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OF THE HELSINKI COMMITTEE OF THE REPUBLIC OF MACEDONIA ABOUT THE HUMAN RIGHTS AND FREEDOMS SITUATION IN THE REPUBLIC OF MACEDONIA

HELSINKI
COMMITTEE FOR HUMAN RIGHTS OF THE REPUBLIC OF MACEDONIA

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I. SUMMARY

The Report of the Helsinki Committee is not intended to comprehensively cover the entire human rights and freedoms situation in the Republic of Macedonia. The analysis and assessments contained in this Report are based on the information available to the Committee, resulting from cases reported to the Committee i.e. registered by the Committee's monitoring network.

The fundamental commitments and goals that the new governing structure defined in the pre-election period and upon election by the end of 2002 were: improvement of the security situation, advancement of the economic situation and of the standard of living of the population, global democratization, respect for the law and development of a state governed by the rule of law, advancement of integrative as opposed to disintegrative processes in the Republic of Macedonia and such level of general respect and protection of human rights and freedoms by which the country would come closer to the European trends, enabling its prompter inclusion in the European structures.

Despite the great expectations of the citizens and the grand pre-election promises[1] given by parties, which came into power, in 2003 there were no significant steps forward made in the area of human rights protection and promotion. In some spheres of life there were even indications of retrograde trends, as compared to the previous year. Human rights and freedoms violations are present in the entire social structure and are of such dimensions that the question of the global democratic orientation of the current authorities is raised.

1 Many promises (even the smaller ones) remain at the level of void pre-election marketing. This for example can be said for the promise of the Prime Minister given on 29 November 2002 that the priority task of the new authorities would be shading light on the destiny of missing persons; or about the promise given by the Minister of the Interior in respect of the Rastanski Lozja case when he referred to exact terms by which he would clarify the case regarding which there are numerous indications that there was a summary execution of 7 nationals of Pakistan by officers of the said Ministry.

1. Public events and democratic principles violations

The 2003 political situation in the Republic of Macedonia was still determined by the implementation of the provisions of the Ohrid Framework Agreement. The new Government declaratively continued the trend of "implementing the Ohrid Framework Agreement" (13 August 2001), despite the fact that from the legal perspective it is a matter of legal implementation of Constitutional amendments which entered into force upon their adoption (16 November 2001). Explaining the adopting the laws and amendments with the necessity of implementing the Ohrid Agreement instead with the implementation of Constitutional amendments could be considered as a drastic example of derogation of the rule of law principle. [2]

All decision, structural changes and the activities in general of the state are still a result of direct inter-party bargaining done in closed high ranking party circles, with evident by passing of the legislation and devaluation of the rule of law. This can especially be said about the personnel changes made throughout 2003 at all levels of the state administration. Based on the dominant application of the party affiliation criterion in the personnel changes applied at all levels of authority, very often these changes are not seen by the population as serving the purpose of implementing the Agreement, but as a direct intervention by ruling political parties in all segments of society. Hence, the changes are perceived as excessive, inappropriate and unlawful on one hand (by persons belonging to the majority Macedonian community) or on the other hand as insufficient in terms of utilization of all available human resources (by persons belonging to the Albanian community).

Disguised by the "implementation of the Ohrid Framework Agreement" the changes of the composition of the state administration are not featured by application of the Law on Civil Servants (the State Administration Agency is bypassed, there are no public advertisements published, the defined criteria or procedures are not applied; the Law on Labor Relations

2 Contrary to the constant referral to the Ohrid Framework Agreement, a very illustrative and indicative fact regarding the implementation of the Constitutional amendments is the establishment of the Committee for Relations among Communities on 18 September 2003, a year and ten months after the adoption of Amendment XII to the Constitution. The Committee's competencies envisage consideration of issues connected with the relations among communities, then giving opinions and proposals for their resolution (the Parliament is obliged to adopt a decision regarding such proposals), yet the Committee did not present its opinion in respect of several cases of deteriorated interethnic relations in the autumn 2003 (the Brest case, the opening / relocation of classes case) etc.

