Annual report

on the situation in the area of human rights in the Republic of Macedonia for 2014

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СОДРЖИНА

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I JUDICIARY

Introduction

One of the basic activities of the Helsinki Committee is the observing of the court proceedings across the country, especially those from the area of criminal and civil justice. Dozens of cases were observed in the course of 2014, during several hundreds of court hearings. In addition, through its program for free legal assistance, the Helsinki Committee was in a position to take into consideration and act on a large number of court cases, including those conducted before the Administrative Court.

Similarly to the year before, 2014 was also a year of selective justice exercised by means of blatant intrusion of the executive into the judicial authority and the hunt of ideological opponents and people critical of the government. The judiciary has not managed to rise above these pressures and in certain cases, by imposing detention where it could have opted for alternative measures, clearly contributed to the general feeling that certain court proceedings are solely formal closures of previously envisioned scenarios of the executive power. This was particularly noticeable in the court cases against Jovan Vranishkovski and members of the Ohrid Orthodox Archdiocese, against the journalist Tomislav Kezharovski, medical doctor Dejan Stavrikj, the president of the council of the Municipality of Centar Miroslav Shipovic, the directors of several schools in Gostivar and tens of former officials and social figures lustrated as alleged collaborators of the communist regime.

There are suspicions about the impartiality and independence of judges in nearly all courts in the country, including the Administrative and Constitutional Courts. The Primary and Appellate Courts did not comply with the principle of trial within reasonable time in a large number of cases, especially by delaying the announcement of verdicts, and in some cases by exceeding the initial legal time limits by five times. The Administrative Court continued confirming the lustration decisions of the Commission for Verification of Facts behind closed doors, and the Constitutional Court closed its doors to the cameras of the media, although according to the courts Rules of Procedure, its sessions are public. We are especially concerned by the fact that in several of its rulings, the new structure of the Constitutional Court passed verdicts which are diametrically opposed to the courts previous practice.

1. Lake Smilkovo Case

In June 2014, the Primary Court Skopje 1 announced the verdict in the Lake Smilkovo Case (dubbed the «Monster» case by the police). Out of the total of seven suspects, six were sentenced to lifetime imprisonment with a non-effective verdict, while one was acquitted. With the non-effective verdict, the suspects were pronounced guilty of the criminal act of «Terrorism» for committing a five-fold murder with the intention of endangering life and

body and creating a feeling of insecurity and fear among the citizens of RM. According to the verdict, the defendants, members of the Albanian ethnic community, chose their victims because of their Macedonian ethnicity.

In their closing addresses, while speaking about the motive to commit the crime, the prosecution stated: «The message is - We shoot on Good Thursday to blood-stain your Easter. We kill male offspring in order to destroy your faith and future». This manner of expression of motives may be considered inadequate in accordance with the provisions from the Law on Criminal Procedure, according to which the prosecution needs to state its assessment of the evidence presented at the main hearing, then elaborate on its conclusions with reference to the facts important for the decision and lay out and explain its proposal on the criminal responsibility of the client. Emphasizing the motives for the crime, phrasing sentences as if they were told by the defendants themselves, sentences which could easily provoke fear and insecurity among the people, can easily lead to inter-ethnic tensions between the two biggest ethnic communities in the country. The headlines of certain media reported those words as if they had been uttered by the defendants themselves, which can particularly contribute towards the creation of a hostile and tense atmosphere which can result in inter-ethnic incidents further on.

On 4th July, the public announcement of the verdict resulted in violent clashes between about 3,000 protesters and the police in front of the Primary Court 1 in Skopje. The protests resulted in injury of several protesters, about twenty police officers and material damage to the two primary courts in Skopje. The six protesters were arrested and effectively sentenced for «Participation in a group which is about to commit crime» to 2.5 years of imprisonment.

2. *The Jovan Vranishkovski Case*

In July 2013, with a verdict of the Criminal Court in Skopje, Mr. Vranishkovski was sentenced to three years of imprisonment. The first-instance verdict was delivered to Vranishkovski as late as 106 days after, contrary to the Law on Criminal Procedure which stipulates that the verdict need to be delivered to the defendant within 60 days. The first instance verdict was appealed against, but the Appellate Court in Skopje took more than seven months to schedule a public hearing, in April 2014. Due to alleged problems with the procedure, the discussions was postponed on two occasions and finally took place in July 2014, when the first instance verdict was confirmed. The delays in the trial only served to confirm the stance of the Helsinki Committee that the persecution of Jovan Vranishkovski and the Orthodox Ohrid Archdiocese has a political background.

Near the end of 2014, Mr. Vraniskovski publicly complained about the bad conditions in KPU Idrizovo where he was serving his sentence. In the open letter from December 2014, he stated that after the expiry of the 10 months in which he fulfilled the conditions to be provided treatment through which he would be entitled to take advantage of the benefit of leave of absence, his request was denied. Furthermore, his requests for a visit by a cleric, a right which is stipulated in the Law on Enforcement of Sanctions, were also rejected. Regarding the accommodation, Mr. Vranishkovski stated that 33 persons are accommodated in a single room, with a single toilet, the hygiene is at a low level, the food is scarce and tasteless and the prison does not even provide a plate and a spoon to the convicts, which is why they are forced to get by even for these most basic needs.

After the letter was announced the Helsinki Committee requested permission for a visit from the Directorate for Enforcement of Sanctions, but the request was denied.

In December 2014, Metropolitan Hilarion, the Chairman of the Department of External Church Relations of the Patriarchate of Moscow arrived for a visit to Macedonia. After the meeting with the President of the country and Prime Minister, Mr. Vranishkovski was released as a prerequisite to normalize the relations between the Macedonian and the Serbian Orthodox Church. In January 2015, at the suggestion of the Director of KPU Idrizovo, the Primary Court Skopje 1 adopted a decision for probation release of Mr. Vranishkovki. The decision became effective in February 2015, when Vranishkovski was released with deteriorated health. These events serve as another case in point to the stance of the Helsinki Committee that Jovan Vranishkovski was a political prisoner. It is indicative that on one hand, the Director of KPU Idrizovo proposed the probation release because he believed that Mr. Vranishkovski was re-socialized, and due to his good conduct in prison, and on the other hand, previously he never allowed him to take advantage of any of the benefits, such as a weekend outside the prison. The Helsinki Committee believes that the probation release of Mr. Vranishkovski was a political decision. Had the Macedonian institutions acted in accordance with the principle of rule of law, Vranishkovski's prosecution would have never happened and he would have been free a long time ago.

3. *The Case of the dismissed Gostivar managers*

The Helsinki Committee in 2013 found an increased number of complaints on grounds of political affiliation and conviction, as a result of the local elections held in April 2013, as well as the change of the local governments in several municipalities. Complaints for discrimination on these grounds were also received in 2014, and the cases from 2013 were also actively processed. Most of the complaints to the Committee were submitted from the Municipalities of Gostivar, Ohrid and Karposh. From all of these complaints, the Helsinki Committee singled out the case of the dismissal of 8 directors of primary and secondary schools in the Municipality of Gostivar by the new mayor of the municipality, without abiding by the dismissal procedure, i.e. without having the dismissal decision be passed by the schools boards of the specific schools, as the most specific case. The dismissed directors filed complaints to the Helsinki Committee, they were provided with free legal aid, and a court procedure to establish discrimination on grounds of political affiliation was also initiated, which is still under way. Making use of the right to participate in the procedure in the capacity of an involved party, as organizations, i.e. civil associations which deal with protection of the rights to equal treatment of those whose rights are being decided on in the procedure under the scope of their activities (Article 39 of the Law on Prevention and Protection against Discrimination), the members of the Network became an involved party with the right to give proposals, ask questions and undertake all other litigation actions similar to the plaintiffs, including submission of regular and emergency legal remedies.

We believe that the involvement of civil associations in civil procedures needs to become a practice, especially when it comes to civil procedures which are initiated to establish discrimination and protection against it, since this legal mechanism makes it possible for civil associations to have an active role in the court procedures when it comes to proving discrimination.

Despite the evidence based on which it could be proved that discrimination was perpetrated by the defendants in the specific case, the court decided not to shift the burden of proof on the defendants' side and conducted the procedure as a regular civil procedure in which the plaintiffs were to prove the substantiation of the lawsuit. The Helsinki Committee concluded that the court procedures which are initiated to establish discrimination cannot be treated in the same way as the other civil procedures, due to the sensitivity of the cases, as well as the fact that in the largest number of cases those who have been discriminated against do not have access to the information and data which are at disposal solely of the plaintiffs. Such evidence, data or statements of the plaintiffs are of particular importance to prove discrimination in the specific case and may be provided solely in case if the plaintiff is proving that there had been no discrimination. Due to the specific nature of the cases of discrimination and the process of proving it, Article 38 from the Law on Prevention and Protection against Discrimination stipulates that if the party in litigation claims that in line with the provisions of this law, the right to equal treatment has been violated, he/she is bound to present all the facts and evidence in support of his/her claim. Proving that there had been no discrimination falls on the back of the opposing party. A court procedure for discrimination based on political affiliation was also initiated against the managers of certain sectors in PE Komunalec - Gostivar, for discrimination committed by the acting director. The procedure was effectively completed, and the verdict was negative. The trial chamber of the first instance submitted notice that before filing a lawsuit, the plaintiffs should have first submitted a complaint to the Commission for protection against Discrimination. This is an flagrant example of incorrect attitude and practice, which was emphasized by the Helsinki Committee pointing out that the Commission for Protection against Discrimination is an independent authority which adopts opinions and recommendations upon submitted complaints and its function is in no way related to the judicial protection against discrimination.

The opinion of the Commission for Protection against Discrimination which establishes that there had been discrimination can only be used as material evidence in the court proceedings, but may not be binding for the competent court in the adoption of the ruling. Furthermore, in a case when a complaint is submitted to the Commission for Protection against Discrimination, and the Commission fails to reach a decision, the victim is entitled to initiate proceedings and inform the Commission about this, whereby the proceedings before the Commission shall be stopped.

4. The Kezharovski Case

In October 2013, in the court case KOK no. 51/12 dubbed «Liquidation» by MoI, journalist Tomislav Kezharovski was sentenced to 4.5 years of imprisonment for the criminal act of «Revealing the identity of a protected witness». He committed the crime in 2008, since, by researching a court case for an ordered murder he came to realize that the protected witness in the said case was forced to give a false testimony by police officers. Although the article was published in 2008, the criminal proceedings against Mr. Kezharovski were initiated in 2013 when the journalist was investigating the circumstances of Nikola Mladenov's death, who was also a journalist. Apart from Mr. Kezharovski, another seven defendants in the same case were sentenced to imprisonment for other criminal acts from the area of organized crime.

After a nearly five-month delay in the submission of the case files by the Primary Court

Skopje 1 to the Appellate Court in Skopje, the second instance, as well as the first instance court exceeded the deadline for submission of its decision by several terms. The Primary Court, instead of submitting the case files to the Appellate Court immediately after the expiration of the deadline for submission of appeals, delayed this process for nearly five months longer than the legal time limit due to alleged technical problems. Although a case with several detainees was in question, and the proceedings for such cases need to be urgent and conducted without delay, both the Primary, as well as Appellate Court delayed the procedure by nearly five months after they had received the case files. According to Article 405, paragraph 2 from the previous Law on Criminal Procedure (in accordance to which this case was conducted), if the defendant is in detention, the court of the second instance is bound to submit its decision on the case files back to the court of the first instance not later than 45 days as of the day of receipt of the case files from the said court.

Upon the submission of the decision from the court of the second instance to the court of the first instance, the first instance court must submit the decision to the parties in the proceedings without any delay. By not complying with the provisions of the Law on Criminal Procedure, the two courts jointly contributed to multiple delays in the deadlines for drafting the submission of their decisions. All in all, a total of nearly ten months of delay in the deadlines is in question, meaning that in case both courts had acted according to the law, the second-instance procedure would have been bound to be known all the way back on March 2014, yet it was only announced only in January 2015. With these actions, the Primary and Appellate Court in Skopje have committed substantive violations to the criminal procedure and violated the principles of efficiency and urgency which resulted in an unnecessary 19-month long limitation to the freedom of most of the defendants. Apart from the violation of national law, the overall litigation, including the manner in which the measure of detention was extended to the defendants is contrary to Article 5 (right to freedom) and Article 6 (right to a fair trial) from the European Convention on Human Rights.

Upon the announcement of the ruling of the Appellate Court in January 2015 which decreased Kezharovski's 4.5 year-long sentence to 2 years, on the exact same day MoI, upon the adoption of the referral act by the judge for enforcement of sanctions, arrested Kezharovski and took him to serve his sentence without previously handing the verdict to him. Although the verdict becomes effective upon its adoption by the Appellate Court (Article 127, paragraph 1 from the old Law on Criminal Procedure, in accordance to which this case was conducted), prior to its delivery to the defendant it is not enforceable (Article 127, paragraph 2, LCP), i.e. the judge for enforcement of sanctions was not allowed to pass a referral act for a sentence of imprisonment. By not complying with the legal regulations the judge for enforcement of sanctions has, in fact, committed the substance of the criminal act of «Unlawful Deprivation of Liberty», which, in accordance with Article 140, paragraph 4 of the Criminal Code is punishable by imprisonment from six months to five years in cases when it is committed by an official by abusing official position or authority.

One day after his transfer to the Skopje Prison, the prison Director proposed termination of the sentence to the director of the Directorate for Enforcement of Sanctions with a duration of 30 days (until 18 February 2015), due to the deteriorating health of Mr. Kezharovski. The proposal was accepted in spite of the fact that he was present at the protests organized against his imprisonment and was obviously in good health. In the meantime, the proposal of the Prison Director Mr. Kezharovski to be released on parole

was accepted by the Primary Court Skopje 1 and a positive decision was passed. The decision was appealed against by the Primary Public Prosecution Skopje, but the appeal was rejected, and the parole confirmed. Despite the positive decision of the Appellate Court Skopje which confirmed the parole, we would like to remind that this decision was adopted on the last day before the expiry of its deadline. These actions of the prosecution and the courts resulted in a nearly two-year-long psychological pressure on journalist Kezharovski. The journalist will be registered in the criminal records as a perpetrator of a crime, and his claims for police pressure on a protected witness and fabrication of a statement in order to influence and judicial authorities will remain uninvestigated.

This case raises three serious questions about justice in Macedonia: 1) Was the delay in the procedure a deliberate activity in order for journalist Kezharovski to serve the sentence in prison, including home detention? 2) For what reason did the public prosecution fail to conduct investigation to verify the claim of the protected witness that the police had exerted unlawful pressure by fabricating his testimony? 3) Can the Macedonian judiciary, in conditions when the freedom of media and the freedom of expression are seriously threatened, live up to its social role of a protector of the rights of citizens who reveal the unlawful intrusion of the executive authority in the judicial authority, or is this authority sending another message of silencing and censoring all those who have a critical attitude and opinion?

5. *The Stavrikj Case*

At the start of the month of May, the web-site of the Ministry of Internal Affairs released an announcement informing the public about the arrest of person D.S. The announcement was titled «Asked for and got a bribe of 2,000 EUR to «arrange for» an invalid pension», and it was also stated that MoI «realized a case» for the criminal act of « Receiving an award for unlawful influence». MoI informed that the arrested doctor is an ophthalmologist, owner of a private healthcare institution - a specialist practice in ophthalmology «Center for eye diseases OKO» and an employee at a private healthcare institution - Policlinic for specialist-consultative healthcare practice «Cornea Medica», as well as that he had previously been an employee at the Clinic for eye diseases - Skopje.

