



# 2018 ANNUAL REPORT OF THE HELSINKI COMMITTEE FOR HUMAN RIGHTS

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Despite the positive shifts, political events prevailed over the reform process once again in 2018. The failed referendum, which succeeded the signing of the Prespa Agreement and the efforts towards creating a majority that would support its adoption by the Assembly, resulted with the controversial Law on Pardons concerning the participants in the Bloody Thursday. Politics interfering in the judiciary crudely violated the principles of equality before the law and the rule of law. Institutions failed to prevent the escape of the former Prime Minister Nikola Gruevski from the country, with no responsibility whatsoever assumed by anyone regarding the case.

These events, accompanied by the non-transparent adoption of several criminal laws, tarnished the collaboration that civil society organizations (CSOs) managed to establish with the Government. Although CSOs inclusion in the adoption of certain laws was satisfactory, and the Blueprint Group for Judicial Reforms actively participated in the entire reform process, still, partial and politically motivated interventions in crucial laws trespassed on the legal certainty of the citizens and damaged the projected reform goals. The status of the Special Public Prosecutor's Office also fell in the domain of calculations between the political parties, despite the fact that any postponement might compromise the ongoing proceedings.

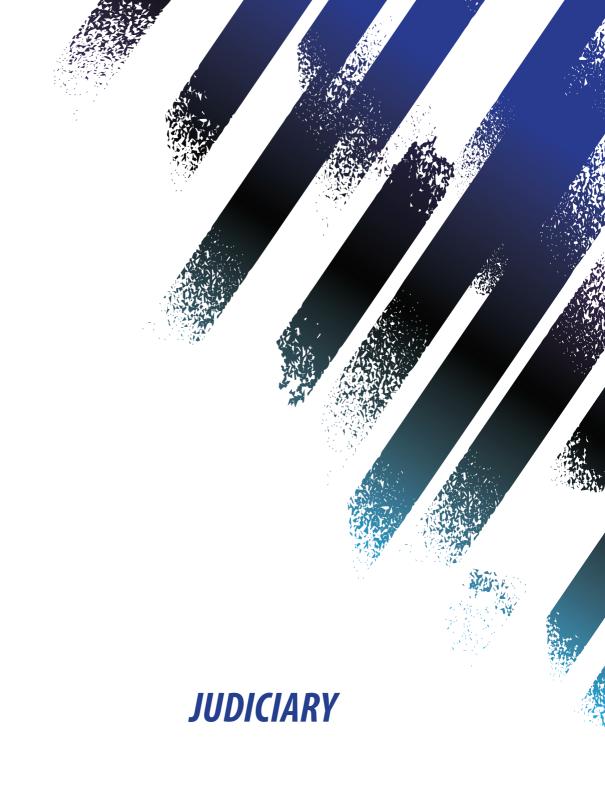
It is inevitable to mention the political bargaining among the parties regarding the Law on Protection against Discrimination, the adoption of which was prolonged for months, accompanied by media spins and controversial statements of high-level political representatives.

The entire atmosphere in the country during the reporting period encouraged hate speech in the media space, and more alarmingly, the number of registered hate crimes doubled in comparison to last year. Even though such crimes are typically mostly ethnically based, hate against the LGBTI community, migrants, women etc. were also largely present. The police, courts and public prosecutor's office remained ignorant and ineffective in the resolution of such cases. Sensitization as a tool is also missing in cases of gender-based violence, where the competent often fail to act on behalf of the victims and their protection.

In addition to the separate review of the situation with gender equality, hate speech and hate crimes, discrimination and human rights of vulnerable groups and LGBTI community, the report also covers the situation with labour rights, with a focus on the rights of textile workers. The report also includes specific court proceedings as part of the Committee's regular court monitoring in 2018, with an overview of closed institutions in the country. Bearing in mind that offering free legal aid and locating all irregularities in the current Law on Free Legal Aid is distinctive for the Helsinki Committee, the report also contains comments on the new Draft-Law on Free Legal Aid.

Along with the situations and events established in 2018, the report also offers relevant recommendations for all fields in which the Committee is actively working. With this we hope to provide clear directions on dealing with the problematic issues and occurrences shaping the general human rights' situation in the Republic of North Macedonia, and expect that decision makers will consider them in the process of creation of state policies and measures.





## JUDICIAL REFORMS

The reform implementation in the judiciary of the Republic North Macedonia is a crucial precondition for European integration, considering the significance of Chapter 23 in the process of EU accession. In the 2018 Report on the country (published in April 2018) and covering the period from October 2016 to April 2018, the European Commission recommended adoption and implementation of the measures prescribed with the 2017-2022 Strategy on Judicial System Reforms and the consequent Implementation Action Plan in 2018, including reforms in the systems for election, promotion, discipline and dismissal of judges and prosecutors, as well as demonstrating that the independence of the judiciary is respected and promoted on all levels. The European Commission further stated that despite the evident progress, the country needs to make sustained efforts towards complete implementation of the strategy and address outstanding recommendations in order for the judiciary to function without undue external and internal influence. The Report also mentions the risk from political involvement in the judiciary, the practice of selective justice in certain politically sensitive cases, stressing that although basic rights are largely guaranteed by law, the implementation requires sustained commitment to reforms.

However, 2018 was marked by the resolution of political issues such as regulating the use of other communities' languages and the name dispute with Greece (adoption of the Law on the Use of Languages, the signing of the Prespa Agreement, organizing and carrying out the 2018 Referendum, "chasing" two-thirds majority votes after the unsuccessful referendum, adoption of the Law on Pardons related to the events on April 27th, voting for constitutional amendments etc.), instead of implementation of the required judicial reforms.

According to the Strategy on the Justice System Reforms, adopted in November 2017 and the consequent Action Plan, the implementation of measures and activities for the realization of these reforms should have been finalized not later than December 2018. However, due to the above-mentioned political activities, unfortunately, the reform implementation digressed from the initial Plan 3-6-9, later transformed in the 2017-2022 Strategy on Reforms and the Action Plan, forcing the entire process to come to a stop.

The Helsinki Committee, with its partner organizations from the Blueprint Group, thoroughly monitored the entire implementation process of the strategic judicial reforms, particularly from the aspect of observing the timeframe prescribed for the reform implementation, civil sector participation, the parties concerned and the public, as well as the transparency of the process.

The general conclusion on the implementation of the measures and activities, prescribed with the Strategy on the Justice System Reforms, is that the process was significantly delayed and certain segments lacked the participation of civil society organizations, leading to the assumption that the reform process was only partially transparent.



Namely, most of the deadlines related to the implementation and realization of the activities and measures prescribed with the Action Plan were not observed. Consequently, in June 2018, the Government developed the Draft-Plan 18, which only prolonged the previously prescribed deadlines in the Action Plan on the implementation of the 2017-2022 Strategy. The civil society organizations from the Blueprint Group reacted on the lack of clarity in the process, claiming it focused solely on the postponement of the deadlines set for the reform implementation. Several strategic laws were postponed for the coming 2019.

No representatives from civil society organizations were involved in the working groups on reforms in criminal legislation, although public experts and concerned parties (professors, judges, prosecutors and lawyers) did participate. The expertise civil society organizations have gained from the longstanding work in this area is of great importance and could assist in the creation of improved legal solutions towards promotion and proper protection of citizens' rights in related legislation.

According to the recommendations on judiciary issued by the European Commission in the 2017 Report, greater inclusion and increased influence of civil society organizations is required in the implementation process of the Strategy on the Justice System Reforms. Despite their relevant knowledge and experience in certain areas, CSOs, including the Helsinki Committee, were not directly included in the working groups or in other activities related to the adoption of certain laws and regulations. Specifically, civil sector representatives were completely absent from the working groups on the amendments to the Law on Criminal Procedure, the Criminal Code and the Law on the Public Prosecutor's Office.

On the other hand, the inclusion and influence of civil society organizations in the adoption of certain laws was satisfactory. Consequently, during the amendment process to the Law on Courts, the Law on the Judiciary Council and the Law on the Academy for Judges and Public Prosecutors, civil society representatives were equal participators in the working groups, attended the meetings with representatives from the Venice Commission, and some of their recommendations were successfully recognized as legal solutions.

Civil society organizations were also included in the working groups on the adoption of the new Law on Misdemeanours and the amendments to the Law on Administrative Disputes, while the Law on Free Legal Aid, following the comments and reactions of CSOs, was repealed and sent back to the beginning of the adoption process.

The Helsinki Committee assessed the judicial reforms implementation process as partially transparent. Namely, despite the efforts of the Government and the institutions involved in the reform implementation to include civil society organizations and the public in the process, in reality certain laws, such as the Law on Criminal Procedure, and particularly the Criminal Code, were amended without an extensive public debate and without being promptly published on the Single National Register of Regulations (ENER) for comments. The working group intensively worked on major reform changes to the Law on Criminal

Procedure, however, at the end of October 2018, without previous discussions and public debates, the Draft-Law on Amending the Law on Criminal Procedure was published with interventions only in the provisions on special investigative measures and partially on detainment. On December 31st, the same occurred with the Criminal Code, with the introduction of amendments with the potential to seriously disrupt the sanctioning of financial criminal offenses. Despite such unfavourable amendments to the Criminal Code, some positive changes did occur, specifically with the clear definition of hate crime in the general provisions, where the grounds for committing a hate crime were expanded to include sexual orientation and gender identity, introducing more serious qualification among the special criminal offenses for offences committed out of hate. Furthermore, the amendments improving the criminal and legal protection, the introduction of a new offense "obstruction of justice," as well as the provisions on protected witnesses are expected to contribute towards more efficient criminal and legal protection in the country.

Despite the particularly inclusive development of the 2017-2022 Strategy and Action Plan, still, the defacto realization was not sufficiently transparent nor inclusive.

# COUNCIL FOR MONITORING THE IMPLEMENTATION OF THE 2017 -2022 STRATEGY FOR JUDICIAL SYSTEM REFORMS

The Helsinki Committee, with the other members of the Blueprint Judiciary Group, participated with their own representatives in the work of the Council for Monitoring the Implementation of the Strategy for Judicial System Reforms.

The Committee assessed its participation and activities within the Council as a positive example due to the opportunity for civil society organizations to personally communicate their opinions and understanding of the judicial reforms to the decision-makers, as well as to directly offer proposals, which were accepted on several occasions.

Consequently, the members of the Blueprint Judiciary Group were active stakeholders in the overall reform processes.

# (IN)DEPENDENCE AND (IM)PARTIALITY OF THE JUDICIAL COUNCIL AND THE PUBLIC PROSECUTORS' COUNCIL

During 2018, apart from the election of two new constitutional judges to replace the two whose mandate had ended, no other judges were elected, despite the call for the election of judges on several instances. Similar to past experiences, the number of judges decreased in 2018 due to retirement or dismissal. Since the mandate of the previous members had expired, six new members to the Judicial Council of the RNM were appointed.



The election of judges and public prosecutors is still being practiced in accordance with the current Law on Courts, the Law on the Public Prosecutor's Office and the Law on the Academy for Judges and Public Prosecutors.

The new laws, developed with the assistance of civil sector representatives, are expected to improve the manner of election and dismissal of judges, all towards allowing legal professionals with an established integrity, non-partisan and non-politicized in the judiciary system, and thus avoiding the past practice of electing judges and prosecutors following party's orders. Pursuant to all recommendations of the international community so far, the key to finally liberating the "imprisoned state" is not only eliminating the so-called regime, but rather the establishment of a legal state where the law would rule instead of influential members of the parties, and where laws and peoples' rights would be observed. This would be impossible without an independent, unbiased and non-partisan judiciary.

An important novelty, a benefit to the judicial reforms and the strengthening of the judicial independence, is the adoption of the Law on Cessation of the Law on the Council Determining Facts and Initiating Procedures to Determine Liability of Judges. The Law dismissed the Council Determining Facts and Initiating Procedures to Determine Liability of Judges, established in 2015 and tasked to act on complaints and motions against judges. The Council was a separate investigative body established to separate the different phases in the procedures for determining disciplinary responsibility of judges (initiating procedures, conducting an investigation and deciding on the disciplinary responsibility of judges). From the very start, public experts assessed it as an unnecessary step, a fact later confirmed with the Council's work. With the dismissal of the Council, the competence to conduct disciplinary procedures was restored to the Judicial Council. Pursuant to the amendments on initiating a procedure against individual judges by the Judicial Council, the members of the Judicial Council who have initiated the procedure as "prosecutors" should not to be involved in the decision-making as "judges". This solution is in line with the views of the Venice Commission and the established practice of the European Court of Human Rights.

The legislation package for reforms in the prosecutor's office were still in a draft version until the end of the reporting period, even though these concern the solution of the Special Public Prosecutor's status. Despite the numerous unsolved issues regarding these laws, in October 2018, the Law on the Public Prosecutor's Office was partially amended, lacking transparency in the course, with the adoption of the Law on Amending the Law on the Public Prosecutor's Office. With the amendments, the Public Prosecutor's Office was included in the system for external control of the police, a solution expected to improve and promote the control over a key segment such as the police.

However, the Committee believes such adoption of crucial laws and the partial and segmented solution of the problems would diminish the citizens' legal certainty and the rule of law.

## THE ACCMIS

In 2018, the Ministry of Justice released to the public the Report on the ACCMIS, the result of the control of the ACCMIS services for the distribution of cases in the courts. The work of the following three courts was investigated: Primary Court Skopje 1 – Skopje, the Court of Appellations in Skopje and the Supreme Court in Skopje and the Supreme Court of RNM.

According to the findings, the courts have failed to consistently apply the Law on Managing the Movement of Cases in Courts and the Court Rules of Procedure, the ACCMIS is not fully used in line with its purpose, provisions from legal regulations on the frequent changes in the annual schedules of courts are being abused and the provisions prescribing a field of speciality for judges are not being observed. The ACCMIS and the automatic distribution of cases were manipulated by frequent changes in the annual schedule and the manual distribution of cases to individual judges, whereas the appointment of judges in the Criminal Council of the biggest criminal court in the country was also affected.

The findings from the supervision indicated that most of the irregularities occurred in the work of the Primary Court Skopje 1 – Skopje, as well as the Supreme Court of the RNM, while the Court of Appeals in Skopje consistently observed the laws and by-laws in this area in the most part.

In addition, the ACCMIS is currently undergoing upgrading and improvement, in order to prevent manipulation and irregular application towards selecting the "suitable", i.e. unsuitable judge to decide on certain cases.

## SPECIAL PUBLIC PROSECUTOR'S OFFICE

The Helsinki Committee continued to monitor the work of the Special Public Prosecutor's Office in 2018 as well. It was observed that the court hearings regarding all the charges pressed by the SPPO finally began and were approved by the court. First-instance verdicts were reached in the cases "Tank", "Tifani", "Trust", and "Trista", while the Court of Appeals confirmed the verdict from the "Tank" case, sentencing to two years of imprisonment the former Prime Minister, Nikola Gruevski. However, his escape, which occurred in the most suspicious circumstances, was harshly condemned by the Helsinki Committee and all partner organizations working on monitoring the judiciary and judicial reforms. The Committee and the other organizations demanded that the system's institutions, particularly the Public Prosecutor's Office, courts and police investigate the case thoroughly and fully, initiate proper procedures and seek liability should certain individuals or institutions be found responsible for the escape. However, despite the public requests to the competent institutions, no response was offered as to how the convicted individual managed to leave the country by the end of 2018.



In 2018, the SPPO took over the cases "Monstrum" and "Sopot" from the Primary Public Prosecutor's Office. From the very beginning of the "Monstrum" proceedings, the Committee carefully monitored all the court hearings and found that, by the end of year, the Prosecutor had submitted the same evidence from the previous procedure. However, this time, the public was included in the entire process, i.e. the interrogation of the protected witness, the inspection of the vehicle and all the other evidence, all this at the request of an observer from the Helsinki Committee and with the consent of the participants in the proceedings. Evidence collected following special investigative measures, evidence already submitted by the defence and the prosecution's new evidence is expected to be submitted the following year.

Even though the SPPO took over the case "Sopot from the Primary Prosecutor, in 2018, or shortly after, the SPPO dismissed the case. Such a decision stirred strong reactions among the public, the media and the social networks.

However, despite the fewer obstructions against the SPPO cases, observed by the Committee last year, in certain cases hearings were still postponed, particularly regarding the "Target/Fortress" and the "Titanic" cases.

The Special Public Prosecutor's Office initiated ten new investigations in 2018. Experts and legal practitioners were divided in their opinions regarding whether the special law on the establishment and the jurisdiction of the SPPO allowed new investigations after the end of the 18 months-mandate. The defenders of some suspects requested legal opinion from the Supreme Court of the RNM, asking interpretation of the provision. By the end of the year, the Supreme Court had failed to act and respond. Since the request actually implies authentic interpretation, the Committee believes that the Supreme Court of the RNM is not competent to act in this matter since the legislator, i.e. the Assembly has the exclusive right for authentic interpretation of the laws of the RNM.

Concerning the new investigations, the expert and general public were mostly interested in the SPPO's new case called "Empire". The investigation in this case involved former officials and businessmen close to the former government, while some suspects were detained in order to prevent them from affecting the witnesses, from covering evidence or impacting the investigation in any other manner. The defenders of the detained suspects complained against the detainment procedure, i.e. since the suspects had not been previously questioned or aware of the evidence the court held against them. The Criminal Council and the Court of Appeals rejected the defence's argumentation and the suspects remained detained until the end of December, 2018, when the SPPO asked that two of the detainees be placed under house arrest since prison detainment was no longer deemed necessary.

Although pursuant to Plan 18 and the 2017-2022 Strategy on Judicial Reforms, as well as the recommendations of the European Commission and other international stakeholders, one of the priorities of the judicial reforms was regulation of the SPPO's status, a law regulating its status had still not been adopted by the end of 2018.