is ignored (there are decisions for dismissal adopted without a legal advice, persons are transferred to jobs at which there is already another employee, or to jobs which it is well know will be eliminated with the new systematization of jobs, the legal provisions regarding annual holiday or dismissal are not applied, compensation for separated family life is not paid, the mechanism of "disciplinary proceedings " is avoided) etc. Such an approach, which supports the domination of the political factor instead of the legal modus and respect for laws), has an adverse effect on the further development of democracy and is often a threat to the exercise of fundamental human rights and freedoms.

Thus, the de facto bi-national approach present in the Ohrid Agreement (which is quite acceptable in terms of an agreement which is to end an armed conflict) increasingly clashes with the multicultural, multiethnic and multi-confessional character of the state. [3] On the other hand, the predominance of the ethno-dimensioning of each problem and each relation in the state prevents the development of democratic institutions, mechanism and relations and it turns parliamentary democracy into ethno-democracy.

The practice of party bargaining (which was characteristic for the parties part of the government in the period prior to the armed conflict) ultimately lead to complete lack of transparency[4] of the decision making processes, it excludes citizens from these processes

3 The analysis and publication of the data of the 2002 population census is of great importance in this context. According to the data, the Republic of Macedonia is ethnically diverse having 2.022.547 inhabitants of whom: 64.18% ethnic Macedonians, 25.17% ethnic Albanians, 3.75% ethnic Turks, 2.66% ethnic Roma, 1.7% ethnic Serbs and some other smaller communities.

As of the beginning, these data were considered to be very important in light of the latest legislation amendments: regarding the territorial division, the use of official languages, education and structure of the public administration, etc. Furthermore, as of the beginning of data processing, there were doubts expressed about the collected material, about the entry of data and about the data processing, which exacerbated with the marginalization of the State Census Commission from the undertaken activities.

The results, published at the beginning of December 2003, showed significant increase in the number of persons belonging to the Albanian ethnic community in the total number of the population, and decrease in the number of persons belonging to all other ethnic communities. This resulted in open negation of the results of the census by all other ethnic communities. For example, according to the 2003 census data, there are 53.873 Roma in the Republic of Macedonia, while assessments by the Roma communities reach 136.000 Roma.

The results were immediately placed in the context of the implementation of the Ohrid Framework Agreement without being viewed through the prism of the constitutional terminology. Namely, the total number of inhabitants of the Republic of Macedonia was not presented to the public although this is data of key importance for the implementation of the constitutional amendments. For example, in respect of the official languages the Constitution clearly states that in addition to the Macedonian language an official language shall also be "the language spoken by at least 20% of the citizens (Amendment V) – which means the relevant information about the number of citizens (nationals of the Republic of Macedonia) and not the number resulting from the Census.

4 On 24 June 2003, the Parliament of the Republic of Macedonia adopted a Decision for amendments to the Constitution of the Republic of Macedonia. The Decision has only two articles: 1) It is hereby decided to amend the Constitution of the Republic of Macedonia 2) This decision shall enter into force immediately and shall be published in the Official Gazette of the Republic of Macedonia.

By this purely formal decision to amend the Constitution of the Republic of Macedonia which does not define which parts of the Constitution are proposed to be amended, the Parliament of the Republic of Macedonia in fact violates the principle of transparency of the work. By non publishing the key elements of the proposal to

(inter alia through limited access to vital[5] information)[6] and turns them into objects of administration that in an attempt to exert their own influence can only manifest disobedience and obstruct state decisions.[7]

One of the indicators of the above described situation is the lack of the institute of public debate in connection with amendments to laws, which are of vital interest of citizens, formalization of the transparency in the publication of amendments[8] and non-application of the institutes of direct democracy. [9]

And again under the disguise of implementation of the Ohrid Framework Agreement, the partisan policy in the entire society gains enormous dimensions, especially in the state structures. This has a direct impact on the human rights corpus i.e. there are acts of open discrimination on grounds of political party affiliation.[10] The selectiveness in the application

amend the Constitution – the direction of amendments and additions to the Constitution and the explanation for the proposed amendments and additions to the Constitution (which is accordance with Article 200 of the Parliamentary Rules of Procedure) the Decision is formal and its publication in the Official Gazette is senseless. Hence, such a blank decision practically enables instituting procedure for amending any article of the Constitution or the entire Constitution without explaining the reasons.