With these actions, albeit indirectly, contrary to the Constitution, private data of the suspect was revealed. Thus, in a subtle, yet apparent way, the presumption of innocence of the arrested doctor was harshly violated. Namely, although MoI did not reveal the name of the suspect, the presumption of innocence and the secrecy of data were violated by indicating his profession and qualifications, the name of the healthcare institution in his ownership and his previous and present employment in specifically indicated clinics in Skopje. The presented data very easily led to the fill name and surname of the suspect. The very title of the announcement, apart from its inadequacy, was contrary to the norms and regulations that MoI needs to comply with and respect when it informs in the public in the role of a public broadcaster. The wording «asked for and got» pointed to an already proven crime even before the start of the court proceedings. No part of the announcement refers to the fact that the detainee has a status of a suspect, nor that reasonable doubt for a crime is in question. To the contrary, MoI used the wording «realized a case for a criminal act» which in the context of the overall text of the announcement indirectly points to an already proven criminal act. Dejan Stavrikj was

accused of accepting a promise to receive an amount of 2,000 EUR for himself or other persons. The defendant was charged with receiving bribe from the damaged in order to provide him with a decision for disability pension. It is indicative that the decision for approval of a disability pension to the damaged was adopted on 30.04.2014, while Dr. Stavrikj was arrested on 06.05.2014, the same day when the damaged was handed the said decision. The court trial for Dr. Dejan Stavrikj took place on 26.05.2012 and was conducted according to the new Law on Criminal Procedure, in an accelerated procedure, but there was no audio recording. During the cross-examination, the damaged allegedly did not provide clear and specific answers, and did not recall half of the things that he was asked about. At a certain point, the main hearing was closed to the public, and during the open public hearing the Primary Public Prosecution failed to present firm and irrefutable evidence in support of the indictment. In spite of this, after the first and only hearing, the court passed a verdict finding Dr. Stavrikj guilty, and non-effectively sentenced him to imprisonment with duration of one year.

6. Lustration Process

After the decision of the Constitutional Court from 2014 for rejection of the initiative of the Helsinki Committee which disputed the Law on Lustration, the Commission for Verification of facts, the Administrative and the Higher Administrative Court continued conducting this undoubtedly most unconstitutional process since the country's independence. In the case of Petar Karajanov it was established that he had «collaborated with the organs of state security in the capacity of a secret collaborator» with a decision of the Commission, whereby a file of another person with the same name and surname was used as evidence for his activities. The facts about the mistake that was made are indisputable, bearing in mind the basic data about the «other Petar Karajanov». However, the Commission for Verification of Facts, despite the publicly presented irregularities and the indications of the Helsinki Committee, stuck to the adopted decision. Due to the blatantly wrong actions, the Helsinki Committee provided legal aid to Mr. Karajanov in drafting a lawsuit to the Administrative and to the Higher Administrative Court which solely backed up the decision of the Commission without any arguments.

Upon the exhaustion of all the domestic institutional possibilities to contest the lustration process, the Helsinki Committee for Human Rights, through its plaintiff, Petar Karajanov, sent an appeal to the Court in Strasbourg. The appeal referred to Article 6 (fair trail), Article 8 (respect for the private and family life) and Article 13 (right of effective remedy) from the European Convention on Human Rights. The Helsinki Committee represented the plaintiff who believes that within the duration of the entire proceedings for his lustration he was not provided with a fair and objective trial, the entire trial took place in secrecy, behind closed doors and without his presence whereby he did not have access to court, while in the meantime the unfair trial took place before non-objective and biased tribunals in front of which it had been impossible to fully consider and defend his civil rights and the validity of the reasons for the charges against him; his presumption of innocence was harshly violated from the very start to the very end of the procedure; he was given a short deadline to prepare his defense; he was prevented from providing effective defense, both himself, as well as his attorney, as he was not invited as a party in the court proceedings at all; and he was placed in an unequal and disadvantaged position unlike the state authorities who made decisions on his case, whereby the principle of equality of arms and adversarial procedure was violated and

the decisions adopted against him do not contain the adequate explanation of their validity and the reasons why they were adopted.

7. Duration of detention in the Republic of Macedonia

The Court case Rover, in which some of the defendants have been in detention for more than two years after the pressing of the indictment, caused disagreement among the law practitioners as to how long the maximum deadline for detention of detainees should be. Namely, in accordance with Art. 207 from the law (yet still applicable) Law on Criminal Procedure, detention may last up to one year as of the raising of the indictment for criminal acts for which an imprisonment sentence of up to 15 years may be stated, or up to two years for criminal acts the culprits for which may be sentenced to a lifetime in prison. Bearing in mind that in the Rover case, some of the detainees were taken to court as accomplices in a double murder (an act which may result in a life sentence) they are placed in detention for over two years.

According to the practice of the Primary Court Skopje 1 which runs the case, the period between the announcement of the verdict of the first instance and its possible overturning by the Appellate Court does not count as detention, as was the example with the Rover case. According to the court, upon the completion of the main hearing and the announcement of the first-instance non-effective verdict, detention is imposed on other grounds, in accordance with Article 371 p. 6 and 7, and it may last until the start of the serving of the sentence, i.e. the effectiveness of the verdict. However, this example and practice are not followed by the Primary Court in Shtip, in case K no. 224/12, in which the defendant was sued for a criminal act which is not punishable by life sentence, the defendant was release upon the expire of one year, with the explanation that the maximum deadline that a person can spend in detention had expired. Similarly to the Rover Case, in case K. no. 224/12 from the Primary Court Shtip, a verdict was announced which was later overturned by the Appellate Court Shtip.

The Helsinki Committee would like to remind that the European Convention for Human Right guarantees the minimal standards for protection of human rights that the member countries of the Council of Europe have to comply with. This in no case prevents the member countries from providing even higher standards for protection of human rights by means of domestic legislation. In fact, the higher protection is stipulated in our Law on Criminal Procedure which clearly and precisely stipulates that the length of detention after the charges are pressed may not exceed the maximum deadline of two years. Therefore, we urge the Primary Court Skopje 1 to reconsider its practice and comply with the decision of the legislator that the length of detention be limited to maximum one, i.e. two years depending on the nature of the criminal act.

8. Exceeding time limits and drafting decisions

As a result of the conducted observations of the court proceedings, the Helsinki Committee finds that in a large number of the criminal cases, the courts do not comply with the provisions of the Law on Criminal procedure when it comes to the deadlines for drafting the verdicts. The deadline for drafting of 15 days as of the day of conclusion of the main

hearing is not complied with, and there have been cases when the deadline of 60 days for more complex cases has also been exceeded. Apart from influencing the duration of the court procedures, this practice can particularly breach the rights of the defendants placed in detention, a situation that the Law on Criminal Procedure stipulates an urgent court procedure for. Such an example is familiar to the public with the cases dubbed as «Waste» - the verdict was pronounced on 25.07.2014, and was drafted and submitted to the proxies of the defendants on 10.12.2014 which constitutes a huge breach of the legally stipulated deadline. In the «Rover» Case, the drafting and the delivery of the decision took four months. This decision was overturned by the Appellate Court Skopje and the case was once again taken back before the court of the first instance. After the procedure was re-conducted, the court of the first instance found the defendants guilty, a ruling which was announced 2.5 months ago.

The situation in the civil courts is no different than the one in the criminal courts. In a large number of the cases from the civil legal matter, the courts do not comply with the provisions from the Law on Civil Procedure when it comes to the deadlines for announcement and drafting of the verdicts. The verdicts are virtually never announced immediately after the completion of the main hearing (in accordance with Art. 324 p. 3 from the LCP), although the cases in question are not always complex. The deadline for announcement of 8 days as of the day of conclusion of the main hearing is not complied with, in cases when more complex cases are in question (Art. 324 p.4 from LCP). The case with the drafting of court verdicts is similar, meaning that in this area too, non-compliance with the legal deadlines in drafting and delivery of verdicts has been observed in relation to Art. 326 p.1 from the Law on Civil Procedure, i.e. the announced verdict must be drafted in writing within eight days, and in cases of higher complexity within 15 days as of the day of announcement.

9. Administrative Court

Violation of the right to trial within a reasonable deadline and inefficient protection of economic and social rights

In procedure where urgent resolving of the cases conducted before the Administrative Court is stipulated, a delay has been established, as well as non-compliance with the legally set deadlines.

The violation of the right to a trial within a reasonable deadline by the Administrative Court continued into 2014 too. most of the cases that the Helsinki Committee reported about, even cases from the previous years, have not yet been effectively finalized, even in the case of Slavcho Mitevski, the procedure for which lasts 18 years. The main problem with the delays in the court procedures is the fact that in most of the cases reported to the Helskinki Committee, the Administrative Court does not decide on the merits, especially when it comes to the economic and social rights of the people. The absence of courage on the part of the Administrative Court to decide on the merits against the decisions of the administrative authorities affects the efficient court protection in these cases, and thus also the violation of the right to a trial within a reasonable deadline.

10. Constitutional Court

For a longer period of time, already, the Helsinki Committee has addressed criticism to the Constitutional Court, both for the lack of efficiency its work i.e. the long period of decision making upon the submission of initiatives, as well as from the aspect of court transparency and competency, especially after the selection of new judges in 2013. This assessment was also confirmed in 2014, especially because of the ruling of the Constitutional Court with regards to the restrictive changes to the Law on termination of pregnancy. Namely, upon the submission of the initiative by several civil associations, among which the Helsinki Committee, the Constitutional Court did not establish anti-constitutionality in this Law, although the changes limit the constitutionally-guaranteed rights of women to freely decide to have children. Moreover, the debate which took place in the Constitutional Court regarding the submitted initiative, was not adequate for an institution which needs to defend the constitutional foundations of the Republic of Macedonia. Apart from several serious arguments and their correlation to constitutional provisions expressed by one judge, the discussion was a display of personal convictions - abortion is murder, personal experiences and fears - examples of relationships between parents and children, moral evaluations - correlating abortion with infidelity, ideological convictions, relating abortion to «liberal values» and same-sex marriage which would jeopardize the future of the nation. This unconstructive debate at the Constitutional Court came after a surge of criticism against the newly elected judges, i.e. their lack of competence and independence. It is obvious that the Constitutional Court did not manage to rise above the aggressive campaigns of the executive authority promoting multiple-children families and protect the woman's right to decide about the termination of pregnancy on her own, without burdening the procedure and without going through biased counseling advising women not to kill children, judging them and aggressively convincing them to keep the pregnancy at any cost.

The Helsinki Committee reacted to the one-sided decision of the President of the Constitutional Court for termination of the practice of audio and visual recording by media workers of the sessions of the Constitutional Court, which negatively affects the transparency of the court. In fact, it is a decision which was passed on session no. 17, held on 11.06.2014, which the Committee believes limits the freedom of informing the citizens about the work of the court. According to the opinion of the Committee, there is a tendency to exclude the public through this type of limitations, especially after the adoption of the decision of the Constitutional Court to reject the request for protection of freedoms and rights from Article 110, indent 3 from the Constitution which refer to the freedom of public expression and informing about the events from 24 December 2012. This decision was adopted without a public debate and without inviting the stakeholders and the Ombudsman, although, as a rule, the Constitutional Court should schedule a public debate when it comes to requests for protection of freedoms and rights (Article 55 from the Rules of Procedure of the Constitutional Court). The Helsinki Committee considers this decision to be unprecedented, bearing in mind that up to the adoption of this decision, there was no case of exclusion of the public from the court's public hearings. Therefore, the Committee expected the President of the Constitutional Court to provide an explanation as to how the decision to limit the publicity of the sessions of the Constitutional Court was passed, i.e. whether it was passed solely by the President, with the majority of votes of the judges of the Constitutional Court, as well as to elaborate on the reasons for its adoption, what cases it would be implemented in (and whether even in those cases of public hearings). According to the Rules of Procedure, the President

chairs a specific session, but no article states that solely the president adopts decisions which could lay down the oncoming work and sessions of the court. The Constitutional Court did not reply as to how the contested decision was adopted, although it is bound to provide answers to the citizens, journalists and media workers. We would like to remind that the Constitutional Court is supposed to be the protector of the already fragile democratic principles of society, and not pass decisions which partially limit the right to information and do not protect the public interest.

II CONSTITUTION AND LEGISLATION

Introduction

2014 saw the repeating of the same practice of law adoption - by accelerated procedure and without consulting the general public, or the involved groups of citizens. The government went even further with the changes to the Constitution of the Republic of Macedonia, which did not involve an extensive debate about the necessity of those changes. Namely, the civil organizations got self-organized and submitted their objections to the Government of RM regarding the proposed constitutional changes, and then to the Assembly of the Republic of Macedonia as well. Once again, as in the cases of adoption of new laws or legal changes, the objections were not taken into consideration, aside from the part which referred to the regulation of cohabitation, which was excluded with the explanation that this legal matter would be regulated by law.

1. Constitutional Changes

Amendment 33

In accordance to the conclusions of the Assembly of the Republic of Macedonia from 27 August 2014, the constitutional amendments XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII и XXXIX were proposed. The text of draft-amendment 33 covered the definition of marriage and cohabitation, as well as any other form of registered union, as a union between one man and one woman. Bearing in mind the ambience that the constitutional changes were proposed in, i.e. the absence of a democratic atmosphere in the process of changing the highest legal act, the hastiness in the implementation, the inadequate consultations and the exclusion of the public, as well as the absence of the opposition from the Assembly of the Republic of Macedonia, it can be concluded that the attitude of the proposer - the Government of the Republic of Macedonia - towards the Constitution is irresponsible. It is unacceptable to adopt substantial constitutional changes without an adequate strategy for this, i.e. without informing the public about the goal of the constitutional changes, as well as the consequences and changes that these changes will have on the social life.

By defining the union between a man and a woman as the sole form of cohabitation which produces legal effects (marriage and registered civil union), the right to family life, the principle of equality of all citizens, the principle of justice, the rule of law, the principle of plurality, the citizen as the bearer of sovereignty, the dignity, individual autonomy and secularity of the state - guaranteed with the Constitution of RM are being violated, and thus also the right to protection against discrimination, as well as the other rights guaranteeing equal treatment of all citizens. From a legal aspect, the constitutional definition of marriage as a union between one man and one woman is totally unnecessary. In the Macedonian national legislation, marriage is already defined in this way in two laws: the Law on Family and the Law on Prevention and Protection against Discrimination. At the same time, the Venice Commission underlined that raising the legal definition of marriage (which is identical to the one in the Draft-Amendment) to the level of a constitutional principle, is unnecessary from a legal point of view.

Guided by the elaboration of Amendment 33 and thus emphasizing the attitude of the proposer of the constitutional changes - the Government of the Republic of Macedonia, an artificial impression is to be created that marriage in Macedonian society is marginalized, i.e. under a threat by the new lifestyles, and that there are tendencies for its de-institutionalization. The Venice Commission, in its opinion on the proposed constitutional changes and more specifically Amendment 33, emphasized that translating the legal definition of marriage to the level of an institutional principle is legally unnecessary. This definition of marriage in the Constitution would result in cementing the homophobic and transphobic policies which have already been translated in some of the existing laws in the country.

Believing that marriage in legal and social sense represents a correlation to family life, one must take into consideration the broader interpretation of family life and its legal grounds. Hence, considering the fact that the European Convention on Human Rights has been ratified and is therefore a part of the domestic legislation, we emphasize that Article 8 of this Convention, or the right to privacy and family life also refers to the right to family life of same-sex couples. Namely, in 2010, the Court of Human Rights ruled that same-sex partners also have the right to family life, whereby the constitutional definition of a union exclusively as a union between one man and one woman is in collision with ratified international documents, which are part of the national legal system of the Republic of Macedonia and have higher legal effect than the domestic legislation.