However, the Committee would like to stress and recommend to decision-makers that the longer the resolution of this Prosecutor's Office remains to be postponed, the greater the possibility that the SPPO's mandate would legally end, which would endanger all current cases and pre-investigative and investigative procedures. The Committee would like to assert that the SPPO's independence and capacity to work on complex and extensive cases should be considered in the process of finding a proper solution. This Prosecutor's success, among other, is restricted by its human resources and financial freedom and means.

## PUBLIC PROSECUTOR'S OFFICE

Despite the appointment of a new Public Prosecutor at the end of 2017, no significant changes occurred in this Office's work, particularly not regarding any new procedures related to offences of corruption or abuse of position. Despite the change in the Public Prosecutor's Office, certain cases remained buried deep in the prosecutor's desk. For instance, despite the two requests of the Helsinki Committee for processing the criminal charges regarding the assaults against the LGBTI Centre from 2012-2014, the Public Prosecutor reiterated that the procedures are ongoing, while the Higher Public Prosecutor's Office failed to respond to our request. The failure of the PPO to press charges against any of the perpetrators conveys lack of focused attention these cases require for a thorough and complete investigation.

The Helsinki Committee positively assessed the charges pressed by the Primary Public Prosecutor's Office Skopje – Department for Organized Crime and Corruption against 33 individuals accused for the raid of the Assembly of RNM on April 27th, 2017, following the hearings with particular attention. However, on the one hand, the Committee condemned the pardoning of most of the accused in this criminal event due to the political bargaining related to the voting for constitutional amendments in the Parliament of RNM. Such treatment of certain individuals in the country and the adoption of a law to pardon the accused violates the principle of the rule of law, destroys the legal state and supports impunity and selective justice in accordance with the laws.

In 2018, the Helsinki Committee continued to file criminal charges to the Public Prosecutor's Office and request prosecuting cases ex-officio regarding human rights and freedoms violations. The institution remains passive and unresponsive this year as well, which is further accompanied by a failure to comply with the legally established deadlines in accordance with the Law on Criminal Procedure, which stipulates a six-month period for conducting an investigative procedure from the date the order was issued.

In most of the cases on overstepping police authorizations, excessive use of force by police officers, hate speech and hate crime registered this year, a proper response of the prosecution authorities is still lacking. However, the Committee perceived a positive trend of recognizing, registering and processing individual cases of hate crimes and hate speech. Still, selective justice continues to be applied, hence the Prosecution's diligence and interest in acts of hate speech or hate crimes when the victims or concerned parties are political or public figures in our society is bigger than in cases of ethnic hatred among minors and against the LGBTI community.



Regarding the continuous practice of failure to conduct effective investigations in cases of improper conduct of authorized police officers, the abovementioned amendments to the Law on the Public Prosecutor's Office were adopted, establishing an external, independent mechanism for supervision of illegal police conduct and excessive use of force by the police. These amendments were part of a package of legislative changes in seven laws through which the legal framework for establishing this mechanism should be provided (the Law on Police, the Law on Internal Affairs, the Law on Execution of Sanctions, the Law on the Ombudsman, the Law on the Public Prosecutor's Office and the Law on Courts). However, by the end of 2018 we received no data on the implementation of the legal amendments on establishing bigger control over police bodies. Consequently, the Committee would like to remind that reforms are assessed by the manner of implementation as well, not just by their adoption.

Despite the selective justice, the Helsinki Committee still welcomes the recognition of hate speech elements by the Public Prosecutor's Office in six cases, as well as initiating investigations and pressing criminal charges. Regarding the hate speech related with the fires in the neighbouring Greece, the Public Prosecutor's Office pressed charges against M.N., however the proceedings before the competent court have still not commenced.

Overall, notwithstanding certain improvements, the actions of the Public Prosecutor's Office can be assessed as lacking effectiveness and transparency, leading to the conclusion that it continues to fail in its role as a protector of the rights and freedoms of citizens.

## LAWS ON PARDONS

After the draft-law on pardoning prisoners of RNM was adopted last year, it was delivered to the Assembly of RNM in January 2018. The Law on Pardons refers to prisoners sentenced to imprisonment of up to six months (completely released from serving their sentence), convicts sentenced to more than six months imprisonment (their sentence is commuted by 30% of the total imprisonment stated in the final verdict), while convicts who have been sentenced to a single prison sentence with an effective verdict shall have their sentence commuted by 30% in the part of the previously established sentences under the pardon. The Law also specifies that if a single prison sentence for a crime that is not subjected to pardon is delivered, the convict will be released from serving the sentence by 30% only in relation to the previously determined separate sentences covered by the pardon.

Article 3 of the Law clearly states that the amnesty does not apply to persons sentenced to life imprisonment and lists the crimes exempted from the process, such as the criminal offense of murder (Article 123 of the Criminal Code); acts against elections and voting (Article 158-165-c of the Criminal Code), acts against sexual freedom and sexual morals (Article 186, 187, 188, 189, 191, 193, 193-a, 193-b and 194 of the Criminal Code); acts against the state (Article 305-327 of the Criminal Code); acts against the public order (Article 394-a-394-d of the Criminal Code); as well as acts against humanity and international laws (Article 403-418-a and from Article 418-c to 422 of the Criminal Code).

The procedure for releasing or commuting the prison sentence of convicts serving prison sentences shall be initiated ex-officio. The court that has reached the first-instance verdict shall initiate the procedure ex-officio at the request of a public prosecutor or the convicted person in cases when the convicted individuals have not yet began serving imprisonment. The amnesty decision can be appealed within 24 hours from receipt of the decision, which can be submitted by the convicted person and the person authorized to make a complaint on behalf of the convicted person.

The execution of the Law caused bigger problems, since people who had spent years in prison were released without proper previous preparation and a plan for re-socialization and inclusion in social life outside the closed institution. Certain individuals rehabilitated under the Law were released without proper valid identification documents, causing additional problems in the integration and re-socialization process in these people's life out in freedom. This has a potential real risk of recidivism and might obstruct the long-term aim of the Law, mainly to solve overcrowding in prisons.

However, the Law on Pardons adopted at the end of 2018 unleashed the strongest reactions since it provided the opportunity to 33 accused individuals in the court case related to April 27th to be exempted from criminal responsibility. The Law did not encompass the organizers of the criminal offences, those armed with weapons or who committed violence at the Assembly of RNM, as well as those who abused their official position. However, all accused MPs and other individuals participating in the offence and not exempted with the Law were pardoned.

The Helsinki Committee strongly condemns the adoption of the Law, pointing that the executive and legislative authorities assaulted the independence of the judiciary and most seriously violated the principle of the rule of law with this intervention. The Committee indicates that the adoption of the Law simply confirmed impunity in the past and the privileged position certain categories of citizens enjoy, and confirmed that laws in RNM are not equal for all citizens.

## **MONITORING COURT PROCEDURES**

The Helsinki Committee continued monitoring court proceedings in 2018 as well, particularly proceedings referring to grave human rights violations. Of special focus was the monitoring of hate crimes, hate speech, discrimination, domestic violence, LGBTI rights violations etc.

Bellow we offer an overview of the monitoring regarding the following procedures:



### The case "Bloody Thursday" or "A Raid of the Assembly of RNM on April 27th, 2017"

From the very beginning, the Helsinki Committee followed the main hearing of this case with particular attention. The Committee on several occasions indicated to violations of the accused's rights during the procedure, however, after reactions from the defence and the expert public, the court corrected its conduct. At the start of the trial, the Committee's monitors noted violations of the detainees' rights. Due to the length of the hearings, the detainees at times were unable to leave the courtroom for an entire day, and more alarmingly (as was pointed by the defenders of some individuals) they were deprived of food or beverages for hours, despite the obligation of the closed institution and the court to provide this. The court ordered the prison services to provide sufficient food for the detainees during the hearings, thus correcting the error.

The Committee also noted that the court, for a time, violated the right to quality defence due to the "marathon" length of the hearings, at times lasting for 10-12 hours. However, the complexity of the case, its extent, the fact that some of the accused were detained, the large number of accused and the huge volume of evidence submitted by the prosecution and defence all impacted the intensity of the scheduling and length of the hearings.

Due to the previously mentioned Law on Pardons, out of the 33 accused for the April 27th events, only 17 remained. Some chose not to take the opportunity to file a request for pardon, even though the exclusion provision did not refer to them, leaving the court to determine whether they were quilty.

#### Case "Monstrum"

After the Supreme Court accepted the request of the public prosecutor and approved a retrial of the case "Monstrum" before the primary court, the case was taken over by the SPPO from the Primary Public Prosecutor. The Helsinki Committee monitored the procedure and the retrial.

Although it was the court's intention to hold closed hearings during the examination of the protected witness, at the request of our monitor, the court, by previously obtaining consent from those involved in the proceedings, re-examined its decision and allowed a hearing opened to the public, as well as the general public. This action confirmed the court's ability to conduct transparent proceedings by observing the rights of those damaged and of the accused in the process.

Although the SPPO demanded extradition of the first and the second accused, while the court was in continuous communication with the competent ministry and the request for extradition from the neighbouring country was submitted when the procedure began, the two accused have still not been extradited. This creates revolt and lack of trust among relatives and representatives of the victims towards the court and the system's institutions, even though at this stage the decision does not solely depend on our national bodies, but rather the institutions of the neighbouring country where the fugitives reside.



#### Case "Tamara Dimoska"

In 2018, the Primary Public Prosecutor's Office partially accepted the criminal charges against the doctors and those responsible at the Health Fund, holding them criminally responsible for the death of Tamara Dimoska from Veles. Namely, the Primary Prosecutor found there was reasonable doubt for criminal responsibility of the doctors making the decisions in the commissions, as well as those responsible at the Health Fund, but the former Minister of Health, N.T. was released from responsibility. The Helsinki Committee appealed the public prosecutor's decision before the Higher Public Prosecutor and is still waiting for a response.

In the final quarter of 2018, the court proceedings against the accused doctors and the responsible individuals at the Health Fund commenced, with previous postponements on several occasions due to the doctors' absence related to professional obligations and trips, and by the end of the year the prosecution was still in the stage of submitting evidence. The Helsinki Committee followed the proceedings with particular attention, not only because it filed criminal charges regarding this case, but also because such conduct of individuals and institutions seriously endangers the health and lives of the citizens of RNM.

### Case "Hate Speech regarding the Fires in Greece"

The Committee welcomed the decision of the Primary Public Prosecutor to file charges against M.N. for encouraging racial, national and religious hatred by spreading hate speech in relation to the fires last summer in Greece.

The hearings before the competent court had still not started by the end of 2018, however, the Committee will continue to monitor the case, considering the small number of criminal proceedings on the basis of hate speech in RNM and bearing in mind that the court practice and amendments to the laws regulating these crimes are still being established.

### Case "Sazdo"

The case of a young man, severely beaten at a frequented bus stop in Skopje by three peers, after which he fell in a coma and passed away ten days later as a result of the injuries, was registered by the Helsinki Committee as a hate crime due to the different ethnicity of the victim and the perpetrators. At first, the Primary Prosecutor qualified the act as violence, however, after the death of the boy, the case was prequalified as a murder committed in a vicious manner. However, both the police and the prosecutor failed to document the case as a hate crime in any of the stages.

The Committee has been monitoring the court proceedings with particular attention from the very beginning and noted, with concern, that the court has continuously violated the provisions of the Law on Criminal Procedure. Namely, since the beginning of the main hearing, the Committee's monitors have observed that the Judiciary Council, in particular the president of the Judiciary Council, has been observing the Law on Criminal Procedure in force by 2013 instead of the new Law on Criminal Procedure, in force since December 2013, and pertaining to this case. Such rough violation of the process law endangers the entire procedure, on the one hand, resulting with impunity of the perpetrators due to process violations, while on the other, endangering the accused's rights. The Helsinki Committee pointed that in every procedure, as in this one, the court must act objectively and impartially and must strictly observe the provisions regulating the procedure in order to guarantee fair trial to the accused and protect the rights of the damaged and the victim. In this way justice would be satisfied and a potential verdict finding the accused not guilty will not be questioned. By the end of 2018, the prosecution was still in the process of submitting evidence.



The monitoring of cases and the consequent hearings have led the Committee to observe that although the rights of those involved in criminal procedures are generally observed, particularly of the accused, damaged or the victims, in certain cases (the abovementioned in particular) the rights of some of the involved parties are violated and the provisions on the criminal procedure are not observed in certain stages. This was registered in a procedure processed pursuant the 2010 Law on Criminal Procedure, in force by 2013. Namely, some of the judges and judiciary councils failed to act pursuant to the Law, some even seriously violated the procedure by applying the principles and provisions from the old Law, despite the new Law in force. However, the prosecutors and defendants also failed to act pursuant or acted contrary to the provisions of the new LCP. In certain cases this was explained as a result of the inability to apply certain provisions due to the lack of proper technical equipment and means. Consequently, the Committee recommends that, despite the numerous trainings on the application of the new LCP of judges, lawyers and prosecutors, further instruction is still necessary in order to correct such errors by the higher courts. Observance and proper application of laws is crucial to the rule of law, hence courts must ensure equal application of procedural laws and guarantee the right to a fair trial and reinforce the legal certainty of the citizens.



## INITIATED PROCEDURES/SUBMITTED APPLICATIONS

The Helsinki Committee, in 2018, prepared and submitted an application regarding a human rights violation to the European Court of Human Rights in Strasbourg. The case referred to a ten-year old child who was verbally and physically harassed during a medical intervention by the medical staff in a small-town hospital in the country. Although the case was immediately reported first to the police, and then to the competent public prosecutor, the prosecutor rejected the criminal charges. After all domestic remedies were exhausted, the applicant, with the legal aid of the Helsinki Committee and a lawyer, submitted an application to the ECHR in Strasbourg. The application was accepted and is being decided upon by the ECHR.

# COMMUNICATION WITH THE ECHR REGARDING PENDING APPLICATIONS

In the X and Y vs. Macedonia, a case of police brutality against the applicants, the Helsinki Committee was called to intervene as a third party, upon which the Committee prepared the communication and submitted it to the Court in the prescribed deadline.

In the case Boshkovski vs. Macedonia, in April 2018, the Helsinki Committee acting as the applicant's representative, submitted written observations in the prescribed deadline to the ECHR in reply to the claims of the Government in its written observations.

## PROCEEDINGS CONCLUDED BEFORE THE ECHR

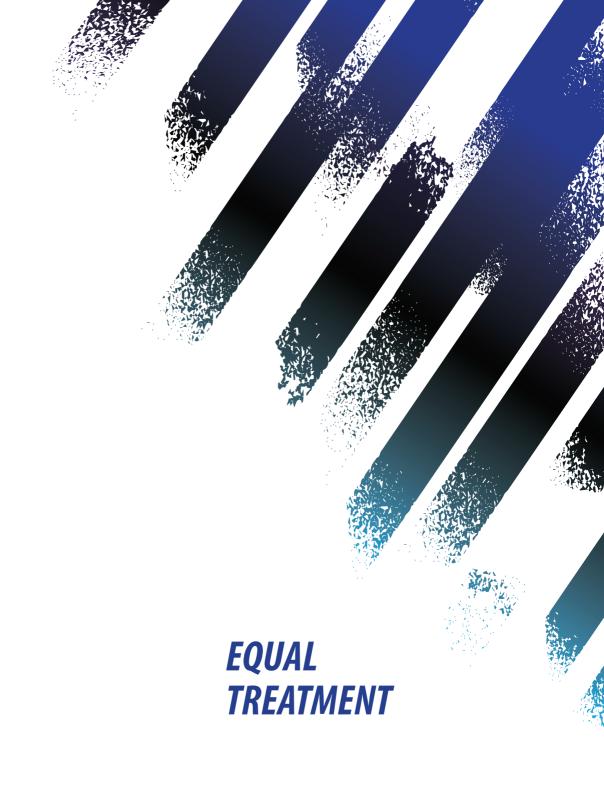
In the case Zaklina Dimovska vs. Macedonia, the Committee submitted a notification to the ECHR that the Primary Public Prosecutor Skopje initiated a criminal procedure against the individuals reported on the grounds of reasonable suspicion that they have committed, i.e. failed to act and thus are guilty of the deterioration of the health condition and death of the applicant's young daughter. Subsequently, the Court informed us that the application was declared inadmissible and the case was concluded.

In the case Frckovski vs. Macedonia, in which the applicant submitted an application to the Court on the grounds of the lustration proceedings against him, in 2018, the ECHR inquired whether the applicant is still determined to pursue the submitted application, and the applicant promptly informed the court of his intentions. After the communication, the ECHR declared the application inadmissible and the case was concluded.

## **EXECUTION OF JUDGEMENTS PASSED BY THE ECHR**

In 2017, the ECHR passed a judgment regarding the application of the Orthodox Ohrid Archdiocese (OOA), or the Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy, effective from April 2018. Until the end of the reporting period, Judgement no. 3532/07 had still not been executed in full, i.e. the state had failed to pay the damages and expenses awarded by the Court, however the church has still not been registered in the proper register and the process is pending.





## **DISCRIMINATION IN 2018**

During 2018, the Helsinki Committee for Human Rights continuously monitored the situation with discrimination throughout the Republic of North Macedonia towards prevention and protection from discrimination by providing legal aid to victims of discrimination, and informing the public on discrimination cases and the work and efficiency of the anti-discrimination protection mechanisms. In addition, representatives from the Helsinki Committee participated in the working group on developing the new Draft-Law for Prevention and Protection against Discrimination.

The general overview of prevention and protection against discrimination in 2018 corresponds to the one from 2017, confirming the fact that in the past year the country failed to prioritize discrimination as an area in need of improvement and promotion. Apart from reported discrimination cases, the Committee also acted in cases registered with the monitoring of the media, social networks, employment advertisements and monitoring the situation in society, current policies and practices.