5 The authorities are very persistent in publishing numerous unimportant decisions such as the decision published in the Official Gazette of the Republic of Macedonia No. 51/03 by which the public is informed that at its session held on 21 July 2003, the Government of the Republic of Macedonia adopted a decision to grant approval for the Decision for procurement of vacuum cleaners for cleaning of aircrafts.

6 The Constitutional Court decided not to institute a procedure for assessment of the constitutionality of certain articles of the Law on Amnesty inter alia referring to another decision (U. No. 65/2002 dated 22 May 2002) by which it was decided not to institute a procedure for assessment of the constitutionality of Article 8 of the Law on Amnesty with the explanation that "the authorities of the Minister of Justice to adopt Rules for implementation of the Law do not go beyond the constitutional provisions nor do they go beyond the provisions contained in the Law on organization and work of state administration bodies, remaining within the frameworks defined for the state administration set up." The Ministry of Justice submitted information that such Rules for implementation of the Law had been adopted but not published in the Official Gazette. In order to get a copy of the rules, one should submit a written request which will be decided upon in terms whether a copy will be submitted or not.

7 The demonstration of the employees of several bankrupt companies; of the Nova Makedonija newspaper employees, the demonstrations of the former employees of the Ministry of the Interior the demonstrations of the students and parents in Bitola (regarding the opening of a class in the Albanian language of instruction) and in Skopje (regarding the transfer of classes in the Albanian language of instruction to the central school Arsenie Jovkov); the demonstration regarding the new Law on Territorial Division.

8 On 14 April 2003, the Government adopted a Decision to adopt Annual Plan regarding the national interest in the field d of culture for 2003 (Official Gazette of the Republic of Macedonia No. 29/03). Article 1 states that "By this Decision the 2003 Annual Program regarding the national interest in the field of culture is adopted, which according to Article 2 shall enter into force on the day following the publication of the Decision in the "Official Gazette of the Republic of Macedonia and shall be applied as of 1 January 2003."

9 The referendums organized in regard to the adoption of the new Law on Territorial Division.

10 An indication of partisan policy application is the prompt dismissal of the State Public Prosecutor (without proper explanation, in a summary procedure); the change of the Director of the Civil Servants Agency; the change of all members of the State Judicial Council (through a legislative amendment the adoption of which requires simple majority by which there was a direct violation made of the constitutionally prescribed 6 year term of office, and even more "for purposes of implementing of the amendment" the entire composition of the Council was changed); the election of judges of the Constitutional Court.

of the law is especially concerning when it comes to prosecution of perpetrators who belong to the ruling state and party structures, (in which case the legal provisions are interpreted through their advisory and humane dimension) i.e. when it comes to prosecution of persons belonging to the opposition parties or persons who are not members of any party (in which case the punitive dimension predominates). [11]

The deviation from the declared commitment to promoting and protecting human rights and freedoms is spread on the international activities of the present authorities. The ratification of the bilateral agreement for exemption from prosecution between Macedonia and the USA was indeed a great attack on the promotion and protection of human rights and freedoms in the Republic of Macedonia, since this agreement de facto facilitates impunity for most grievous crimes, which is in direct collision with the provisions of the Rome Statute, ratified by the Parliament. In lack of substantiated public debate and without proper explanation, by the

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The criminal prosecution against corruption and abuse of official duties is limited only to political opponents, in which cases as a rule there are activities undertaken which go beyond the legal norms or are utterly extensively interpreted (the case of detention of the former MP Amdi Bajram, and the detention of a renowned member of the VMRO-DPMNE, Mrs. Slobodanka Sukleva; the trial of the former Defense Minister, Mr. Ljuben Paunovski, the intrusion in the homes of former officers of the disbanded unit at the Ministry of the Interior –Lions and similar). The party affiliation criterion was most probably applied in the adoption of the decision not to destroy the illegally constructed houses in the protected park - Vodno (since the excuse that the winter conditions prevent this is totally unacceptable).