Furthermore, the legal, as well as constitutional exclusion of same-sex partnerships and the non-regulation of the rights which may be produced as legal effect from the registered union of same-sex couples constitute discrimination and this has been confirmed through the practice of the European Court of Human Rights, in particular the case of Vallianatos and others vs. Greece (29381/09 and 32684/09). It is necessary to pinpoint the contemporary trends in the regulation of the forms of cohabitation, such as the marriage and cohabitation on a European level, especially from the aspect of human rights of LGBTI people. Bearing in mind the experience with the Hungarian Constitution, in this sense the Venice Commission is building a special attitude towards the constitutional definition of marriage and cohabitation and the consequences from it. In this vein, the Venice Commission, in its opinion on Amendment 33, pleaded for the need to provide equal level of legal recognition of same-sex partnerships, as it has been provided for opposite-sex partnerships.

According to the opinion of the Commission, the state has high discretion in the legal regulation of marriage as a type of a union, but once it starts recognizing rights and privileges typical of marriage to persons who have not entered matrimony in accordance with the national laws (registered cohabitation or other registered forms of life partnerships), then the sex and sexual orientation of those persons may not act as obstacles in practicing those rights. This assessment of the Commission is not ungrounded, to the contrary, it may be explicitly justified in Macedonian legislation as well. Thus, according to the Law on Family and the Law on Prevention and Protection against Domestic Violence[1], same-sex extramarital unions are not entitled to the rights of mutual sustenance and property acquired in the course of the duration of the union (Art. 13 from the Law on Family), the right to alimony (Art. 11 and Art. 193, Law on Family) and the rights from the area of protection against domestic violence (Art.3 Law on Prevention and Protection against Domestic Violence). This is contrary to the opinion of the Venice

1 Art.3, Law on Prevention and Protection against Domestic Violence („Official Gazette of the Republic of Macedonia no. 138/2014)

Commission, and also contrary to the practice of the European Court of Human Rights, since these rights need to be available for extramarital unions between same-sex persons. In conclusion, we may single out certain international standards related to the above-mentioned instances, especially related to the practice of the European Court of Human Rights as a source of law:

1. The notion of family life is much broader in scope than the notion of marriage, and the relationship of a cohabiting same-sex couple living in a stable de facto partnership, falls within the notion of "family life", just as the relationship of a different-sex couple in the same situation would;

2. The limitations of rights and freedoms arising from marriage in national laws must not restrict or reduce the right in such a way or to such an extent that the very essence of the right is impaired; and

3. Any other definition of registered (extramarital) unions which have rights typical of marriage, may not be exclusive and discriminating towards same-sex partners.

4. The attitudes of the Court are directed towards potential "change in social circumstances" and the necessity of their adjustment, i.e. the legal regulation of relationships needs to be headed towards this change and adjustment. ите треба да биде во правец на таа промена и таа приспособеност.

2. *Legal changes to part-time employed persons*

By means of accelerated procedure, the Assembly of the Republic of Macedonia adopted the changes and amendments to the Law on Contributions from Compulsory Social Insurance, the Labour Law, the Law on Pension and Disability Insurance, as well as amendments to the Law on Employment and Insurance against Unemployment and the Law on Health Insurance. The assessment of the Helsinki Committee is that these legal changes would lead to confusion in the practice and would stimulate work on the grey market and would just fictitiously decrease the unemployment rate.

Namely, a free-lance worker hired with a temporary service contract or a copyrights contract, who is engaged by three different companies and receives annual amounts which are higher than 12 minimum salaries in the country, will have the three employers individually pay his/her social i.e. pension and healthcare insurance for the amount paid to her/him. A freelance worker who receives amounts lower than the minimum salary from three places, which are in total higher than the minimum guaranteed salary in the country, must register her/his income on her own and pay the contributions on an amount calculated by the Pension Insurance Fund.

These solutions may lead to lack motivation in employment and the legal solution may have an adversary effect on the efforts for an increase of employment in the country, as well as result in an increase in the grey economy. In the legal changes there is also obvious mixing of the labour law and the law of obligations which leads to breach of the principles of obligation relations as legal freedom, which in itself would create confusion in practice, irregularities and would raise a lot of legal dilemmas and issues.

The fact must be taken into consideration that in all the changes and amendments to the specific laws the same matter must not be addressed in different ways, since that would be contrary to all the constitutional principles.

In accordance with the legal changes, persons hired with a temporary service contract or a another type of contract, as well as the permanently employed people, who additionally earn other income on grounds of a copyrights contract or a temporary service contract shall also be obliged to pay contributions for pension, social and healthcare insurance. Furthermore, it is envisaged that persons who make earnings from several temporary service contracts will pay their contributions calculated on the amount of total income received if it exceeds the amount of the minimum salary established by law, and it is a legal obligation of part-time workers and their employers to register their freelance engagement or temporary service contract in the competent institutions which need to record it in their registers.

In accordance with the Law on Obligations, i.e. Article 619, there is no obligation to pay contributions. Hence, it can be concluded that there are no labour and legal grounds for people who are already regularly employed and who pay their contributions for pension and disability insurance, to additionally pay those same contributions in case when they have concluded an obligatory legal act such as the copyrights contract, or the temporary service contract. This clearly shows that the legislator wrongfully puts an equation between the people hired with temporary service contracts, copyrights contracts or other part-time contracts, with those who are permanently employed, i.e. it wrongfully assumes that all people who do contractual work are fictitiously employed persons. This means that the newly-introduced category of taxpayers is based on a wrong assumptions, which is evident from the legislator's failure to codify the particularities with regards to the relations arising from temporary service contracts, copyrights contracts or other contracts. Those particularities are: inconsistency of earnings, varying pace of payment of remunerations, job insecurity, the possibility of contract termination, etc. The Helsinki Committee believes that this will become a problem in practice and will result in mixing up the labour law and the law on obligations, legal uncertainty, as well as breach of the equal position of subjects on the labour market, since the people affected with these changes will solely be provided with social insurance, but not the other labour rights that the permanently employed are entitled to.

Moreover, the legislator has not at all envisaged that certain professions, such as interpreters/translators, artists, performers hired for a specific event, are fully regulated with temporary service contracts, copyright contracts or other contracts, so consequently, with the newly introduced contested provisions, the legislator does not provide them with equal access and protection until retirement and taxes them significantly more. The Helsinki Committee concludes that these provisions harshly breach the constitutional principle of equality of citizens in front of the Constitution and the laws, which means that the legislator is bound to establish equal principles in the laws under which the citizens would exercise their rights, freedoms and duties. The principle that «all citizens are equal before the Constitution and laws» in particular binds the legislator with a ban on introducing provisions in the law which would differentiate between people, as well as an obligation to the authorities, organizations and other subjects to apply the Constitution and the laws equally to all citizens.

Despite all the arguments provided by the Government, in fact the competent Ministries, about the goal of these changes and on how these changes would improve the labour

market and protect the workers themselves, the goal of these changes is clearly spelled out: to fictitiously decrease the unemployment rate and directly increase the funds in the budget of the Republic of Macedonia. The unemployment rate shall fictitiously decline as each individual who will sign a copyrights contract, or a temporary service contract will be erased from the register of unemployed in the register of the Employment Agency of the Republic of Macedonia.

The funds in the budget in the Republic of Macedonia will directly increase because the contributions paid by the citizens who have signed copyrights or temporary service contracts will flow into the first pension pillar, and not in the private pension funds.

3. *Law on higher education*

On 14.01.2015, by means of accelerated procedure, the last changes to the Law on Higher Education (the normative text of this law was amended for the 13th time since 2008). The university units of the biggest university in the Republic of Macedonia - the University «Ss. Cyril and Methodius», in their objections and suggestions, emphasized the unconstitutionality of the changes and amendments, also established in the changes and amendments to the Law on Higher Education in 2011; the internal contradictions of the normative text, the inconsistence in the regulation of the work of the institutions of higher education, the unclear and imprecise language, the nomotechnical mistakes and the inapplicability of some of its key articles.

The law, most openly to date, headed out to terminate the autonomy of the University guaranteed in Article 46 from the Constitution of the Republic of Macedonia, which was first touched upon with the law from 2011. This was most blatantly done with the provisions for introduction of a «state exam» for the students (allegedly to check the quality of studies), whereby the failure to pass it would result in losing the status of a student. The second tool to terminate the power of the university and professors, was imposing abstractly high, imprecise and absurd criteria for progress of the academic staff. The inability to fulfill those criteria would result in blocking the career advancement of teachers and would leave them at the «mercy» of the Minister of Education and Science. Both cases eliminate the constitutionally allocated power of knowledge to the University (that of students and professors) and contrary to the Constitution and the international standards (Declaration of the free European Universities, 2007) - it subordinates the university and higher education to the direct management and domination of the Government.

The most recently proposed legal solutions violate the Constitution of the Republic of Macedonia, by violating three articles: Article 46 which guarantees the university's autonomy, Article 44 which guarantees the equal conditions and everyone's right to education, Article 47 which guarantees the freedoms and rights of the scientific and other types of intellectual authorship.
The University's Autonomy covers: a sovereign student-teacher relationship in all the areas related to knowledge and checking knowledge and assessment; here, the control is performed by means of various levels of assessment and self-assessment which exclude any external control on the part of the state. In addition, it also covers the fiscal autonomy and the sovereignty of the territory that the University operates in.

Hence, the law may only affirm, develop and additionally protect the autonomy, and must in no way jeopardize it. Its provisions, regulating autonomy should mainly strive towards a process of university self-regulation. If this is not complied with, and the Law on Higher Education in Macedonia does not comply with it and makes an additional step which clearly usurps the university's autonomy by the state (with the frequently uttered and misunderstood clichés such as «the University is not outside society») and this directly jeopardizes the right to higher education of students and professors (as active participants in the teaching and educational process) and jeopardizing this right is a subject of interest to the Helsinki Committee of Human Rights.

In this vein, both from technical as well as conceptual aspect, the latest changes and amendments to the Law on Higher Education, as well as the changes and amendments of the entire package of laws have produced a string a problems without fulfilling the expectations for adequate reforms in higher educations, and are in fact contrary to the process of improving the quality of higher education in the Republic of Macedonia. In this sense, from a technical aspect, it is very important to mention that the most recently proposed legal solutions are methodologically incorrectly located and obstacles occur in the integral reading of the codified text due to the language and the inadequate numeration, and finally, they are not governed by nomotechnical standards;
while from a conceptual aspect a large part of the matter regulated in the Law on Higher Education is not legal matter, but needs to be regulated with guidelines and therefore it is impermissible for the legislator to get involved in the internal organization of the work of the university.

What is a serious political novelty is the self-organization of the students against this law and their final success in «breaking» it down and making the Government withdraw the law and obliging to adopt a new one in accordance with the standards of autonomy and participation of all stakeholders (first and foremost students and professors). This is a serious political experience of successful self-organization which placed the student agenda on a new, central spot in the broader social scene and has an influence as a new political language within it.

Apart from the academic aspect and the criticism against the law as contrary to the basic principles of the Bologna process, it should be noted that the law also envisages how teaching and assessment should be organized, which constitutes discrimination against the course teachers who need to select the literature and the other teaching materials, conceptualize the lessons, as well as the method of examination. The direct violation of the constitutionally-guaranteed autonomy is also explicit in the functioning of a quasi-state authority and auxiliary body of Ministry of Education and Science one of which is the Accreditation and Evaluation Board, whereby this board would carry out the verification of the knowledge of the students from first, second and third cycle and take over a part of the educational process i.e. the assessment, which is a primary activity of the university and its units.

The blatant violation of the principle of autonomy in the implementation of the state exam the manner and procedure for which are stipulated by the Minister of Education and Science, with the additional presence of two representatives of the same competent ministry, does not stop with the violation of the principle of autonomy. Moreover, what is of particular concern from the aspect of the rights to privacy is the provision stipulating that sitting for the state exam should be recorded, broadcasted live and then the videos are to be uploaded on the web-site of the Ministry of Education and

Science which is in direct collision with the court practice of the Court of Human Right in Strasbourg.

The new legal solutions also imply profound degradation of the teaching personnel, bearing in mind the conditions which are related to the publishing of studies in magazines listed in the Web of Science base (about 50% of the adequate area) because such articles require higher previous investments in the area of science and education, a long period of time, a national and regional dimension of the publishing, necessity to broaden the indexing bases, as well as an adaptation of the possibility to have impact depending on the subject of study, as in the case of humanities; and finally possible replacement of these conditions with other options for the humanities which would include scientific publications (authored, co-authored), published by internationally acclaimed publishing houses.

When it comes to the degradation of the teaching personnel, it is essential to reject the legal solutions which envisage and refer to the Law on Labour Relations, according to which «Through a written statement, the worker may require from the employer to have his employment contract extended up to 67 years of age (men), i.e. 65 years of age (women), unless otherwise stipulated by the law.» In this way, direct discrimination is institutionalized within the academy, whereby the extension of the employment contract constitutes basis for gender discrimination at the university.

Furthermore, in the vein of discrimination against the teaching personnel, it is important to mention that it will potentially be perpetrated through the English language tests (every three years), as well as through the personally and integrity tests.

Finally, taking into consideration the negative trend in the reforms of the higher education, particularly prominent since 2011 resulting in the final terrible outcome with the latest legal changes and amendments, and also assessing the statements of a large number of the university units of the «Ss. Cyril and Methodius» University about the necessity of a completely new Law on Higher Education, we emphasize the need for a process in which the involved parties (the students and teaching personnel) will provide incentive and participate in the creation of a completely new Law on Higher Education, which would omit the legal solutions violating the principle of constitutionally guaranteed autonomy, i.e. process which would be conducted according to the principles of academic liberty.

III CIVIL AND POLITICAL RIGHTS

Introduction

In 2014, the Helsinki Committee found that the approach and practicing of civil and political rights in the Republic of Macedonia was significantly limited by the state authorities, the bearers of public offices, political parties and media, by violating the right to a peaceful protest, the electoral right in the early general elections and regular presidential elections, as well as that violations were observed in the freedom of expression along with a serious increase in hate speech by means of explicit nationalism or homophobia. The electoral manipulations, the increased hate and excessive demonstration of power, especially during peaceful public assemblies, as well as organized media labeling of individuals or groups critical of the policies of the executive authority have additionally worsened the conditions for exercise of civil and political rights. The citizens, due to these practices which have become more prominent in the past 4 years, were excluded from participating in the processes of making public decisions and policies which directly affect their rights. In fact, the stronger the resistance of the civil society was, the more the security measures through the security services were increased instilling fear among the citizens.

As a result of these circumstances, in 2014, the Committee observed all the public gatherings, peaceful protests, as well as demonstrations, and we also observed the early parliamentary and regular elections. In the course of the observation of all the public gatherings and in the course of the electoral processes, particular attention was paid to the attitude towards the media from the aspect of freedom of information.

