number of received and completed cases, reduced number of repealed and annulled provisions of laws and by-laws, reduced number of employees, and unchanged assets in the annual budget. According to the annual reports of the Court, the number of received cases is in constant decline and compared to 2011 when 236 cases were received, there were 128 cases in 2015 (-46%). The comparison for the same years in terms of completed cases is 231/150 (-35%); repealed/annulled decisions 32/11 (-66%), and requests for protection of freedoms and rights of citizens 23/13 (-43%). These negative indicators show an unusual inactiveness in the work of the Court, reduced public confidence, inclination towards the policies of the legislature and the executive, and the state's negligence in developing the bastion of human rights and promoting the professionalism of constitutional judges and professional service.

During 2016, the Constitutional Court was often criticized by the professional and general public, and its work was frequently reported by the media. In circumstances when it is disputable whether the entire current structure of the Constitutional Court is from the ranks of prominent lawyers, their political choice, disrespect of their own previous practice, closing of public sessions and non-acceptance of opinions by the Venice Commission, reasonable suspicions arose that the Court which should protect constitutionality and legality has become an institution subordinate to the legislature and the executive and political parties. This seriously violates the independence, impartiality, competence, and legitimacy of the Constitutional Court. Problems in the functioning of the Court are also mentioned in the progress reports of the Republic of Macedonia to the European Commission, which notes the composition of the Court, its bias, and the extension of decision-making.

At the 4th Session of the Constitutional Court held on 24th February, the Court decided to initiate a procedure for assessing the constitutionality of the Law on Amending the Law on Pardon ("Official Gazette of the RM no. 12/2009"). The 7th Session of the Constitutional Court, held on 16th March, was followed by the repeal of provisions of the law and all its provisions, including the provision which states that pardon could not be granted to people convicted of crimes against elections. Prior

to the decision, the Helsinki Committee called on the Constitutional Court to rise above party and individual interests and to issue a decision that would neither establish the law as unconstitutional nor repeal it. It is symptomatic that the Constitutional Court decided that there is need to assess the constitutionality of this law, especially given the fact that the initiative to challenge it was filed in early February, immediately after the opening of the case “Titanic” by the Special Public Prosecutor’s Office, in which former ministers Mile Janakievski and Gordana Jankulovska and other people close to the ruling coalition are suspected of election fraud. The speed of action shown by the Constitutional Court in this case (40 days from the submitted initiative to the final decision) is the only example of rapid action on a particular initiative, which very transparently revealed its role as an instrument for defending the party interests of a political party from the ruling coalition.

2. Law on Free Legal Aid

The Law on Free Legal Aid is the first legal solution for exercising the constitutionally guaranteed right to equality (Article 9) which proclaims equality among citizens regardless of gender, race, skin colour, national and social origin, political and religious beliefs, property and social position on the one hand, and the equality of citizens before the Constitution and laws on the other. This provision of the Constitution refers to the need for ensuring equal access to justice for all citizens, including citizens who fall under the category “vulnerable citizens”, whose living is difficult as a direct result of their financial position.

The free legal aid system identifies the legal problems and weaknesses of the law on free legal aid itself that restrict the right to equal access to justice.

Namely, the people defined in the Law have the right to free legal aid, who, given their material position, could not exercise the rights guaranteed by the Constitution and the Law, without endangering their own support and the support of their family members with whom they live in a shared household. A request for free legal aid, in accordance with the provisions of the Law on Free Legal Aid, is approved in all court and administrative proceedings, if it resolves an issue of interest to the applicant. However, the law limits the ability of applicants to seek legal aid in areas other than those listed in the law, such as rights in the field of social, health, pen-

sion, and disability insurance, labour relations, child protection, victims of domestic violence, protection of victims of crime, protection of victims of human trafficking, recognition of the right to asylum, and property issues.

One of the main disadvantages of this Law is the predicted maximum property that an applicant should own. Only a small category of people, i.e. people living in conditions of great poverty, can apply as beneficiaries. Instead of promoting the rights of equality of citizens, the current law brings unequal access to justice and bypasses the poor citizens in the Republic of Macedonia, which violates the basic principle of the law. Namely, the real estate (apartment, house) in which the applicant and their family live are of special importance for the application of this law; above all, the minimum residential space should be exempted from property that will be subject to determination and assessment by the competent authorities. In the part of the allowed property, in accordance with the number of average salaries, the legal text itself should be matched, because the basis for gross salaries is allowed only in case of owning a vehicle, but it is unclear for the remaining allowed property, which the competent authorities arbitrarily calculate in average-net wages.

“Property” of the applicant for free legal aid means all movable and immovable property, property rights, amount of cash in domestic and foreign currency, cash in bank or on a savings account, gift, securities, shares, shares in capital, and other property of the applicant or of adult members of his household in the country or abroad.

Regarding the definition of the term “family members” in the Law on Free Legal Aid, the family circle is too broad, because in accordance with the estimated fourth degree, this circle includes great-grandparents and great-grandchildren, which may be a problem in practice if we take into account that the income and property of the applicant are assessed at the level of the entire property and the total income of the family community in which the applicant lives.

Despite this flaw, practice shows that the urgency of the procedure for resolving the right to free legal aid is not always considered. This is primarily because of the centralization of decision-making, i.e. the Ministry of Justice is obliged to decide on the territory of the entire country, as well as the “poor communication” between state institutions that should issue evidence of the property status of the applicant. Hence, as opposed to the 20 days provided as a legal deadline in which the Ministry

decides whether to approve or deny the request for free legal aid, in practice the real duration of this procedure lasts 40-60 days, which exceeds the deadlines of the Law on Procedure, the Law on General Administrative Procedure, the Law on Administrative Disputes, and the Law on Labour Disputes within which a deadline of 8 days is determined, i.e. from 15 to 30 days for a lawsuit or appeal to the competent bodies or courts in a court or administrative procedure. Victims of domestic violence, due to the urgency of the situation in which they find themselves, usually decide not to seek free legal aid due to the deadlines within which decisions are made. Because of these reasons, there is an urgent need to amend and regulate the Law on Free Legal Aid with other laws related to free legal aid and to establish a more efficient and faster system for exchanging data on applicants between institutions.

When beneficiaries of the lowest pension who live in a family community with two or more dependents acquire the right to free legal aid, the restrictive nature of the law for the applicants who are the recipients of the lowest pension comes to the fore again, and instead of with two or more people, they live with one person who they support and do not meet the strict criteria provided by law.

When it comes to terminological and conceptual shortages, there is an absence of a clear definition; which citizen is considered a “single parent” who exercises the right to child allowance, being that one of the criteria for exercising the right to free legal aid, due to which various interpretations of this term can be seen in practice, which in turn contributes to increasing legal uncertainty.

The awareness of the citizens about the Law on Free Legal Aid is at an undesirable level and with the legal provision for prohibition of advertising, in accordance with the Law on Free Aid, the authorized associations for providing prior legal aid were prohibited from advertising for providing preliminary legal aid. Illegal advertising is the basis for revoking the authorization to provide legal aid. This legal provision is illogical because the associations themselves are non-profit organizations, and not entities that would make more profit with advertising. This provision causes negative consequences for the purpose of the law itself.

The Helsinki Committee welcomes the initiative for drafting a new Law on Free Legal Aid with the hope that in the future it will enable the implementation of the goal of the law itself and will provide equal access to justice to all citizens of the Republic of Macedonia.

3. The President of the Republic of Macedonia

On 12th April, the President of the Republic of Macedonia collectively pardoned 57 suspected perpetrators of criminal acts, for whom criminal charges were filed or criminal procedures were initiated. Most of the suspects were under investigation by the SPP. Hence, the President exceeded his constitutional and legal powers and consequently committed the crime of Abuse of official position under Article 353 of the Criminal Code of the Republic of Macedonia.

Namely, the position and decisions for pardon were adopted by the President without a legal basis, given the fact that Article 11 of the Law on Pardon to which he referred was repealed and is not an integral part of the legal order of the Republic of Macedonia. With this act, the President obviously exceeded his powers because under the illusion of pardon, which is an act provided for individual cases as correction of justice in specific and especially justified cases, the President essentially and de facto usurped the authority for a group and collective amnesty for a large number of criminal acts, thus invading the authority that the Constitution, due to its seriousness, considers to be as an exclusive right of the Assembly of the Republic of Macedonia.

Therefore, the President put himself above the law, the Parliament, and the political agreement from Przino, which essentially abolished the powers of the SPP, as a consensually accepted body competent to prosecute crimes related to illegally intercepted conversations. This is probably the only example in history where a head of state pardoned a massive and organized violation of human rights and freedoms, including cases of violation of the constitutional right to freedom of election, violation of privacy, corruption, and other abuses of the political elite, previously noted in a series of credible and serious domestic and international reports of a number of governmental and non-governmental organizations.

By obstructing criminal justice in a great number of corrupt acts covered by pardons, the President also violated the international obligations of the state to prevent and prosecute corruption, money laundering, thus violating the provisions of the Palermo Convention. The haste and unfoundedness of individual decisions became apparent in those cases in which people who were not suspects in criminal proceedings were pardoned; moreover, there were pardoned people for whom there were only criminal charges but no criminal proceedings.

On 27th May, the President decided to annul the pardons for 22 people, as he stated, all politically exposed persons. After huge pressure from the domestic and international public, on 6th June the President decided to completely withdraw the decision for pardon - release from prosecution without conducting the proceeding that he adopted on 12th April.

IV. PENITENTIARIES AND HARRASMENT

In 2016, the convicts who contacted the Helsinki Committee also pointed out the high level of corruption between the prison service and the prisoners. According to the convicts, everything can be bought in the prisons, from mobile phones, drugs, parole, and better accommodation in the prison. Prison services continue to be violent - they slap, punch, kick, and hit with their batons. Violence is used as a punishment for possession of illicit objects, as a means of disciplining or resolving violence between prisoners. Racist treatment of Roma ethnic prisoners has also been reported.

1. Health Protection in Prisons

During 2016, several convicted persons serving prison sentences addressed the Helsinki Committee via telephone and letters, stating that they needed assistance in exercising their right to health care, which is in accordance with Article 124 and Article 129 paragraphs 1 and 2 of the Law on Execution of Sanctions. Due to their poor health, these persons, on their own initiative and at their own expense, request the prison services to send them for medical treatment outside the prison where they are serving their sentence. In 2016, the Helsinki Committee concluded that the authorities in prisons unnecessarily delay the process of treatment of convicts and their sending for medical treatment, a situation that harms the health of these persons, violating their legally guaranteed right to health care.

2. Death Cases in Prisons

During 2016, but also at the beginning of 2017, the death rate was particularly worrying. For a period of 15 months, 13 people serving a prison sentence died, the vast majority of them in the Idrizovo Prison. Deaths were reported in prisons, in ambulances on the way to hospital, or shortly after hospitalization. In almost all cases, the Sanctions and Prisons Administration reported that they were the result of an overdose of narcotic drugs or medicine. Even though the public prosecutor's offices ordered autopsies, the results were not made public, which only reinforces the suspicions that the cause may be negligence of the prison institutions, but also violence in the prisons. The Helsinki Committee believes that the main reason for the high mortality rate is inadequate medical care, especially for people who need specialist medical care. The convicts are treated only by general practitioners, and

there is often a lack of therapy for the chronically ill who are forced to fend for themselves. The use of substitutes only worsens the situation, and in prisons people with drug and narcotics addictions are almost never treated.