Only 22 discrimination cases were documented throughout the year, cases reflecting systematic problems with Roma, women, particularly women from the minority ethnic communities and single mothers, people with disabilities and marginal religious communities. Statistics reveal that most cases refer to discrimination on the grounds of sex and gender, ethnicity, and family and marital status.

Regarding the areas of discrimination, access to goods and services seem to prevail, followed by labour relations, education and health. Civil society organizations continue to be the most active in raising awareness and informing citizens on discrimination and protective mechanisms. The Ombudsman also reacted and reported discrimination cases, with a notable inactivity of the Commission for Protection against Discrimination in this part.



## DISCRIMINATION IN ACCESS TO GOODS AND SERVICES

We detected several cases of discrimination in access to goods and services on different grounds. The continuing trend of limiting access to goods and services to Roma people on the grounds of their ethnicity is concerning, a problem detected in 2017 as well. The case in question referred to restriction of access to a coffee bar in Prilep, and involved situation testing. The test results indicated that Roma were prevented from entering the coffee bar with the explanation that at that particular moment all tables had been reserved. On the other hand, the control testers of Macedonian ethnicity were allowed access to the coffee bar and served by the staff. The Helsinki Committee initiated a procedure before the Commission for Protection against Discrimination in this case. The procedure is still pending.

Another case concerned discrimination on the basis of personal, family status and age while a single mother and a child under the age of 14 attempted to access the Illusions Museum "Iluzium". In the pricelist, the Museum offers promotional family tickets for two-parent families with two children, excluding single-parent families from the offer. Furthermore, the pricelist prescribes discount on tickets for children under the age of 14 but not for 14 year olds. The Helsinki Committee initiated a procedure before the Commission for Protection against Discrimination regarding this case, which, unfortunately, had a negative outcome, i.e. the Commission failed to find discrimination in the specific case.

The third case referred to discrimination on the ground of religion and religious beliefs in access to the Portofino Osteria and Bar Restaurant against a girl wearing a hijab. Namely, the restaurant prohibited access to a girl wearing a hijab, accompanied by several friends not wearing a hijab, with the explanation that all tables were reserved, although most of the tables at that moment were free. Half an hour after they were forbidden access, a friend of the girl-victim of discrimination returned to the restaurant and was seated without a problem. The Helsinki Committee initiated a procedure before the Commission for Protection against Discrimination in this specific case. The Commission found in favour of the girl, determined discrimination and recommended eliminating the issue. The Commission also instructed the restaurant to issue a public apology to the discriminated girl. The restaurant's apology was published in a daily newspaper.

## **DISCRIMINATION IN LABOUR RELATIONS**

Most documented cases of discrimination in this area were on the ground of sex and gender and referred to women. The first case concerned cases of discrimination against women on a maternity leave whose employers failed to pay the annual leave allowance (K-15). Pursuant the General Collective Agreement for the Private Sector in the Field of Economy, employees who have been working for the employer for at least six months in the calendar year have the right to an annual leave allowance. Some employers, including the Organization of Employers, arbitrarily interpreted this provision, i.e. believed that absence due to pregnancy, giving birth or parenthood precludes employees from meeting the condition of six months continuous employment at the same employer. State municipal labour inspectorate units shared this interpretation. Considering that women mostly use the right to a leave due to pregnancy, giving birth and parenthood, such interpretation of the Collective Agreement's provisions is discrimination on the ground of sex and gender. After the Helsinki Committee initiated a procedure for authentic interpretation of the Collective Agreement, the Commission for Interpreting the General Collective Agreement for the Private Sector in the Field of Economy decided that women who have used a leave due to pregnancy, giving birth or parenthood, and who have been employed for six months at the same employer in the calendar year, are allowed to an annual leave allowance.

Another case refers to discrimination against a woman with a physical disability in her access to her workplace. Namely, the woman was employed at a cleaning service company and carried out her working activities on different floors at the Ministry of Transport and Communications. Since one of the Ministry's lifts was out of order, the woman's access to her workplace was prevented. After the Helsinki Committee reacted, the Ministry partially removed the lift's defect, making the lift functional from the first floor of the Ministry. Since the situation prevented the woman's access to the place where she carries out her activities, the Helsinki Committee kept communicating with the Ministry for the full repair of the lift in order to provide access to people with physical disabilities.



## **DISCRIMINATION IN HEALTH**

The most indicative discrimination case in the field of health this year was the discrimination against women on the basis of family and marital status by the General Hospital Strumica. Namely, on the notice board in the reception room at the hospital's obstetrics department there was an announcement that all patients admitted at this department should carry an excerpt from the Registry of Marriages. The announcement was discriminatory and is a form of harassment on the grounds of family and marital status. The Helsinki Committee contacted the Commission for Protection against Discrimination, requesting that the Commission investigates whether the hospital, pursuant to the announcement, offers health services only to married pregnant patients carrying with them an excerpt from the Registry of Marriages, and whether pregnant unmarried women or women unable to produce an excerpt are refused services, i.e. whether these women cannot give birth at this hospital. The Helsinki Committee also issued a reaction to the hospital, requesting that the announcement be removed. The hospital, immediately after the reaction, removed the discriminatory announcement.

# LAW ON PREVENTION AND PROTECTION AGAINST DISCRIMINATION

This year marked the postponement of the adoption of the new Law on Prevention and Protection against Discrimination. The draft-law was delivered to the Assembly in May 2018 by the Ministry of Labour and Social Policy, following the inclusive development process of the Draft-Law with the participation of all active stakeholders, including representatives from the Helsinki Committee. Contrary to all international recommendations, and the promises made by the Government and the parliamentary majority that the Law would be adopted by the end of 2018, the law was not adopted.

During its last session in 2018, the Assembly's Commission for Labour and Social Policy, an MP from the Democratic Renewal of Macedonia (DOM) proposed putting the law as the first item on the agenda for an open discussion. The MPs from the VMRO-DPMNE, one from DUI and one from PCER rejected the proposal for beginning the Commission's session with a discussion on the Law. During the session, members discussed the contradiction the Law poses with regards to religion, scandalous in itself since the Republic of Macedonia is a secular country. However, the outcome was putting the discussion as a second item on the agenda, which once again prolonged the procedure for adoption of the Law. This decision was preceded by the Commission's President avoiding the put the Law on the agenda several times. The recommendation for the adoption of the Law and harmonization of other legislation comes from the EC Report, which was positively assessed by the Venice Commission of the Council of Europe. Furthermore, in its concluding remarks and recommendations to the state, the CEDAW commented on the protracted adoption process.

The continuous postponement of the discussion and adoption of the Law delayed the promotion of the protection provided to citizens in discrimination cases. By reducing the debate to discussion on whether the Law will be placed on the agenda and resorting to the argument that the law is contrary to religious beliefs, MPs demonstrated lack of seriousness and willingness to adopt a law offering comprehensive prevention and protection against discrimination.



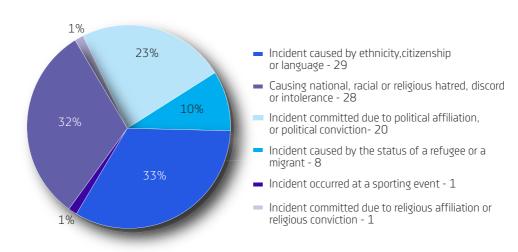
The Helsinki Committee for Human Rights commenced the activities related to the monitoring and registering of hate speech in the entire country in 2014. In 2018, the Committee began introducing a comprehensive mechanism for mapping and documenting these negative social occurrences as a response to the growing trend of hate speech, particularly on social media. Methodologically, the monitoring and reporting of hate speech and hate incidents was conducted through interactive internet tools <a href="https://www.govornaomraza.mk">www.govornaomraza.mk</a> and <a href="https://www.govornaomraza.mk">www.govornaomraza.mk</a>. In order to be able to verify the reports, the Helsinki Committee examined and approved the reported materials, which were later added to collective statistics generated by these internet tools.

In 2018, the biggest number of hate speech cases were registered in July and September, predominantly on the grounds of ethnicity and political affiliation. The negotiations with Greece and the signing of the Prespa Agreement, as well as the announcement for organizing a referendum all occurred in this period.

Table – Time display of hate speech-related incidents in 2018



Table - Structure of incidents 2018





The data analysed revealed that hate speech generated hate crimes on the basis of ethnicity and political affiliation. Equally, the data gathered on hate speech, as well as on hate crimes indicated that the largest number of registered hate speech cases and hate crimes were on ethnic basis and most often between members of the Macedonian and Albanian ethnic community.

Although data on hate speech in the past years showed that homophobic speech is present among the public, particularly on social networks, victims of hate crimes on the ground of sexual orientation and gender identity in the past were not encouraged to report the cases before the competent institution or civil society organizations, due to failure to act and/or inadequate conduct of institutions regarding already reported cases on these two grounds and the inadequate protection of the victims.

Furthermore, in 2018, hate speech originating from politicians during public debates and political campaigns mostly resulted with hate crimes committed from their supporters and sympathizers. In the race for sensationalism and increasing the readership, the media neglected its legal and ethical obligations to filter the contents broadcasted to the public, and was instead utilized as a channel for spreading discriminatory and hate speech.

## HATE SPEECH AND HATE CRIMES AGAINST REFUGEES

During 2018, although significantly less in comparison to last year, calls to violence, insults and xenophobic speech against refugees and migrants were present among the public.

The Helsinki Committee registered three cases of hate speech against refugees and migrants on <a href="www.govornaomraza.mk">www.govornaomraza.mk</a>. The intensity of hate speech and insults towards the refugees was mostly present on the social networks. One of the registered cases concerned the Facebook status of a professor at the lustinianus Primus Faculty of Law. The professor called the migrants thieves, rapists and warned citizens to be expecting all this once the migrants populate our country. Hate speech was additionally spread in the comments under her post. Other cases referred to a shared photo in which refuges were compared to dogs in an insulting manner, thus humiliating and offending them, and spreading lies and prejudices against them. The photograph was shared on a Facebook page for the promotion of refugees' rights.

<sup>2</sup> Ibid.



<sup>1</sup> http://www.govornaomraza.mk/reports/view/943.



From January 1<sup>st</sup> to December 31<sup>st</sup>, 2018, the Helsinki Committee registered a total of 123 hate crimes, which is almost double the number of hate crimes committed in 2017. From the 123 incidents, 60 were verified by the end of the year, with 63 remaining unverified.

The process of verifying the incidents transpired by requesting information and proper written answer from MOI, as well as regularly monitoring the Ministry's daily bulletins and media reports on certain incidents. Unverified crimes were recorded due to probable prejudice regarding the perception of the victims/witness, the different ethnicity or political affiliation between the perpetrator and the victim, lack of other motives, frequency of similar incidents, as well as the location and timing when the crimes were committed. Most of the unverified incidents concerned ethnically mixed environments, boroughs and schools, buses or vicinity of bus stops, particularly bus lines used by people with different ethnicities etc. Furthermore, unverified incidents are specific in the manner they occurred (assaults in buses or at bus stops, fights between two groups or a group of minors assaulting one or more victims etc.).

Regarding the motives behind the hate crimes, 64% of the incidents occurred due to the victim's ethnicity, making these incidents the most numerous, followed by incidents committed due to the victim's political affiliation, a quarter of the total number of incidents (25%). A third of the incidents were caused by racial, national and religious intolerance (13.8%), followed by incidents due to refugee/migrant status (4.8%), religion and religious beliefs (3.2%). This year we registered a hate crime due to the victim's disability (0.8%). It has to be stressed that we didn't register any incidents exclusively on the ground of the victim's sexual orientation in 2018. A case of hate crime due to the victim's disability was registered (0.8%). This year (2018) there were no incidents of hate crimes exclusively due to the victim's sexual orientation.

The number of hate incidents due to the perpetrator/victim's political affiliation or political views particularly increases before and during the adoption of certain political decisions, such as the adoption of the Law on the Use of Languages, the signing of the Prespa Agreement, the 2018 Referendum and the voting for the constitutional amendments in the Assembly.

In 2018, most of the registered incidents (67) were qualified as the criminal offence - violence (they were committed outdoors, in front of many people, for instance in a school yard, on a bus stop during rush hour, in buses etc., at sport's events etc.). However, the prosecution authorities qualified most of these incidents, particularly those between young people and minors, as misdemeanours, failing to register them as hate crimes in the official state statistical records. Such definition of these offences is hardly a proper response on part of the state, since perpetrators are being send a message that they would either not be held responsible or be sanctioned with a minimal sentence, contrary to the purpose of the punishment – to serve as a preventive action for perpetrators and potential perpetrators of such crimes.

Damaged property was registered in 26 incidents, mostly due to political affiliation or religion and religious beliefs (damaging a vehicle, homes, other objects, religious or state buildings, as well as headquarters of political parties).



Out of 123 registered incidents, in 18 the victims suffered physical injuries, while a person passed away due to injuries suffered at the end of June 2018. Such consequences are mostly registered in crimes committed on the ground of ethnicity.

Specifically, in the case of the young sports fan, assaulted and beaten by three peers from Albanian ethnicity and consequently lost his life, the Helsinki Committee submitted several letters to the competent Public Prosecutor's Office requesting particular attention in the handling of this case, conducting full and thorough investigation and charging the perpetrators in accordance with the collected evidence. The Committee also issued a press release, pleading for sensibility among both ethnic groups and condemning hate speech, particularly from public and political figures, stressing that hate speech would only escalate into violence and increase the number of hate crime victims. The case was initially qualified as violence, however, after the boy passed away it was prequalified as a murder committed in a vicious manner. The proceedings before the first-instance court are currently ongoing.

The offence - endangering the safety was noted in 15 hate incidents, once again cases caused due to the victim/perpetrator's political affiliation.

As many as 11 met the criteria defining the criminal offence - causing national, racial and religious hatred, and some of these incidents were adequately processed by the prosecution organs (the police and the prosecutor's office).

Robbery as a criminal offence was recorded in six registered cases, in incidents against refugees/migrants.

A case of causing general danger by setting a politician's vehicle on fire was also recorded.

The tendency of young people and minors as perpetrators of hate crimes continued in 2018. Substantial 36% of the victims were under 18, while in some cases the victims were 12-13 years old. A considerable number of the hate crime perpetrators were minor, hence out of the 319 recorded perpetrators, 72 were minor, which is almost a quarter of the total number of perpetrators. (22%).

This is a serious indicator of a significant decrease in the tolerance among the young population, particularly among the different ethnicities (mostly among young people from Macedonian and Albanian ethnicity). The competent institutions should be careful when monitoring this phenomenon and its trend, should work on preventing such undesirable trends by introducing educational programs for cohabitation and tolerance, on the one hand, and recording and properly qualifying hate incidents where victims or/and perpetrators are minors or young people, on the other hand. Thorough and full investigation and initiating procedures is also necessary in order to punish the guilty parties pursuant to the law in fair, unbiased and objective evidence-based trials without a reasonable doubt. This would send the correct message of zero tolerance and adequate sanctioning of perpetrators regarding hate-motivated violence to the public and other young people.

Most of the 123 incidents were registered in Skopje (85 or 69%), followed by Prilep (11), Kumanovo (4), Tetovo (4), Veles, Negotino, Bitola and Vinica (2) and Strumica, Kicevo, Tabanovce, Mavrovo, Gevgelija, Demir Hisar, Gostivar, Delcevo and Ohrid (1).

Regarding the Skopje incidents, as many as 20 occurred in the Gazi Baba Municipality, 19 in Chair, 17 in Centre, 7 in Aerodom, 5 in Karposh and Butel 5, Kisela Voda and Gjorche Petrov 4, and Aracinovo, Studenicani, Cucer Sandevo and Petrovec recorded 1 hate incident.

The fact that only 24 perpetrators discovered by the Ministry of Interior is shocking, while criminal charges were filled in only 8 of the registered hate-related incidents. It is a grave indicator that the Ministry of Interior and the Public Prosecutor's Office must monitor and process such cases more carefully, must act in cases when information is received, and conduct timely, swift, thorough and complete investigations. Hate crimes could have extensive social harmful implications. If more perpetrators were identified and brought to justice, the handling of the matter would be more efficient.





Over the course of its mandate, the Helsinki Committee continued monitoring the situation with the prisons in 2018 as well. The cooperation between the Helsinki Committee and the Directorate for Execution of Sanctions was reaffirmed with the signing of a Memorandum of Cooperation. Certain improvements in the situation with the punitive-correctional institutions were perceived, related to decreasing the overcrowding in prisons after the adoption of the Law on Pardons in January 2018.

However, conditions inmates endure during their imprisonment still fail to meet the treatment standards established with all relevant international human rights instruments.

# **OVERCROWDED PRISONS AND INADEQUATE TREATMENT**

The new Law on Pardons, adopted at the beginning of the year, addressed the issue of the overcrowded prisons. According to the data released by the Directorate for Execution of Sanctions, around 800<sup>3</sup> inmates serving a prison sentence were covered with the Law.

Regarding the overpopulated prisons, according to data released by the Directorate, the total number of inmates by  $31^{\rm st}$  December, 2018, in all punitive-correctional institutions was 1,954. The total capacity of all punitive-correctional institutions is 2,026 inmates. The statistics indicates that the number of convicted individuals has decreased by 30% in comparison to the previous year. The total number of inmates at the PCI Idrizovo was 1,222, which compared with the 1,786 from last year shows a 32% decrease. By December  $31^{\rm st}$ , 2018, 53 female inmates were serving sentence at the women's ward in PCI Idrizovo.

In the course of 2018, several new buildings were opened at the PCI Idrizovo, increasing the capacity for additional 546 places. According to data from the Directorate for Execution of Sanctions, the new facilities were conceived as open and semi-open departments, with four-bed cells pursuant to international standards.

Regarding the official data on the space capacity in this period, compared to the number of convicted individuals in the punitive-correctional institutions outside Skopje, the institutions' capacity was exceeded in Strumica (33%), Shtip (11%) and Tetovo (29%). However, compared with last year, the number has significantly dropped for more than 100% for each institution individually.