1. The right to a peaceful protest and public assembly

This past year of 2014 was marked by an increased number of organized rallies, protests and strikes. [2] Apart from the peaceful protests, three other ethnically protests motivated were observed, where violence and clashes with police officers were noted[3]. The year

2 Observed protests: Protest of the redundant workers Civil Association UNIT - total number of protests: 6; March against Poverty - «It's 5 to 12, its time the people woke up and the Government came to its senses, because it 5 to 12 to save the future generations». Total number of protests 1; Protest against the pollution in the city of Tetovo in front of the Ministry of Environment and Physical Planning in Skopje; Protest for workers' rights on the 1 May; the Independent Union of Journalists and Media Workers (SSNM CCHM), the Union of the Macedonian Diplomatic Service (SMDS), the Union of workers from the administration, the judicial authorities and the civil associations (UPOZ УПОЗ), the Leftist Movement SOLIDARITY (СОЛИДАРНОСТ), the Movement for Social Justice LENKA (ЛЕНКА) and the Confederation of union organizations of Macedonia (KSOM) organized this year's workers' rights protest. The total number of protests: 1; Protests against the air pollution held in the residential area of Zhelezara - Total number of protests: 3; the National Network against Homophobia and Transphobia and a line of protests in front of the building of the Public Prosecution of the Republic of Macedonia. Total number of protests: 5; Student and Professor Plenum: the Students from the «Ss. Cyril and Methodius» University in Skopje, from several departments and streams, with the support of a large number of the professors. Total number of protests: 3 plus one spontaneous gathering in front of the Ministry of Education and Science during the so-called public debate; Protest against the payment of additional taxes on remunerations. Total number of protests: 1; Civil initiative «UDAR (BLOW) - a civil initiative against the general policies of the executive authority in the Republic of Macedonia - total number of protests: 1; Civil Platform - AJDE; The first public assembly of the citizens' platform «AJDE - HAJDE» was held under the message «Politics back to the citizens». Total number of protests: 1

3 Violent protests in the residential area of Gjorce Petrov. Total number of protests: 2; Violent or non-violent protests: The Citizens against the court verdict in the Lake Smilkovo case. Total number of protests: 8

started with serious violations of the right to a peaceful protest and attempts for its violent prevention by police officers. Namely, in February 2014, at the first protest of the Civil Association UNIT representing the interests of redundant workers supported by several civil organizations and informal groups was met with a harsh and unprofessional attitude on the part of the police officers, which resulted in two detained and more than tens of slightly injured citizens.[4] One of the participants who was detained and released from the police van after the intervention of the Committee, was unlawfully legitimated with allegations of involvement in a conflict which was contrary to the Committee's findings, i.e. the participant at the protest had in fact been injured from the blows of the police officers. In this case, the committee provided free legal aid in order not to let the attempts to de-legitimate the protests, the injuries and the obstruction of the public gathering as a whole to get covered-up. The Committee prepared a special report registering and documenting all the violations with photo and video materials. In the course of the entire year several civil associations, as well as informal groups which expressed their dissatisfaction were repeatedly met with harsh and unprofessional attitude on the part of the police officers. Some of the practice of obstructing public gatherings or attempts to stifle authentic civil movement observed in the past two years have been repeated, but also some new practices of action have been introduced. The Committee noted down the following situations which were repeated in nearly all peaceful protests in 2014, such as:

1. Obstructing of a public gathering by police officers securing the protest by setting up a cordon at the venue of the protest, as well as attempts to intimidate with the excuse that the free movement of non-protesting citizens is being obstructed

2. Verbal provocations/offenses by uniformed and non-uniformed police officers addressed to the citizens/organizers of the protests

3. Not taking responsibility for the expressed verbal offenses or use of force against citizens during a protest by police officers. A practice of police officers refusing to legitimize themselvesself has been observed, withdrawing an officer from a protest and other methods disabling proceedings in front of a competent authority - in this case the Internal Control Sector under MoI.

4. Pressure and labeling of citizens as politically unsuitable and the executive authority blaming them for affiliation with the parties from the opposition, by means of active and simultaneous campaigns against the citizens.

5. Setting up a cordon (ring) of police officers around the protesting citizens. This practice needs to be monitored in future, bearing in mind that it has not been previously observed as typical when securing peaceful protests and public gatherings

6. Two cases of legitimizing citizens after the end of a protest - in one case having the citizen previously followed (1 member of the Solidarnost (Solidarity) movement during the protests of the redundant workers and 1 member of Studentski plenum (Student plenum); whereby the member of the Solidarity movement was provided with free legal aid and a lawyer after he received an invitation for an interview at a police station. Until the finishing of this report, the representative has not been given a notification about proceedings against the client from a competent court or any other authority.

4 Special report: http://mhc.org.mk/reports/183#.VNMcWNLF-pc

7. A practice has been observed of seizing video and photo materials from citizens and journalist taken during protests in two cases: the Demonstrations in the residential area of Gjorche Petrov where the materials of several journalists had been deleted and in the second case a «drone» was confiscated belonging to a participant in the protests organized by the Student Plenum with the explanation that it recorded state-owned buildings which is why the footage had to be checked.

The solidarity and mutual support between the citizens, civil associations, social movements, informal networks and the higher inclusion of youth, when confronted with the above-mentioned problems, spell out changes in the civil society. The increased partisan-political pressure applied on the public has resulted in an adverse effect towards the benefit of the citizens, encouraging them to stand up against the established practice of public discrediting and «lynch» against those who think differently. In a particularly difficult year of a serious political crisis, the civil society has managed to win the fight for visibility and to publicly confront the policies of the executive authority. The movements, which according to the Committee's assessment have managed to unite the citizens, were the protests of the Students' and Professors' Plenums provoked by the changes to the law on higher education and the pooling of the signatories of the Social Charter (independent unions and leftist movements) with the civil associations and part-time workers due to the changes to the Law on Contributions, which at a time of an economic crisis envisaged unrealistic increases of taxes among the precarity and the remaining part-time workers.

1.1. Excessive use of force during protests

The protests in Gjorche Petrov which were organized after the murder of Angel Petkovski where violent behaviour was observed alongside use of brute force by the police officers and the protests on the occasion of the case «Lake Smilkovo» have caused friction in the inter-ethnic relations, as well as an increased number hate crimes based on hate on grounds of ethnicity.[5] The streets of Skopje turned into a «military zone» during these protest which instilled fear about the security and safety of the citizens, and exactly these events served to show that the institutions of the system, instead of taking action to alleviate the tensions, most frequently opted to give inadequate statements which could only make the situation worse. The Helsinki Committee expressed concern and regret about the unrest of this kind, as well as sympathy for the families of the victims who were exposed to every-day media pressure violating their privacy and family life at the expense of the daily partisan and political needs of the executive authority. In the face of the escalation of inter-ethnic tensions, the Committee urged for sobriety and restraint, and expressed concern about the increased violence among the youth and the hate which escalated[6] between the youth from the Albanian and Macedonian ethnic community (see crime and hate speech).

5 Reports MHC: http://mhc.org.mk/reports/250#.VNMm8NLF-pd; http://mhc.org.mk/announcements/211#.VNMnpNLF-pc

6 http://mhc.org.mk/announcements/225#.VNMnktLF-pc

2. Early presidential and parliamentary elections 2014

The Helsinki Committee of Human Rights of the Republic of Macedonia monitored the election process of the regular presidential and early electoral elections through the open office on the voting days during the first and second round of the elections. The Committee prepared a brief analysis of the complaints of the citizens who directly addressed the office, and also followed the campaigns of all the political parties who took part by establishing a team monitoring hate speech and hate crimes[7] during the elections campaigns, during the elections and after their completion. The general conclusion about the election is that they went in an exceptionally worrisome atmosphere, followed by fraud, violence and even abuse of disabled persons accommodated in public institutions[8]. Similarly to the local elections in 2013,[9] the Committee found repeated practices of violation of the electoral law, which was particularly prominent on the voting day. Based on the undertaken activities and the analyzed data, the Committee noted down the following irregularities:

- Abuse of documents for personal identification and data of many citizens, allowed by the Ministry of Internal Affairs, as well as issuing of personal documents for the citizens from the Macedonian community in Pustec, the Republic of Albania.

-Easy removal of the ink which was used as means to mark and check the voters.[10] The questions related to the controversial public procurement for the ink addressed to the State Electoral Committee and the delay in the payment of money necessary to conduct the elections by the Ministry of Finance remained unanswered, which cast additional shadow on the legitimacy of the overall electoral process.

-Pressures, agitation, running records of voters of so far unidentified persons and lists of citizens the purpose of which remained unclear, as well as public reading out of the names and surnames of citizens.

- The heftiest objections of the OSCE/ODIHR Spillover mission in the Republic of Macedonia was the abuse of media to the benefit of the ruling party, especially during the period of conducting the campaign for both the presidential, as well as the parliamentary elections, which created a non-competitive environment and representation of all the remaining parties that participated in the elections. This usurpation of the public information services constitutes violation of the electoral law and the right to freely receive and share objective and multifaceted information to the electorate which decreases the possibility of autonomy in decision-making due to lack of information.

- The cases of hate speech, as well as hate crimes, were on the increase both during the elections and after.

7 http://mhc.org.mk/announcements/185#.VNIiA2jF-Nc
8 http://mhc.org.mk/reports/198#.VNIhwmjF-Nc
9 Локални избори 2013:http://mhc.org.mk/announcements/119#.VNNySZ3F-Nc
10 Ibid.2 The use of ink was envisaged in the latest changes to the Electoral Code from January 2014, adopted by the Assembly by means of accelerated procedure. In the past 10 years, this method was used during the elections in Afghanistan (2004), Kazakhstan (20110 and Malesia (2013). In all of these countries the same problem which was observed on voting day in Macedonia occurred, i.e. the ink could be removed very quickly after it was applied as was the case with some of the voters. The adoption of the changes to the Electoral Code which requires a two-third majority and should have under no circumstanced been conducted by means of accelerated procedure and without including the expert and scientific public...

For the first time, a report was submitted to the Committee by a citizen who was blackmailed because of his disability with the threat that he would not be taken to vote unless he agrees to vote for the ruling party. This case needs to raise serious concern, since the methods of agitation have turned into blackmailing members of one of the most vulnerable groups - the persons with physical disabilities, pointing to the fact that electoral victory is more important than the physical integrity and dignity of a person. The post electoral period and the delegitimizing of the elections by the biggest party of the opposition and its coalition partners, as well as rejection of the mandates in Parliament reflected total destabilization of the legal and political order.

The Committee regrets to conclude that in this electoral process too, the citizens' right to vote continues to the be jeopardized by direct participants in the electoral process, i.e. political parties and activists. The overall electoral atmosphere and the breach of the secrecy and inviolability of the right to vote points to a democratic deficit, and also to a lack of capacities to enhance the legislative framework and enable free, fair and democratic elections in the Republic of Macedonia. In the past two years the elections have illustrated what can be dubbed structural violence over the citizens and their right to vote which is becoming a practice in Macedonia.

3. *Freedom of expression, information and the media*

The Helsinki Committee of Human Rights monitors the situation with the freedom of expression in the public space, as well as the access to objective information and various types of content, without censure, in the interest of the wider audience. Furthermore, the Helsinki Committee monitors the transparency of institutions, especially from the aspect of communication with the citizens on issues of public interest. In addition, in the recent period, the Committee analyzed the situation and allegations of political influence and censorship on the editorial policy of the media and journalists.

This is particularly due to the fact that this past year the freedom of expression and the freedom of media was seriously breached due to the disproportionately high fines imposed on certain media, the verdict imposed on the journalist Kezharovski, the exclusion of the public from the processes of adoption of the important legal changes in the area of regulation of the public broadcasters and the new competences of the reformed independent body. These social phenomena lead to establishing complete censorship and self-censorship of journalists, in an attempt to establish complete control over the editorial police of the media, leaving minimal space for critical through which has been mainly left to find room for expression on internet-based media.[11]

The Committee has also observed that the lack of social responsibility when reporting about sensitive cases, especially the involved parties in the process have led to increased escalation of hate speech among the participants in the protests. Due to the protests and the tense atmosphere, in the months of June and August, the Committee noted down an increase in the number of reported cases of hate speech on the platform **www.govornaomraza.mk.**

The Committee also expresses great concern over the increased pressures on media and media workers through the court verdicts and abuse of the Law on Civil Liability for Libel

11 Fines for «Telma» and «24 news» :http://www.mhc.org.mk/reports/219#.VNNzap3F-Nd

and Insult, due to the passed court ruling to the benefit of higher government officials. This practice indicates demonstration of strength from a position of power, influence and control over the judicial system, and also sends a negative message to the citizens that criticism directed towards the executive authority may end up in a fine or another type of penalty, at the same time increasing censorship in public spaces.

The public freedom of information was also limited by the President of the Constitutional Court with reference to whom the Committee had already warned that she was establishing a practice of non-transparency with the adoption of the decision not to have the public hearings of the Constitutional Court broadcasted with an audio and video footage. The committee expresses regret about the practice of censorship in informing the public about issues of public interest, such as the hearing on the disputed changes to the Law on Termination on Pregnancy. Just to remind, this unprecedented decision by the President was first introduced in the month of June when a unilateral decision to exclude the public was adopted, which followed after the decision of the Constitutional Court to reject the request for protection of the freedoms and rights from Article 110, indent 3 from the Constitution referring to the freedom of public expression and information regarding the events from 24 December 2012. [12]

12 http://mhc.org.mk/system/uploads/redactor_assets/documents/764/Mesecen_Juni_2014.pdf.

IV CLOSED INSTITUTIONS AND POLICE TREATMENT

Introduction

The mechanisms of supervision which need to perform supervision over the closed institutions continue to prove that they are either non-functional or only partially functional and cannot be deemed independent. The effectiveness of the Ombudsman as a National Preventative Mechanism in the first four years is still not on a satisfactory level, especially due to the lack of professional staff, as well as the incomplete participation of the civil organizations - something which although completely possible and necessary, has not been implemented in practice. In the course of 2014, the Standing Survey Commission of Human Rights under the Assembly of the Republic of Macedonia did not hold a single session, while the State Commission for supervising penal and correctional institutions, whose decisions would be binding to all those that they apply to, operates only on paper. Therefore, with the exception of the Ombudsman, there are no other constant mechanisms of supervision of prisons and of the Directorate for Execution of Sanctions in Macedonia. The Directorate for Execution of Sanctions for the largest part systematically rejected the requests of the Helsinki Committee for visits of convicts who had addressed the Committee, while the journalists' access to the prisons was fully disabled.

The same problems in the area of closed institutions persist: overcrowding, substandard conditions of life, inadequate hygiene, inappropriate healthcare and protection, insufficient access to legal services. absence of re-socialization activities. In 2014 too, a significant number of convicts and detainees addressed the Helsinki Committee claiming that they are unable to exercise their right to healthcare. These citizens, as a result of their declining healthcare, asked to be given access to suitable therapy or to be examined by their family doctors at their own initiative and their own cost. Through several examples, the Helsinki Committee established that the employees in closed institutions unnecessarily delay the procedures after these requests, and very often no medical examinations outside the institutions are allowed.

The Sector of Internal Control and Professional Standards under MoI, continued with its practice of one-sided investigation of the allegations of citizens who complain of abuse of police authority. The sector is closer to disciplinary body more than to a true mechanism for protection of human rights when they are violated by police officers. Although the topic of an external supervisory mechanism was raised by the authorities in April 2014, no specific measures were taken to introduce independent external supervision over the police.

1. Case: Leon Raposki – *torture against a child protégé*

Torture against a deaf and mute child at the Public Institution for Protection and Rehabilitation Banja Bansko

The case of the deaf and mute child - victim of torture by the Public Institution for Protection and Rehabilitation Banja Bansko stirred the public and was the subject of particular attention on the part of the Committee. The findings on the case were obtained from the report of the Ombudsman, who several months before, during a visit of the Public Institution for Protection and Rehabilitation Banja Bansko, found inhumane treatment of a child. The child was found tied to a bed with the explanation that it is impossible to control him in any other way.