3. Legal aid

Many convicts who contacted the Helsinki Committee in 2016 complained that the legal services in the penitentiary institutions did not function. Some of the convicts who requested free legal aid from the Committee were not at all aware of the possibility of receiving legal aid in the prisons themselves. Although the legal service of the Helsinki Committee advised them about their rights, through complaints and requests to the directors of the prisons, the convicts, nearly without exception, stated that they did not trust the system and that if they acted that way, they would only complicate the already difficult situation in prison.

Faced with this mistrust, the Helsinki Committee instructed the convicts to send a written petition so representatives of the Committee can visit them. Particularly worrying is the fact that even after such a recommendation, which the convicts accepted, some of their requests did not arrive at the office of the Helsinki Committee. For the received applications, a request to visit the convicts was always sent, but the requests were systematically rejected by the Directorate for Execution of Sanctions.

4. Reconstruction of prisons

With a loan of 52 million euros provided in 2009 by the Council of Europe Development Bank, IPA funds, and the Government of Norway, the Ministry of Justice was to launch a project to reconstruct and rehabilitate penitentiaries across the country. Thorough repair was predicted, as well as demolition of existing facilities and construction of new ones with larger capacity. Through this project, completely new faces were promised to PCI Idrizovo, Prison Skopje, Correctional Facility Tetovo, and completion of the construction activities of the new prison in Kumanovo.

Although more than 8 years passed since the provision of favourable loans until 2017, the field work has not been completed for any institution. The Ministry of Justice in an extremely bureaucratic and slow procedure when it comes to technical projects, reports, and tenders, and has failed to use the already provided funds. Although this project was supposed to start in 2011 at the latest and to complete most of the reconstruction by 2015, no project has been fully completed by the completion of this report. This situation indicates the unprofessionalism of the Ministry of Justice and the negligence of the Government for the convicts, due to which thousands of convicts are living in substandard living conditions. Meanwhile, the overcrowding in prisons is growing and in 2016 reached about 160%. With this inactivity, the Republic of Macedonia has not only failed to fulfil the recommendations of the Committee for the Prevention of Torture of the Council of Europe, but also has further deteriorated the human rights of those serving prison sentences.

5. Oversight mechanisms

The oversight mechanisms are only partially functional and cannot be considered independent. With the entry into force of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2009, the Ombudsman was appointed as the National Preventive Mechanism which began exercising its powers in 2011. The effectiveness of this mechanism, although increased during 2016, is still unsatisfactory, especially due to the lack of professional services and minimal non-participation of civil society organizations, which, although possible, is rarely applied in practice.

Apart from the Ombudsman, whose indications are optional, there are no mechanisms for independent control of either the prisons or the Directorate for Execution of Sanctions. The State Commission for Supervision of Penitentiary and Correctional Institutions, whose decisions would be compulsory towards all those to whom they refer, is formed only on paper. It is not active and does not perform its duties. Supervision by judges regarding the execution of sanctions does not exist as well. The administration continuously refuses NGOs and the media to visit prisons and talk to convicts. Therefore, apart from the Ombudsman, in Macedonia there are no other permanent mechanisms for supervision of prisons and the Directorate for Execution of Sanctions.

6. Special Institution - Demir Kapija

During 2016, representatives of the Helsinki Committee visited the Special Institution - Demir Kapija and prepared a report on the conditions of this institution and the dependants accommodated in the institution. One of the purposes of the report is to review which of the proposed measures and activities of the Deinstitutionalization Strategy have been undertaken and implemented by the Special Institution in Demir Kapija and, as a result of that, which of the previously mentioned problems have been overcome.¹

The condition of the special institution and the dependants accommodated there is more than alarming. All departments are in poor condition and do not meet minimum living conditions. The exterior of the buildings is in poor condition, the walls are corroded, and the facade has fallen in many places. The rooms where the dependants are accommodated are full of moisture and mold. The special institution still does not have a gynaecologist or an accessible gynaecological chair for those with physical disabilities, and contraception is neither shared among the female dependants, nor they are sexually educated. Also, the number of special educators does not correspond to the number of dependants.

Of particular concern is the finding, confirmed in the Register of Deaths, that from 1993 to 5th February 2016, 375 people died in the Special Institution.

1 You can read the full report on the condition of the Special Institution - Demir Kapija and the dependants at the following link: <http://mhc.org.mk/>

YEAR	DEATH CASES	YEAR	DEATH CASES	YEAR	DEATH CASES	TOTAL
1993	46	2001	17	2009	8	375
1994	25	2002	13	2010	13	
1995	18	2003	10	2011	7	
1996	31	2004	12	2012	9	
1997	31	2005	11	2013	9	
1998	22	2006	11	2014	9	
1999	21	2007	9	2015	12	
2000	19	2008	9	2016	3	

Most deaths are due to lung disease in dependants. Most of the dependants who died of lung diseases were immobile dependants with deep intellectual disabilities. The general practitioner occasionally hired by the Ministry of Labour and Social Policy cannot act as a general practitioner, i.e. cannot prepare medical referrals for treatment and treatment of dependants. Even though there is no permanent general practitioner, the special institution has not yet hired a dentist. The reason for that is that the Special Institution Demir Kapija does not function within the regular health system, i.e. it is not part of the Ministry of Health. Therefore, a large number of dependants are unable to exercise their health insurance rights; meaning, they are sent to general hospitals only in emergency life-threatening situations.

It is obvious that deinstitutionalization has not even started in this institution and it is necessary more active measures to be taken for its real realization.

7. Torture and inhuman approach

During March 2016, the Helsinki Committee sent 49 requests for information regarding registered cases in which the primary public prosecutor's offices and courts acted on the criminal offenses of Torture and other cruel, inhuman or degrading treatment and punishment (prison sentence from 3 to 20 years) and Harassment in the performance of the service (prison sentence from 1 to 5 years) for the period from 2009 to 2015. Feedback was received from 21 (out of 26) courts and 20 (out of 23) primary public prosecutor's offices. According to the answers received from the courts, for a period of six years, they handled 22 cases related to torture and 56 cases related to harassment.

For the crime of torture, there was not a single conviction by which someone was sentenced to prison. Only eight suspended sentences were handed down as an alternative measure. Regarding the criminal offense of harassment on duty, only one verdict was handed down with a prison sentence (six months) and 16 verdicts with a suspended sentence. The Primary Public Prosecutor's Offices handled 32 cases of torture. There were an investigation and people sentenced to prison in only seven of them. Prosecutions acted in 138 cases of harassment on duty - there were 30 investigations, and charges were filed in 22 cases.

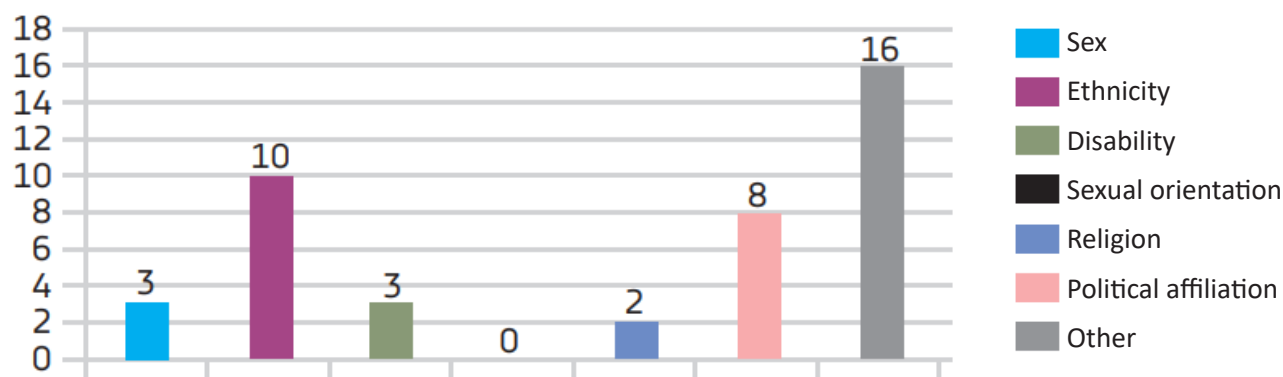
V. DISCRIMINATION

1. Introduction

The Helsinki Committee for Human Rights actively monitored the situation with discrimination in the Republic of Macedonia during 2016 by acting in the reported cases of discrimination and the proceedings before the equality bodies and the courts, as well as through the monitoring of the media and social networks, and the monitoring of court proceedings.

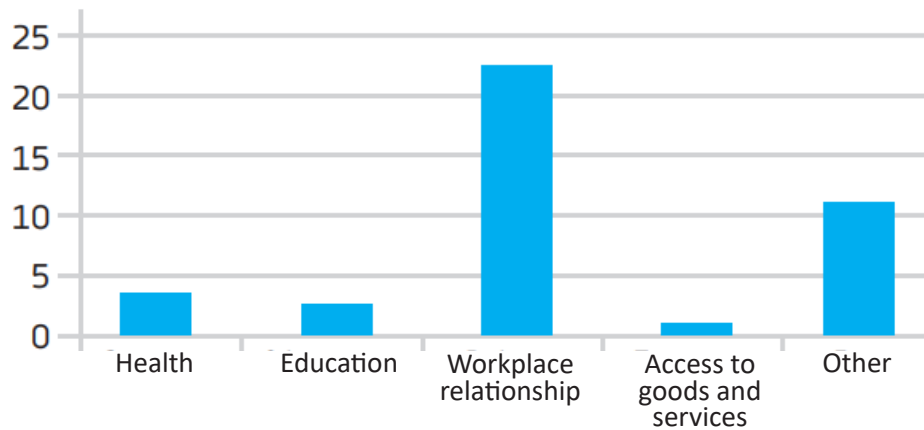
Acting on the complaints submitted by citizens and monitoring the situation in society and in the media in the period from May to November 2016, the Committee found that most of them related to discrimination based on ethnicity, gender, political affiliation, disability, and religion.

Table presentation of the grounds of discrimination



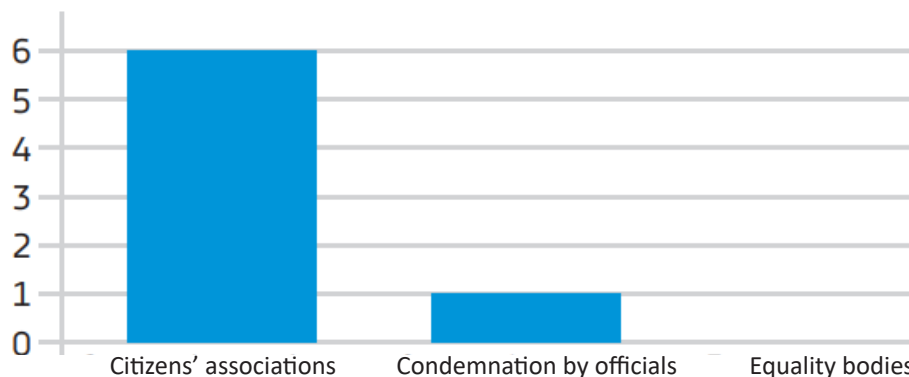
In terms of fields, most cases of discrimination were reported in the fields of employment, education, health, and access to goods and services.

Table presentation of the fields of discrimination



According to the monitoring of the Helsinki Committee and the information received from the citizens' associations and the Ombudsman², a total of 57 court proceedings were conducted in 2016. By the end of 2016, 10 court proceedings were completed, 4 of which were positive and 4 were negative.