Despite the decrease in prison overpopulation, hygiene problems and inadequate conditions in the facilities not included with the reconstruction still persist. During visits made by the Committee's representatives and in conversations with the inmates, we perceived a problem of non-separated (open) toilets in the cells, no ventilation, as well as mould and humidity. Unless addressed properly, the lack of qualified staff in prisons, particularly educators and social workers, together with the inexistent re-socialization programs are systematic problems, which could cause negative consequences for imprisoned individuals even after they are released from prison.

In 2018, in a conversation with a female inmate from the PCI Idrizovo, the Helsinki Committee received information that female inmates did not have telephone access to contact their families. According to CPT standards, "maintaining contacts with the outside world is very important, particularly with family and friends. In this context, the CPT wishes to emphasize the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). In the 2016 CPT Report on Macedonia, restricted access to telephone was a key remark on visits. In this context, the CPT stated in the recommendations that it is necessary "to ensure that prisoners and their families can maintain contact with dignity and respect of privacy."

<sup>3</sup> https://sdk.mk/index.php/makedonija/815-zatvorenitsi-ke-bidat-opfateni-zakonot-za-amnestija/.



### HEALTHCARE

With the transfer of the primary healthcare services in punitive-correctional institutions to the Ministry of Health, the problem of inadequate health treatments of prisoners expanded. Due to the lack of communication among the institutions and the insufficient medical staff in prisons, inmates face difficult access to a doctor and are administered inadequate medications. The most common problem listed by inmates in their petitions is the belated response in cases when treatment outside the prison is necessary. Namely, pursuant to the Law on Execution of Sanctions, inmates can seek a specialist examination out of the institution, at their own expense, and, if necessary, they can also ask for cessation of the prison sentence in order to receive outside treatment. In most cases, convict's requests are never answered, but when they are, it is usually too late to arrive the appointment at the health institution on time. Untimely actions on part of the institution can result with further deterioration of the inmates' health.

The number of inmates on methadone therapy in punitive-correctional institutions was 232 by December 2018.

Data from the Directorate for Execution of Sanctions indicates that 50 inmates in prisons have Hepatitis C. The PCI Shtip registered 35 inmates, CCI Tetovo – 5, PCI Kumanovo – 3, PCI Bitola – 2, while PCI Prilep and PCI Gevgelija 1 person with Hepatitis C. PCI Idrizovo did not provide an exact number of people infected with Hepatitis C, however the prison doctor stressed that around 60% of the registered methadone users in the prison have Hepatitis C.

Female inmates still don't have access to health services, and conversations with them disclosed that prison doctors at times neglect to visit them for several months. The absence of a gynaecologist at the Women's Ward within the PCI Idrizovo remains problematic, considering that women serving prison sentences have gender-specific health needs, not only during pregnancy or regarding pre- and post-natal care but also regarding their reproductive and sexual health, as well as breast and uterine cancer screenings. In the course of 2018, one death case of a female inmate was registered. The woman was diagnosed with cancer and kept in her cell for more than two months without doctor's care and proper therapy<sup>4</sup>. The Helsinki Committee addressed the healthcare situation of female inmates in front of CEDAW in Geneva.

<sup>4</sup> Skopjelnfo.mk. "Female Inmate Dies in Idrizovo" – diagnosed with cancer, was left in her prison cell for two months without proper therapy and care" – https://skopjeinfo.mk/pochina-zatvorenichka-od-idrizovo-bolna-od-karcinom-koja-dva-mesecilezhela-vo-zatvorska-soba-bez.

### **DEATHS**

In the course of 2018, nine death cases were recorded in the punitive-correctional institutions. Three of the nine deaths were registered as suicide by hanging in the cell. Three inmates died in a hospital, transported there due to deteriorating health conditions, two inmates died while they were exercising their benefits (annual leave) and one during an attempted escape from the prison.

In the 3<sup>rd</sup> General Reportj<sup>5</sup>, the CPT issued several recommendations on suicide prevention in prisons. Namely, prison management, including medical staff, should ensure that there is adequate awareness on suicide prevention throughout the establishment, and that appropriate procedures are in place. Suicide prevention requires active efforts through monitoring, support and establishing a relationship of trust among prisoners and prison staff. Measures should be ensured towards providing proper coordination of the activities for suicide prevention, particularly by scheduling regular and frequent meetings of the multidisciplinary team, with the necessary contribution of the specialists in the context of psychiatrists and educators.

Prisoners under the risk of suicide require urgent medical support and should be under a special monitoring regime. Neglecting to identify these prisoners and/or taking proper measures was criticized in CPT reports. In such cases, the European Court of Human Rights established violations of Article 2 (the right to life) and/or Article 3 (probation of torture and inhuman or degrading treatment and punishment) from the European Convention on Human Rights.<sup>6</sup>

Pursuant the recommendations of the CPT, every prisoner's death should be thoroughly investigated, in order to determine the cause of death, the facts leading to it, including the related factors, and whether the death could have been prevented. Furthermore, in cases of a prisoner's death (or soon after transfer to prison), an autopsy should be conducted and the prison management and medical services should be informed of the findings. Finally, every death in prison should be analysed towards learning something for the prison in which it occurred, and, in cases when the death was self-afflicted, whether there are any systematic measures on a state level that should be undertaken.

# SUPERVISORY MECHANISMS

The constant lack of effective monitoring and control mechanisms for treatment of prisoners in punitive-correctional institutions resulted with amendments to the Law on the Ombudsman, the Law on the Public Prosecutor's Office and the Law on Internal Affairs.

<sup>6</sup> Keenan v. UK 27229/95; Güveç v. Turkey 70337/01; Riviere v. France 33834/03; Renolde v. France 5608/05; De Donder and De Clippel v. Belgium 8595/06; Dybeku v. Albania 41153/06; Ketreb v. France 38447/09; Mouisel v. France 67263/01; Tarariyeva v. Russia 4353/03.



<sup>5</sup> CPT/Inf (98)12.

The amendments to the Law on the Ombudsman, voted by the Assembly on October 30<sup>th</sup> 2018, prescribe establishing a mechanism for civil control on police work and the work of prison police. The mechanism is comprised of three outside members from civil society organizations, with long-standing and established working experience in human rights, police law and the judiciary system. The civil control mechanism is prescribed to act and provide support and protection of victims, their rights and present their interests in all procedures, through an efficient and transparent investigation, in criminal offences and other unlawful actions committed by employees at the Ministry of Interior during the application of police authorizations and by prison police, and in cases requiring a revision of a procedure in front of the competent public prosecutor. Despite the enforced legal amendments, the civil control mechanism is yet to be implemented and function.

The amendments to the Law on the Public Prosecutor's Office, voted by the Assembly on October 30<sup>th</sup> 2018, prescribe the establishment of a special department for investigation and prosecution of crimes committed by people with police authorizations and by prison police before the Primary Public Prosecutor for Organized Crime and Corruption. In addition, the department is prescribed to have a separate expert office and public prosecuting investigators, while the public prosecutors and the department head shall be appointed by the public prosecutor from the Primary Public Prosecutor's Office for Organized Crime and Corruption for a mandate of four years.

The amendments to the Law on Internal Affairs, voted by the Assembly on January 30<sup>th</sup>. 2018, prescribe the obligation that if charges against an employee of MOI are filed, or there is information that an employee of MOI who has a status of a police officer or is an authorized official for safety and counterintelligence with police authorizations has committed an offence while on duty or while off duty, and with threats or force caused the death, severe bodily injuries, illegal detainment, torture or other cruel, inhuman or humiliating treatment and punishment, provided the Law prescribes ex officio prosecution, the Ministry should immediately notify the Department for Investigation and Prosecution of Offences Committed by People with Police Authorizations and by Prison Police at the Primary Prosecutor's Office for Organized Crime and Corruption. In this context, along with the notification, the Ministry also delivers all sources of information on the committed offence, the perpetrator and victim and other information. In addition, according to the Law, the procedure for establishing disciplinary responsibility of the Ministry's employee can also be initiated by the Ombudsman.

Furthermore, it should be noted that during 2018, a representative of the Helsinki Committee, together with the MPs-members of the Standing Survey Committee for the protection of human rights and freedoms, as well as representatives from the Human Rights Institute and the National Democratic Institute, on July 19<sup>th</sup>, 2018 visited the PCI Idrizovo. During the visit, the MPs had the opportunity to become aware of the prison situation and the conditions in which inmates serve their sentences. The Standing Survey Committee announced the intention to visit all prisons in the country and present its findings and conclusions to the Assembly.

# **JUVENILE DETENTION CENTRES**

According to the official data for 2018, a total of 18 children were placed in the Tetovo Correctional Juvenile Facility, temporarily relocated in the Ohrid prison, in the first annual quarter, 13 children in the second, and 10 children in the third quarter. According to data issued by the Directorate for the Execution of Sanctions, the building at the new Tetovo Correctional Juvenile Facility is completed, is being furnished and expected to be opened in September 2019. The new facility would be able to house children who have been referred to an educational-correctional facility as a punitive measure, at the age from 14 to 23.

In the meantime, children are still placed in punitive-correctional institutions lacking proper conditions for their education, re-socialization and improvement, which puts their future re-socialization in society at risk. Such treatment is contrary to international standards and the established court practice of the ECHR. Namely, in the judgment Blokhin v. Russia, the ECHR found that "detention for educational supervision of juveniles must take place in an appropriate facility with the resources to meet the necessary educational objectives and security requirements." The Court "allows a temporary stay in facilities that do not provide such conditions, however temporary detainment in inadequate conditions must be relatively short and followed by a transfer of the juvenile to a centre that provides educational supervision." Furthermore, according to official data, 8 cases of Hepatitis C were registered in the ECF Tetovo, a fact that only confirms the inadequate conditions children serving educational-correctional measures have to suffer.

Regarding minors serving prison sentences, in 2018, the Ohrid prison accommodated seven children. These minors are not included in the educational system and are placed in an institution lacking proper conditions for re-socialization.

#### Torture and Inhuman Treatment

In 2018, the Helsinki Committee for Human Rights in Macedonia was approached by an individual from Ohrid regarding her son, who was a victim of excessive use of force by police officers from SIA Ohrid.

Namely, on the critical day, while arguing with her son, two police officers from SIA Ohrid interfered and applied excessive force by kicking and hitting her son continually for 15 minutes. When they called the police station for back up, three more vehicles with police officers arrived. The mother witnessed that her son was thrown in the police vehicle and hit on the body and genitals with a police baton. The individual was held for six hours and released after her lawyers arrived, while her son was held for 23 hours at the police station. When released the next day, he was immediately taken to a doctor, who diagnosed a serious injury of the left testicle, evidently swollen, and bruises and scars all over his body. After the examination, the patient underwent an urgent surgical procedure for removal of the left testicle. Despite his complains of pain at the police station, urgent medical assistance or a doctor's visit was not provided.

<sup>7</sup> Blokhin v. Russia app. no. 47152/06 - https://jurisprudencia.mpd.gov.ar/Jurisprudencia/Blokhin%20v.%20Rusia.pdf.



The claims proposed in the petition allow for a reasonable doubt regarding the police officers' unprofessional and unlawful treatment, overstepping the boundaries of their authorizations and duties, in a humiliating manner to the human dignity and personality, with the use of excessive force. The Helsinki Committee was notified that the case was reported to the Department for Internal Control, Criminal Investigation and Professional Standards and that criminal charges were filed by the victim's legal representatives.

The Helsinki Committee for Human Rights continued monitoring the treatment of the institutions competent in this case, requested information from the Department for Internal Control, Criminal Investigation and Professional Standards regarding the previously submitted petition. The Department replied that on the basis of the conducted investigation and other actions, it was concluded that the petition was founded, and consequently criminal charges were filed against two police officers due to a reasonable doubt that they have committed the criminal offences "Harassing while on duty" from Article 143 of the Criminal Code and "Severe bodily injuries" from Article 131 of the Criminal Code.

At the time our report was closed, the case was still ongoing before the Special department for investigating and prosecuting criminal offences committed by people with police authorizations and members of prison police at the Primary Public Prosecutor's Office for Prosecuting Organized Crime and Corruption.



### **PEOPLE WITH DISABILITIES**

The deinstitutionalisation process reached its peak in 2018, starting with the inclusive development but also the adoption of the new 2018-2027 National Strategy on Deinstitutionalisation – "Timjanik" and the consequent Action Plan, which prescribed transformation of life in institutions towards social services within the local community. Consequently, life in institutions was gradually abandoned on account of transferring wards to small group homes and foster families. From August 2017 to December 2018, 131 children left the social institutions and were accommodated in non-institutional forms of care. All ten children, under the age of 18, left the Special Institute Demir Kapija and are now living in three apartment units with support in Negotino, the Timjanik village and Skopje. The children from the Public Institution for Care with Educational-Social Problems "25th May", as well as the children from the Child's Home for Children without Parents and Parental Care "11th October", or 30 children in total, were also transferred. The Helsinki Committee was actively included in the process and it will continue to monitor the implementation of the Strategy and the Action Plan in the following phases.

As with regards to accessibility, unfortunately, despite the efforts towards increasing accessibility in Skopje, other towns in the country failed to introduce any significant changes for people with disabilities. By failing to take specific measures towards providing accessibility, municipalities prevented the daily movement and life of this group. Some state institutions, schools, banks, cultural institutions and streets remain inaccessible.

### **ROMA**

Roma continue to be the most vulnerable ethnic community facing discrimination and difficulties in the exercise of their rights in almost all spheres of social functioning.

The current Roma Strategy is still only partially implemented, while state efforts for improving the Roma status remain only on paper instead of being transformed into specific action plans and affirmative measures towards improving Roma status and integration in all social spheres.

Roma still face systemic discrimination, particularly regarding inaccessibility to healthcare and gynaecological services for Roma women, as well as segregation of Roma children in education, while the state is failing to take specific measures to prevent discrimination on the grounds of ethnicity, skin colour and marginalized groups. Of particular concern is the continuing trend of systemic segregation of Roma children in the educational process, i.e. the complete lack of categorization forces them to attend schools for children with mental disabilities or attend special classes in regular schools instead of being included and integrated in regular classrooms.

CEDAW's recommendations refer to adoption of an action plan prescribing temporary protection measures for all Roma women facing any type of unequal treatment, increasing their participation in decision-making processes, adoption of measures towards prevention of Roma women from quitting education, developing special programs to reduced poverty and participation in socially inclusive programs.

In addition, the conclusions and recommendations in the report from the Universal Periodic Review, third cycle, of the UN's Human Rights Council on the human rights situation in the country, indicate that the country has to work on prevention of hate speech and hate crimes against Roma, prevention and protection against discrimination, improvement of access to education and promotion of inclusive education for Roma children, and decreasing the number of Roma women who quit education. Furthermore, the state is recommended to implement all action plans on social inclusion of Roma in employment, education, housing and healthcare, as well as strengthening Roma participation in public life and decision-making processes.



LABOUR RIGHTS In the course of 2018, the Helsinki Committee documented 70 cases of labour rights violations, involving around 300 workers in the country. The legal assistance offered in these cases consisted of legal counselling, informing workers on labour rights, initiating administrative procedures, guidance for initiating labour disputes in front of the courts and monitoring these procedures. Workers sought legal counselling regarding the following:

- The possibility for submitting an application to the European Court of Human Rights in Strasbourg, in cases when all domestic legal remedies were exhausted;
- The possibility for filing a petition to the State Labour Inspectorate and initiating a court procedure due to unpaid salaries and social benefits contributions by the employer;
- The manner of reporting and payment of overtime work;
- Exercising the rights in front of the employer and eliminating actions in violation of labour rights;
- The procedure for protection against harassment at the workplace;
- Regulations on part-time work;
- > Regulations on the minimum wage and consensual cancelation of the employment contract and the crucial elements consisting such consensual cancelation.

From January to October 2018, the State Labour Inspectorate registered 17 workers who have suffered severe injuries resulting with death and 1,527 with less or more severe bodily injuries. The Helsinki Committee registered a significant number of injuries among workers at their workplace, with several workers having suffered severe bodily injuries, while some died as a result of their injuries obtained while performing their working obligations. The Committee requested information from the State Labour Inspectorate on whether in these specific cases the employers took the necessary protection and safety measurements at work for their employees.

Workers exercise institutional protection of their labour rights through the State Labour Inspectorate. Labour inspection has an important role in the protection of the workers' rights and the guarantee of consistent respect and application of labour-related regulations. An employee can submit a request to the State Labour Inspectorate in cases of rights violations or prohibition from exercising labour rights. The Inspectorate has an obligation to respond within 30 days of the submission.

The Helsinki Committee initiated 18 administrative procedures for extraordinary inspection supervision before the State Labour Inspectorate and the Health and Safety at Work Sector within the Inspectorate. Since this institution failed to establish violation of labour rights in most of the cases, the general impression is that the inspection supervision is an inefficient mechanism for the protection of labour rights. The 30 day response timeframe is inadequate



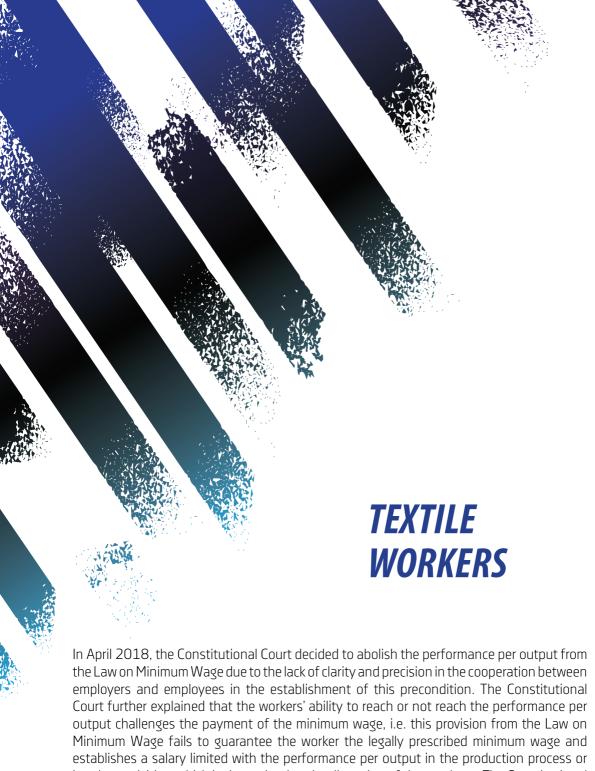
since the issue is protection of the labour rights directly related to the workers' ability to earn for their livelihood, which should involve exceptional priority and urgency. The long deadline further complicates the situation, considering that at the same time the employee is restricted by the eight-day deadline for filing a complaint or request to the employer regarding the said violation, and of course the fifteen-day deadline for initiating a court procedure.