The Committee immediately took action on the case and after obtaining information that the child has been transferred to the PI Public Institution Rehabilitation of Children and Youth (Topansko Pole) - Skopje, representatives of the Helsinki Committee of Human Rights of the Republic of Macedonia visited the health institution and had the chance to meet the child. The medical documentation specified combined disabilities in the psychological development, hearing and speaking impairment and a severe form of cerebral paralysis. Upon meeting the child, it was noted that he was moving normally, which raised doubts as to the appropriateness of the diagnosis of severe form of cerebral paralysis. What was also established from the meeting was that the child was educationally neglected and not paid sufficient attention to since no one had tried to teach him sign language so that he would be able to communicate with his environment. The transfer to the Public Institution for Rehabilitation of Children and Youth Topansko Pole was also a cause of concern, since this institution does not have adequate professional personnel who could work with the child in accordance with his hearing and speech impairment. Consequently, the Committee demanded that the competent institutions urgently re-categorize this child for the purpose of correct assessment of his health status so that he can be provided with adequate care and attention further on.

According to the assessment of the Committee, the inhumane treatment that the child had been subjected to is impermissible and contrary to the international standards for children's rights. Furthermore, the lack of adequate treatment and the fact that no attempts had been made to teach him sign language speak of complete absence of care on the part of competent institutions and his complete neglection.

Acting upon the request of the Committee, the Ministry of Labour and Social Police and the Ministry of Health stepped forwards with two completely contrary opinions. On one hand, the Ministry of Labour and Social Policy informed the Committee that they had taken measures and that disciplinary procedures had been started against the professionals who had acted on the case, and on the other hand, the Ministry of Health informed the Committee that after the State Healthcare and Sanitation Inspectorate conducting inspection, no violations had been established, nor mistakes on the part of the competent persons and institutions in charge of this case.

Taking into consideration this outcome and the lack of will to take responsibility for the case, the Helsinki Committee pressed criminal charges to the Primary Public Prosecution Strumica, against the Director of the Center for Social Work Bitola, the Director of the Institution for Rehabilitation Banja Bansko and against the people who had been directly responsible for Leon in these institutions, for the criminal acts of Torture and other cruel, inhuman or degrading treatment and punishment and Harassment while being on duty.

The Primary Public Prosecution in Strumica rejected the pressed changes with the explanation that that the reported acts were not prosecuted ex officio, and that the tying up of the child was justified, for security reasons. After this decision, the Helsinki

Committee filed a request to move the criminal prosecution to the Higher Public Prosecutor in Stip, which also found that the child was chained for security reasons and upheld the decision of the Primary Public Prosecution. In addition, the Senior Public Prosecutor emphasized the fact that Article 3 from the European Convention of Human Right which prohibits torture, the humiliating and degrading treatment under any circumstances, is not of an absolute characters, and that all circumstances had to be taken into consideration.

The Helsinki Committee believes that this decision is incompetent and unprofessional, which is why, in case the response of the Public Prosecutor of the Republic of Macedonia is also negative, and no violation of the rights of the child is established, an application will be submitted to the European Court of Human Rights.

2. *Case: feces-contaminated water for the inmates and detainees of the Kumanovo Prison*

In the course of 2014, the Helsinki Committee of Human Rights was approached by convicts serving their sentence in the Kumanovo Prison. The prison was put into operation in September 2013, and was promoted by the government as an institution which fulfills the European standards. Among other things, it was announced that the prison has its own separate water-supply and sanitary water-heating systems.

From the interviews conducted with the inmates in this institution, the Helsinki Committee concluded that they were facing serious problems related to the inadequate living conditions. The problems of the about 300 convicts and detainees referred to the absence of activities, the non-functional separate rooms such as the hair salon, the religious rituals room, the schoolroom, the library etc. The complaints that very often there is no water in the prison in spans of two to three days were particularly disquieting, and that no hot water was supplied at all. Namely, the prison has neither a water-supply system, nor waste-water sanitary infrastructure. The water which is used for drinking, cooking and bathing is transported in tanks. According to the information obtained from the inmates and the residents living in the vicinity of the prison, the well that the water is pumped out of is located in the village of Gradishte, Kumanovo.

In the course of the month of September 2014, an inmate sent a bottle of the water used in the prison to the Committee. The water had an atypical color and contained small particles of unknown matter. For this reason, the Committee sent the water for a laboratory analysis, the results of which proved that the water is not safe for drinking. Bearing in mind that the water was analyzed without fulfilling the technical prerequisites (a sterilized bottle and handing in the water for analyses within six hours after it is taken) the Committee in October 2014 found the well in village of Gradishte and provided a new sample which was taken for analysis to the Institute of Public Health in Skopje, in accordance with the technical prerequisites.

In October 2014, we visited the family living in immediate vicinity of the prison, that one media outlet reported had been facing flooding of their house and yard with the fecal waters discharged from the prison. The walls of the house of the family consisting of two spouses aged 80 were flooded from the ground up to two meters of height. Their yard and garden were also completely flooded, and an unpleasant odor was noticeable everywhere. The family had stopped using the water for drinking, but they were using it

for the livestock they were breeding. Although the family had contacted the competent authorities, they had not provided an answer, or had proclaimed themselves incompetent. In the course of the visit, in line with the technical prerequisites, a sample was also taken from the water of the family's private well.

After the laboratory analysis of the water used in the Kumanovo Prison, ordered by the Committee and implemented by the Institute of Public Health of the RM, the report states the following: «The analyzed sample of the raw potable water DOES NOT MEET the legal and professional regulations for bacteriological analysis due to the increased total number of bacteria». The report states that the water is polluted with feces, as well as that it has increased electrolytic conductivity.

Regarding the analyzed water from the well of the family living in the vicinity of the prison, the analysis also found that IT DOES NOT MEET the legal and professional regulations for bacteriological analysis due to the increased number of bacteria, and that there are indications of fecal pollution of the water. When it comes to the physical and chemical analysis, the analyzed sample contains a significantly increased content of nitrates, chlorides, iron and manganese. The sample of water IS NOT FIT for human consumption.

Due to the results, the Committee addressed the Directorate for Execution of Sanctions, the State Sanitation and Healthcare Inspectorate, the State Environment Inspectorate and the Ombudsman. The Directorate for Execution of Sanctions rejected our findings and informed us that the water for the Kumanovo Prison is procured from a different well. In their letter, the Directorate did not address the situation with the affected family at all. The State Inspectorates of Environment and Healthcare found our findings for discharge of feces in nature to be legitimate and they imposed on the Prison to immediately stop polluting the environment and the family's private property. The Prison did not act according to the order of the inspectorate. The Ombudsman informed us that they had decided to conduct a procedure to establish the plausibility of our findings. The inmates from the prison have informed us that after the Committee's reaction, clean water is being brought to the prison, and also hot water for showering is provided. The problem with the affected family persists, and at their request the Helsinki Committee continues to provide free legal aid, including the drafting of a lawsuit against the Directorate for Execution of Sanctions for the inflicted damage.

3. *Полициска бруталност врз малолетни деца Роми*

On 19.05.2014, in the vicinity of the Skopje Kale, the police unit Alpha intercepted and held two underage children from the Roma ethnic community on suspicion of them having committed the criminal act of «Theft». The case was part of a police action after a citizen had reported a bag stolen by by A.S. (12) and B.M. (17). According to two children's parents' statements, and the witnesses from scene, the police officers immediately resorted to brute force in order to extort a confession by beating up the children with their fists, kicking them, pulling their hair and hitting them with their batons.

Shortly after B.M. was detained and placed in a police vehicle and taken in an unknown direction. A.S.'s father called 192 in order to report police brutality on underage children. After the talk with the officer, he was informed that B.M. was located in the

police station «Centar». They spent two hours in the police station without being given any information about the child, who was kept for interrogation without the presence of a parent or an attorney. According to B.M.'s statement, he was questioned and beaten up. B.M. does not talk and understand Macedonian, but this did not prevent the police officers from questioning the child without the presence of an interpreter. In fact, B.M. was unable to answer the police questions because, among other things, he did not understand them. The next day B.M.'s health deteriorated and he was taken to the PJI Urgent Clinic of Traumatology, orthopedic surgery, anesthesia, resuscitation, intensive care and emergency center where he was diagnosed with injury such as head contusion, neck contusion, ribcage contusion, and bruises on the chest.

The Committee finds the behaviour of the police officers from the Alpha Unit to be extremely unprofessional, unacceptable and equal to inhuman treatment and punishing. Even more so, since in this case underage persons were in question who were not able to defend themselves or provide resistance or inflict injury on adult police officers. Due to such severe violations of human rights, the Helsinki Committee sent a complaint to the Sector of Internal Control and Professional Standards under MoI and cooperated with the lawyer of the underage children in the drafting of the criminal charges which were sent to the Primary Public Prosecution in Skopje, against a member of the Alpha unit. According to the Internal Control Sector, it was not possible to establish torture, and even after the expiry of the 8 months since the filing of the criminal charges they have not established contact with the damaged party and have not given their stance on the case.

The Helsinki Committee reminds that the members of the Roma community are facing a discriminatory attitude by institutions and citizens at an increasing rate and that they are particularly dissatisfied with the treatment they get from police officers. Therefore, the Committee believes that the public prosecutor needs to get seriously involved in this case and start a procedure against the police officers on several grounds in accordance with the Criminal Code of the Republic of Macedonia. Otherwise, this case will remain just another one among the many which serve to testify to the phenomenon of impunity, i.e. the public prosecutors taking the side of the members of the police units.

V DISCRIMINATION

Introduction

The Helsinki Committee of Human Rights actively followed the situation with discrimination in the Republic of Macedonia, both individually, as well as through the Network for Protection against Discrimination. The Committee's conclusion is that although 4 years have passed since the enforcement of the Law on Prevention and Protection against Discrimination and the establishing of the Commission for Protection against Discrimination, we are still far from providing effective protection in the area of discrimination, especially when marginalized groups are in question. The Law on Prevention and Protection against Discrimination remained unchanged despite the criticism from the professional public and non-governmental sector. The criticism mainly referred to Article 3, where sexual orientation and gender identity are not established as grounds for discrimination, as well as the provisions which allow employees in the state administration to become members of the Commission for Protection against Discrimination. An additional aspect which led to an even greater increase in the distrust in the impartiality of the work of the Commission is the fact that it has not yet been provided with financial independence, especially when it comes to complaints for discrimination perpetrated by state officials.

Nevertheless, what has to be underlined as a positive development in the reporting year, is the first positive court verdict establishing discrimination on grounds of ethnicity, and it referred to the restriction on Roma from freely leaving the country. The fact that judicial protection as a mechanism for protection against discrimination started to be sought in other cases as well, serve as an indicator of the increased awareness among the citizens about the possibility of court protection in cases of discrimination.

Acting on the complaints submitted by citizens following the situation in society and the media, the Committee found that most of them referred to discrimination on grounds of ethnicity, sexual orientation, gender identity, sex, gender, political affiliation and religion, while those most exposed to discrimination were Roma people. This conclusion is based on the systemic discrimination against the members of the Roma community with the restriction to their right to freely leave the country imposed by the Ministry of Internal Affairs.

When it comes to the Roma community, unfortunately, no progress has been made in protection against discrimination and no awareness can be observed about the fact that they are victims of a kind of social discrimination, which is why they continue to be one of the most vulnerable groups in the country.

LGBTI people still remain the subject of systemic discrimination, due to the inaction of the public prosecution after the several attacks on the LGBTI Center and the choice not to include sexual orientation and gender identity in a large number of laws which are aimed at providing effective protection against discrimination and their inclusion in society.

As a result of the continual government campaigns who have the goal of cementing the stereotypes of the position of the woman in society, accepting her solely in the role of a

wife and mother, the equal status of women in society is under a siege along with their full inclusion. These conclusions are due to the fact that this past year discriminatory changes were adopted to the Law on Labour Relations, and the Constitutional Court decided negatively on the submitted Initiative for Reconsidering the Constitutionality of the Law on Termination of Pregnancy.

1. Discrimination of Roma at border crossings by MoI

For two years in line, the Helsinki Committee has received complaints from citizens referring to the limitation of their right to free movement/departing from the border crossings of the Republic of Macedonia. In the course of the month of June, a new case of limitation to the right to free movement of a member of the Roma community, actress Emra Kurtishova who was not allowed to leave the Skopje airport and go to visit her sister in Germany, hit the headlines. This was not an isolated case, nor a single occurrence, it was just a confirmation of the already established discriminatory practice of the Ministry of Internal Affairs to limit the right to free movement and departing from the state for the Rome, under the excuse that they could be possible asylum seekers.

The Helsinki Committee, as a member of the Network for Protection against Discrimination stepped forwards with harsh condemnation of the actions of the border police officers towards the members of the Roma ethnic community leaving the borders of the Republic of Macedonia. The reaction of the Committee was mainly directed towards the absence of efforts on the part of the state to work towards improvement of the status of the Roma and provide them with equal treatment in the practicing of their rights guaranteed with the Constitution and the international documents. The reaction adamantly called for termination of the practice which constitutes unequal treatment and discriminatory attitude which in the bottom line can also be interpreted as politics of racism and racial discrimination.

The tendency in the attitude of the Ministry of Internal Affairs towards the members of the Roma community is clear, if we take into consideration the practice of marking the passports of the citizens of Roma ethnicity who were not allowed to get out of the country with two bars or with a stamp.

Considering the fact that in most of the cases the Ministry of Internal Affairs stated that the limitations occurred because the persons did not possess the necessary documents to travel to some of the EU member-countries, the Committee reminds about the constitutionally guaranteed right of each citizen to freely exist and come back into the country. This right may only be limited in order to protect the safety of the Republic, an undergoing criminal procedure and the protection of the health of people.

2. Discrimination of women

Discrimination on grounds of sex in the Law on Labour Relations

The Assembly of the Republic of Macedonia adopted discriminatory provisions in the Law on Labour Relations in the area of extension of the employment contract up to 67 years of age (for man), i.e. 65 years of age (women). According to the changes, the voluntary written statement is submitted once a year (upon acquiring 62 years of professional service for women, i.e. 64 years of professional service for men), while after its receipt the employer is bound to extend the employment contract. With these changes, men are given an opportunity which is denied to women, i.e. women who are unable to extend their employment contracts up to the age of 67, which constitutes direct discrimination.

The legal solutions were adopted in the familiar conspiratorial manner, without including the public or any debate or consultations with the civil sector.

These legal changes practically deny the gender equality which existed before the adopted changes in the part of exercising the right to work (i.e. both men and women could demand extension of the years of service up to 65 years of age). The discriminatory solution shall additionally increase the gap of inequality between men and women, bearing in mind that women would work for a shorter period of time, which would result in lower pensions. The state keeps putting special emphasis on the stereotypical presentation of women as mothers and care-takers, thus promoting unequal advancement in men's careers.

The Health Insurance Fund project for payment of maternity leave

The Helsinki Committee and the remaining members of the Network for Protection against Discrimination believe that the announced Government's project for faster payment of maternity leave to women will act as an additional obstacle for women to get a job and not be able to exercise their rights from permanent employment. Namely, with this project, the payment of the maternity leave fee should be taken over by employers, who afterwards need to claim these funds from the Health Insurance Fund of Macedonia.

Most of the unemployed women in the Republic of Macedonia are aged 25 to 34, i.e. in their reproductive period. One of the reasons that the Health Insurance Fund emphasized when announcing this project is the faster payment of the maternity leave fee, especially in the first months after the birth of the baby. In order to refund the money paid for this, the employer will need to submit a refunding request, which, in itself, would be another complication in the procedure for refund of money to the employers. In the information sent to the public, HIFM emphasizes that the introduction of this project would not result in any discrimination for any of the stakeholders, as well as that this project is being implemented in the employees' best interest.