According to the monitoring of media reactions to cases of discrimination, it can be concluded that the institutions are still passive in terms of condemning discrimination and raising awareness of existing discrimination, while citizens' associations are the most active in this area.



Individual cases of discrimination before equality bodies

² As of 1st June 2016, the Helsinki Committee started with the preparation of monthly discrimination newsletters containing information from citizens' associations and the Ombudsman for reported cases of discrimination and initiated procedures for protection against discrimination.

2. Determined discriminations against the blind by the banks

The Helsinki Committee, together with the members of the Network for Protection against Discrimination, the National Union of the Blind of the Republic of Macedonia, and the National Union of Civil War Invalids of Macedonia, in April 2013 submitted a complaint to the Commission for Protection against Discrimination against all banks in the Republic of Macedonia establishing discrimination against this group of people. Unequal treatment refers to the use of banking services and products that require the signature of the user; banks do not recognize the signature of blind people and do not allow the use of facsimiles and force them to authorize a third party to sign on their behalf and for their account. Blind people also face problems in using electronic banking due to the internal regulations of banks (use of tokens, codes, and similar security tools that blind people are not able to use). Additionally, banks do not provide the use of assistive technology, such as voice ATMs, Braille printers, software solutions for access to electronic services, and so on.

Because of these reasons, the Commission for Protection against Discrimination adopted a positive opinion which established direct and prolonged discrimination on the basis of physical disability against the blind by the banks and recommended the banks not to require a power of attorney to act on behalf of the blind and visually impaired, but to create conditions for personal signature and facsimile. The Commission recommended that each bank make a reasonable adjustment to the specific needs of these individuals, both in its branches and online. Regarding the control of the operations of the banks, the Commission gave its recommendation to the National Bank of the Republic of Macedonia, as a responsible institution for supervision of the operations of the banks, to strengthen the control in achieving equal access to the services and products of the banks by the blind and visually impaired people.

3. Discrimination and racial profiling at border crossings and restriction of the right to free movement

During 2016, discrimination and racial profiling at border crossings and restriction of the right to free movement continued. The Helsinki Committee for Human Rights was approached by a client seeking legal assistance since she was restricted the

right to move and leave the country freely and she was discriminated against on the basis of presumed ethnicity by police officers working at border crossings. The incident happened when the client wanted to cross the border crossing at Alexander the Great Airport and travel to Switzerland. The border police officer who performed the passport control and told the party that she could not cross the border on the basis that she had no money and because in 2014 she sought asylum in Norway and thus abused the visa-free regime of the Republic of Macedonia. According to the police officer, the client wanted to seek asylum again, this time in Switzerland, and was therefore not allowed to cross the state border. After she was returned the passport, she noticed that two lines were placed in it. This discriminatory behaviour of the police officers at the border crossing at the Alexander the Great Airport gives reasonable suspicions that the client was a victim of direct discrimination based on presumed ethnic origin, i.e. the police officers did not allow her to cross the border since they assumed she was Roma because of her name and surname.

4. Discrimination based on marital and family status and religion in the textbook “Society” for fourth grade

The Network for Protection against Discrimination, coordinated by the Helsinki Committee, provided legal assistance to 42 parents to file a complaint to the Ombudsman and the State Education Inspectorate for direct discrimination based on marital and family status and religion against the Ministry’s student review committee for the textbook “Society” and the Ministry of Education and Science because of discriminatory texts on the basis of marital and family status, but also on the basis of religion in the said textbook.

The complaint was preceded by a reaction from several parents to the exercise in the textbook, which asked students to glue a photo of their parents’ wedding, and even more to say whether they were married in a church or at a registry office, which is extremely disturbing, exclusive and stigmatizing to all those children and parents living in non-traditional families. This exercise and text mean discrimination against children living in single-parent families, which can occur through divorce of spouses, death of parent(s), children living in families with other relatives, or even parents living in an extramarital union, or parents who got married, but had no wedding celebration. In addition to the exercise and the rest of the textbook in

the section on marriage and family, there are contents that exclude and stigmatize non-traditional families. These contents in the textbooks, in addition to discriminating and stigmatizing entire groups of children and parents and negatively affecting the development of children from unconventional families, also prevent access to accurate and relevant information for each student by building an exclusive image of what it means to have a “normal” family, making it impossible for them to understand the differences and building negative stereotypes in students from the fourth grade.

5. Discrimination of a transgender person

In June 2016, the Commission for Protection against Discrimination adopted an opinion establishing direct discrimination on the basis of gender identity due to prohibited entry into a facility that provides public services - swimming pool, i.e. limited access to services due to their gender identity. The complaint in this case was filed by the person, and the legal aid was provided by the Helsinki Committee. Although the Commission’s opinion defines discrimination based on sex, the very explanation of the opinion concludes that the gender identity of the victim was the key factor due to which the person was denied entry. The commission in its opinion also indicated to the discriminator to compensate the victim within 30 days.

After receiving the opinion and the consultation with the Helsinki Committee, the victim as the damaged party and the discriminator as the cause of the damage agreed to resolve the dispute out of court. For that purpose, they concluded a compensation agreement in which the discriminator admitted his guilt for the event and with which both parties agreed on the amount of compensation as well as the conditions for its payment. This agreement is the first signed out-of-court agreement on compensation for discrimination based on gender identity, which is a major step forward in the fight against discrimination.

6. Discrimination based on sexual orientation and degrading speech towards LGBTI people

The Helsinki Committee, the LGBTI Support Centre, and the LGBT United Tetovo filed a complaint with the Commission for Protection against Discrimination due to a disturbing column on an Albanian web portal entitled “Homosexuals - Today’s Gays”, written by a high school teacher. In the column, the author uses extremely discriminatory, harassing, and degrading speech towards LGBTI people.

After receiving the complaint, the author of the column issued a public apology, apologizing to the entire LGBTI community, saying that his text was not intended to offend or discriminate against anyone, because everyone has a personal right to sexual orientation.

COURT PROCEEDINGS

1. Racial profiling at border crossings

During the month of August 2014, the Helsinki Committee conducted a situation testing to prove the racial and ethnic profiling and unjustified restriction of the right of movement over the Roma at the border crossings in the Republic of Macedonia. The testing was conducted with a total of five testers, of which four Roma, one Macedonian and one Albanian, and was repeated twice. The testing was conducted on a bus traveling to Bujanovac, towards the Republic of Serbia, through the border crossing Tabanovce. The purpose of the trip was to visit friends. In both cases, only the Roma were taken off the bus by police officers, asked where were they travelling, how much money they were carrying, what the purpose of their trip was, which confirmed the racial profiling of the Roma at border crossings. The testing results were one of the evidences in the court proceeding that was initiated to establish systemic discrimination by the state against the Roma ethnic community, but also discrimination against the Roma who were testers and who were discriminated at the Tabanovce border crossing.

The Primary Court Skopje 2 Skopje failed to establish discrimination in the specific case, with the explanation that there is no discrimination because the plaintiffs

were not restricted in their right to move. However, the Court accepted the testing of the situation as evidence of proving discrimination, which allows this method to be further used as evidence in future court proceedings to establish discrimination.

Given that the Court failed to recognize systemic discrimination against the Roma ethnic community, and discrimination against individual plaintiffs, an application will be prepared in this case to the European Court of Human Rights for violation of the right to equal treatment due to racial profiling of the Roma.

2. Segregation of Roma children in the education process (actio popularis)

The Helsinki Committee, together with KHAM Delchevo, the Institute for Human Rights, the Open Society Foundation Macedonia, and the European Centre for Roma Rights, initiated a lawsuit to establish systemic discrimination against Roma children due to their over-representation in special education (special schools and special classes within regular schools). The defendant in the case was the Government as responsible for the problem, as well as for the fact that it did not take any specific actions and measures to eliminate the consequences of this discriminatory practice.

The legal interest of the plaintiffs in initiating an actio popularis court proceeding for this issue arises from their previous actions in this area. By having parents and children approach these organizations and raise their concerns about such conduct or co-operate in the investigations conducted, the Court should have considered that there was consent among victims to protect their rights. In addition, the Court should have assessed that in the present case it was a matter of systemic discrimination involving an unidentified number of persons. For these reasons, the consent of the whole group can neither be sought nor obtained. On the other hand, it is unsustainable for the Court to consider that the consent of one child, i.e. his parent or guardian, may represent the interests of the whole group.

However, the Court decided to dismiss the lawsuit, citing the absence of the consent of a victim of discrimination, pursuant to Article 41 paragraph 4 of the Law on Prevention of and Protection against Discrimination. Although the Court in the explanation of the decision acknowledges that the plaintiffs have a justified inter-

est in conducting the procedure, it still considers that such a lawsuit cannot be allowed because a written consent was not submitted by a victim of discrimination, although the Law on Prevention of and Protection against Discrimination does not specify the form in which consent is to be given. This decision was confirmed by the Appellate Court Skopje.

This case shows that there is an urgent need to amend the LPPD in the part regarding the possibility for citizens' associations to initiate actio popularis court proceedings in such a way that there will be no restriction on mandatory consent from a victim of discrimination and there will be no obligation for a joint lawsuit for establishing discrimination. In this way, the citizens' associations will be left with the opportunity to initiate court proceedings on behalf of entire groups of discriminated citizens and thus to protect their interest and the public one, and to initiate social changes.

VI. ECONOMIC AND SOCIAL RIGHTS

1. Introduction:

During 2016, the Helsinki Committee registered a number of complaints for violation of economic and social rights, which is primarily due to the high unemployment rate in the country, the impoverishment of the population and violations of labour, social, and health rights. This year, special attention was paid to the rights of people with disabilities, who submitted a large number of complaints to the Helsinki Committee due to the inability to exercise the rights that are legally established for this category of people.

There is no progress regarding the rights of people with disabilities and these people face difficulties in everyday life - from the inaccessibility to all institutions in the social, health, and educational field to the inability to exercise social rights, constitutionally and legally guaranteed.

A particularly important problem that is increasingly imposed every year due to the increase of poverty in the country is the problem of homelessness, for which the state still has no solution.

Another problem that was registered during 2016, and which has been present for many years, is the problem with the continuous violation of workers' rights and the mobbing of employers on textile workers.

INDIVIDUAL CASES

2. The state does not have a long-term solution for the displaced Roma people from the neighbourhood under Kale

In August 2016, 29 Roma families or 121 persons, including 64 children, among whom 10 babies and three pregnant women, were displaced from their makeshift dwellings located under Kale in Skopje. These people were left to live in the open air and without minimum living conditions for more than 3 months, and state institutions did not take any steps to solve their housing problem. As a result, as well as

the lack of personal hygiene, many people developed skin infections and a number of health problems. Additionally, some of them did not have personal documentation, and thus could not exercise their rights to health and social protection.

These people, together with the support of several organizations working for the protection of Roma rights, organized a protest in front of the offices of the City of Skopje, demanding acceptance from the city authorities and solving their problem. Through the contacts made and the meetings held with the competent bodies, we can conclude that the institutions transferred the responsibility for solving the problem to each other and to date they have not found any solution. The Intermunicipal Centre for Social Work Skopje was the only centre that proposed a solution i.e. the people to be accommodated in the reception centre in Chichino Selo, which despite not having the capacity to accommodate all 29 families, does not have adequate living conditions. After more than 3 months, a series of meetings and negotiations with state institutions, some of the displaced people were temporarily accommodated in the Institute for Care, Upbringing, and Education of Children and Youngsters “Ranka Milanovic” and PI for care of Children with Educational and Social Problems “25 May”. However, some of the people remained under the open sky at the place where the improvised dwellings were located.