The legal team of the Helsinki Committee monitored a court procedure for determining psychological harassment at the workplace before the domestic courts. The plaintiff A.G. is employed at the Public Transportation Company Skopje as the head of the procurement department, where she had suffered psychological harassment for years. The Primary Court Skopje 2 – Skopje rejected the lawsuit as unfounded, and the Court of Appeals confirmed the first-instance verdict. The Helsinki Committee reacted since the second-instance court violated its legal obligation to reach a verdict within 30 days of the receipt of the lawsuit. In addition, the burden of proof during the entire procedure was placed on the plaintiff.

Since mobbing is a frequent occurrence with severe consequences, and Macedonian courts have decided in favour of a mobbing victim in only one case, the Helsinki Committee indicated that the lack of positive court practice in this area discourages employees from seeking court protection in such cases.

The Helsinki Committee recorded a case where during a consensual cancelation of an employment contract, the employer initiated a court procedure against the employee for compensation for damages due to a violation of the non-compete clause. The Primary Court Skopje 2 found in favour of the employer, to the detriment of the worker. According to the Law on Labour Relations, the non-compete clause can be agreed only if the employment contract is terminated at the employee's will or fault. In the specific case, both parties expressed willingness for termination, hence the grounds on which the Court rendered such verdict are unclear. The worker appealed the verdict and our legal team will continue to monitor this case.

In August 2018, a working group was formed for the adoption of the new Law on Labour Relations and the Helsinki Committee participated with a representative. Our comments to the proposed amendments referred to the provisions they regulate: annual leave, leave due to pregnancy, giving birth or parenthood, employment contract for a definite period of time, paternity leave for fathers or child adopters, prohibition of termination due to pregnancy, giving birth and parenthood, procedure prior to dismissal due to personal reasons of the employee, complaint against the decision on termination of the employment contract with a notice period and the ban for performing duty beyond the full-time working hours.



in other activities, which is determined at the discretion of the employer. The Constitutional Court's decision improved the situation with the minimum wage payment in the textile industry and reduced the cases of unpaid minimum wage.

Furthermore, the Committee for Interpreting the General Collective Agreement for the Private Sector in the Field of Economy decided that women on maternity leave who have been continuously employed by the same employer for six months have the right to the annual leave allowance, also known as K-15. The Committee stressed that the interpretation of the Committee for Application of the Annual Leave Allowance and Specifying the Interpretation from 2015 applies, pursuant to which women on maternity leave have the right to the annual leave allowance. This interpretation of the Collective Agreement stopped the unequal application and incorrect and discriminatory interpretation of provisions on annual leave allowance payment made by employers, some local units of the State Labour Inspectorate and the Organization of Employers, whose previous opinion was that women on maternity leave, employed continuously for six months by the same employer, do not have the right to an annual leave allowance.

In 2018, 444 cases of labour rights violations against 5,379 textile workers from 82 textile and other industry-related companies throughout the country were documented. The violations referred to: unpaid salaries, unpaid salary supplements, unpaid overtime, overtime work beyond the legally permitted maximum, violation of the right to use annual and weekly days off, unlawful termination of employment, mobbing, working in inadequate health, sanitary and safety conditions, unpaid annual leave allowance (K-15). The legal assistance in the documented cases consisted of legal counselling, informing the workers on their labour rights and initiating extraordinary supervision inspection before the State Labour Inspectorate. The Helsinki Committee initiated 37 administrative procedures for extraordinary supervision inspection before the State Labour Inspectorate. The Inspectorate found violation of the labour rights only in four cases and ordered the employers to remove the violations. In 12 cases it failed to establish any labour rights violations, while 21 procedures were still pending by the end of the reporting period. This reflects the trend of prolonged and lengthy procedures for extraordinary supervision inspections, prevailing in 2017 as well. Such procedures fail to expose the true factual situation, and in cases of irregularities or shortcomings, employers are only sanctioned with a fine, which they are easily able to pay and continue violating labour rights. Workers are unable to settle their claims from their employers through administrative procedures, which are free and easily accessible, and cannot receive their monetary claims. On the other hand, due to the relatively low incomes and the social risk, textile workers have limited access to justice regarding court protection.



# INTERNATIONAL INSTRUMENTS AND AMENDMENTS TO LEGISLATION

Regarding prevention and elimination of gender-based and domestic violence, 2018 was marked by changes initiated with the ratification of the Istanbul Convention (The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence).<sup>8</sup> Its ratification (in December 2017) obliged the state to implement a legal and institutional system for the prevention of gender-based violence, efficient protection for victims, and aim towards creating a society that will ensure equality between men and women, and prohibit discrimination against women.<sup>9</sup> This would help create a society with zero tolerance for any type of gender-based and domestic violence.

The Ministry of Labour and Social Policy developed a National Action Plan for the Implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence, <sup>10</sup> used as the basis for monitoring the harmonization of the national legislation with the Convention's provisions, as well as meeting the other obligations for prevention of gender-based violence and providing swift and effective protection of the victims and prosecuting the perpetrators. The Action Plan prescribes adoption of a new law/ amendment of the current Law on Prevention and Protection against Domestic Violence and the Criminal Code with a definition on gender-based violence and incrimination of all forms of gender-based violence, such as: physical violence; stalking; sexual harassment; sexual violence, including rape; forced marriage; female genital mutilation and forced abortion and sterilization.

As a document, the Action Plan provides good guidelines for improvement of the legislation and the services offered by institutions, including the civil sector. However, the implementation in practice and whether victims' access to justice and services would be improved remains to be seen and assessed.

Regarding the amendments to the laws, a Working Group on Developing the Law on Prevention of Gender-based Violence was formed in the second half of the year, with a representative of the Helsinki Committee as its member, which held its first meeting in December 2018. The process continued with ratification of the Istanbul Convention and its implementation in our legislation, i.e. gender-based violence was not been explicitly regulated in our laws previously. Consequently, the working group began working on the first draft-law on gender based violence, which would include domestic violence.

Regarding the promotion of women's rights, a new Draft-Law on Termination of Pregnancy was adopted by the Government and was being examined by the Assembly's Committee on Health by the end of the reporting period. The new Draft-Law was developed in cooperation

<sup>8</sup> https://www.coe.int/en/web/istanbul-convention/-/-the-former-yougoslav-republic-of-macedonia-ratifies-the-istanbul-convention.

<sup>9</sup> Article 4, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.
10 Action Plan for the Implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence of the Republic of Macedonia 2018-2023.

with the civil sector, while the Helsinki Committee participated with a substitute-member in the Working Group through the Gender Platform. The current Law<sup>11</sup> restricted the free will of women to terminate pregnancy and endangered their integrity to make independent decisions regarding their reproductive health. The provisions restricting the woman's right to freely choose to terminate the pregnancy were removed from the current Law, which were: mandatory counselling and mandatory three days of waiting before termination of pregnancy after the counselling; inability of the woman to independently decide to terminate the pregnancy after the tenth week of pregnancy but only do so with a decision of the firstinstance committee, as well as delivering documentation as confirmation in cases of rape or disadvantageous social situation. The new Draft-Law allows termination of pregnancy, at the request and with consent of the pregnant woman, after all required information has been provided and after counselling, after the 12 to 22 weeks of pregnancy by a specialist in obstetrics and gynaecology. Termination of pregnancy after the 22 gestation week shall be decided by a first-instance committee, with the right to file a complaint before a second-instance commission. The new Draft-Law introduces the possibility for the socalled medication abortion, in which medication is used to bring about abortion in up to nine weeks of pregnancy, in a health institution from the primary healthcare. This solution simplifies the procedure and access to termination of pregnancy.

# **INSTITUTIONAL INACTION**

We commend the efforts made by the Ministry of Labour and Social Policy to introduce the Convention's provisions and standards through the Action Plan, however plenty remains to be done regarding prevention and protection against domestic and gender-based violence. The circumstances observed last year by the Helsinki Committee regarding the prevention and protection against domestic and gender-based violence are presented below.

In a direct contact with the victims and institutions, by providing free legal aid, accompanying victims to the competent institutions and with court representation, as well as by monitoring court processes, the Helsinki Committee for Human Rights observed insufficient protection of the victims, violations of their rights by institutions, as well as delayed access to justice.

During its activities, training institutions involved in the prevention and protection against domestic violence, the Committee registered insufficient knowledge of the Istanbul Convention's provisions among employees in institutions. Institutions require further work towards educating employees on the standards prescribed by the Istanbul Convention regarding institutional prevention of domestic violence and help to victims, since the level is far from satisfactory.

<sup>11 &</sup>quot;Official Gazette of the Republic of Macedonia," no. 87/2013, 164/2013, 144/2014 and 149/2015.



In the past year, the Helsinki Committee was approached by 20 victims of domestic/gender-based violence. Out of these, 6 were accompanied to the competent institutions in order to report the offence, and help them protect their integrity during the procedure, assist them in finding a solution to their case, as well as provide them with support when institutions fail to act according to legally prescribed competences and fail to provide the necessary protection and support to the victim.

The Committee recorded a case where the party faced resistance by a social worker when she reported domestic violence. Namely, the party was a victim of domestic violence from a former partner with whom she had never shared a dwelling. The social worker refused to record the report explaining that the case was not a matter of domestic violence since the perpetrator and the victim did not live together. In this case, a representative of our legal team pointed to the social workers at the Centre that their actions were contrary to the Law on Prevention and Protection against Domestic Violence.

The Primary Court Skopje 2 – Skopje placed a victim of domestic violence under temporary protection after the victim reported her intimate partner for domestic violence. Although the court exceed the legally prescribed period to make a ruling, the case is considered as a positive example in the court practice to be observed by courts as well as other institutions dealing with victims of domestic violence by a person with whom they have been in close intimate relations, regardless of whether they shared a dwelling or not.

The Helsinki Committee also received an anonymous report of domestic violence by the victim's parents. Namely, the parents forced the victim to marriage, and when the victim attempted to leave her home, the parents forbade her and deprived her of all personal belongings. The actions and continuous psychological harassment by the parents deprived the victim of her basic human rights. The Committee reported the case to the Sector for Internal Affairs – Tetovo. The inspector from the domestic violence department acted pursuant to the report, visited the victim's home and talked with her and her parents. The Sector for Internal Affairs – Tetovo pressed charges before the competent Public Prosecutor's Office.

A victim of domestic violence requested free legal aid from the Helsinki Committee due to continuous psychological and physical violence from her former partner. The victim reported the threats from her partner several times at the competent police station, which were officially recorded as complaints, even though the threats intensified after every report. The Helsinki Committee provided legal counselling and legal aid, advising the victim to submit a request for temporary protection from domestic violence before the competent court. The request was submitted in June, and the court made a ruling in December 2018. During the procedure, the court hearings were continuously postponed due to the defendant's absence. The court violated the principle of urgency of the procedure, pursuant Article 44 from the Law on Prevention and Protection against Domestic Violence. The postponed court hearings endangered the victim's safety, particularly considering that the victim and

her family suffered continuous physical and psychological violence, were exposed to threats and stalking during the entire procedure, which could have had potential fatal consequences. The Ministry of Interior filed criminal charges against the perpetrator. The procedure is still before the Primary Public Prosecutor's Office, to where a representative from the Committee accompanied the victim during her hearing.

# MONITORING COURT HEARINGS ON CASES OF DOMESTIC VIOLENCE

In 2018, among its other regular activities, the Helsinki Committee monitored 12 court hearings on the following offences: "bodily injury" from Article 130 and "serious bodily injury" from Article 131 from the Criminal Code of the Republic of North Macedonia committed during domestic violence.

The main finding from the monitoring was that victims face slow access to justice. Out of the 12 hearings, 11 were postponed, mostly due to absence of the public prosecutor or unduly submission. The frequent absences of the public prosecutor prevents victims of domestic and gender-based violence from a victim-oriented approach (as prescribed by the Istanbul Convention), making the victims feel unsafe and insufficiently protected by the state. During one court hearing, the Committee's monitors observed that the judge proposed that the victim reconciled with the perpetrator of the domestic violence, which is contrary to the Istanbul Convention's provisions.

Considering that every third women has experienced some form of violence<sup>12</sup>, the institutions' treatment of victims needs to reflect the gravity of the situation. Aggression and violence are present in our society and strongly reflected on women who are victims of domestic and gender-based violence.

<sup>12</sup> WAVE Report 2012, Country Information Macedonia (Over 39% of women have experienced some form of domestic violence in Macedonia).



### INTERNATIONAL ADVOCACY

In November 2018, the Helsinki Committee for Human Rights, represented by the executive director Uranija Pirovska, participated in the delegation of non-governmental organizations working in the field of protection of women's rights in the Western Balkans.

The most significant moment of the visit to Brussels was the meeting with the Croatian MEP, Biljana Borozan, EU's Rapporteur for Women's Rights. Soon after the Resolution on Women's Rights in the Western Balkans was adopted.<sup>13</sup>

The Resolution addresses all socioeconomic factors impacting the exercise of women's rights: employment rate, quality and availability of education, possibilities to combine work and family obligations, participation of women in politics, as well as violence against women and children. Violence and discrimination against women is the most frequent human rights violation in the Western Balkans, according to progress reports. The Resolution is particularly important since it places gender equality high on the agenda for EU membership negotiations of the countries from the Western Balkans.

<sup>13</sup> https://emerging-europe.com/news/womens-rights-in-western-balkans-get-european-parliament-support/.



In 2018, the borders of European countries remained closed pursuant to the agreement between EU and Turkey reached in March 2016. With the official closure of the Balkan Route, smuggling groups and illegal crossing of the borders became the main method for refugees and migrants to realize their intention, i.e. reach Western European countries through a more difficult route. Faced with numerous challenges, some succeeded, with others resorting to more than ten unsuccessful attempts to cross the closed borders. Furthermore, in 2018, the refugees and migrants transiting the country mostly consisted of men than women and children. Unaccompanied minors were the most frequent vulnerable group, with pregnant women in a smaller number. Old people and people with disabilities, contrary to the previous years of the refugee crisis, were almost completely absent. According to the country of origin, individuals and groups from different countries crossed the country in different parts of the year: Afghanistan, Iran, Algeria, Pakistan and Iraq as the most frequent, and rarely refugees and migrants from Morocco, India, Bangladesh and Palestine.

On the one hand, during 2018, the Republic of North Macedonia managed to provide refuges and migrants with proper stay in the country by providing basic conditions in the transit camps in order to ensure respect of their human rights. However, on the other hand, the most dominant problem throughout the year was the practice of illegal "deportation", i.e. forcing refugees and migrants out of the state without observing the proper procedure. According to the organizations monitoring the situation in the field, "deportation" to Greece is a common practice, pursuant or contrary to the refugees' will. Unfortunately, the same practice was observed among the Serbian security forces, which, following the same routine, transported refugees to Macedonian territory, at their request or contrary to their will.

# **CRISIS SITUATION**

The first decision for declaring a crisis situation alongside the south border with Greece and the north border with Serbia, due to increased entrance and transit of migrants through our territory, was adopted in August 2015 for a one-month period, later prolonged on five occasions. The last decision for a crisis situation covered the period until December 31, 2018. The declaration of a crisis situation had several consequences: the Crisis Management Centre, with a coordinative role in the refugee crisis, was activated, i.e. participation in the establishment and complete coordination of transit camps; second, the Army of the Republic of Macedonia was activated along the borders, necessary in dealing with the illegal migration and other security risks related to it. In addition, after a previous agreement with several EU countries, police forces (Europol) were installed along the Macedonian-Greek border, patrolling in mixed teams with Macedonian police officers.

In October 2018, the Government submitted a proposal to the Assembly of the Republic of North Macedonia for prolonging the deadline for managing the crisis situation until June 30 2019. The prolongation was explained as necessary in order to provide the Army and

the security forces of the Ministry of Interior with continuity in the execution of activities towards securing, protecting and guarding the state border. During a session on November  $9^{th}$ , 2018, the Assembly adopted the decision for prolonging the deadline until June  $30^{th}$ , 2019.

### **RECEPTION-TRANSIT CENTRES**

In 2018, the established transit centres in Vinojug, Gevgelija (RTC Vinojug) and Tabanovce, Kumanovo (RTC Tabanovce) continued to function according to the same principles. The Crisis Management Centre was in charge of the centres' management, i.e. coordination, with representatives from the Ministry of Interior (MOI), Ministry of Labour and Social Policy (MLSP) and the Ministry of Health. In addition to state institutions, civil society organizations (domestic and international) were also represented in high numbers. Depending on their mandate and work, they provided various services and goods to the refugees accommodated or transiting the centres. As in 2016, both centres differed in their openness, which led to differences in their functioning. The RTC Vinojug is a closed-type camp, i.e. the refugees and migrants residing there have a restricted right for movement outside. They are not allowed to leave the camp without prior consent from the competent institutions and escort (by the MLSP or the Red Cross). Contrary to this, the refugees and migrants residing at the RTC Tabanovce have the opportunity to leave the camp and go for a walk in the city, shopping or similar any time and without being escorted by an official from the camp.