Reacting to HIFM, the Network for Protection against Discrimination emphasized the multitude of unofficial evidence pointing to the fact that direct discrimination is a widespread practice, especially in the private sector, in the form of forcing women to sign contracts according to which they would not have children for a certain period of time. Furthermore, there are findings that they are asked personal family questions during job interviews, as well as that there are many cases of termination of employment by means of dismissal, after the end of the maternity leave. Therefore, the proposed solution will not only fail to make it possible to have equal treatment and timely payment of the maternity leave fee, but will also increase the negative practice of not hiring young women of reproductive age. This additional discrimination on young and pregnancy

women will contribute towards hindered access to work and weakening of the already fragile economic security of women in the Republic of Macedonia.

Ineffective protection of women - victims of family violence - gender based violence

In the course of 2014, five cases of femicide were committed, which is the most severe form of violence against women and a direct consequence of family violence or intimate partner violence, which is a subject of particular concern. Femicide is committed by a men, most frequently a current or former partner and is preceded by long years of domestic abuse, threats and intimidations, sexual violence, most often in families where women are less powerful and have lesser resources than their partners. This alarming number points out to the non-functioning of the system for protection of victims of family violence, as well as the state's inability to deal with this phenomenon. The last two cases were three-fold murders in which members of the closer family of women-victims of family violence were killed by their former husbands. In both cases reports of domestic violence were submitted to the Ministry of Internal Affairs and to the Center of Social Work.

The European Court of Human Rights of Human Rights has already stated that efficient protection of domestic violence also cover the inefficient implementation of the laws, and not only their adoption, as well as that the country's failure to deal with gender-based violence constitutes discrimination which is banned with the European Convention on Human Rights, but also with the national legislation. The Helsinki Committee found that there are reasonable suspicions in these specific cases that the women and their families who had reported violence were not provided with adequate protection, which is why we need to seek responsibility from the competent institutions and the persons who directly acted upon these cases.

3. *Discriminatory course at the Institute of Family Studies*

The Helsinki Committee, as a member of the informal Network for Protection against Discrimination, together with the other members, expressed its opinion that the study program at the new Institute of Family Studies is discriminatory on several grounds: on the marital and health status, sexual orientation and gender. In the study program itself, the description of the goals and content of some of the study courses are indicative of homophobic attitudes, emphasizing the role of the woman (and not the man) in the family and in the private sphere, the treatment of «homosexuality» and divorce as socio-pathological phenomena, unequal treatment of homosexuality and heterosexuality, treating drug addiction as a deviation, not a health problem, etc. The literature which is mandatory for some of the study courses (Development of children and adolescents in the family and Development of adults and growing old in the family) is the subject of a complaint before the Commission for Protection against Discrimination for their homophobic content, the heterosexism and for propagating religious dogmatism.

We would like to remind that the Institute of Family Studies was opened at the same time when the Department of Gender Studies at the Faculty of Philosophy was put on stand-by and when campaigns against abortion started to dominate the public discourse, along with aggressive campaigns against the women's right to choose, and in favour of the «traditional values» in which the executive authority discriminates against several

groups of citizens. Furthermore, we would like to remind that with its decision, the Commission for Protection against Discrimination has already recognized such content as discrimination and harassment in the textbooks on Pedagogy, Medical Psychology and Psychiatry volume 1 and volume 2. The textbooks were withdrawn from use, as well as the study courses which were also contested in front of this authority. The role of universities, above all, consists of building an autonomous, contemporary and critical scientific thought, and must not allow to support programs and study courses whose goal is to fortify stereotypes and demote scientific thought.

VI HATE SPEECH

Hate speech

In the absence of official statistics on hate speech by the competent institutions in the Republic of Macedonia, the Helsinki Committee has noted down and documented hate speech in public spaces with the aid volunteers spread over 8 different regions. The process of documenting/noting down hate speech on the interactive web-platform www.govornaomraza.mk officially started in April 2014, and by the end of January 2015, a total of 215 reports were submitted, 82 of which were confirmed, and 72 of which were verified. The difference of 10 confirmed reports refers to reports where it has been indicated that there are grounds for hate speech, but due to a lack of information used to verify it they are placed in a separate category which does not affect the final result of the processed statistics. most of the reports on the platform were submitted by the 20 volunteers spread to over the towns in the 8 non-administrative regions. The data drawn from the platform point to the fact that hate speech is present in all the regions, and it is most prominent on social networks and internet-based media. Due to the nature of phenomenon, the volunteers noted down the hate speech in public space on local and central level by documenting graffiti.

The statistics from the categories featured in the platform, in accordance with the Criminal Code of the Republic of Macedonia, show that:

- Most of the reports refer to a category classified as hate speech on grounds of ethnicity/religious belief/language/citizenship.
- Hate speech on grounds of sex/gender, sexual orientation occurs as a second highest category according to the number of reports.
- A lower number of reports were noted down on grounds of political affiliation/social background, i.e. as well as the other categories, such as those on grounds of race/skin color, health status/mental/physical disability, marital/family standing, property-ownership/social status and mocking representatives of international organizations and representatives of foreign countries.
- Most of the reports were submitted on several grounds and oftentimes in the reports on a published text, comment, or other content on social networks and media, several types of hate-speech could be found. In fact, most of the reports were on two grounds at the same time, i.e. on grounds of sexual orientation and ethnicity.
- The graph, which measures the parameters of escalation of hate speech according to the reports, confirmed that this phenomenon is closely related to the political and social problems that the citizens are facing. According to the monthly reports of the Committee hate speech escalated mainly during the early general and regular presidential elections. Later on, during the post election period or after the announcement of the verdict for the defendants in the Lake Smilkovo case. Moreover, the active campaign for fueling homophobia by means of promotion of so-called traditional values of the executive authority undoubtedly resulted in an increase in the number of reports on the platform on grounds of sexual orientation and gender identity. This campaign, apart

from hate speech, also resulted in another attack on the LGBTI community during a public event. (see hate crimes, the attack on the Damar Cafe).

- Hate speech is related to the social requests of various formal and informal groups who have disagreed with the public policies and the ruling of the executive authority. In fact, the executive authority, through its pro-government media, has often resorted to labeling individuals or groups who are part of civil movements, formal and informal initiatives and has thus triggered/ increased hate speech on the social networks and the media. The number of graffiti containing hate speech is also related to the current social and political developments. The data that a large part of these graffiti is directed against members of ethnicities and marginalized groups is of high concern. Also, there has been an increase of graffiti containing Nazi symbols which are related to the prominent nationalist rhetoric and propaganda spread by the executive authority.

The Helsinki Committee regularly reacts on the trends of increase of hate speech and hate crimes in the Republic of Macedonia. What is particularly concerning is that the competent institutions, such as the Public Prosecution and the Department of Electronic Crime under the Ministry of Internal Affairs are not taking a pro-active role in preventing or curbing hate speech. What is also worrying is the fact that despite the increased presence of hate speech and its reflection in a serious number of hate crimes and incidents, the competent institutions are still not motivated to adequately analyse or sanction this phenomenon. The Committee has submitted lawsuits for spreading hate speech to the Public Prosecution that no response has been provided to up this moment. Therefore, it may be concluded that the victims of hate speech, nearly identically to the victims of hate crimes and incidents, are unable to receive adequate judicial protection nor seek justice for thus types of criminal acts.

VII ДЕЛА ОД ОМРАЗА

Hate crimes in the OSCE region - Incidents and responses: The annual report for 2012 states that between the period from 2008-2012 «51 member-countries have pointed it out to OIDHR that they are collecting certain data on hate crimes. [...] The Republic of Macedonia pointed out that ODIHR does not collect statistical data of this kind.» The internet hate speech portal of OSCE/ODIHR 2014, states that «[...] The Republic of Macedonia informed ODIHR that no data on hate crimes has been collected». Furthermore, the Progress Report of the European Commission from 2014 on [...] the Republic of Macedonia, states that «The data from the reporting, investigation and the conducting of investigation on hate speech and hate crimes is not systematically collected, and the trainings in the for the legal institutions, the prosecutors and judges need to be increased.» In 2014, the Helsinki Committee of human rights of the Republic of Macedonia announced a special analysis of the hate crimes registered in the period from March to December 2013. This analysis, along with this report and the web-portal for reporting hate crimes - www.zlostorstvaodomraza.com, constitute the first specific efforts to collect, monitor and submit reports on the hate crimes in the country.

In the period from the 1 January to the 31 December 2014, a total of 87 hate crimes and incidents were registered. 12 incidents were reported to the Committee by the victims, while all other incidents were reported by the media. 46 incidents were verified by contact with the police, police bulletins, media reports, meetings with the victims and from people who witnessed the incidents. 41 of the registered incidents were not confirmed, but were nevertheless included in the report due to the presence of bias, including: the perception of the victim/witness; comments on the crime scene; the difference in the victim's and the offender's ethnicity; the pattern/frequency of previous incidents; the nature of the violence; the lack of other motive; location and timing. To be more specific, the unverified incidents were included due to the information obtained with regards to the location of the incident (for example, the ethnically mixed neighborhoods and schools, bus lines used by members of various ethnic communities, places where hate crimes had already occurred, etc), the time of the incident (after a previous fight as means of revenge, after the school classes, during or after a sports match, etc), and the property damaged during the incident (for example churches and graveyards).

Most of the criminal acts were committed by young individuals. The victims and offenders are usually members of different ethnicities (Macedonians and Albanians). The most frequently committed crimes are: attack, possessing and use of illegal weapons, property damage, vandalism, threats and violence. The registered incidents are also related to the alleged criminal act as it is regulated in the Criminal Code of the Republic of Macedonia. Most of the alleged crimes include: bodily injury (47), violence (46), property damage (31), jeopardizing safety (30) and participating in a fight (21). Apart from this, a large number of incidents are categorized under the following alleged criminal acts: Inciting hatred, discord and intolerance of national, racial or religious or other discriminatory basis (8), Threatening with a dangerous tool during a fight or argument (6), Assault of a public servant during the performance of work related to security (4) and Vandalizing graves (3). Very often, the criminal acts committed during an incident fulfill the criteria of two or more alleged criminal acts, which is the result of the higher number of criminal acts compared to incidents, presented in this chapter.

The largest majority of cases (84%) have occurred in Skopje and the region around the town. There were 4 incidents in Bitola, 3 in Kumanovo and in Prilep each, 2 in

Bitola and 1 incident in Strumica and Makedonska Kamenica. The towns where the highest number of incidents occur are regions in which there is a significant presence of a minority - either ethnic Macedonians (Tetovo), or ethnic Albanians (Skopje and Kumanovo). Unlike 2013, no incidents were registered in the ethnically diverse towns of Gostivar, Kichevo and Struga. Similarly to 2013, there were no incidents registered in Debar. Apart from Saraj, a municipality predominantly populated with ethnic Albanians, hate crimes also occurred in all other 9 municipalities in Skopje. Most of the incidents took place in Chairs (15), Centar (13), Aerodrom and Gazi Baba (9) and Butel and Karposh (8). Chair and Butel are mainly populated with ethnic Albanians, while ethnic Macedonians are a majority in the rest of the municipalities.

Not a single hate crime against the Roma was registered. The fact that no such incidents were registered does not necessary have to mean they did not occur, but that they remained unreported. At least 11 incidents in Skopje took place in buses (the media sometimes report about the location where a certain bus was attacked, but not the number of the bus route). Most of the buses go through the residential areas which are populated by ethnic Macedonians and Albanians. At least 13 incidents took place in, or in the vicinity of 7 secondary schools in Skopje: Zef Ljush Marku (4), Marija Sklodovska-Kiri (3), Zdravko Cvetkovski (2) and one incident in Vlado Tasevski, Cvetan Dimov, Krste Misirkov, as well as Kiril Pejchinovic each. The incidents involved attacks a of group of students against an individual student, or a fight between two opposing groups. Three of these schools are located on the same boulevard in the Municipality of Aerodrom. There are Macedonian and Albanian students in all of the schools. Apart from these locations where hate crimes were committed on several occasions, graves were desecrated (in the Municipality of Gjorche Petrov and in the village of Lovreni, Prilep).

Most of the hate crimes (61%) occur as a result of the different ethnicity of the victim. Nearly all of these incidents include ethnic Macedonians and Albanians. The political affiliation (23%), the sexual orientation (10%) and religious affiliation (6%) are the rest of the biased motives which served as a reason for hate crimes in Macedonia. In 8 of the incidents «inciting national, racial and religious hatred, discord and intolerance», a crime had allegedly been committed, and for the incident in the Damar Cafe, the criminal act of «Racial and other discrimination» allegedly took place. There was a minimum of 125 victims and 496 offenders of hate crimes in the course of the year. Whenever an unidentified number of offenders was reported by the media (for example, from 10 to 15), the lower number was used in the drafting of this report. Whenever it was reported that a «group» of offenders committed hate crime, the number used in this report was 3 people. The largest majority of victims are male minors. The youngest victim was 10 years old. There were 5 young females, although there are probably more than that, considering the fact that the media often reported hate crimes committed against «a group» of young people.

Six incidents of hate crimes were committed by the supporters of 4 football teams and 3 basketball teams. The incidents mainly involved a fight between the supporters of two opposing teams with ethnic Albanian and ethnic Macedonian players. Apart from the supporters, sometimes even the members of the guest team end up as victims. During the matches involving that kind of teams, continual chanting can be heard accompanied by hate speech by the local supporters. These events are usually considered «high risk matches» by the corresponding sports federation, which means that the presence of supporters from the guest team is forbidden. It seems that the authorities strictly enforce the implementation of this rule by sending an increased number of police officers on the roads between the towns and municipalities where

the match takes place, at the entrances to the towns, as well as in the vicinity and inside the football stadiums. Although hate crimes have a harmful influence on the safety and security of citizens and it also appears that they have negative influence on others areas of society, including sports.

The police located suspects related with a minimum of 35 out of 87 incidents. A minimum number of 30 other incidents were reported to the police and under investigation. Considering the fact that at the moment there is no database on hate-crimes, the solved cases were registered by calls to the police, media monitoring, and direct notification on the part of the victim. There is no information as to the case status in 16 of the incidents, due to the selection of victims (usually in the alleged crimes committed for sexual orientation as a biased motive). According to the responses obtained from the Ministry of Internal Affairs, 21 incidents resulted in criminal reports, 14 in misdemeanor charges, 10 incidents have not been registered, and there was no response on 3 of the incidents. The committee only established 3 incidents which were processed in court.

VIII ECONOMIC AND SOCIAL RIGHTS

Introduction

In 2014, an increased number of complaints referring to violation of the economic and social rights was registered, which was mainly due to the impoverishment of the population and the harsh violation of the workers' and health rights. Apart from the submitted complains, the situation worsened with the changes in the legal regulation referring to freelancers, who according to the Helsinki Committee, may particularly threaten the status of people with fixed-term employment contracts. The worsening of the situation with the social rights was further affected by the changes to the Law on Social Protection, in the part of the conditions for exercise of the right to financial assistance for care by another person, whereby some citizens lost the right to this benefit.

1. Case: Laste Ivanovski

The Helsinki Committee acted on the case of Laste Ivanovski and Valentina Ilievska, two employees at the Customs Administration of the Republic of Macedonia. In 2009, due to offences done at the workplace, they were both given dismissal by the Head of the Customs Administration. The Commission in Charge of Issues from the Area of Labour Relations replaced Late Ivanovski's dismissal with a fine, and fully annulled Valentina Ilievska's dismissal and remitted the case back for consideration. Consequently, they were both supposed to go back to their permanent employment, yet this did not occur, because in the meantime they had been formally called off from their jobs. After two addresses to the Customs Administration, the Helsinki Committee took the stance that there are no legal or administrative obstacles to getting Laste Ivanovski and Valentina Ilievska back to their jobs and giving them new working assignments. By prolonging their return on the workplace, their right to work was jeopardized, as well as the right for financial compensation, the right to healthcare and pension insurance, and at the same time their private and family life was jeopardized.