The state still fails to find a permanent solution to the housing problem of these people, thus failing to fulfil its constitutional obligation to take care of the social protection and social security of citizens in accordance with the principle of social justice and the obligation to provide protection to those citizens who do not have opportunities for material and social existence.

3. Real problems people with physical disabilities face

During 2016, the Helsinki Committee acted on complaints or information received from parents of persons with physical disabilities, which mostly referred to the field of education or social protection. Major problems faced by children with disabilities:

- The admission of children in kindergartens is limited and, in most kindergartens,, children are rejected on the grounds that the kindergarten does not have profes-

sional services who would know how to deal with these children and their needs.

- The admission of children in schools is conditional on the submission of documentation for the child's ability to study in regular schools, in some cases more than once.

- For a child to be admitted to school, parents often had to turn to higher institutions or seek help from acquaintances.

- The physical accessibility of the schools is at the lowest level and according to the claims of the parents, there is an access ramp only in 2 primary schools in Skopje, and no elevator in any of them.

- Special schools do not have adequate accessibility and professionals for individual work with children with physical disabilities.

- Lack of awareness of school staff about the problems of children with physical disabilities. After entering school, their children were placed in classes that had lessons on the upper floor of the school building, which made their movement even more difficult, and later in the higher grades, after the introduction of cabinet teaching, the child's movement became almost impossible.

- Due to the need for the child to go upstairs to get to their lesson and the need to later move from one classroom to another and go to the toilet, parents are put in a position to have to come to school all the time and move their children due to the lack of support staff.

- The regulations in the field of health and social protection, most often the rule-books, are set in such a way that the implementation of certain rights hinders the implementation of other rights, i.e. they are excluded from each other.

- Medical devices are basically available for free, but additional parts, spare parts and service are charged. In addition to payment, parts are not always available.

4. Macedonia has no progress in the implementation of social, economic, and cultural rights

After reviewing the periodic report of Macedonia, the UN Committee on Economic, Social, and Cultural Rights published its Final Observations. In this document, the Committee gives around thirty specific recommendations to Macedonia on how to fulfil its obligations under the ratified Pact for Economic, Social, and Cultural Rights. Several areas and problems are mentioned that need to be addressed: the census, the Ombudsman, the corruption, and the non-discrimination. Attention is paid to the problems of poverty, the minimum wage, housing, food, the right to strike, unemployment, and the right to education.

The Committee recommended the Republic of Macedonia to include sexual orientation and gender identity as grounds for protection against discrimination in the Law on Prevention of and Protection against Discrimination. For the first time, the Committee imposes an obligation on the state to allow same-sex couples access to privileges reserved for married couples. In order to eliminate stereotypes and stigmatization towards LGBTI people, the state has an obligation to conduct an effective investigation to resolve cases of violence against LGBTI people; the Committee further recommends the state to improve the living conditions in refugee transit centres, to stop illegal retroactive use of the Law on Social Protection and Illegal Abolition of the Right to Social Financial Assistance, to provide effective and adequate protection of all victims of domestic violence and to conduct an effective and timely investigation for all cases of reported domestic violence, and to take all necessary measures to prevent the segregation of Roma children in the education system.

5. The competent institutions have failed in preventing and dealing with the consequences of the flood

On 6th August 2016, the city of Skopje was affected by a big storm and heavy rains. In some parts of the city, there was a big flood that affected several city areas and completely destroyed them. The floods killed 22 people, left six missing, and about 100 injured. This black balance of lost lives could and should have been avoided if the competent institutions and crisis management bodies had fully fulfilled their legal obligations of prevention and action in case of floods.

The National Protection and Rescue Directorate (NPRD), the Crisis Management Centre (CMC), the Parliament of the Republic of Macedonia, the Government of the Republic of Macedonia, and the state administration bodies are institutions that have the greatest competence in the field of prevention of natural disasters and floods.

In the days after the flood, there was inadequate coordination of the individual components in the crisis management system, inadequate handling of the individual institutions and bodies, and collapse of the system as a whole.

The Helsinki Committee believes that a huge mistake was made during the taken preventive measures for protection, as well as in the way of dealing with the natural disaster that hit the area of the city of Skopje. The competent state bodies did not take the legally determined preventive measures. The assessment of the threat of natural disasters is outdated and does not correspond to the real factual situation, no warning was sent to the citizens to prepare for the strong storm; the drainage channels and a large part of the sewerage network were neither cleaned nor there were protective structures built.

The bodies of the state administrations continuously show that not only do they not have the capacities to deal with this crisis, but they also act contrary to the positive legal regulations. This action of the state administration bodies after the flood and the failure to take preventive measures for protection, are the direct culprits for the black balance of the victims of this catastrophic flood.

6. Continuous violation of labour rights and mobbing of textile workers

Through documented cases of providing free legal aid, in 2016, the Helsinki Committee registered a series of violations of workers' rights and mobbing of textile workers committed by their employers, mostly in textile and leather factories in the eastern part of the country. Violation of rights most often refers to late payment of salaries, non-payment of salaries and legal contributions for pension and health insurance, non-compliance with legal provisions on working hours, overtime, overtime pay, psychological harassment at work, providing daily and annual leave, providing conditions for safety at work, as well as paying legal salary benefits for work

on non-working days and public holidays.

For that purpose, the Helsinki Committee submitted requests to the Sector for Labour Inspection at the State Labour Inspectorate for extraordinary inspection of 22 textile and leather garments from Stip, Kriva Palanka, Kocani, and Delchevo for examination of the situation i.e. to see whether employers respect the labour rights of their employees.

The State Labour Inspectorate found irregularities and shortcomings in the implementation of legal regulations and violation of workers' rights in only 2 of the 22 reported cases, thereby giving employers time to eliminate the identified irregularities. One of the confections acted upon the instruction of the Inspectorate, while in the other case the Inspectorate submitted a request for initiating a misdemeanour procedure for not acting upon an issued order, which resulted in monetary sanctioning of the confection.

During this period, the Helsinki Committee held several trainings with textile workers in order to inform them about their employment rights and how to use the protective mechanisms for their protection.

A major problem in protecting the labour rights of textile workers, especially those related to regular payroll, contributions, and supplemental pay, is access to justice. Namely, the protection mechanisms for workers' rights that are free, and thus available to textile workers, are administrative procedures, which in case of finding a violation of workers' rights, can result in sanctioning the employer. Through these procedures, the textile workers cannot settle the monetary claims from the employers for unpaid salaries, contributions, and supplemental pay. Compensation for these claims can only be sought in legal proceedings which carry large financial costs for court fees, legal fees, and expertise costs, which textile workers cannot afford due to their low socio-economic status.

VII. HATE SPEECH

During the deepest political and social crisis in the Republic of Macedonia, during 2016, there was a spread and promotion of hate speech on an unprecedented scale. Dynamic developments on the domestic political scene, the refugee crisis, the early parliamentary elections, as well as the various developments internationally, have contributed to the intensification of hate speech. Ethnicity, political affiliation, and sexual orientation, as same as last year, continue to be the most numerous basis for hate speech in the Republic of Macedonia. The rise of hate speech among young people is worrying, poisoned by nationalist messages, calling for intolerance towards the country's ethnic communities and filled with political propaganda. The ignorant attitude and selective approach of the relevant institutions, i.e. the police, public prosecutors, and courts, have contributed to a serious increase in hate speech, through impunity of the perpetrators and the inability to take social responsibility for the spread of this negative phenomenon.

By monitoring hate speech on the Internet and in public, the Helsinki Committee registered 136 reported cases of hate speech on the platform www.govornaomraza.mk, 133 of which were verified. Most of the reports refer to hate speech that appeared on the Internet and social networks, while in a smaller, but still significant number, cases of hate speech were registered in the public, i.e. in the form of written graffiti (mostly on ethnic basis) and at public gatherings. From the significant events that directly provoked and produced hate speech, we single out the following:

In February, a monument of a two-headed eagle was erected in Topansko Pole in Skopje. While the competent municipalities reacted with astonishment and uncertainty about who erected the monument, social networks were flooded with hate speech against ethnicity and nationality. Ethnic tensions and intolerance were further fuelled by the immediate placement of a 51-meter cross in the municipality of Butel. As a consequence of the widespread hate speech, acts of hatred were inevitable when Todor Petrov (President of the World Macedonian Congress, initiator of erecting the cross) was attacked by members of the Albanian ethnic community during the opening of the construction activities for the installation of the cross. Although the event attracted the attention of senior political officials, there was no public condemnation of such an act and the hate speech that followed the whole event.

During June, there was a significant presence of hate speech on social networks, because of the attack on a gay club in the United States. Instead of condemning the event and supporting the victims, Macedonian citizens on social networks shared comments in support of such an event, calls for violence against the entire LGBTI population, and promotion of homophobic attitudes calling for such attacks in the future. The Helsinki Committee reminds that exactly as a consequence of this homophobic speech that is often present in the Republic of Macedonia, and lack of persecution of it, the LGBTI Support Centre was a victim of 6 attacks in the past which to this day, have no legal outcome.

After two delays and a sharpened political crisis, the early parliamentary elections were finally scheduled for 11th December 2016. The pre-election period, as in previous years, proved to be the most fruitful period for hate speech. Consequently, the nationalist rhetoric in the election campaign of certain political parties, as well as the forced imposition of interethnic relations as one of the main issues, set ethnicity as the most common basis for hate speech. Sensationalist media headlines related to the “federalization of Macedonia” and the “introduction of bilingualism” significantly contributed to the process of fuelling interethnic intolerance. The extremely sharp rhetoric among all political parties, as well as the declaration of every citizen who does not support the ruling political party as a traitor and supporter of the opposition parties, has made the political affiliation the second most common basis for hate speech that is constantly spreading on social networks and the Internet.

The negative consequences of spreading hate speech on ethnicity were inevitable. Thus, on 22nd November, the Day of the Albanian Alphabet, in the late evening hours, the Museum of the Albanian Alphabet in Bitola was demolished for the fourth time. In addition, on the outer walls of the Museum were written calls for the “death of the Shqiptars”³ and swastikas. Numerous organizations called for an immediate reaction of the competent institutions, pointing out that the non-prosecution and impunity of such acts is only their approval and encouragement. Despite numerous calls and condemnations, the perpetrators of these hate crimes have not yet been identified.

The unclear election results and growing political tension have contributed to a

3 Derogatory term

further increase in hate speech against political affiliation. Immediately after the announcement of the election results and the announcements by the State Election Commission to review the complaints filed by political parties, citizens organized a protest in front of the State Election Commission headquarters in order to express their revolt. The protests were attended by supporters, members, and officials of the then ruling party, VMRO-DPMNE. One of the worrying features of the protest was the promotion and propagation of hate speech based on political affiliation. Hate speech, besides the chanting of the mob “wretched Shqiptars”, was also noted in the statements of elected public officials, i.e. former lawmakers, directors, and the former prime minister himself who addressed the gathering. In their speeches, they directly and indirectly threatened the leader of the opposition political party, as well as, in one case, a foreign ambassador. The intention of the speakers was clear, which was to provoke hatred, discord, and intolerance based on political affiliation, and in some cases ethnicity. The context, that is the deep socio-political crisis and division of the people, were an additional aggravating circumstance that inevitably leads to committing hate crimes. All this leads to complete fulfilment of the essence of the crime of inciting hatred, discord or intolerance on national, racial, religious or other discriminatory grounds according to Article 319 of the Criminal Code of the Republic of Macedonia, for which imprisonment is provided. Unfortunately, the reactions of the police or the public prosecutor’s offices, which are competent to initiate criminal proceedings in spreading and promoting hate speech in public, again, were nowhere to be found.