At the start of the year, around 70 refugees with different origin were accommodated in the RTC Vinojug, a number which decreased as individuals asked to be transported to Greece. According to the country of origin, most migrants and refugees came from Afghanistan, Syria, Iran, Morocco and Algeria. In February, the dynamics of the situation in North Macedonia changed, with an increase in the number of refugees in the transit camps and outside of them. For the first time in a while, the number of refugees remaining in the transit camps increased to 50, mostly adult men, or in some cases women travelling with their spouse or a family member and children, as part of their families or without escort.

At the RTC Tabanovce, on the other hand, where refugees are free to come and leave, and due to the increased movement in this region, the number of refugees constantly varied during the year. The RTC Tabanovce continued the selective politics of permitting refugees and migrants to be admitted in the camp and allowed to stay. This practice, observed in 2017 by the National Preventive Mechanism within the Ombudsman, continued in 2018, with the selection being done without any established criteria and rules, i.e. some groups or individuals were allowed to enter the camp, while some were not. Despite the numerous warnings by the MOI and CMC, the practice continued, leading to the conclusion that it depended solely on the individual willingness of certain police officers assigned at the camp. The situation was also observed by outreach workers from civil society organizations working at the RTC Tabanovce and the mobile teams working in the vicinity of the non-regulated



route. Namely, organizations reported their attempts to convince unregulated migrants to visit the reception-transit centre, register there and receive legal aid and protection. However, the centre's doors were closed and migrants were not allowed to enter. The competent staff offered no explanation, invoking different procedures unknown to representatives of civil society organizations. Such actions led to situations when more refugees and migrants were residing outside the centre than inside it.

Since unregulated migration increased, so did migrants' refusal to reside at the RTC Tabanovce. Most of the refugees and migrants passing through the region were staying in the camp only in order to receive the basic products (food, water and warm clothes), healthcare or for a brief rest. However, migrants, generally refused to stay at the camp, treating it only as a stop along the way, and immediately left the camp without remaining there. This is the reason for the increased frequency and constant change in the number of refugees residing in the camp. From conversations with police officers, their impression was that refugees do not wish to stay in the Republic of North Macedonia. They believed if refugees could choose between North Macedonia and Serbia, they would choose Serbia since it is geographically closer to their desired destination. However, offered a choice between North Macedonia and Greece, they would choose Greece because of the easier access to relocation programs and the European programs packages, as well as easier access to smuggling groups.

The infrastructural organization of both camps remained relatively the same in 2018, with occasional problems and additions. Considering the decreased number of refugees staying at the camps, providing individual accommodation for each family arriving was not an issue. All accommodation capacities were equipped with air conditioning, i.e. heating in winter and cooling in summer. Hygiene in camps was satisfactory and all necessary products were provided – clothing, food and medical care. Due to technical problems, the internet connection in both camps was not working. This issue remained unsolved by the end of the month, and refugees living in the camps had no available means of communication or access to information.

Refugees and migrants accommodated at the camp were provided with food and water. Although in previous years the Ministry of Labour and Social Policy provided the food, since from the middle of 2017 this obligation fell to the Red Cross, this organization continued providing food in 2018 as well. Educational and recreational activities at the camps were completely left to civil and international organizations. When the number of refugees was significantly higher, children frequently attended classes in different subjects, i.e. languages (Macedonian, German), math, geography and other social sciences. Recreational activities were organized for children and women at the camp. When the number of refugees and migrants dropped, the educational and recreational activities also decreased. It is concerning that the Ministry of Education never officially participated in organizing educational lectures for the children staying at the camp during different periods, even though access to education is one of the fundamental guaranteed rights.

During the monitoring, the Helsinki Committee observed that refugees and migrants residing or transiting the camps were provided with efficient medical care. Considering their vulnerable situation and the kilometres of daily journeys, different health problems were detected: exhaustion, dehydration and wounds from the long walk, dog bites, physical abuse and violence, and even severe illnesses, such as cancer, epilepsy and other permanent conditions requiring constant therapy. In certain cases, pregnant women, even women with critical pregnancies, continued travelling despite doctor's advices not to do so. The Red Cross provided consistent primary medical case, i.e. 24-hour presence at the camps and mobile teams assisting refugees on non-regulated routes, particularly in the Lipkovo region. According to the reports (within the "Help on the Route" project), the Red Cross offered first aid and helped a total of 14,958 times at the transit centres and in the neighbouring regions. Doctors assigned by the Ministry of Health were also present at the camps and intervened when necessary. Women were provided with regular gynaecological exams conducted in mobile ambulances, and when necessary (critical pregnancies or specialist exams) women were transported to the city hospitals. Transport to local city hospitals was also provided for refugees requiring specialist examinations. Dentist exams were also provided when needed.

The living conditions at reception centres for foreigners (Gazi Baba) and asylum seekers (Vizbegovo) in Skopje were improved, mostly due to the decreased number of refugees, migrants and asylum seekers accommodated in them. In this sense, during the reporting period, the Reception Centre for Foreigners (Gazi Baba) accommodated 384 people, while the Centre for Asylum Seekers (Vizbegovo) 186 people. This is due to the low asylum requests as well as the practice not to accommodate migrants and refugees at the Reception Centres for Foreigners, particularly with cases of smuggling victims, who were referred to a RTC where they could be registered and give a statement. Such treatment is a positive step towards abandoning previous practices of excessively abusing this possibility by competent institutions.

### IRREGULAR MIGRATION AND DEPORTATION

In comparison to 2017, 2018 was characterized by an increased surge of migrants and refugees attempting to illegally cross the borders and smuggling routes, and arrive at their destination countries. During the reporting period, over 18,000 irregular migrants were registered by the outreach workers near Lojane, Vaksince, Lipkovo and Gevgelija. Furthermore, from January to September 2018, the border police and the army prevented 13,143 attempts for illegal crossing of the Macedonian border with Serbia and Greece.

People taking the unregulated routes received no treatment and were left to their own devices, i.e. the only protection and help they received was from outreach workers from NGOs, while institutions completely ignored them. Lack of information was the main problem, i.e. whether refugees were forcefully returned from Serbia or they left voluntarily, whether the migrants were coming from Serbia and if so whether it was their first time. People



intercepted by outreach workers did not give true statements, mostly due to fear of being somehow incriminated. Institutions are crucial in identifying these people in order for them to receive efficient protection of their human rights and dignity, particularly since they remain outdoors.

Consequently, the Helsinki Committee observed several movement directions of refugees and migrants on Macedonian territory. The first case concerned groups or individuals returning from Serbia, voluntarily or by force. Refugees returning voluntarily, after a brief or longer stay in Serbia, see no possibility to further continue and have no other solution. The only option is to return to Greece, get in touch with smuggling groups and continue towards the Western countries where a family member might be waiting or an opportunity to somehow earn money. Rarely, there are refugees who have lost all hope or wish to return to their families, to their country of origin. In some cases, the Helsinki Committee observed refugees and migrants forcefully returned from Serbia, i.e. "deported" by the security forces. Once they report to the RTC Tabanovce, these groups have two options: to be transported to Greece by the competent institutions or be accommodated at the camp, from where after a while they attempt to pass the Macedonian-Serbian border again.

In another case, refugees arrived from Greece, on their own or with the help of smugglers. When refugees move alone, in most cases they are found on side roads by the police, during attempts to find the road to the Macedonian-Serbian border. On occasions refugees were found in rugged areas and near railways, similar to the beginning of the refugee crisis, which significantly endangered their safety. In most registered cases (in bulletins published by the Ministry of Interior and by observers of the situation in the field), groups transported to the camps were usually caught travelling with smugglers. In almost all cases, refugees were victims of smugglers charging a substantial amount (2,000 to 5,000 Euros), only to be deceived and never reach the agreed destination. In most cases, when intercepted by the police, smugglers abandon their vehicles, leaving the refugees behind.

From data issued by outreach workers, due to the lack of official statistics issued by the Ministry of Interior, the Helsinki Committee keeps record on the number of people "deported" to Greece. Consequently, "deportation" of refugees and migrants of different origin, mostly from Syria, Afghanistan, Pakistan, Iraq, Iran, Algeria, and rarely Palestine, Morocco and Libya, were still deported to Greece. The problem of illegal deportation is contrary to human rights standards, i.e. the prohibition of collective expulsion of aliens pursuant to Article 4 of the European Convention on Human Rights Fourth Protocol to the Convention, confirmed with the established practice of the European Court of Human Rights. In this aspect, transporting refugees and migrants across the border line without understanding and examining every individual case, without cooperation with the security forces and the competent institutions from the neighbouring country, and without formal decision to do so, is inadmissible. Such practices greatly contradict each other.

From January to September 2018, the Ministry of Interior discovered 44 cases of migrant smuggling concerning 763 migrants. The number of revealed cases has significantly increased in comparison to data from last year.

### **ACCESS TO ASYLUM**

Although Macedonia is not the country of destination for refugees and migrants, in 2018 several asylum requests were submitted. As observed by the Helsinki Committee, access to asylum was relatively uninterrupted, considering that organizations present at the reception-transit centres reported cases where police officers failed to act immediately regarding the applications for recognition of the right to asylum, allowing applicants to change their minds.

In 2018, all refugees placed in the transit camps, and who intended to request asylum, were swiftly provided with legal assistance, i.e. were thoroughly informed about the asylum application procedure. Individuals (refugees or migrants) whose applications for recognition of the right to asylum were processed, were transferred to the Reception Centre for Asylum Seekers – Vizbegovo, Skopje as soon as possible, where interviews regarding their asylum applications took place. However, it was stressed that this practice was often "abused" by asylum applicants as a way to be transported to Skopje, from where they would immediately leave the Reception Centre and head to Kumanovo, and from there to the Serbian border. People held at the Reception Centre for Foreigners, as witnesses in criminal procedures against smugglers, were generally informed of the possibility to apply for recognition of the right to asylum, however, according to reports, they were only provided with that opportunity after giving a witness statement, which is essentially a violation of the right to access asylum.

Pursuant data from the Asylum Sector at the Ministry of Interior, in 2018 a total of 249 asylum applications were submitted for 284 individuals. After the initiated procedures and decisions, according to the Sector only three people were granted subsidiary protection. No individuals were granted the status of a refugee, while nine were refused the recognition of the right to asylum. Compared to last year, the number of applications for recognition of the right to asylum increased in 2018, however, the number of approved applications and granted subsidiary protection remained low. The trend of not recognizing refugees even when arriving from war zones and when the individual circumstances would justify the refugee status is most concerning, and casts doubt on the effective examination of the individual circumstances for every asylum application.

# 2017-2027 ACTION PLAN FOR INTEGRATION OF REFUGEES AND FOREIGNERS

After the adoption of the National Strategy for Integration of Refugees and Migrants (hereinafter: Strategy) in 2017, as a crucial document of the Ministry of Labour and Social Policy for regulating the state policy on dealing with recognized refugees and foreigners on its territory, 2018 saw the development of the 2017-2027 Action Plan for Integration of Refugees and Foreigners. The Action Plan prescribed activities for significant improvement of the system for protection of refugees' rights in the country, such as commencement with operation of the Inter-ministerial body towards periodic legislative analysis and analysis of systemic irregularities, including researching migration trends. Also, the institutions' efforts towards implementation of frequent informative campaigns for strengthening the capacities of the public is also important in order to understand refugee related issues. Hate speech and xenophobia against refugees and migrants have been known to occur among the population in the past years, in addition to certain politicians attempting to manipulate the public opinion, prompting feelings of danger and fear among the citizens. This often resulted with hate violence against migrants and refugees transiting Macedonia.

The development of mechanisms for formalizing more comprehensive consultations with the participation of representatives from the refugees, civil society organizations and academic institutions in the Action Plan is important since CSOs particularly contribute in the dealing with the refugee crisis and the movement of migrants. Inclusion of CSOs implies monitoring the Action Plan implementation and ensuring consistent execution. However, by the end of 2018, no significant progress in the realization of the activities prescribed with the plan was observed.

# LAW ON INTERNATIONAL AND TEMPORARY PROTECTION

In December 2017, the Ministry of Interior launched the process involving amendments to the Law on Asylum and Temporary Protection, a law which did not completely meet European directives' standards, and also comprised of relatively bad legal solutions. During an Assembly's session, on April 4, 2018, the new law was adopted and renamed as the Law on International and Temporary Protection. The goal of the new Law is to incorporate EU directives on refugees and migrants. For the first time, the Law encompasses and recognizes "sexual orientation" as a ground for persecution and seeking asylum in North Macedonia. Although the "intention to seek asylum" was retained, the limitation on the period for family reunification was removed, as well as the designation of every EU, NATO and EFTA member country as a safe third country.

The novelties introduced with the Law are the grounds for persecution, i.e. the elements taken into consideration during the decision-making process on asylum applications and the specific meaning each category has. Article 7, paragraph 5 of the new draft-Law, pursuant to Directive 2011/95/EU of the European Parliament, for the first time introduces sexual orientation and gender identity as characteristics of a particular social group which could lead to persecution, hence allows the possibility for seeking international protection. According to paragraph 5, sexual orientation is not considered as a punishable crime and gender and gender identity shall be considered when determining membership to a particular social group. Considering that very few laws in Macedonian legislation explicitly mention sexual orientation and gender identity as protection grounds, the introduction of such amendments to the Law is considered as a momentous step.

Unfortunately, the provision limiting the freedom of movement of asylum seekers was retained. Namely, Article 63 prescribes that freedom of movement shall be restricted in extraordinary circumstances in order to determine the identity and citizenship, and establish the facts and circumstances of the asylum requests, particularly if a risk for escape has been determined, in order to protect the order and national security or when a foreigner is retained for the purposes of initiating a procedure for his return or removal. Thus regulated extraordinary circumstances of restricting freedom of movement may lead to arbitrary deprivation of freedom from several aspects, particularly considering the determined risk for escape as a precondition for restricting freedom of movement.

Considering the increased number of refugees in the past three years, exercising the possibility to restrict the freedom of movement of asylum seekers might overburden the capacities of the state's reception centres for asylum seekers and refugees. It could lead to many and more serious rights violations, particularly the absolute prohibition of torture, humiliating or degrading treatment, which, as experience indicates, is unavoidable. Furthermore, the Law prescribes the possibility for restricting freedom for three months the most, with the possibility for a three-month protraction. Also, the procedure for detaining an asylum seeker is unclear and problematic, particularly since the decision is not made by a competent court but rather the Ministry of Interior, which puts the constitutionality of the Law into question.

Unjustified restriction of freedom (Article 5 of ECHR) and torture, humiliating and degrading treatment and unjustified deprivation of freedom (Article 3 and Article 5 of ECHR)

In July, there was a critical case related to a refugee from Iraq, who at the beginning of the month was electrocuted from the railways in Gevgelija and suffered severe burns on the entire body. He was first taken to a Skopje hospital, and was soon released with severe body wounds to the Tabanovce camp. Due to pains and bleeding, from Tabanovce he was transferred to the Kumanovo hospital, where the doctors refused to admit him claiming that the Skopje hospital was responsible for his treatment, after which he was returned to the transit camp. After a while, he was admitted in the hospital and kept there for ten days. At the person's request, after being released from the hospital, he was transferred to Gevgelija with the assistance of the Red Cross. The improper treatment by the Kumanovo Hospital, refusing to treat a patient, is torture, humiliating and degrading treatment and a violation of the right to life.



The monitoring of the refugee crisis in 2018 led to the conclusion that, considering the increased movement of refugees and migrants on unregulated roads, the crisis is far from being finished. The official number of refugee and migrants at the camps was relatively low in comparison to the number of the men, women and children moving on the unregulated roads, a number significantly larger than last year. The latter are invisible to the state apparatus and are left to the smuggling criminal groups and their individual ability to survive.

Regarding the conduct of competent institutions, there is improvement in comparison to previous years, particularly regarding discovering and prosecution of smuggling groups operating in the country. However, in certain instances, the competent institutions continued the established practices contrary to the human rights principles and standards prescribed with international documents. Although the refugee crisis is a complex global political issue, our country has no other option but to continue enhancing the capacities to guarantee free exercise of the fundamental human rights and freedoms of all people on its territory, regardless of where they come from and where they are going.



The Helsinki Committee for Human Rights, as an association authorized to provide free legal aid through daily communication with the citizens, offers legal assistance such as legal advice and information on legal issues and problems concerning the citizens approaching the Committee. In the following types of civil and administrative procedures: social, health, pension or disability insurance, labour relations, protection of children, protection of victims of domestic violence, protection of victims of trafficking, recognition of the right to asylum and property issues, the Helsinki Committee offers initial advice on how to exercise the right to free legal aid and assistance when filing in requests for free legal aid to people who meet the strict criteria prescribed by the Law on Free Legal Aid, i.e. people who due to their financial situation cannot afford access to justice and court protection.

In 2018, 337 citizens approached the Committee with requests for free legal aid in different fields of the law. Predominant were criminal cases, protection of victims of domestic violence, protection of labour rights, property issues and social protection.

Considering that the Law excludes most applicants for free legal aid, in 2018, the Helsinki Committee submitted a total of 6 (six) requests for free legal aid to the Ministry of Justice. Three were approved, 1 was rejected, while 2 are still pending.

The Law on Free Legal Aid, adopted in 2009 and enforced in 2010, aimed to provide equal approach to justice particularly of vulnerable and marginalized groups with the application of free legal aid in civil and administrative procedures. However, in practice, deficiencies in the Law and the entire system of free legal aid were detected, resulting with a small number of applications for free legal aid, despite the significantly increased number of applicants.