2. Случај: Тамара Димовска

The Helsinki Committee of Human Rights of the Republic of Macedonia received a complaint by one Zhaklina Dimovska, referring to the inability to exercise the right to treatment abroad for her underage daughter Tamara Dimovska who was diagnosed with severe spine deformity. The allegations further state that the request was rejected although it was accompanied by medical findings and a consultative opinion which decisively states that urgent action is required. The authority of the first instance, from the day of submission of the request, until the day of decision, through its professional services addressed several specialized medical institutions, both in the country and abroad, in order to collect treatment offers. All the medical institutions in the Republic of Macedonia rejected the case because they do not own the necessary technical and medical equipment for the necessary surgery. Despite the consultative opinion of the competent doctors working in these medical institutions, the authority of the first instance decided that not all the possibilities for medical treatment in the Republic

of Macedonia have been exhausted, i.e. that the intervention could be performed by PHI - University Clinic of Traumatology orthopedic surgery, anesthesia, resuscitation and intensive care and emergency center in Skopje. Contrary to this solution, the Medical Council of this clinic gave a proposal to send her to be treated abroad, with the explanation that there was no possibility to perform a corresponding intervention within the clinic. Despite the stance of the Medical Council, as well as the urgent nature of the case, the Health Insurance Fund adopted the decision as much as 6 months later, thus severely breaking the time limit for adoption of a solution stipulated in Article 31, paragraph 2 from the Law on Health Insurance, which decisively states that in the event of an urgent case, the opinion of the commission of the first instance needs to be sent to the Head of the Fund within a single working day. Zhaklina Dimovska sent an appeal against this solution to the Management Board of the Fund within the prescribed deadline, which acting contrary to the opinion of the Medical Council and Tamara's interest, reaffirmed the solution of the first instance and concluded that not all possibilities for treatment in the Republic of Macedonia have been exhausted.

On 02.12.2014, Zhaklina Dimovska submitted a new request for treatment abroad, after previously obtaining an opinion of the medical council from PHI TOARIL and the Emergency Center in Skopje that they do not have the means to perform the necessary surgical intervention for patient Tamara Dimovska, with the note that it was a matter of great urgency. After this request, the commission of the first instance adopted a positive solution, once again breaking the legal deadline of one day for adoption of the solution. This solution was submitted to the Dimovski family on 11.02.2015, two days after underage Tamara had passed.

Due to the immense numbers of institutional errors in this case, Tamara's mother, Zhaklina Dimovska, with the support of the Helsinki Committee filed a lawsuit against the then heads of the Health Insurance Fund, against the president and the deputy, the president of the Management Board of the Fund, against the president and deputy president of the medical commission of the first instance, the president of the medical commission of the second instance and the chair of the commission of the second instance for Negligence in service. A lawsuit was also filed against Minister Nikola Todorov, due to the public statement that the Ministry of Health and the Fund will compensate for the treatment expenses, although the Minister of Health has no legal authority to decide upon compensation of funds. In this direction, we would like to remind that the treatment funds were never compensated to Tamara Dimovska until the day of her death - 09.02.2015.

Annual report

on the situation with the rights of LGBTI people in the Republic of Macedonia in 2014

Fearing the political articulation of the LGBTI community

Skopje, February 2015

IX LGBTI Community

1. Introduction

2014 not only failed to bring any progress when it comes to the status and rights of the LGBTI people, but there were even attempts for their limitation, bearing in mind the proposal for a change in the Constitution in order to define marital and extramarital relations as exclusively heterosexual. Although the overall political and institutional crisis did not give space for these planned changes to the Constitution to be implemented, this act, supported and promoted by the highest representatives of the institutions of the system further jeopardized the legal, social and physical safety of the representatives of the LGBTI community. The escalation of violence has already put the basic right: the right to life, under a threat. What is especially concerning is the fact about the constant violence on the defenders of the rights of LGBTI people, as well as the organizations working on political articulation of the community. The attack on Damar Café during the celebration of the second anniversary since the establishing of the LGBTI Support Center, having in mind the media, the messages and symbols used before, during and after the attack, fully reveals extremist structures, which hidden behind the Christian and Muslim community in the government, attacked the LGBTI community, slandering the image of the very members of these religious communities. The fact that Damar Café has existed for five and a half years already, it is recognized as a gathering-place for the LGBTI people in the Old Bazaar, and has never been attacked before, reveals the background of this organized attack. The attack on the celebration of the LGBT Center is indicative of the active homophobic and transphobic agenda which is being implemented with the support of the ruling parties and is, above all, directed towards the activists and organizations working with LGBTI people. This agenda is directly focused on preventing the awareness-raising and political articulation of the LGBTI community, in order for it not to become an active political stakeholder in the social trends and shape up as a part of the electorate. The coupling of the homophobic and transphobic representatives of the institutions, the media, and other groups has created an atmosphere of fear and oppression, but at the same time, it has managed to achieve an effect contrary to the one aimed at by the creators of this frightening atmosphere. Feeling the threat that they had been brought under, the LGBTI people flocked around the defenders of their rights, got organized and participated in the protests before the competent institutions, meaning that we can already speak of an organized community which is starting with self-advocacy. This has and will have long-term impact on the fight for equality and fairness for the LGBTI people in our country.

2. Legal framework

The only progress when it comes to the rights of LGBTI people in 2014 was marked with the change in several articles of the Criminal Code in the month of February with the introduction of the wording «belonging to a marginalized group», as well as the adoption of the new Law on Prevention and Protection against Domestic Violence in September, in which the notion of close personal relationships and the definition of family violence do not exclude the members of the LGBTI community.

The alterations in the Criminal Code (Official Gazette no. 27 from 05.02.2014) led to a change in paragraph 5 from Article 39 which, inter alia, states that when reaching the sentence, the court shall take into consideration whether the crime was committed against a person, or a group of persons or property, directly or indirectly, due to their belonging to a marginalized group. Furthermore, Articles 137 (Violation of equality of citizens), 144 (Endangering safety), 319 (Inciting hatred, discord or intolerance on national, racial, religious, and other discriminatory grounds), 294-d (Dissemination of racist and xenophobic material through computer systems) and 417 (Racial and other discrimination), introduce the phrase of «belonging to a marginalized group» as grounds for discrimination. Although the new changes to the Criminal Code resulted in broadening of the grounds for protection against discrimination and violence of certain communities, yet the adoption of these changes by the Assembly of RM by means of accelerated procedure, without previous consultative sessions with all stakeholders, as well as the fact that instead of the explicit introduction of the sexual orientation and gender identity as grounds, the legislator opted for the generalized formulation of «member of a marginalized group», leads to transferring the responsibility to the judges who would decide whether the members of the LGBTI community are or are not members of a marginalized group according to their own conviction and interpretation. By not providing adequate protection of the LGBTI community, as well as by publicly stigmatizing it, the state directly incites hatred and violence against these people, and becomes a direct accomplice in the violation of the basic human rights and freedoms. When it comes to the adoption of the new Law on Prevention and Protection against Domestic Violence (Official Gazette no. 138 from 17.09.2014), it is important to mention the definition of domestic violence and the concept of close personal relations, which are not restrictive in this law, meaning that they do not only refer to the opposite sex people who are in close personal relationships. Namely, Article 3, which contains the definition of domestic violence, states that domestic violence may be committed against people who are in a close personal relationship with the victim, regardless of whether the offender has shared or shares the same residence with the victim, while Article 4, paragraph 1, item 3 states that the notion of close personal relationship implies personal relations between people who are, or who have been partners. Accordingly, this legal text, with the formulation of the concept of close personal relationship it contains, provides protection of the members of the LGBT community, in cases when they occur as victims of domestic violence committed by their same-sex partners.

3. Cases

Among the cases reported in 2014, the cases in which the LGBTI people are victims of discrimination, hate crimes and domestic violence, are the most frequent.

The following cases were reported in the course of 2014:

Discrimination by the employees from the supermarket in SM Ramstore against people - members of the LGBTI community (gay men). Two persons, gay men, while shopping in the supermarket in SM Ramstore, were discriminated against by the security personnel and one of the employees in the supermarket, who started shouting out «faggots» to them without being provoked in any way. They reported the case to one of the cashiers, who told them that measures will be taken to prevent the discriminatory behaviour of those employees. On their subseqent visits to the supermarket, the discriminatory behaviour did not occur again.

Discrimination by the employees and owners of the «Sheherezada» pastry shop in GTC towards people - members of the LGBTI community (gay men). Those who reported the case stated that they often visited the pastry shop, but after some time the employees started acting in a discriminatory manner towards them, and refused to serve them, since, as they were told, the owner had ordered the employees not to serve them due to their sexual orientation. They were told that they would only be served by the waiter who is like them (gay man). Furthermore, one of the employees told them that both the employees, as well as the owners, find them to be undesirable in the pastry shop, whereby the victims stopped visiting the place. Finally, the biased behaviour of the employees and owners of «Sherezada» led to a restriction in the right of equal access to public goods and services of these people (gay men). The network for protection against discrimination sent an appeal to the Commission for Protection against Discrimination in order for it to establish discrimination on grounds of sexual orientation, and restriction to the right to access to good and services as a result of the said discrimination. The answer provided by the Commission stated that no discriminatory behaviour on the part of the «Sheherezada» pastry shop had been established.

Discrimination and disturbing behaviour by members of the «Alpha» - First Response and Intervention Unit, towards members of the LGBTI community. Those who reported the case state that in the vicinity of MNT, more specifically on the premises between the boulevard and the new building under construction near the staff entry of MNT Opera, where they were passing by on their way back from «Vinoskop», they were intercepted by two other people under cover who presented themselves as members of the police, i.e. as members of the First Response and Intervention Unit - «Alpha», without legitimating themselves. The two people were asked for their IDs without being given a reason why their identity was being checked. After establishing their identity, they were ordered not to come back to that place again, because, as the members of the «Alpha» - First Response and Intervention Unit stated, in case they are found at that place again, they would be detained and registered in the list with the «others», without an explanation as to what this «others» means, and what the reason for the restriction to the right to freedom of movement in public spaces of these people is. Then, these people sat down on a bench in immediate vicinity, whereby they were warned again that unless they leave, or in case they appear again on that spot they would be detained and registered in the list with the people coming to that place, once again without stating who those «other people» were. An appeal was sent to the Internal Control Sector, whose response stated that it is impossible to establish whether those people were members of the «Alpha» - First Response and Intervention Unit.

Discrimination and disturbing behaviour by members of the «Alpha» - First Response and Intervention Unit, towards members of the LGBTI community. The two persons who reported the case stated that they were intercepted near the Lawyers' Street by four members of the «Alpha» - First Response and Intervention Unit. The unit members asked for their IDs, but the people stated that they do not have identifications cards, whereby they were discriminated against by the Alpha unit members on grounds of their sexual orientation. The people were also photographed with the private telephones of the members of the «Alpha» - First Response and Intervention Unit, since they were told that unless they allow them to take their pictures, they would take them to the police station. The people did not want to proceed with charges, since as one of them stated, a few days later he once again met a member of the «Alpha» - First Response and Intervention Unit, who told that the entire action was a joke and that it would not happen again, whereby his behaviour truly improved.

Attempt for a physical assault by an unknown person towards a person, member of the LGBTI community (gay man). The person who reported the case stated that while he was getting off a bus at the bus station on Bit Pazar he ran into a person with whom he had previous disagreed regarding the sexual orientation the victim. The attacker immediately headed towards the person in order to physically attack him without being provoked in any way, whereby the person started to run and immediately dialed 192 in order to call the police, whereby he was told that a team will be sent and was asked how old he was, to which the person stated he was underage. The police officer told him on the phone that he needs to call a parent and come to the police station to report the case. The victim did not inform his parents about the attack since they are not aware about his sexual orientation.

Physical attack by a group of unknown persons towards members of the LGBTI community (gay men). While the person who reported the case was taking a walk with his friend in the vicinity of MNT, he was attacked by two unknown persons, and one of those persons hit him with a stone on the head. The person who reported the case and his friend took shelter on the «Stara kukja» restaurant, which is located in Pajko Maalo, and immediately called the police. The police came to the crime scene and made a report, whereby the people were discriminated against when they said that the reason for the attack was their sexual orientation. The person who reported the case had no medical documentation. At the request of the person who reported the case, accompanied by a member of the LGBTI Support Center, a certificate of a reported crime was obtained. Criminal charges will be pressed for this case to the Public Prosecution.

An attempt for a physical attack by a group of unknown men to towards members of the LGBTI community (gay men). While the person who reported the case and his friend were walking in the center of Skopje, they were attacked by two young persons, who threw stones on them with the intention of hurting them. Fleeing from the attackers, the persons took shelter in a café and called the police. The police arrived at the crime scene and made a report. When they found out the reason why the people were attacked (their sexual orientation), the police officers started making fun of them and discriminating against them. At the request of the person who reported the case, accompanied by a member of the LGBTI Support Center, a certificate of a reported crime was obtained.

Dismissal for the employees because of their sexual orientation. A case was noted of a dismissal from the workplace in the state administration, because the employee had stated that he is of a different sexual orientation that the rest of the people. The person initially had decided to turn to the court to establish discrimination on grounds of sexual orientation, but later decided to quit due to the homophobic environment which does not positively affect the decisions of those who are discriminated against and does not encourage them to press charges in order to protect their rights. Most often these people are frightened for themselves and their families, exactly because of the homophobic environment they live in. As proof of the inequality of these persons in their access to legal protection are some court verdicts, among which is one court verdict for a trans-gender person. Namely, the person decided to change their sex, and during the divorce procedure, it was decided that they need to pay alimentation, but since the person was unemployed, due to a lack of financial means, they were unable to pay for the alimentation. Failure to pay child support constitutes a criminal offense, according to the Criminal Code of the Republic of Macedonia. Based on this, the person was sentenced with a parole, although all the facts contributing to them not being able to find a job, and thus a source of finances in order to pay for the said support,

were presented. In spite of the fact that the person constantly applies for a job at the Employment Agency, she gets no answer from there. In order to increase the protection of people - members of the LGBTI community, the need for a change in the existing Law on Prevention and Protection against Discrimination, by introducing sexual orientation and gender identity in Article 3 which lists the grounds on which protection against discrimination must be sought. The introduction of these two grounds in the said law is mandatory for a country aspiring to become a member of the European Union. On the other hand, by not introducing these grounds in the Law on Prevention and Protection against Discrimination, space is left for further attacks and violations of the rights of people with different sexual orientation and gender identity.

The Commission for Prevention and Protection against Discrimination decided - three university school books have homophobic content. In this direction, and after the implicit statement of the stance that LGBTI people are exposed to discriminatory treatment, the Commission for Prevention and Protection against Discrimination, in the opinion on the complaint submitted against the schoolbooks on Medical Psychology and Psychiatry volume 1 and volume 2 established that there is harassment on grounds of sexual orientation. The complaint was sent by the Network for Protection against Discrimination. Three textbooks were in question, which are used for university education at the «Ss. Cyril and Methodius University», as a psychological-psychiatric professional literature, designed for students of medicine, psychiatry and other related studies. The schoolbooks contain homophobic content which portrays homosexuality as a mental disorder, inversion of the sex drive, and «normal sexual activity» is defined as a sexual activity between opposite-sex persons, etc. The schoolbook on Medical Psychology even states that the Criminal Code of Macedonia still contains the provision of punishable illegal fornication of two males, although the book was published in 2004, and homosexuality was decriminalized with the Criminal Code from 1996. In contemporary scientific trends, the term of sexual orientation recognizes homosexuality, heterosexuality and bisexuality (while an increasing number of studies are starting to include asexuality). The international statistic classification of diseases and health problems of the World Health Organization (ICD-10 update), as well as the Diagnostic and Statistical Manual of Mental Disorders (DCM IV-TP), as most relevant sources which have removed sexual orientation as a mental disorder all the way back in 1987; whereby the ICD-10 update states that «Sexual orientation, in itself, may not be considered a disorder». The commission recommends that the indicated parts of the schoolbooks be removed and put out of use, while in its explanation it states that in their clarifications, most of the authors of the schoolbook apologize for the mistakes made in that text. The Network stated that they hoped that the Commission would establish discrimination on grounds of sexual orientation and gender identity in the other school books with similar content as well. Moreover, according to them, it is not enough to just remove the homophobic content, but it is necessary for it to be replaced with content in accordance with the contemporary scientific trends. Ignoring homosexuality in the professional literature which treats sexuality is also an outlet for homophobic propaganda, since it denies the existence of the LGBTI community.