The end of the year was followed by a positive example in the fight against hate speech. At the end of December 2016, the Agency for Audio and Audio-visual Media Services conducted an extraordinary supervision over the work of Sitel TV, whose subject was the reporting of the television in the pre-election campaign. The period covered by the supervision is from 2nd to the 5th December 2016 and refers to the editions of the main news “Dnevnik” which is broadcast at 7 pm and 11 pm. In its report, the Agency says that the surveillance was conducted because there was a violation of Article 48 of the Law on Audio and Audio-visual Media Services, which explicitly prohibits programmes that incite or spread discrimination, intolerance or hatred based on race, sex, religion or nationality.

The most significant thing from the conducted supervision is that the Agency found that Sitel TV spread and promoted hate speech by broadcasting a series of consecutive editions of the daily news programme “Dnevnik”, entitled “Bilingualism

has a price". Namely, the content and language used in the published programme, according to the Agency, is "intended to impose opinions, manipulate information, and intimidate with job losses, loss of state, tensions and war, use tactics of naming professions, cities/municipalities, and ethnic communities that need to feel threatened." The Agency notes that the publications contain explicit hate speech, incite, and spread intolerance, discrimination and hatred based on nationality/ethnicity. The Agency submitted its report and findings to the Commission for Protection against Discrimination and the Primary Public Prosecutor's Office so they can take appropriate measures and properly punish the spread and promotion of hate speech. The Helsinki Committee welcomed this positive example of recognizing and condemning hate speech, especially given its danger when it is spread and promoted in the media.

VII. HATE CRIMES

In the period from 1st January to 31st December 2016, the Helsinki Committee registered a total of 70 hate crimes. Most of the incidents were registered as soon as they were reported by the media or published in the daily bulletins on the website of the Ministry of Internal Affairs, while 3 (three) incidents were reported by Helsinki Committee observers or other people. Of all the incidents, 35 were verified through correspondences to the Ministry of Internal Affairs, daily bulletins of the said Ministry, media reports, and a meeting with victims of such crimes.

The remaining 35 incidents were not verified but were documented due to bias, including the victim/witness perception, on-the-spot comments, the difference between the victim and the perpetrator on ethnic grounds, pattern/frequency of previous incidents, the nature of the violence, lack of other motives, location, and timing. Specifically, the unverified incidents were covered due to information received regarding the location of the incident (for example, ethnically mixed neighbourhoods and schools, bus lines used by members of different ethnic communities, i.e. transiting through places of mixed ethnicity, places where hate crimes have already occurred in the past, etc.), the type of incident (for example, a large group of juveniles attacking one or more victims without provocation, group fighting, attack on a bus or at a bus stop, etc.), time of the incident (after previous fighting as a form of revenge, after school, during or after a sporting event, etc.), and property damaged during the incident (for example, religious buildings, party headquarters, etc.). The verified and unverified incidents are marked in green, i.e. in red on the portal of the Helsinki Committee - www.zlostorstvodomraza.mk.

Compared to 2015, the biggest difference in 2016 is in the motive for the hate incidents. While in 2015 the motive for most of the incidents was the status of refugee or migrant of those transiting through the Republic of Macedonia, in 2016 the motive for most of the incidents is ethnicity, i.e. political affiliation or conviction of victims and perpetrators.

Consequently, while last year most of the incidents involved robbery of refugees transiting through the country, this year the most numerous incidents involve violence between Macedonians and Albanians, as well as damage to party headquarters and political billboard, especially in the pre-election period.

Unlike 2015, when there was a declining trend in the number of incidents committed due to Macedonian or Albanian ethnicity of the victim, that is the perpetrator, in 2016 the number of such incidents increased significantly. In 2016, the ethnicity of the victim or perpetrator was the motive for almost half of the registered incidents. For comparison, in 2013 this type of incidents represented 84% of all registered incidents (98 out of 116), in 2014 that figure was 61% (53 out of 87), in 2015 34% (15 out of 44), while in 2016 the number rose again to 48.5% (34 out of 70).

The largest number of incidents occurred in November (18 incidents, 26% of the total number of registered incidents), i.e. in the pre-election period, when there was a significant presence of hate speech in the media. Most hate crimes were committed by young people. The most common crimes are Violence (28), Damage to other people's property (27), Bodily injury (26), Encouraging hatred, dispute or intolerance on national, racial, religious, and other discriminatory grounds (23), Participation in a fight (10).

The largest number of incidents occurred in Skopje and its surroundings (42), most of which in the municipality of Cair (8) and in the municipality of Gjorce Petrov. When it comes to the other cities in Macedonia, the largest number of incidents occurred in Kumanovo (8), as well as in Bitola, Demir Kapija, and Tetovo - in the municipality of Tearce (4 in each of these cities).

At least 89 victims and 211 perpetrators of hate crimes were registered. Most victims are young people and refugees or migrants. Out of the total number of victims, at least 31 are refugees or migrants (the majority of whom are of Moroccan origin), and at least 9 are minors. Out of the total number of perpetrators, 12 were confirmed to be minors, and another 13 are presumed to be the same, given that they are high school students.

According to the written answers received from the Ministry of Internal Affairs, the police discovered the perpetrators in at least 18 incidents. At least 23 other incidents have been reported to the police and are under investigation. A total of 11 criminal charges were filed against a minimum of 30 persons, and misdemeanour charges were filed against the perpetrators in 7 of the incidents.

IX. GENDER-BASED VIOLENCE

1. Introduction

During 2016, five new cases of femicide were registered i.e. murders of women by current or former spouses or intimate partners. The Helsinki Committee recalls with concern that these events are just a continuation of the numerous cases of gender-based violence and domestic violence that have resulted in deaths in the past two years. Namely, in April this year, the media reported on a double murder and suicide in the village of Volkovo in Skopje. A 45-year-old police officer first killed his mistress's mother and grandmother, and then committed suicide. In August, there was a report of a killed woman in Makedonska Kamenica who was killed by her husband, who later committed suicide.

This situation is particularly worrying, especially given that the state does not provide special protection for all forms of gender-based violence, nor does it keep separate records of femicide cases. These conditions are set out in the Istanbul Convention, which is the first thorough international document for the protection of women against violence, to which the Republic of Macedonia is a signatory but has not ratified it yet.

In the reporting period, the Helsinki Committee provided legal assistance in 6 cases of gender-based violence and monitored the actions of the institutions, including the courts, which should impose temporary measures for protection against domestic violence. From the monitored procedures it can be concluded that the institutions are not yet fully aware of the Law on Prevention of and Protection against Domestic Violence, especially the article which stipulates that violence between partners who do not live together is considered domestic violence.

SEPARATE CASES:

Case 1 - Domestic violence caused by parents

The Helsinki Committee for Human Rights was approached by a client seeking legal assistance as a victim of physical and psychological domestic violence. Name-

ly, the client's parents have been committing physical and psychological domestic violence against her for a long period of time, beating and insulting her every day with abusive words. The Helsinki Committee for Human Rights for the needs of the client prepared a request for imposition of temporary measures for protection from domestic violence and it was submitted to the competent primary court. In the request, the client demanded from the Court imposition of all expected protection measures provided in Article 35 of the Law on Prevention of and Protection against Domestic Violence and appointed a representative of the Helsinki Committee for Human Rights of the Republic of Macedonia, who will accompany her to the court hearings when the temporary measures will be imposed.

During the monitoring of the court hearings so far, the Helsinki Committee for Human Rights is concerned about the judges' ignorance of the Law on Prevention of and Protection against Domestic Violence. Namely, during the main hearing, the trial judge in the case of the party stated that "the law does not give him the authority to impose temporary measures to send the perpetrators of domestic violence to an appropriate counselling centre, nor does he have the legal authority to temporarily remove the perpetrators of domestic violence from their home".

The Law on Prevention of and Protection against Domestic Violence specifies all measures for temporary protection, including removal from home regardless of ownership (Article 35 paragraph 4) and mandatory attendance in an appropriate counselling centre (Article 35 paragraph 8). At the same time, Article 42 of the same Law stipulates that the courts decide in the procedures for temporary measures for protection and the provisions of the Law on Litigation are applied in them, unless otherwise provided by the Law on Prevention of and Protection against Domestic Violence.

Case 2 - Domestic violence over a woman caused by her husband

The Helsinki Committee for Human Rights was approached by a client seeking legal assistance as a victim of physical and psychological domestic violence. Namely, the client's husband has been physically abusing towards her for a long time, beating her and insulting her with abusive words. The physical violence against the client culminated on 21st July 2016, when she asked her husband if he had done the field

work, after which her husband, without any reason, started insulting her and slapping her and strangling her on the neck.

In addition to the claimed physical violence, she was subjected to both economic and psychological violence. Namely, she was forbidden by her husband to leave home, to move freely, to use the telephone, credit card and the like.

Because of this, the client, through her lawyer, submitted a proposal for imposing several temporary measures for protection against domestic violence to the Primary Court Vinica, in addition to submitting the entire medical documentation for the bodily injuries inflicted by her husband. The Primary Court Vinica with a decision rejected the proposal of the client to impose temporary measures for protection against domestic violence on the basis of a statement given by her husband and on the fact that the client and her husband at the time of, not taking into consideration the submitted medical documentation. Dissatisfied with this decision, the client filed an appeal to the Appellate Court in Stip. Even more worrying is the fact that the Appellate Court in Stip rejected the appeal with the explanation that the client did not submit evidence for the existence of rational reasons for determining the requested temporary measures despite the fact that the party submitted complete medical documentation for the suffered bodily injuries.

Case 3 - Domestic violence caused by an ex-partner

S.S. is a victim of domestic violence caused by her partner with whom she has been in a relationship for 15 months. For the first time S.S. reported the violence after a verbal argument in a restaurant in Strumica, when the perpetrator called her out of the restaurant where he started punching and kicking her on the head and body. After this, the two were taken to the police station in Strumica where, after a short conversation, the perpetrator was released, and the victim was detained for 8 hours at the police station. The victim was not instructed for her rights by the police, she was not allowed to make a phone call, nor was she told that she had the right to a lawyer. The same day, S.S. called the on-call service of the Emergency Medical Service in Stip and reported the injuries caused by the perpetrator.

After all the examinations were performed, S.S. reported domestic violence at the police station Stip. She spoke to a police officer there who told her that they would call the perpetrator for an oral interview and warn him. As she was not satisfied with the reaction of the officer, after two days she reported the violence again in the police station Stip. This time she spoke with a police inspector for domestic violence, who acted in accordance with her authority and instructed the victim that she should go to the hospital and document the injuries. Officials prepared a protocol on receiving a report for a caused “bodily injury” crime while committing domestic violence.

After S.S. had reported the violence in the Police Station Stip, she also addressed the Intermunicipal Centre for Social Affairs - Stip, but the officials told her that she could not report the case because it was not about domestic violence. It did not help as well when S.S. mentioned that the case had already been reported to the police and that it is treated as inflicting bodily injury while committing domestic violence.