The Helsinki Committee, in cooperation with five authorized associations for providing free legal aid and led by the Open Society Foundation – Macedonia (OSFM), developed two documents containing comments on the Draft-Law on Free Legal Aid, generally concerning: 1) insufficient valorisation of the work of the authorized associations, 2) the limited range of the previous free legal aid and 3) the limitation of the legal issues for which one can seek and receive free legal aid.

Despite the indicated deficiencies, in April 2018, the new Draft-Law entered parliamentary procedure. During a public debate, the draft-amendments were presented by OSFM and the authorized associations, after which the Draft-Law was withdrawn and the Ministry of Justice commissioned the development of a new version in coordination with the civil sectors.

Since then, two meetings with the Ministry of Justice took place, during which the following documents were presented: the refined text of the Law, draft-financing models for associations, as well as clarification on the financing model with an open call.

Regarding the new Draft-Law on Free Legal Aid, published on the Unique Electronic Registry of Regulations of the Republic of North Macedonia (ENER) on November 21, 2018, most of the recommendations and suggestions offered by the civil society organizations that previously offered legal aid were accepted, with a general tendency for promoting the current situation of vulnerable and marginalized individuals.

The increase of the legal fields encompassed with the Law is of great importance. Namely, civil and administrative matters were added to the new Draft-Law, with the exception of criminal legal matters.

Although significantly improved, this version of the Law has some insufficiencies, hence the Helsinki Committee, together with the Open Society Foundation – Macedonia and other civil society organizations prepared a document with commends and delivered it to the Ministry of Justice.

The comments on the new Draft-Law on Free Legal Aid can be found in Attachment 1 to the Report.



Despite certain progress in 2018, some processes were delayed due to the political context the country was in, as well as the contradiction demonstrated by certain political parties from the opposition regarding significant issues. Although the new Law on Prevention and Protection against Discrimination was developed the previous year and was expected to be adopted by June, nine months after entering parliamentary procedure, the Assembly had still failed to do so by the end of 2018.

Legal gender recognition remained unregulated, causing prolonged legal uncertainty and insecurity for transgender people. Hate crimes and other violence-related cases were not publically condemned and resolved, while the police, courts and the Public Prosecutor's Office remained ignorant and ineffective in the prosecution and resolution of such cases.

Hate speech grew linearly as LGBTI visibility increased through campaigns and events promoting non-discrimination, non-violence and accepting differences rather than heteronormativity.

A positive movement was the work of the Inter-Party Parliamentary Group for the Advancement of the Rights of LGBTI People, working actively on support and advocacy for changes, with the support of several LGBTI organizations, among them the LGBTI Support Centre. The substantial efforts of the civil society organizations and the support of the Inter-Party Group resulted with the adoption of several legal solutions, such as the first steps towards greater protection of LGBTI rights in the country.

The Law on Audio and Audio-visual Media Services was adopted towards the end of the year, and it included sexual orientation and gender identity in an anti-discriminatory clause. In addition, the Criminal Code was amended to include sexual orientation and gender identity as grounds for hate crimes.

During 2018, the first regional LGBTI conference took place in Skopje, the Regional ERA Conference, where people from the community, activists as well as government representatives, domestic and from the region, discussed the different contexts with LGBTI rights in the region.



#### DISCRIMINATION AGAINST LGBTI PEOPLE

2018 was expected to be the year when LGBTI people were going to be provided with explicit protection against discrimination with the adoption of the new Law which introduced sexual orientation and gender identity as grounds in an anti-discriminatory clause, prescribed a higher level of professionalism and independence of the Commission for Protection against Discrimination and stipulated intersectional discrimination. Although the Draft-Law was developed in 2017 and expected to be adopted by June 2018, it wasn't even nine months after entering in parliamentary procedure, which made its application and harmonization with other laws uncertain.

In addition, although the new Draft-Law introduced positive changes, several remarks remained unaddressed due to the state's failure to recognize the necessity to include "sex characteristics" as a discrimination ground, thus failing to provide legal certainty to intersex people.

#### HATE SPEECH AND HATE CRIMES AGAINST LGBTI PEOPLE

Hate speech on the basis of sexual orientation and gender identity increased in 2018, particularly in the second half of the year. Just before the national campaign "Don't Judge Who Loves Whom" was launched, aiming to inform the public on the violence and discrimination against LGBTI people in Macedonia, hate speech drastically increased on the social networks. The comments revealed huge hatred and condemnation of LTGBI people, comparing them to sick people who will never be accepted by society. The regular daily monitoring of posts referring to the campaign registered as many as 175 comments involving hate speech, a number which keeps increasing. The most explicit comments were reported to the Ministry of Interior, Sector for Cyber Crime and Digital Forensics, as was also the Facebook page – Circle no. 20 (Заокружи 20), on which all videos from the campaign were initially posted. The Ministry failed to respond to any of the reported cases, a sufficient indicator that the practice of not condemning hate speech and failing to prosecute people who spread hate speech is still present. This further encourages hatred against LGBTI people on the internet and social media, while the Sector for Cyber Crime and Digital Forensics remains an inefficient mechanism for prevention and protection from online homophobia and transphobia.

#### **GENDER-BASED VIOLENCE**

In the Republic of Macedonia, the lack of structured support and assistance system for victims of domestic violence<sup>14</sup>, gender-based violence<sup>15</sup> and violence on the basis of sexual orientation and/or gender identity<sup>16</sup>, as well as the insufficiently structured approach within the social and legal framework, unfortunately, is the reality in which members of gender and sexual minorities have been living for a long time. Efforts were made towards improving this reality by raising the awareness in the struggle against domestic and gender-based violence, as well as violence on the basis of sexual orientation and/or gender identity and creating opportunities for a systematic approach towards providing help and support for the victims.

#### RIGHTS OF TRANSGENDER PEOPLE

The country is still lacking a Law on legal gender recognition, consequently transgender people are exposed to harassment and unpleasant situations in circumstances requiring the use of a personal identification document, in which the gender marker does not correspond to their gender expression and identification. The adoption of such a law would significantly improve the status and access to transgender rights in the country and encourage accepting gender diversity. In the course of 2018, the LGBTI Support Centre issued a Report on the implementation of Recommendation CM/Rec (2010)5 of the Committee of Ministers of the Council of Europe to member countries on measures to combat discrimination on the ground of sexual orientation or gender identity in the Republic of Macedonia<sup>17</sup>. The Report was presented and discussed during a round table attended by representatives of institutions in charge of the Recommendation's realization. The Ministry of Justice, just before the discussion, recognized the necessity for starting the process for amending certain legal solutions indicated in the Report as critical and in need of modification. The Report stressed the need for amendments of legislation regulating changes of personal data of transgender people who wish to do so, which is very complex and make the procedure more difficult for transgender people. A law targeted as problematic was the Law on Registers of Births, Marriages and Deaths. The Ministry of Justice decided to form a working group for amendments pursuant to the indicated needs in the LGBTI Support Centre's Report.

<sup>17</sup> Report on implementation of Recommendation CM/Rec (2010)5 of the Committee of Ministers of the Council of Europe on measures to combat discrimination on the ground of sexual orientation or gender identity by the Republic of Macedonia, 2018, http://lgbti.mk/wp-content/uploads/2018/09/.



<sup>14</sup> Definition from the Law on Prevention and Protection against Domestic Violence, Article 3 "Domestic violence shall be harassment, insults, endangering the safety, bodily injuries, sexual, or other mental, physical or financial violence causing a feeling of uncertainty, danger or fear, including threats of such actions, towards the marital partner, parents or children or other individuals living in a marital or extra-marital union or joint household, as well as towards a current or former spouse, extra-marital partners or individuals who have a child together or are in close intimate relations, regardless whether the perpetrator shares or used to share the same dwelling with the victim or not."

<sup>15</sup> The Helsinki Committee strives and advocates for the adoption of a separate Law on Gender-based Violence, recognizing and introducing femicide as a separate criminal offence in the Criminal Code and the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, or the Istanbul Convention, which has a legally binding character.

<sup>16</sup> http://lgbti.mk/wp-content/uploads/2018/10/Mesecen-Izvestaj-JuniJuli-2.pdf.

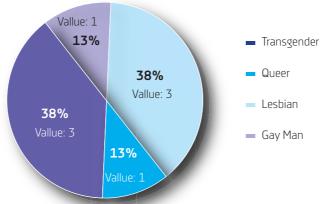
A representative of the LGBTI Centre is a member of the working group, which has already held several meetings and is actively working on creating a good legal solution towards a simplified procedure and legal certainty of transgender people in the country. The Centre advocates for a legal solution based on self-determination of transgender people when changing data in personal documentation, without the requirement of presenting documentation for gender reassignment surgery. On the plus side, the Ministry of Labour and Social Policy confirmed that the Law on Legal Gender Recognition is the next priority after the adoption of the Law on anti-discrimination.

#### **LEGAL AID**

In 2018, the LGBTI Support Centre provided legal aid in eight cases of rights violations within the community. Most cases, i.e. three of the reported cases for which we provided legal aid and counselling, refer to domestic violence. Two of the cases refer to harassment from police officers, one case harassment by an unidentified person and two discrimination cases. In addition, we provided legal counselling over the telephone. The number of underaged individuals approaching the Centre has increased, reporting mostly domestic violence from parents. The fact that in all cases in which we provided legal aid, the competent organs failed to either act without delay or act at all is concerning. The lack of experience and sensitization on working with LGBTI people, particularly with minors, was observed also among social work centres and the police. Three of the registered cases referred to lesbians, one case to a gay man, and another where the individual identified as queer.







## RECOMMENDATIONS

#### **JUDICIARY**

- ➤ Decision-makers must give priority to judicial reforms and observing the legally established deadlines.
- ➤ Greater inclusion of civil society organizations directly in the reform processes, thus allowing them to share their experience and expertise in this area.
- ➤ Bigger transparency on part of the Government and institutions involved in the judicial reforms, particularly by providing timely information, opening public and expert debates, clarification as to why specific recommendations, comments and remarks on legislation amendments are accepted and some rejected.
- Larger promotion of positive amendments and informing the executive authorities, particularly the executors of laws and courts, of such amendments and their meaning.
- In order to ensure comprehensive implementation, decision-makers, as well as decision-executors should develop an implementation plan and allocate resources, available to civil society organizations and the public, as well as find a solution on how to monitor the implementation.
- Improve and upgrade the system for election, punishing and dismissal, of judges and public prosecutors in order to strengthen the independence, objectivity and unbiased approach of the court and public prosecutor's office and thus prevent the influence of political parties and the business elite.
- Accepting the recommendations of international institutions, particularly the Venice Commission and the established practice of the European Court of Human Rights regarding establishing liability of judges.
- ➤ Thorough and full investigation and decision-making on part of the Public Prosecutor's Office regarding all cases referring to assaults due to sexual orientation and gender identity, particularly in cases submitted by the Helsinki Committee and other civil society organizations on the attacks against the LGBTI Centre, as well against other civil activists from 2012-2015.
- Resolving the status of the Special Public Prosecutor's Office towards maintaining its autonomy and the resources at its disposal, and seeing that all cases and investigations initiated by the SPPO be resolved and finished, and allow initiating new high-profile cases.



- Restoring and strengthening the legal certainty of citizens by implementing transparent and timely judicial reforms, stopping the practice of frequent and quick amendments to legislation, codification of legislation, where necessary, and correct implementation.
- Firstly, it is necessary to introduce improved and upgraded ACCMIS, as well as frequent and extraordinary controls by competent institutions on the application and functioning of the system, and reduce to minimum any opportunities for abuse and manipulation for personal or political interests.
- Increased transparency of the Public Prosecutor's Office, as well as the lower prosecutor's offices following the example of the Special Public Prosecutor's Office (updates of the website, issuing proper statistical data on the processed cases referring to hate crimes, hate speech, corruption, domestic violence, police brutality and abuse, notifying that certain court proceedings are initiated, particularly offences with high profile and of interest to the public).
- Informing the public and civil society organizations on the new role of the prosecutor's office regarding external control of the police, as well as encouraging and motivating the public and the civil society to report cases of police brutality and abuse.
- Non-selective actions and detailed and complete investigations in all cases and events reasonably suspected of being criminal in nature, regardless of the social status and similar characteristics of the victim or the perpetrator.
- ➤ Greater efforts on part of the Public Prosecutor's Office to initiate and conduct proceedings, particularly in incidents and cases of corruption, hate speech and hate violence.

#### **COURT MONITORING**

The Committee recommends, despite the numerous trainings on the application of the new Law on Criminal Procedures of judges, prosecutors and lawyers, additional training, but also correction of certain oversights made by the higher courts. Observing the laws and correct application is crucial to the principal of the rule of law, hence courts must ensure equal application of procedural laws towards respecting the right to a fair trial and strengthening the legal certainty of citizens.

#### **DISCRIMINATION**

- Implementation of the new Law on Prevention and Protection against Discrimination.
- Increasing state campaigns on raising awareness about discrimination, its forms and protective mechanisms.
- Improving the systems for data collection and segregation in discrimination cases of state bodies.
- Enforcing the Commission for Protection against Discrimination by changing the criteria for appointing commission members and introducing professional administrative service within the Commission.
- Improving the expertise and professionalism of the views expressed by the Commission for Protection against Discrimination by precisely determining the type and form of discrimination and by thoroughly specifying the recommendations on how to eliminate discrimination.
- Improving access to court protection through amendments on the Law on Prevention and Protection against Discrimination, with provisions prescribing exemption from court taxes for people initiating court proceedings for protection against discrimination.

#### HATE SPEECH

- The Republic of North Macedonia has a weak formal frame for recognition and sanctioning hate speech. Court practice and the impunity principle indicate that the articles from the Criminal Code regulating this offence should be more clearly defined. Additionally, since sexual orientation as a ground is not specified, and statistics reveal that it is the second ground for hate in the country, it should be listed more explicitly.
- The Ministry of Interior and the Department of Cybercrime and Digital Forensics should have a more proactive role in the prevention of online hate speech. In addition, the Department should establish better cooperation with local self-government units and remind them of their obligation to remove hate speech from public spaces. The Ministry of Interior should also start keeping records and data on hate speech grounds and hate crimes in order to analyse the situation in the country and ensure proper institutional response.
- The Public Prosecutor's Office should carefully monitor the indicators for encouraging hate violence and spreading hate speech, upon receiving information for such or criminal charges filed, and carry on complete and thorough investigation in order to introduce a practice that would ensure protection of human dignity.



- Developing and introducing hate speech and violence prevention programs in high schools and primary schools in North Macedonia and work more seriously with the youth in cooperation with the Ministry of Education and Science and civil society organizations from this area. It is necessary to conduct training of police officers, judges, public prosecutors and lawyers to raise their awareness, recognize and understand the hate speech phenomenon, including the court practice of the European Court of Human Rights in this area.
- ➤ Provisions on sanctioning from the Criminal Code should offer alternative punitive measures for perpetrators. Practical examples of perpetrators volunteering at civil society organizations, according to the grounds of their hate speech, give better results in the process of reintegration and rehabilitation, in addition to their prison sentence or fines.
- Media and journalists should have more rigorous mechanisms for monitoring and removing hate speech in published information. Media and journalists encouraging or spreading hate speech must be properly sanctioned in accordance with the Criminal Code. Civil society organizations, the Council of Media Ethics and the Association of Journalists should take the leading role in introducing high ethical and moral standards in journalists' texts and informing the public.

### **HATE CRIMES**

- Competent institutions and bodies should promote the amendments in criminal legislation to the citizens and to professionals applying these laws, such as lawyers, prosecutors, police officers and judges, but also civil society organizations, in order to for the latter to become better acquainted with these positive changes.
- ➤ Ensure timely and effective investigation and criminal prosecution by applying the new amendments on prosecution and punishment of hate crimes in the Criminal Code.
- ➤ Encourage victims to report hate crimes and ensure their trust in the police and other state institutions.
- Proper documentation and release of comprehensive and comparable data on hate crimes.
- Ensure that victims of hate crimes are properly protected and supported in all phases.
- Ensure proper training of practitioners coming into contact with victims of hate crimes, thereby enabling them to properly assist victims.
- Most importantly, implementing activities and measures for hate crime prevention, particularly by introducing proper training, education and lectures in curricula.

#### **CLOSED INSTITUTIONS**

- Mandatory respect of the established standards on the conditions in which inmates serve prison sentences, particularly with regards to hygiene, proper ventilation and illumination, separating the open toilets in the cells, humidity and mould in prison cells etc.
- Hiring proper staff in punitive-correctional institutions, particularly with regards to resocialization and individual work with prisoners, such as educators, social workers and psychologists.
- The Ministry of Health should consistently assume its role and obligation to provide proper health protection in the punitive system.
- Providing health care to female inmates regarding their gender-specific health needs, not only during pregnancy, pre- and post-natal case, but rather regarding their reproductive and sexual health as well as breast cancer and cervical cancer screenings.
- Raising awareness among the prison management on the necessity for a proper suicide prevention program.
- Introducing proper procedures for assessment of prisoners' wellbeing towards suicide prevention in prisons.
- Urgent establishment and operationalization of the Mechanism for Civil Control within the Ombudsman.
- Urgent opening of the new building of the Educational Correctional Facility Tetovo in Volkovija and transferring the children serving educational-correctional measures at the CCI Ohrid.
- The Ministry of Education should observe the obligation to organize and finance the education of convicts.

### **LABOUR RIGHTS**

- The Helsinki Committee stressed the significant role a swift and timely response of the State Labour Inspectorate has, and the need for this body to precisely establish the factual situation. The Committee encourages workers to use the legal mechanisms at their disposal for protection of their labour rights. Consequently, it is necessary to properly inform workers on the positive labour legislation.
- Due to the alarming number of workers' injuries at the work place, the Helsinki Committee appeals to all employers to observe the regulations pursuant the Law on Health and Safety at Work, and undertake all necessary measures for protection and safety of workers, particularly at workplaces carrying high risks for the health and safety of the workers.