4. Intervention fund

The Intervention Fund within the LGBTI Support Center was founded in May 2014 and is designed to act as initial assistance in situations of concern to the members of the LGBTI community, and which refer to: need of a medical intervention, care, treatment, proceedings or psychological counseling (as a result of physical injuries as

a consequence of hate-based violence, need of medical forensics, etc.); need of a legal intervention, assistance and representation (providing documentation, representation etc.) and need of housing intervention (providing a «safe place», short-term housing, etc.) The intervention fund makes it possible for the members of the LGBTI community to have access to basic means to start solving the problems which are directly or indirectly related to their sexual orientation and/or gender identity.

Since its founding, by the end of 2014, a total of 10 requests for interventional assistance were submitted by members of the LGBTI community.

Out of the total number of submitted requests:

• 3 requests referred to the needs of a housing-related intervention;

• 4 requests referred to the need of legal intervention, assistance and representation; and

• 3 requests referred to the need of a medical intervention, i.e. psychological counseling.

All the requests submitted by the members of the LGBTI community were approved by the Commission. 7 of the approved requests were made use of, out of which:

• 2 requests referred to a need of an intervention related to housing;

• 2 requests referred to legal aid; and

• 3 requests referred to medical aid.

3 out of the submitted requests for an urgent intervention were not used, of which:

• 1 referred to housing; and

• 2 requests referred to legal aid.

The approved funds for these requests were not used up by the members of the LGBIT community because they stated that the need of interventional aid had ceased. The person who submitted a housing request did not take advantage of the approved funds, because in the meantime they found a place where they could stay and informed us that they did not need the requested funds since they had found a job. Regarding the requests for legal assistance, one of the persons gave up on the proceedings, while the other one who had problems with his family because of his sexual orientation, stated that they he would not need these funds because he had decided not to start proceedings against his parents, for they would cause him no more problems.

The most frequent applicants for free legal aid are people - members of the LGBTI community - who are victims of violence, i.e. hate crimes, due to their sexual orientation or gender identity, so as a result of this they feel unsafe, threatened and they need housing, i.e. legal assistance in cases when they decide to start proceedings to find the offenders and punish them. As a result of the attack in the Damar Café, during the celebration of the second anniversary since the founding of the LGBTI Support Center, two people were injured and they submitted requests for legal and medical assistance i.e. psychological counseling. One of the injured people submitted a request for housing

due to the constant feeling of fear, jeopardy and the insecure environment he was living in. Also, among the requests there are those submitted by people - members of the LGBTI community - for psychological counseling, for various reasons, as well as requests for legal aid in cases of domestic violence.

5. Advocacy

Integrated public relations

The program of the LGBTI Support Center for integrated public relations covers building and maintaining a web-site and profiles on social networks; participation in printed and electronic media where the LGBTI questions are treated; monitoring the media, collecting, analysing and documenting all the announcements targeting the issues of relevance to the LGBTI people in the Republic of Macedonia; Reactions and announcements; promotion of the Center activities.

Media

In 2014, the trend of unbalanced national media coverage of topics and issues of relevance for LGBTI people continued. On one hand, a small number of electronic and printed media, and a national broadcasting service (Telma TV) reported in a more balanced way - objectively, and presented evidence-based information. Unfortunately, the remaining national television stations and most of the electronic and printed media have demonstrated an editorial policy close to the conservative policies of the government and they often reported subjectively, in a biased and sensationalist manner. In this vein, it is worth to note the contradictory coverage of these media regarding these issues when they occur in a different country as opposed to when they are located in Macedonia. When it came to cases taking place abroad, these media took a mainly balanced approach. However, when it came to certain events in Macedonia, or the activities of certain NGOs working in this area, their approach was biased and sensationalist, or the event was not covered at all. At times, even suspicions could be traced of direct interference of the Government in the media coverage of the activists for human rights of the LGBTI people. In the period from 01-13 to 10.2014, related to the activities on the Draft-Amendment XXXIII, the activists had been invited to shows on twelve local televisions. In spite od the fact that Macedonia still has a large number of local television stations and radios, after its appearance in Shtip on 13.04.2014, the working group could not arrange an appearance in any of the other local media where it tried to schedule an appearance. When the working group tried to get in touch with TV Prilep and TV Kavadarci, it got a surprising answer: TV Prilep stated that they have no free slots in their program for the next two years; while TV Kavadarci most openly manifested its attitude towards LGBTI people, by stating: you know, you're perverted, we may allow you to appear, but only if you say what they say in the Government». Furthermore, the rise of the show-homophobia in the national media space is particularly disquieting. In other words, if, while broadcasting the news the media have to officially be bound by certain standards of reporting, the hosts of talk-show programs do not. Hence, the hosts of several talk-shows («Jadi Burek», «Milenko Nedelkovski Late Night Show», etc.) have abused their twisted idea of unlimited liberty of expression (which does not exist in Macedonia, as it is susceptible to limitations by the legal norms regulating hate speech and journalistic ethical standards) and have taken advantage of their position of public

personalities to spread their blatant homophobic propaganda, by even justifying the violence against LGBTI people and organizations.

National network against homophobia and transphobia (NNHT)

The National Network Against Homophobia and Transphobia (NNHT), in which the LGBTI Center and the Helsinki Committee of Human Rights of RM are members of the Coordinative Body, was established in 2014. This alliance of organizations dealing with protection and promotion of human rights of LGBTI people contributed towards a more organized and more coordinated approach in dealing with the every-day problems of the LGBTI people in Macedonia and the attempts for institutional marginalization and exclusion of this group of citizens. At the same time NNHT strengthened and united the advocacy capacities of the separate organizations, thus increasing their legitimacy and providing a unique opportunity for their joint and targeted enhancement.

Declaration for condemnation of hate speech and discriminatory speech against women, the LGBTI community and marginalized communities.

One of the first activities of NNHT was on the 18 March, when seven political parties signed the Declaration for condemnation of hate speech and discriminatory speech against women, the LGBTI community and marginalized communities.

In the process of signing the Declaration, NNHT made an attempt to get in touch with all the active political parties in the country. In the discussions, most of the parties demonstrated political will for a fair and democratic election process, liberated from hate speech, but only seven of them supported the Declaration for condemnation of hate speech and discrimination with their signature.

Out of all the political parties, the Alliance for Positive Macedonia, the Liberal Party (LP), the Liberal-democratic Party (LDP), the Democratic Alliance (DA), the Democratic Reconstruction of Macedonia (DRM), the Social-Democratic Alliance of Macedonia (SDAM) and the New Social-Democratic Party (NSDP) signed the declaration, while the party a Civil Option for Macedonia (COM) supported it, yet, unfortunately, Mr. Stevcho Jakimovski was not available in the process of collecting signatures and avoided the attempts to fulfill what he had promised to the non-governmental organizations. However, no single negative answer was received, which indicates that the front is stronger than ever before.

Unfortunately, the ruling party VMRO-DPMNE and none of the parties of the Albanians in Macedonia signed the Declaration.

Pride week 2014

From 20 to 29 we had the second Skopje Pride Week. The second occurrence of the Pride Week increased the visibility of the LGBTI community, warned about the violence and discrimination and alarmed the institutions of the system to take measures to overcome it. Unlike the previous year, when the most typical element was not raising the voice about the human rights of LGBTI people, but the violence, this year the events went smoothly, without security obstacles and without threats to the personal safety of the participants at the events. The LGBTI Support Center and the National Network against Homophobia

and Transphobia managed to adequately and productively communicate with the police in the course of the events and this time managed to prevent any violent incidents. The Pride Week offered the people a series of events such as exhibitions, film screenings, debates, workshops, parties and discussions. The events under the Pride Week covered topics related with the rights of the LGBTI community, gender and sexuality, feminism, sexual education, the rights of sexual workers and the people living with HIV.

Protests for efficient access to justice

On the 23 October, during the celebration of the second anniversary of the opening of the LGBTI Support Center, the sixth attack on it and on its activities took place in the Damar Café in the Old Skopje Bazaar. A group of about thirty young people - masked and hooded, armed with glass bottles and other hard objects, attacked those attending the party. During the attack, there were more than sixty people present in Damar, two of whom were outside the premises, near the front door of the café, and they were attacked with glass bottles and were hit on the head and body, suffering bodily injury. While they were hitting them, the attackers kept repeating that they should leave, and that «there was no place for faggots» there.

Concerned that this attack too, would be left without an adequate reaction of the competent institutions, NNHT sent precise requests to the Government of RM, the Ministry of Internal Affairs and the Public Prosecution of RM: (1) Public condemnation of the homophobic hate violence against the LGBTI people in RM by the Prime Minister of the Government and the Minister of Internal Affairs; (2) Rapid resolution of the case, detection of the offenders and efficient court proceedings for Violence, Causing General Danger or Racial and other Discrimination, by harassing organizations or individuals due to their involvement towards equality of people; (3) Resolution, detection of the offenders and initiating court proceedings against the offenders in the previous five attacks of the LGBTI Support Center in the Old Skopje Bazaar; and (4) Opening a criminal investigation for the hate speech which spread on the social networks after the attack and lawsuits for Inciting Hatred, Discord or Intolerance on National, Racial, Religious or other Discriminatory Grounds against the media who published content containing hate speech against the LGBTI people before the event.

Unfortunately, despite the clear requests and the huge international support (of the diplomatic corps in RM, in the institutions of EU, CE, OUN, foreign NGOs and Networks), none of the requests mentioned above was fulfilled. Up to the moment of writing of this report, the Public Prosecution has not yet announced its public stance on the Special Report prepared by MoI about the attack on Damar, thus continuing the trend of the offenders' impunity. As a reaction to this, at the start of November NNHT started organizing protests in front of the MP Skopje each Thursday, with a single request - efficient access to justice for all citizens of the Republic of Macedonia, regardless of their differences. The protests were of a performative character, and in the course of the protests the activists blocked the entrance to the building of the Prosecution. The citizens who wished to exit the object were not hindered in their action.

6. Case Study: Constitutional changes - Amendment XXXIII

In 2014, the Government of RM proposed eight draft-Amendments to the Constitution of the Republic of Macedonia, among which Amendment XXXIII, with the intention to regulate marriage, the registered extra-marital unions and all other forms or registered life partnership between a man and a woman.

From a legal aspect, such a constitutional definition of marriage is totally unnecessary. Marriage in our country is already defined as a union between one man and one woman. This is stipulated not in one, but in two laws - the Law on Family and the Law on Prevention and Protection against Discrimination. Furthermore, the legal, as well as constitutional exclusion of same-sex partnership (when granting the rights to partnerships which are not marital unions), constitutes discrimination in itself, as was, in fact, established by the European Court of Human Rights in the case of Vallianatos and others vs. Greece (29381/09 and 32684/09).

This means that the institutional homophobia and discrimination against LGBTI people in RM will be granted legal protection. The only thing that this Amendment would result in, in practice, is the strengthening of homophobic and transphobic policies which are already translated into the existing laws in the country. This danger was recognized by the Venice Commission, which underlined that raising the legal definition of marriage (which is identical to the one in the Draft-Amendment) to the level of a constitutional principle, is not necessary from a legal point of view. At the same time the Commission also stated that the Amendment, in case it regulates forms of life partnership other than marriage, should provide same level of realization of legal recognition of same-sex partnership, as it does for mixed-sex partnership.

The opinion of the Venice Commission, as well as the numerous activities that the Center took alongside NNHT in order to lobby against this definition resulted with the proposer's decision to change the wording of the amendment so that it would no longer regulate the registered extramarital unions and all other forms of registered life partnership, but instead, stipulate that the legal relations in marriage, the extra-marital union and the family would be regulated with a law passed with a two-third majority of the total number of MPs.

On several occasions, the Minister of Justice announced that he would fully accept the remarks of the Venice Commission. In the explanation of the new, current wording of the Amendments, it is easily noticeable that this is simply not true. The government simply repeats the statement that the state is free in defining and protecting marriage. Yes, that is correct. But nowhere do the Explanation or the Address of the Minister of Justice mention the remarks of the Venice Commission that this step is totally unnecessary from a legal point of view, nor do they state the remark that there is an equal need to regulate same-sex couples, as there is for mixed-sex couples. The consistent implementation of the principle of equality and non-discrimination means that this also refers to the legal, and not only constitutional regulation of the other forms of life partnership. The increase in the number of MPs votes necessary to regulate the legal relations in marriage and the extra-marital union is not only not in accordance with the remarks of the Venice Commission, but, to the contrary, it only increases the existing discrimination and exclusion of the LGBTI people from the country's legal system

At the moment of writing of this report, the Parliamentary session where the constitutional changes are to be voted on is under way, but it was twice postponed and the date of the final vote is still unspecified.

7. LGBTI Community

In spite of the fact that in 2014 the treatment of the members of the LGBTI community by the state institutions and the media continued to be homophobic and discriminating, however, through its work, the LGBTI Support Center, and through the support groups working under it, managed to create space which the members of the community perceived as a safe space to socialize, create and fight against the repressive mechanisms.

The acquired feeling of unity with the LGBTI people and the sense of belonging to the community in 2014 was most visible through the community's presence at events which are of direct importance for it:

- Regular meetings of the groups where they could discuss possible future activities, actions in public spaces, events, etc;

- Social meetings of all kinds: film screenings, social games, reading poetry, several kinds of art, exhibitions, etc;

- Trainings of all kinds, according to the needs of each of the groups;

- Activating the LGBTI people in minor actions in order to achieve social change, the protests organized by NNHT in front of the public prosecution regarding the violence in the Damar Café, the attacks on the LGBTI Center and Amendment XXXIII from the package of constitutional changes, as well as solidarity with other repressed groups (the March of the Sex Workers, the Student Protests, etc).

The LGBTI Support Center was the daily hub of people who came to mingle, educate themselves through discussions and debates, as well as use the services offered by the LGBTI Support Center.

The lack of spaces in Macedonia where LGBTI people would be able to hang out (gay bars, clubs, cultural premises, etc) is an additional problem for the gay community, so that the events organized by the LGBTI Center are the only place where they can meet, get together, discuss the problems they are affected by and find ways to change something.

The founding of the National Network against Homophobia and Transphobia at the start of February and its actions in the course of the entire year additionally bonded the members of the community, and also led to increased cooperation of the human rights activists of LGBTI people with the members of the community itself.

The homophobic and transphobic violence which takes place for several years in a row, the inefficiency of the state apparatus when dealing with the violence and discrimination against the LGBTI community, and additionally the adoption of legal changes at the expense of LGBTI people, has led to an increase in the awareness of the LGBTI community itself about the problems they are facing, and also resulted in a will to resist the oppression and create a stronger LGBTI community.