The Helsinki Committee provided legal aid to S.S. to submit a proposal for imposing temporary protection marks to the Primary Court Stip, which rejected the proposal as unfounded considering that there is no danger to her physical integrity and safety, and health. After an appeal had been submitted to the Appellate Court Stip against the decision of the Primary Court Stip, the Appellate Court rejected the appeal as unfounded.

X. REFUGEE CRISIS

Starting from 2014, the refugee crisis, which has been raging around the world, did not decrease in intensity during 2015 and 2016. The Republic of Macedonia found itself deeply affected during the entire refugee crisis, as one of the transit countries of the so-called “Balkan route”. From the beginning of the registration of refugees who passed through the country until the end of 2015, 388,233 refugees were registered. From the beginning of 2016, until March 2016⁴, a total of 89,623 refugees were registered - 35,381 were men, 19,917 women, and 34,625 children, including 226 unaccompanied minors. Most refugees are from Syria, Afghanistan, and Iraq, but there are occasional groups and individuals from Pakistan, Iran, Morocco, and Algeria are not excluded.

Dealing with the refugee crisis, in parallel with its own socio-political crisis, the Republic of Macedonia, through individual acts or established practices, failed to ensure respect for the basic human rights and freedoms of refugees who passed through the country or remained “stuck” in it, contrary to their will.

Crisis situation

Due to the large arrival of refugees entering from the southern neighbour, for the first time, in August 2015 the Government of the Republic of Macedonia declared a state of crisis on the southern and northern border. The crisis was extended two more times during the year, initially until the end of 2016, and then with a new decision in October, the crisis situation was extended until the end of June 2017.

Closing borders

From the beginning of 2016 until the first days of March, the refugees transited through the country in an organized and coordinated manner. Statistics show that between 10 and 15,000 refugees transit on a weekly basis. Gradually the number

4 Immediately until the closing of the borders of all countries on the Balkan route, including ours

begins to decline. On 7th March 2016, the Republic of Macedonia decided to close its borders with the explanation that it was a chain reaction of the closing of the borders by the other countries on the Balkan route and the countries of the European Union. The decision came after an agreement was reached between the European Union and Turkey on resolving the refugee crisis, followed by a series of measures which were to be implemented to reduce or stem the tide of refugees⁵. With this measure, about 1,500 refugees remained “stuck” in the Republic of Macedonia on the southern and northern borders, originating from Syria, Iraq, and Afghanistan. This practice is a direct violation of the right of access to territory, as well as the right to seek asylum.

Transit camps

Although the transit camps in Gevgelija and Tabanovce were established while refugees were transiting through the country, their true purpose and use came to the fore during 2016. It was not coincidentally that the camps were located outside the communities, near the border lines with Greece (Vinojug, Gevgelija) and Serbia (Tabanovce, Kumanovo), next to the railway tracks. They were constantly being upgraded and improved. With the closure of the borders at the beginning of March, about 130 refugees remained in the transit camp Vinojug, Gevgelija and this number remained relatively the same until the end of the year. In contrast, in the Tabanovce camp, Kumanovo, about 1500 remained, with 1000 of them housed inside the camp, while about 400 refugees were found outside the camp, in the border zone with Serbia, in appalling conditions and under the sky. The refugees from the camp in Tabanovce could move freely and leave at any time. Thus, over time, the number of refugees in the camp in Tabanovce, slowly but surely decreased to reach 60-90 refugees by the end of the year.

However, while the camp in Tabanovce was open and the refugees were free to leave and return, the camp in Vinojug was closed, i.e. the refugees were restricted in their free movement. This is a direct violation of basic human rights, given that the refugees were held in a kind of detention, without any decision to detain or deprive them of their liberty by an appropriate authority, nor to prosecute them. This

5 http://europa.eu/rapid/press-release_MEMO-16-963_en.pdf

situation remained unchanged until the end of 2016.

In the meantime, although the accommodation facilities in both camps were being improved daily and efforts were being made to provide refugees with a normal life, there were still restrictions that prevented them from fully enjoying their human rights. For example, a prayer room was not established in neither of the two camps, which is contrary to their right to religion and practice religious rites. Their right to seek asylum was threatened on numerous occasions by preventing their access to asylum procedure, as well as by the inadequate review of the submitted asylum applications, which are decided in a short, shallow, and non-transparent procedure.

Smuggling

One of the inevitable consequences of closing the borders was the increased presence of smugglers and the reactivation of smuggling groups. According to unofficial sources, the smuggling groups were most active in the Kumanovo region, i.e. in the surrounding villages of Tabanovce, Lojane, and Vaksince. According to the refugees who managed to do away with the smuggling groups (or did not have enough money to leave the country), the smuggling groups from Greece handed them over to groups deployed in the Republic of Macedonia, which then escorted them to Belgrade, Serbia. Refugees were charged 1500 euros per person for such services. Refugee testimonies that sometimes they were held hostage, harassed, and beaten until they have the money to continue their way. Following the statements of the Ministry of Internal Affairs, the Helsinki Committee notes about 37 criminal events related to illegal migration and smuggling of migrants, in the period from June to December. The events took place with different dynamics, i.e. sometimes five smuggling groups were found in one week, and sometimes none. Smugglers are sometimes caught, but in many cases escaped and are inaccessible to authorities.

Illegal deportation

Unable to withstand the miserable and cruel conditions in the camps in Idomeni, Greece, and in revolt over the closing of the borders by the countries along the

Balkan route, on 14th March 2016, about 700 refugees illegally crossed the Macedonian-Greek border near the village of Moin, Gevgelija region. Members of the Macedonian police and army deployed along the southern border responded immediately with tear gas and smoke bombs. After a short period, all the refugees who crossed the border were placed in trucks and transported to Greek territory, away from any testimonies. In an attempt to escape, three refugees (two men and a pregnant woman) lost their lives drowning in the waters of Suva Reka.

Following the closing of the borders and the impossibility of allowing refugees to enter, the security authorities established a worrying practice of “illegal deportation” of refugees to Greece. Namely, all refugees who were found on illegal roads across the country or were victims of smugglers, were “deported” to Greek territory in an unregulated, illegal, and secret procedure, loaded into trucks and released under a barbed wire fence on the border. Despite the extremely cruel and inhumane method of implementation, this practice is a direct violation of Article 4 of Protocol no. 4 of the European Convention on Human Rights which explicitly prohibits the collective expulsion of foreigners. Through its experience, the European Court of Human Rights explains that this would only be permissible if the state considered the individual circumstances of each individual in the group. Apart from the occasional conversations with certain groups in the Gevgelija transit camp, the state, of course, did not practice individual case review. From the observations of the Helsinki Committee, the expelled groups number from 30 to sometimes 300 refugees. In an official statement, the President of the Republic of Macedonia proudly stated that the Macedonian security services prevented the illegal entry of more than 18,000 migrants, without realizing that such action is completely contrary to the European Convention on Human Rights and represents a collective deportation of foreigners. Hate crimes against refugees.

Hate crimes towards refugees

Throughout the refugee crisis, the attitude of the population towards the refugees ranged from strong support and a desire to help, to the spread of hate speech and repulsion towards refugees. The most frightening thing is that there were also direct attacks on refugees, i.e. committing hate crimes against someone who has refugee status, which was observed on several occasions.

During the monitoring, on the platform www.zlostorstvaodomraza.mk, the Helsinki Committee registered 11 attacks, acts of hatred committed by Macedonian citizens against the refugees. The attacks often involve robbery and mugging refugees, stealing their money, and all the means at their disposal. Inflicting light or severe bodily injuries, using physical force or a knife are not excluded. The Helsinki Committee points to the fact that, although they are often accused of violence, the refugees have never committed an act of violence or attacked Macedonian citizens.

Although the Balkan refugee transit route is officially closed, the refugee crisis is not even close to over. The fate of the refugees in the transit camps in the Republic of Macedonia, as well as of the refugees who cross the country illegally, is still uncertain. The Republic of Macedonia failed to address the refugee crisis because it failed to ensure that their fundamental rights and freedoms are always respected.

XI. CONCLUSIONS AND RECOMMENDATIONS

CIVIL AND POLITICAL RIGHTS

Conclusion:

The Helsinki Committee for Human Rights states that the police unreasonably restricted the right to protest at some of the public gatherings, preventing citizens from moving freely on the streets and protesting in front of certain institutions. By doing so, the police officers restricted the right to free movement, but at the same time the right to public assembly, which is stipulated as a crime in the Criminal Code.

Recommendation:

The Helsinki Committee believes that the police must not restrict the right to protest in the future, as it is a crime. The Public Prosecutor's Office must act ex officio in cases of restriction or obstruction of a public gathering and initiate ex officio proceedings to establish criminal liability for violation of the right to protest, but also for human rights and freedoms.

JUSTICE SYSTEM

Conclusion:

In 2016, the problems faced by the justice system in the past were intensified. The main cause of this situation was the political crisis. The bodies provided by the Constitution to ensure and guarantee the independence and autonomy of the judiciary and the performance of the public prosecutor's office continued to act as executors of the wishes and orders of the ruling political parties. The European Court of Human Rights has confirmed that the Judicial Council is not an independent and impartial institution, and the President of the Council of Public Prosecutors has been re-elected despite a clear legal obstacle to obtaining a second term. The ad-

vancement of expertise in the judiciary and prosecution was slowed down by the inefficient procedure for selecting candidates for initial training at the Academy for Judges and Prosecutors. The SPP opened pre-investigation proceedings against 112 persons, and 50 persons were subject to investigative proceedings. However, since its establishment, this prosecution has faced obstacles and sabotage from several state institutions whose cooperation is crucial for achieving the expected results. The Primary Court Skopje 1 was the first to obstruct the work of the SPP. The court rejected almost all requests for detention and precautionary measures requested by the SPP. There were even controversial distributions of judges which indicated bias in appointing “eligible” judges, who would slow down or impede the work of the SPP.

Recommendation:

The Helsinki Committee recommends amendments to the Law on the Judicial Council, with full involvement of the expert public and strengthening of the composition of the Judicial Council with independent experts; that will provide greater confidence in the decisions of the Judicial Council and the judiciary as a whole. The current Law on the Fact-Finding Council should be repealed. In the future, the Academy and the administrative courts must consistently comply with the short legal deadlines for complaints, appeals, and lawsuits set out in the Law on the Academy for Judges and Prosecutors, whose aim is to ensure the efficiency of the procedure for selecting candidates for the Academy. Institutions to cooperate with the SPP and submit all necessary documents and information in order to enable the investigation of all suspects and the initiation of appropriate criminal proceedings. It is necessary to extend the legal deadline of 18 months for filing indictments and proposals. Amendments to the Law on Witness Protection are needed to enable the SPP to be able to propose protected witnesses in cases in which it has jurisdiction.

CONSTITUTION AND LEGISLATION

Conclusion:

In 2016, the unusual indifference in the work of the Constitutional Court continued. Citizens' trust was reduced and there was a clear inclination towards the policies of the legislature and the executive. This seriously violates the independence, impartiality, competence, and legitimacy of the Constitutional Court.

By pardoning 56 defendants, including senior government and party officials from the government, the President put himself above the law, the Parliament, and the political agreement from Przino, which seriously hindered the work of the SPP. The pardon, which was essentially an amnesty, is probably the only example in history where a head of state pardoned a massive and organized violation of human rights and freedoms, including violations of the constitutional right to freedom of choice, violation of privacy, corruption, and other abuses of the political elite.