- Procedures in labour disputes are based on the principles of priority and urgency, and although the court has a legal obligation, pursuant to Article 405 from the Law on Labour Relations, to address the necessity for quick resolution of such disputes, practice reveals lengthy procedures. The Helsinki Committee appeals that the first-instance and the second-instance court strictly observe their obligation to reach a verdict no later than six months and thirty days respectively in labour disputes.
- In addition, considering that mobbing is a frequent occurrence with serious consequences, and particularly since Macedonian courts have established mobbing only in one verdict, the Helsinki Committee points that the lack of court practice in this field discourages workers from reporting psychological harassment at the workplace.

#### **TEXTILE WORKERS**

- Improving the efficiency of the State Labour Inspectorate through detailed and timely implementation of procedures established during inspection.
- Improving inter-sector cooperation of state organs (State Labour Inspectorate, the Public Revenue Office, and Financial Police) in procedures for protection of workers' rights.
- Improving access to justice of textile workers by decreasing process and administrative expenses for initiating a court procedure towards protection of labour rights.
- ➤ Employers should meet the minimum health and safety at work specifications, pursuant domestic and international standards, including all standards of the International Labour Organization.

## **GENDER EQUALITY**

- Complete and comprehensive implementation of the National Action Plan for Implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence in the prescribed period, with active participation and efforts on the part of all stakeholders, such as the Ministry of Labour and Social Politics, as well as the Ministry of Interior, Ministry of Justice, Ministry of Education, Ministry of Health, court bodies, local self-government, as well as adoption of the Law on Gender-Based Violence, which should include domestic violence, according to the standards prescribed by the Istanbul Convention.
- Sensitize representatives of competent bodies towards recognizing gender-based violence and taking measures and activities for prevention and protection from gender-based violence.

- Sensitize representatives of competent bodies towards the needs of the vulnerable categories of women, particularly pregnant women, women with small children and children with disabilities, single mothers, women with disabilities, rural women, women who use drugs, sex workers, migrants, refugees, lesbians and transgender women, women living with HIV, homeless women, children and other vulnerable categories of women, and when taking actions for prevention of gender-based and domestic violence.
- The social work centres should demonstrate sensitive approach towards victims of family and gender-based violence and inform victims of their rights and available services and propose protection measures.
- The state should prioritize the gender component in all negotiations on EU membership and actively eradicate all types of discrimination against women.
- Introduce gender-responsible creation of policies, laws and budget planning.

## MIGRANTS, REFUGEES AND ASYLUM SEEKERS

- The practice of illegal, group "deportation" of refugees and migrants to the neighbouring countries, without establishing cross-border cooperation with the security forces must stop. This is a violation of migrants' fundamental rights and freedoms and inhuman treatment. All readmission procedures must comply with the human rights standards and be implemented in cooperation between the states.
- ➤ Begin operationalization of the 2017-2027 Action Plan for Integration of Refugees and Foreigners as soon as possible.
- ➤ Undertake measures to influence the public opinion on the refugee crisis, given the high level of xenophobia among citizens, the lack of awareness about the rights of refugees and migrants, the reasons for their escape and the problems they face. It is necessary to increase public awareness and access to information about the crisis, which would reduce intolerance and hate speech.
- Abandon selective admission of refugees in reception-transit centres. Humanitarian assistance and protection against safety risks must be provided to all refugees and migrants moving through the country in order to avoid additional risk to their lives.
- > Freedom of movement must be allowed to refugees and migrants transiting the country, who should not be detained illegally as witnesses in criminal procedures against smugglers.



#### FREE LEGAL AID

Adoption of the Draft-Law on Free Legal Aid as soon as possible, whereupon all comments proposed by associations authorized to offer free legal aid should be taken into consideration.

#### **LGBTI CENTRE**

- Implementation of the Law on Prevention and Protection against Discrimination and harmonization of other laws with this law.
- Monitoring the implementation of the law by equality bodies authorized to act in discrimination cases.
- Developing a system for documenting hate speech and hate crimes, including criminal offences on the ground of sexual orientation and gender identity.
- Improving the investigation and prosecution of hate crimes on the basis of sexual orientation and gender identity and efficient resolution of current cases.
- Introducing regular trainings within MOI and the social work centres on treatment of LGBTI victims of violence and incorporating such trainings in the regular program for training employees in both institutions.
- Introducing mandatory training within the Academy for Judges and Public Prosecutors on acting in cases of violence when the victims are LGBTI.
- Thorough knowledge regarding the problems and needs of the community and how to protect it.
- Adopting a separate law on legal gender recognition on the basis of self-determination, without the precondition of providing medical documentation on gender confirmation surgery, and
- Amendment to the current legal solutions in the Law on Registers of Births, Marriages and Deaths, Law on the Personal Name and the Law on the Personal Identification Number with the introduction of a simplified procedure for changing personal data by submitting documentation before only one body and finishing the procedure before the same body which shall introduce all necessary changes requested by the party ex officio.

# **ATTACHMENT 1**

#### COMMENTS ON THE DRAFT-LAW ON FREE LEGAL AID

# 1. COMMENTS FROM NOMOTECHNICAL ASPECT AND CONSISTENCY OF THE LAW WITH ITSELF AND WITH OTHER LAWS

- 1.1. Nomotechnical improvement of the Law's structure is necessary due to sections or chapters entitled "General Provisions," which further contain articles entitled "General Provisions".
- 1.2. Due to the need for consistency of the Law and harmonization of the structural and fundamental provisions, we propose stipulating in Article 2, paragraph 1 that the Law also refers to legal aid of children and victims of criminal offences.
- 1.3. The following provision: "The Law shall not be applied in legal matters for which free legal aid is prescribed with specific laws" ... should be regulated in accordance with the Law on Litigation Procedure (a separate law), which allows the court president to appoint free legal representative (a lawyer) to the party who requested exemption of the expenses incurred with the proceedings. In this case, the right to free legal aid shall be denied to every party in a litigation procedure due to this provision of the Law on Litigation Procedure. We propose amending the phrasing into: free legal aid shall not be provided to individuals who have already obtained free legal aid on other grounds.
- 1.4. Definitions should be reviewed and adjusted to the essence of the theoretical meaning of free legal aid, as well as the essence of the Law. In terms of terminology, a distinction should be made between preliminary legal aid secondary legal aid. When the term "Secondary Legal Aid" is used, instead of "Preliminary", it is necessary to use the term "Primary Legal Aid." However, when "Preliminary Legal Aid' is used terminologically, the secondary shall be just "Legal Aid". Legal counselling cannot be general. General legal counselling for a specific legal issue is in itself contradictio in adjecto, and accordingly there is no general manner of solving an individual issue. General legal counselling is counselling which is applicable to everyone, in more identical cases of factual and legal nature. Legal counselling is always specific, individual, for a specific factual state. The adjective "general" needs to be erased. "An applicant of free legal aid" is closely defined and excludes individuals who have requested or received preliminary legal aid. The definition needs to be expanded by including individuals who have requested and received preliminary legal aid. "Members of Family" is a very broadly defined term, including potential relatives the applicant might be sharing a household with but not jointly bearing the living expenses.



#### 2. COMMENTS ON PRELIMINARY LEGAL AID

- 2.1. According to the Draft-Law, a right to preliminary legal aid have "...all physical entities with a household or a dwelling...". This provision is too general and unjustifiably wastes the resources of the Ministry of Justice on individuals who have the finances to provide legal counselling from a lawyer. Preliminary legal aid should be limited only to poor and marginalized individuals. On the other hand, this provision, despite its broad definition, may include even financially higher levels of society, however the phrasing "...household or dwelling on the territory of the Republic of North Macedonia" exempts from the right to preliminary legal aid the so-called unregistered individuals who do not possess an excerpt from the Register of Births and therefore own no documentation for personal identification or citizenship. A new point needs to be included in the provision and list this category of individuals.
- 2.2. The range of the preliminary legal aid is again limited. It fails to include what the poor and illiterate need the most, which is escort to institutions and help in filing applications in specifically determined administrative procedures (social protection, healthcare, legalization and privatization of land, petitions to the Ombudsman and the Commission for Protection against Discrimination). The failure to include these forms and modalities of legal aid for the poor prevents their access to justice. On the other hand, the term "preliminary" will gain its necessary meaning when these forms of preliminary legal aid will be included in the Law, because this will allow citizens to receive information on how a specific legal issue is regulated, or legal counselling on how to solve their problems, assistance in establishing all circumstances in the case and in preparation of writs in administrative procedures. Lawyers are usually not necessary in administrative procedures since pursuant the principle of the Law on General Administrative Procedure for assisting an uninformed party, the public bodies are obliged to assist the party in realizing the rights. When these bodies fail to fulfil their obligation, the party requires legal counselling, i.e. primary legal aid (filling in forms, referral to the necessary window, indicating to legal provisions that could be of benefit, being issued documents from another public body, etc.)
- 2.3. Introducing a legal provision on determining the operating hours for reception is incorrect and unjust since poor citizens ask for assistance only when facing a problem, and they mostly live in the periphery and have limited means to transportation. Consequently, being refused a service simply because a citizen has failed to arrive during operation hours is unfair.
- 2.4. We further believe that the work of associations must be clearly distinguished from regional branches since the latter have the strict obligation to examine the material and financial state of the individual. To this end, it is necessary to introduce other forms of preliminary legal aid, particularly counselling, offering information, and assistance in cases when the legal issue can be solved without preliminary legal aid and a lawyer.

2.5. The compensation for the authorized citizen's association for the provided preliminary legal aid – according to the Draft-Law- shall not be paid if it is established that the preliminary legal aid was not provided pursuant the Law, which considers as preliminary legal aid only offering information and assistance in preparation of writs and submission of the request for secondary legal aid. Such a solution fails to improve the position of associations and discourages them from participating in the state free legal aid system, which once again leads to inapplicability of this practice. The associations propose advance payment if an authorized association provides a guarantee. The proposal was presented and explained in front of representatives from the Ministry of Justice.

#### 3. COMMENTS ON SECONDARY LEGAL AID

- 3.1. Legal aid provided by a lawyer, and approved in accordance with the Law, cannot be restricted only to representation in proceedings before a court, state body and exemption from expenses. Counselling and preparation of writs, which we believe was unintentionally left from the text, should also be included. Regulation of secondary legal aid for representation in procedures before a notary, enforcement agent and a mediator is lacking.
- 3.2. There is contradiction in the provision "...in the pronouncement of the court decision, the court shall oblige the opposing party to make a transaction payment of the costs of the procedure to the account of the Budget of the Republic of Macedonia", while the regulation of the content of the decision in a litigation procedure is also brought up, which is a subject of regulation in a systematic procedural law the Law on Litigation Procedure (LLP). In order to resolve this problem, we propose that this obligation be linked with the beneficiary of the free legal aid.
- 3.3. Instead of unjustifiably limiting secondary legal aid exclusively to an inheritance procedure for the property in which the applicant lives, it is necessary to guarantee free legal aid for every individual meeting the criteria for free legal aid in all procedures which require obligatory representation before a notary. This also refers to enforcement procedures conducted in different manners, all of which afflict poor citizens, who as debtors have the right to legal protection. Very often legal shortcomings occur in enforcement procedures, which the citizens are unable to address due to the lack of access to legal aid. Enforcement against real estate is conducted only when the debt cannot be paid through other forms of enforcement, hence it is quite illogical to provide legal aid for one form of enforcement but not for another.
- 3.4. Individuals holding no citizenship, which most state bodies are attempting to eradicate as an occurrence, are not placed on the agenda with the Law. There is knowledge that some people hold no citizenship. These individuals, due to administrative and procedural, as well as legal, ambiguities, and through no fault of their own, cannot regulate their stay in the country. This however, does not mean that they should be exempted from the right to free legal aid, i.e. secondary legal aid. Furthermore, the state is obliged to provide all forms of possible protection to these individuals who find themselves at social risk and pass on the problem of no citizenship and not being able to regulate their stay from a generation to generation. Including individuals who have no citizenship but have a legally regulated stay, and yet excluding individuals with no citizenship and without legally regulated stay reflects unequal coverage of all individuals who really do require legal aid. The article regulating the right to submit applications for secondary legal aid needs to be amended by including all individuals not registered in the Register of Births, since without legal aid they cannot register and acquire personal documents and a dwelling.

- 3.5. Limiting the monthly income of an applicant sharing a joint household with family members, and whose income per family member does not exceed 20% of the minimum net salary, is unjustifiable. There have already been two interventions in this part, with the initial limitation for the income being 50%, later decreased to 20%. This solution significantly limits the access to free legal aid for all multi-person households. The solution is also contradictory in itself. For instance, a single person with a monthly income of 12,000 MKD shall have the right to free legal aid, a married couple with a monthly income of 15,000 MKD, which is 3,000 MKD more, shall not have the same right.
- 3.6. Victims of domestic violence facing it for the first time, victims who have not reported domestic violence for different reasons, as well as victims who were not registered as victims by social work centres shall not have the right to urgent secondary aid. The Law prescribes that the victims deliver a document to confirm they are victims of domestic violence. The authorized associations have used every opportunity to point how illogical this precondition is. Being a victim of domestic violence is not a social or legal status that could be confirmed by a document. Being a victim of domestic violence is a fact which, unfortunately, due to such and similar obstacles in the existing regulations, is mostly proved with a medical report. It is unethical and insulting to introduce a precondition that victims of domestic violence themselves, in addition to facing other generally known problems, victims who have managed to gather the courage to seek secondary legal aid, should produce such a confirmation as if there was some kind of register or a catalogue of victims. Urgent legal aid is prescribed only in court proceedings for pronouncing temporary measures and nothing more. We believe that in cases of victims of domestic violence seeking free legal aid, their application should be approved by assessing evidence the applicants were able to submit, which could include: a document issued by a standardized association for providing free legal aid to victims of domestic violence or other standardized specialized providers of services to victims (shelters, SOS lines, psycho-social counselling, crisis centres and similar, in the spirit of the Istanbul Convention, which prescribes cooperation of state bodies with civil society organizations concerning protection, and a different, integrated approach in the provision of services by all competent bodies), or a document confirming the incident has been reported, or a report from MOI, medical notes and medical certificates, verdicts from the past etc. In practice, there have been cases when the Centre for Social Work refused to register the victim, but the court proceedings and the verdict, initiated by the victim, confirmed the status of a victim. The victim in this case would not be able to provide the required document to serve as confirmation.
- 3.7. The grounds for refusal of legal aid should be revised since they are particularly contradictory and purposely limit the approval of legal aid in accordance with the Law. The right to seek compensation for intangible damages is necessary for restitution in the context of the violated rights. This solution deprives the right to free legal aid of poor citizens who have suffered physical pain, mental pain, as well as violation of their personal rights (for instance discrimination). In the long-term, failure to initiate court proceedings might foster encouragement and the sense of "impunity" and

- "unaccountability" of perpetrators of this sort of actions. Consequently, it is necessary to provide access to secondary legal aid regarding compensation of intangible damages, as well as in cases referring to public and communal activities.
- 3.8. Legal remedy is also not prescribed in cases when, despite the urgency of the procedure and the submitted application within the legally prescribed period, the regional branch fails to act pursuant to the law. By not providing legal remedy in such cases, it cannot be guaranteed that regional offices will act pursuant this provision, i.e., despite the urgency, they still have the option of sending the application to the Ministry of Justice following a regular procedure.
- 3.9. There isn't a provision on statute of limitations on the claim. Namely, the Law should be amended with "...but not after the expiration of three years from the day the last activity within the secondary legal aid was undertaken by the lawyer."
- 3.10. Harmonization of the terminology with the one applied in the Law on Litigation Procedure. We have already offered our proposal to the Ministry on how to regulate this issue in order for all cases in which free legal aid was approved in litigation procedures, and were concluded successfully, to result with reimbursement of the payment made to the Budget of the Republic of Macedonia.

#### 4. COMMENTS ON SPECIAL PROCEDURES

- 4.1. Defence and representation in a criminal procedure is provided pursuant the provisions from the Law on Criminal Procedure (LCP). Victims of criminal procedures, the damaged parties, are left without the right to free legal aid in the Law on Free Legal Aid, a right which is also not provided with the Law on Criminal Procedure.
- 4.2. Legal aid to children the entire concept of legal aid to children at risk and children-perpetrators of criminal offences is extremely problematic. In procedures before the Ministry of Interior and the Social Work Centre, free legal aid is provided and paid pursuant to this Law, while for activities before the court and the prosecution other lawyers, paid for from the court budget, are appointed. Not only that payment of these costs is always delayed, but in certain situations the child has different lawyers before different bodies for the same procedure. The entire model for free legal aid for children requires a reform.
- 4.3. Legal aid for asylum seekers according to the Law, "Every three months, the Ministry shall update the list of lawyers providing legal aid in the procedures for recognition of the right to an asylum and deliver this list to an institution competent to decide on asylum applications." This provision needs to be erased from the Law because lawyers do not have an opportunity to specialize in asylum and international protection, just as there is no possibility for specialization in any other process procedures. Consequently, a question arises of how and on what grounds is this list of lawyers providing legal aid in asylum procedure being compiled.
- 5. In addition to free legal counselling days, provisions for legal strengthening and literacy of the citizens should be added. The free legal advice days, such as they are regulated now, are merely a formality occurring twice annually, attended by no more than 10 to 15 citizens. The Ministry of Justice, in addition to an annual report, should also adopt an annual and financial program on training, experts meetings and coordination, monitoring, etc. The program should prescribe and regulate activities on legal strengthening and literacy of certain marginalized groups. For instance, allocation of finances for trainings on labour rights; programs for trainings of paralegals who help specific groups, such as: Roma, people with special needs, unemployed youth, victims of domestic violence etc.
- 6. Add the term "domestic violence" where the term "gender-based violence" is used in the etx, and vice-versa, and in articles where the term "domestic violence" is used add the term "gender-based violence".