Recommendation:

The Helsinki Committee calls on the Constitutional Court to rise above party and individual interests and to make a decision that will not establish unconstitutionality of the law and will not repeal it or annul it. We emphasize once again that this will not leave the possibility those convicted of election fraud to be pardoned, will protect the public and state interest, and will provide space to rebuild legal security and the rule of law, as fundamental values of the constitutional order of the Republic of Macedonia.

The Helsinki Committee recommends that the President in the future refrain from taking actions and decisions that endanger the legal security and rule of law in the Republic of Macedonia and signify an act of overthrowing the rule of law and violation of international human rights obligations ratified by the Republic of Macedonia.

PENITENTIARIES AND HARRASMENT

Conclusion:

During 2016 and the beginning of 2017, 13 convicts died in Macedonian prisons. Most of them were serving their sentences in the Idrizovo Prison. No measures were taken to deal with the high level of corruption between prison services and prisoners. Prison services continue to be violent - they slap, punch, kick, and use batons on prisoners. Prison authorities continued to unnecessarily delay the process of giving medical care to convicts and sending them to an institution for medical treatment, a situation that harms the health of these individuals, violating their legally guaranteed right to health care. Most of the convicts are not at all aware of the possibility of obtaining legal aid in the prisons, and the system of complaints and appeals to the directors of prisons is completely non-functional. Although the project for reconstruction and construction of prisons was to be completed in 2015, construction activities in 2016 were not even close to completion. The oversight mechanisms are only partially functional and cannot be considered independent. The administration consistently refused to allow NGOs and the media to visit prisons and talk to convicts.

In 2016, as in the period from 2009 to 2015, no convictions were sentenced to prison for the crime of torture. The Roma continue to be the most frequent victims of torture and ill-treatment by the police and the prison police. The state still does not provide adequate legal, medical, psychological, and social support to victims of torture and inhuman treatment.

Recommendation:

It is high time for the activities stipulated in the Penitentiary Reconstruction Project were accelerated. Health care and legal aid must be provided as soon as possible and under equal conditions for all convicted people. Administrative and judicial oversight must be strengthened. NGOs and the media must be able to visit prisons freely and report on their living conditions.

The Helsinki Committee calls on the authorities to finally recognize the existence

of torture and to develop policies to protect against this barbaric act. Authorities must implement a policy of zero tolerance when officials torture prisoners. It is high time we faced the phenomenon of impunity and solidarity of public prosecutors and courts with the police. The main focus must be on victims of torture for whom the state still does not provide adequate legal, medical, psychological, and social support.

Moreover, there is an urgent need to increase the number of specialist doctors, including permanent internists (general practitioner, gynaecologist, and dentist) in the Special Institution Demir Kapija who would continuously monitor the health status of patients on a daily basis and so patients could exercise all health insurance rights.

DISCRIMINATION

Conclusion:

Based on all the information from the competent institutions for protection of citizens from discrimination and the cases that were reported to the Committee, it can be concluded that, despite the fact that six years have passed since the implementation of the Law on Prevention of and Protection against Discrimination and the establishment of the Commission protection against discrimination, it is still not possible to talk about effective protection in the area of discrimination, especially when it comes to marginalized groups. The main points concerning the access to justice for victims of discrimination, i.e. they should be released from court costs when it comes to initiating court proceedings for protection against discrimination, the Commission for Protection against Discrimination should be independent, discriminators should not be burden to provide proof, and sexual orientation and gender identity should be included as grounds for discrimination since they have remained unchanged.

The knowledge that judicial protection in case of discrimination has started to be used more and more is an indicator of increased awareness among citizens about the possibilities of judicial protection. However, most of the initiated court proceedings are supported by citizens' associations that provide legal aid in cases of

discrimination, because the Law on Prevention of and Protection against Discrimination does not provide relief from court costs in initiating court proceedings. Because of these reasons, it can be concluded that access to justice for judicial protection against discrimination remains limited.

Recommendation:

There is an urgent need to amend the Law on Prevention of and Protection against Discrimination so victims of discrimination can ease their way to justice, independence of the Commission for Protection against Discrimination, shifting of the burden to the discriminator, and inclusion of sexual orientation and gender identity as grounds for discrimination.

In the future, the Government and the Parliament of the Republic of Macedonia must accept all amendments to the Law on Prevention of and Protection against Discrimination proposed by the working group established by the Ministry of Labour and Social Policy, in order to finally improve the legal framework for protection against discrimination.

ECONOMIC AND SOCIAL RIGHTS

Conclusion:

The general conclusion is that the institutions do not act in accordance with the positive legal regulations and do not respect the legal deadlines for preparation of the decisions, and with such inaction they directly endanger the rights of the citizens arising from the laws for social and health protection.

Centres for Social Work as a public service of the citizens, especially when it comes to facilitating the access to the implementation of the social rights of the citizens who are at social risk, fail in their work. Beneficiaries of social protection rights have often faced solutions that deprive them of certain rights, precisely because of the general lack of information about reporting financial changes to their trans-

action accounts and, consequently, due to dysfunctional professional services at social work centres. Therefore, it often happened that the right to social financial assistance was terminated, regardless of the insignificant undeclared amount of funds received. Despite the initiated appeal procedures and the proceedings before the Administrative Court, the citizens are still hindered in exercising their economic and social rights due to the long procedures and inefficient work of the institutions.

Recommendation:

The Helsinki Committee recommends that the state bodies be guided by the principle of efficiency and determination of material truth, as well as to act according to the instructions of the Administrative Court and the Higher Administrative Court. On the other hand, courts should be guided by the principle of efficiency and the right to a trial within a reasonable time and make commendable decisions in cases where their recommendations are not complied with and implemented by the governing bodies.

HATE SPEECH

Conclusion:

Although hate speech is getting a bigger impact in the society and is becoming a common tool for mutual clash between different groups and individuals, the reaction of the state authorities that are responsible for prosecuting it as a crime is diametrically opposed, almost non-existent. One of the encouraging factors for the spread of hate speech is its impunity and tolerance. The other factor is the practice of hate speech by public figures, who instead of condemning violence and intolerance, encourage it significantly, without bearing any legal or social responsibility.

Recommendation:

It is necessary a criminal act of spreading hate speech to be foreseen, which will result in an appropriate definition of what hate speech is and will provide a closed list of characteristics. The state and civil society organizations must work significantly to raise awareness among citizens about the existence of hate speech, as well as the mechanisms for protection and reporting hate speech. The police, public prosecutors, and courts need to show a clear attitude and zero tolerance for hate speech as a crime. Perpetrators must be punished with appropriate penalties. Public figures, political leaders, and socially relevant entities must take a strong, unanimous stance against hate speech and promote it to the public and the groups they influence.

HATE CRIMES

Conclusion:

70 hate crimes were registered in 2016. Compared to 2015, the biggest difference in 2016 is in the motive for the hate crimes. While in 2015 the motive for most of the incidents was the status of refugee or migrant of those transiting through the Republic of Macedonia, in 2016 the motive for most of the incidents is ethnicity, i.e. political affiliation or conviction of victims and perpetrators. The early parliamentary elections and the negative charge resulting from the political crisis were a particular cause of hate crimes. At least 89 victims and 211 perpetrators of hate crimes were registered. Most victims are young people and refugees or migrants.

Recommendation:

The Helsinki Committee points to the direct connection between the hate speech in public and the registered hate crimes. Hate crimes in the pre-election period appear as a direct consequence of the increased presence of hate speech by public figures in the media, in political campaigns, and at gatherings of political parties. The Committee urges politicians and other public figures not only to refrain from the use of hate speech, but also to strongly condemn its use at every opportunity.

GENDER-BASED VIOLENCE

Conclusion:

The state still does not meet the minimum standards that should guarantee effective protection from violence against women. The lack of appropriate response by the police and the centres for social work, the small number of shelters for victims of domestic violence, and the absence of shelters for victims of sexual violence are just some of the systemic problems, due to which it can be concluded that the state does not meet the requirements for ensuring proper protection to women victims of gender-based violence. Regarding the actions by the courts, it was noticed that the judges were not fully informed about the content of the Law on Prevention of and Protection against Domestic Violence, due to which in certain cases no temporary measures for protection from domestic violence were imposed.

Recommendation:

The Helsinki Committee for Human Rights recommends that judges begin to apply effectively, consistently, and correctly the Law on Prevention of and Protection against Domestic Violence, especially the provisions concerning the imposition of interim measures of protection, so the best protection can be ensured and the immediate and serious dangers to the life and physical integrity of victims of domestic violence and their family members removed. The state should start the process of ratification of the Istanbul Convention as soon as possible and ensure minimum standards for effective protection of women and children victims of violence.

REFUGEE CRISIS

Conclusion:

During the refugee crisis, there was a significant violation of the rights of refugees on the territory of the Republic of Macedonia. From the closure of borders that restrict their freedom of movement and the ability to seek asylum in a country of their choice, through inhumane and degrading treatment by the officials, to the failure to conduct effective investigations into lost lives, the state has failed to meet its obligations under the international human rights instruments to which it is a signatory. The high levels of discrimination, hate speech, and hate crimes have shown that society is closed and unprepared for a compassionate approach to people of immigrant origin. In addition, the inability of the state to investigate and sanction them showed a serious malfunction of domestic mechanisms for the protection of fundamental rights.

Recommendation:

The national legislation relating to the rights of refugees or asylum seekers must be consolidated in accordance with the international law and the human rights instruments to which the state is a signatory. All cases where there are allegations of human rights violations of all people on the territory of the Republic of Macedonia, must be properly and effectively investigated by the state and those responsible must be sanctioned. The basic human rights of refugees must be promoted, respected, and always protected during their stay in the Republic of Macedonia. The right to seek asylum must not be denied to refugees passing through the country by denying them access to the asylum procedure.



ANNUAL REPORT

on the human rights situation of the LGBTI
community members in 2016

CONQUEST OF FREEDOM

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1. Introduction

The past year marked the culmination of the struggle for winning the freedom and space, which for many years were usurped by a totalitarian and criminal clique nestled inside the authority. We supported this struggle so we can ensure fair conditions for our commitment to a fair and equal treatment, so we can provide democratic and free space in which we can express our arguments for a different, just, and humane society that will take care of everybody, with no exception. The struggle to regain the deprived freedom and space introduces us to a unique opportunity to rethink our society in the year and years ahead. We must not miss the chance to build an open and just society, in order to reach the goal: DIFFERENT! EQUAL! FREE!

2. Advocacy

During 2016, many of the activities of the LGBTI Support Centre were conditioned by the political situation of the wider political community, not just by the situation in which the life of LGBTI people in Macedonia took place. Hence, the main political articulations, especially concentrated through the “Colourful Revolution”, established the political position of the LGBTI Support Centre.

One of the main resources, in that sense, was the research that resulted from the Analysis of the problems and needs of the LGBTI community in Macedonia. The LGBTI Support Centre, with partial assistance from the US Embassy in Macedonia, in January last year conducted a survey on the needs of LGBTI people in the Republic of Macedonia in the areas of social protection, legal services, and policing. The research is not done on a representative sample, nor does it intend to present a picture of how the entire LGBTI community perceives its own place in society, the research is a starting point for how LGBTI people view institutions. The survey was answered by 134 respondents living in Skopje, Tetovo, Kumanovo, Prilep, Bitola, and Strumica. The results of the anonymous survey showed striking figures for the community’s trust in institutions.

Also, on the line of struggle against the selective justice against which the entire opposition in Macedonia took a stand, not only the LGBTI community, the LGBTQI Support Centre created www.prijavinasilstvo.mk, a website where LGBTI people

can anonymously report violence against them. The need for this website lies in the fact that the system in Macedonia does not work and does not protect the LGBTI community, and the presentation took place in front of the Public Prosecutor's Office as a sign of protest against the fact that for years they had been ignoring cases of violence against LGBTI people and activists. The Parliamentary Assembly of the Council of Europe also spoke out against the selective justice towards the LGBTI community in the Macedonian society, by adopting the Declaration no. 585 on the failure of the Macedonian authorities to respond to the repetitive attacks on the LGBTI Support Centre in Skopje. The declaration reminds of the six attacks on the LGBTI Support Centre and its activities during its two years of existence back then and calls on the authorities in the Republic of Macedonia to publicly condemn the violence; to do everything in their power for law enforcement agencies to respond quickly and effectively to individual incidents; to take additional measures to address problems such as homophobia and transphobia in society, as provided for in the Recommendation of the Committee of Ministers CM/Rec (2010) 5 - in the section on measures for fighting discrimination based on sexual orientation or gender identity.

From the aspect of freedom of association and the need for the demands of the LGBTI community in the public sphere to be more visible, it is important for us to mention the organization of the fourth Pride Weekend. The aim of the series of events within the "Skopje Pride Weekend 2016" was to create and promote a different worldview, and to offer a radical and multifaceted critique of the binary gender system, heteronormativity, and nationalist homophobia. The main idea of last year's "Pride Weekend" was solidarity. Additionally, the consistent organization of the Tolerance March by the Helsinki Committee for Human Rights of the Republic of Macedonia, this year was dedicated to the fight against hate speech, as well as the violence contained in the said incriminating speech, which produces injuries and traumas to LGBTI people as well in a large extent.

The struggle for a free society implies responsibility and political engagement that offer solutions to justice and equality. Based on this statement, in December last year the LGBTI Support Centre joined the process of creating a document to improve the situation in several sectors; the process was supported by the office of the Friedrich Ebert Foundation in Macedonia, which was called "The Day After". The Helsinki Committee for Human Rights and the LGBTI Support Centre worked on the judiciary, LGBTI rights and basic rights, and democracy, including fundamental

rights, the right of association, freedom of expression, penitentiaries, and vulnerable groups.

The same document was further submitted for signature to representatives of the parties participating in the previous parliamentary elections. Moreover, guided by the need for decentralization of such political engagement through which justice and equality in society should be achieved, on 14th December, in the premises of the Ombudsman of the Republic of Macedonia, a Memorandum of Cooperation was signed between the Helsinki Committee for Human Rights of the Republic of Macedonia - LGBTI Support Centre and the Ombudsman of the Republic of Macedonia. The purpose of the cooperation between the Ombudsman and the LGBTI Support Centre is to strengthen the regional capacities of the Ombudsman in the field of human rights and freedoms of LGBTI people, as well as to increase legal certainty and mechanisms for protection of the rights of the LGBTI community in the Republic of Macedonia.

3. Institutions

The political crisis in the Macedonian society, among other things, was extended and lasted for a long time because the political parties occupied the institutions so they could not provide services to the citizens of the Republic of Macedonia, and they were treated with the principle of equality with no exceptions when it comes to different personalities.

One of the examples of institutions working under a political party, through which the principle of equality should be materialized, was the election of the new composition of the Commission for Protection against Discrimination. On 11th January 2016, the new members of the Commission were elected by the Assembly. The fears from 2014 were confirmed, when the Network for Protection against Discrimination, where the LGBTI Support Centre is a member, pointed out that the legal uncertainties leave room for a member of the Commission to be selected as an inappropriate candidate for the role they should play. Such inadequate norms have resulted in the selection of staff with political affiliation and with no experience in anti-discrimination law and practice or working with marginalized and vulnerable groups. The most defeating were the elections of Toni Naunovski and the new President of the Com-

mission, Aleksandar Dashtevski, as supporters of policies that degrade and do not treat equally different socio-cultural and political groups in the Macedonian society. Another worrying example is the work of the bodies of the Ministry of Internal Affairs. In the past year, a year of serious political crisis and polarized society, hate speech based on sexual orientation and gender identity gained momentum. The LGBTI community was the target of numerous attacks, most notably on social media. Civic activists representing the rights of the LGBTI community (and their supporters) were attacked in the media by the centres of power, but also by individuals. The Ministry of Internal Affairs has shown no will or competence to deal with hate speech, which can also result in physical violence.

During 2016, the professionalism of two institutions whose work is related to that of the LGBTI Support Centre was significant, and that is the Agency for Audio and Audio-visual Media Services and the Council for Media Ethics of Macedonia. The professional running of the Council is especially important, and it is necessary to be emphasized that with its decisions (even in the past years) it showed a high degree of expertise in the application of the substantive law as well as in the application of the law arising from the jurisprudence of the European Court for human rights. The Council also showed a high degree of professionalism in the time frame in which it responded to all these complaints. From the cooperation with the Council, we point out that on 17th February 2016, the LGBTI Support Centre, the Helsinki Committee for Human Rights of the Republic of Macedonia, and the Coalition Sexual and Health Rights of Marginalized Communities filed a complaint with the Council Complaints Commission regarding an article published on the electronic media Puls24, titled “Destruction of family values with a meaningful plan”, which contains discriminatory content, which grossly violates the right of choice, i.e. certain ways of life are qualified with hatred. Additionally, this article slanders Macedonian NGOs for allegedly financing and planning a “family dismantling”. The Commission decided that the complaint was grounded. As stated in the decision of the Commission, this article violates Articles 1, 10, 11 and 13 of the Code of Journalists.

4. The media and the LGBTI community

During 2016, what was important for the media representation of the LGBTI community in the Macedonian society, was its involvement and political

engagement in the fight for the rule of law, equality, and democracy. Although such a role of the LGBTI community is clear, as an important political entity with a consistent line of resistance to structural exclusion, discrimination and other degradation, still, some media and media workers close to the VMRO-DPMNE party and its business partners, by breaking ethical standards of media work or truthfulness, information and objectivity, showed a clear media tendency in the representation of the LGBTI community as harmful, nasty, with secret agendas, exposed to unpunished violence, associated with mercenary activities and the like.

In that sense, it is very common for media articles to cover LGBTI issues through sensationalist headlines (especially from the showbiz section);⁶ titles that refer to a certain “animalization” of the LGBTI community or its connection with barbarity/instincts and other types of sexist desubjectivization;⁷ additionally, through headlines referring to violence that goes unpunished in the media⁸ or headlines that directly spread hate speech. Regarding the latter, a clear example is the article on the portal “Pulse 24” (together with “Netpress” and “Infomax” and a series of their articles) that clearly states the position and attitude of the media regarding homosexuality, namely the editorial team and responsible for the content placed on the portal. Namely, commenting on an article in another medium (“Okno”), according to the portal “Pulse 24”, the contents related to topics about homosexuality are necessarily “painful”, i.e. they are the result of “degenerative ideas”.⁹

This example, as well as others that will be pointed out below, were part of the media coverage of the LGBTI community during 2016, despite the fact that the European Court of Human Rights has ruled that homophobic views (both expressed through examples that state that the homosexuality is a disease, alienation, disability, degenerative, etc.) are recognized as hate speech,¹⁰ and not freedom of expres-

6 <http://telegraf.mk/zabava/sportshou/ns-newsarticle-ocigledno-ne-e-per-poglednete-ja-georgina-novata-devojka-na-ronaldo-foto.nspix>

7 <http://reporter.mk/uncategorized/%D1%84%D0%BE%D1%82%D0%BE-%D0%B8-%D0%B2%D0%BE-%D1%9F%D1%83%D0%BD%D0%B3%D0%BB%D0%B0%D1%82%D0%B0-%D1%81%D0%B5-%D0%BC%D1%80%D0%B4%D0%BD%D0%B0%D0%B0-%D0%BB%D0%B5%D0%B7%D0%B1%D0%BE-%D0%B0%D0%BA%D1%86/>

8 <http://republika.mk/639771>

9 <http://puls24.mk/mk/vesti/portaLOT-okno-preporacuva-bolna-literatura-za-deca>

10 Vajdeland and Others. vs Sweden, Application no. 1813/07

sion, i.e. that discriminatory speech based on sexual orientation is just as harmful and can cause personal and collective harm as racist speech or that related to the victim's origin or language.

But it is important for us to mention the positive practices, in terms of opposing what was previously pointed out with the use of degrading speech and hate speech against the LGBTI community. One such example was the decision of the Agency for Audio and Audio-visual Media Services, regarding the television “Kanal 5” and “the statements and views expressed by Milenko Nedelkovski in his shows “Milenko Nedelkovski Show” broadcasted on 15th, 22nd, and 29th January 29, 5th and 12th February 2016, which provokes and spreads discrimination, intolerance and hatred based on sexual orientation, thus violating Article 48 of the Law on Audio and Audio-visual Media Services.” Namely, according to the Agency, the violation of the law refers to that “in several consecutive pre-recorded shows, the state-level television programme service TV Kanal 5 makes an editorial decision to allow the author of the show to be a source of homophobia and hate speech based on sexual orientation.”¹¹ As it was reported by the portal “Libertas”, “The programme supervision performed by the Agency for Audio and Audio-visual Media Services was done by official duty and refers to several shows from the “Milenko Nedelkovski Show” in which he speaks the language of hatred and discrimination, uses homophobic speech to blacken political dissidents, compares homosexuality with disease, etc. The report considers all relevant aspects of assessing a speech as discriminatory, homophobic and hate speech (context, responsible person, intent, content, extent, and scope of expression and likelihood of influencing the audience and their future actions).”¹²

5. Cases

This year, the number of reported individual cases in the LGBTI Support Centre did not change significantly, compared to last year. This year, the Centre handled 4 individual cases. From these cases, it can be concluded that the situation with LGBTI

11 http://www.avmu.mk/images/lzvestaj_KANAL_DOOEL_Skopje.pdf

12 <http://www.libertas.mk/agentsija-za-mediumi-kanal-5-shiri-govor-na-omraza-kon-lgbt-zaednitsata/>

people remains unchanged. They still do not trust the institutions and they need to be supported and accompanied during the processes initiated by the citizens' associations. Discrimination on the grounds of sexual orientation and gender identity is again one of the dominant reasons for the absence of any institutional services to LGBTI people.

6. Community

As in previous years, this one as well, the absence of safe spaces where LGBTI people can freely express their sexual and gender identity has proven to be one of the biggest problems in the community. The events organized by the LGBTI Centre over the past year proved to be the most appropriate response to this problem, given the large attendance of these events by LGBTI people this year. Support groups operating within the LGBTI Support Centre and the process of decentralization of the LGBTI movement through the formation of local LGBTI cores have led to the strengthening of the community in many different ways; along the way, the solidarity with human rights activists and solidarity among LGBTI members community have created greater opportunities for community action and, to some extent, a strong political stance against the repressive mechanisms that have oppressed LGBTI people for a decade.

The waving of the rainbow flag in the protests against the regime and the participation in the protests of the Colourful Revolution are an indisputable indicator that over time the community becomes politically aware and shows a clear political stance and visibility.