The key importance of the party affiliation criterion is manifested in the work of the Permanent Survey Committee for protection of human rights and freedoms at the Parliament of the Republic of Macedonia which produces disastrous consequences on the decision to assume a position in respect of the applications of citizens and in respect of other issues considered by the Committee. For example, despite the fact that in the course of the work of the Committee regarding the application in the case of the "social apartments" there were numerous irregularities presented by almost all members of the Committee, the voting was made under direct directive of the party centers and was completely opposed to the presented positions, arguments and the entire discussion.

The party affiliation criterion is the only explanation regarding the series of personnel changes in the management structures of the public institutions and enterprises. (complete change of the management personnel and members of management boards in all budget organization in which the Government appoints or participates in the election (accompanied by the attempt to influence even the appointment of Director of a member of the Skopje University- the Institute for Sociological and Political Legal Researches) while the decisions adopted in this respect lack elementary argumentation for the grounds of the early dismissal (the decision for dismissal of the Director of the Security and Counter-Intelligence Department, and the decision for dismissal of the Director of the public enterprise for management of housing and business premises of the Republic of Macedonia – Skopje; the dismissal of many directors a.i. of organizations registered for performance of activities of special social interest in the field of culture based on Article 100, paragraph 1 of the Law on Culture which only applies to appointment of directors and not their dismal; the dismissal of numerous primary school principals prior to the completion of the term of office and without proper explanation; the unjustified termination of employment as a consequence of dismissal from management position (as in the case of the Director of the Braka Miladinovci Library in Skopje).

11 The decision to destroy the illegally constructed facility owned by the former MP Amdi Bajram in the settlement of Suto Orizari (which is used by the entire population in the settlement, who are predominantly of Roma ethnic origin, who have very low income, using it for private or community celebrations without any remuneration) was adopted and executed very speedily, as different from the decision to destroy the illegally constructed houses in the protected forest-Park Vodno, that was postponed for warmer days giving the possibility that some of them are made part of the general urban plan.

ratification, the Parliament in fact legitimized not only the "law for illegality" bargaining by the Government, but also the claim of the Prime Minister that the political interest is stronger that the legal principles. This is a manifest violation of the rule of law principle and of the basic principles of the international law. [12]

In the context of the general democratic structuring, it is concerning that there is lack or non-functioning of some of the substantial democratic mechanisms for control of power and for direct protection of rights and freedoms of citizens. The Law on the National Ombudsman (Official Gazette of the Republic of Macedonia No. 60/03) is in fact practical implementation of Amendment XI to the Constitution by which the competencies and the responsibilities of the National Ombudsman are significantly increased. The Helsinki Committee welcomed the Law as solid basis for quality structuring of this office of supervision primarily of the executive power.

Unfortunately, the present National Ombudsman missed the opportunity to demonstrate in practice some of the new competencies that would be the best public campaign for the newly introduced mechanisms for control of the authorities. The public could not see a) the National Ombudsman –without prior announcement and approval – entering a police station, prison, psychiatric ward or any other state administration body; b) the National Ombudsman undertaking concrete measures in respect of a prolonged court procedure or in respect of lack of responsibility by the judiciary; c) the National Ombudsman being received without delay by the Prime Minister or the President of the Republic; d) the National Ombudsman inspecting most confidential information (state organs are obliged to provide all evidence, data and information regardless of the level of confidentiality) e) the National Ombudsman raising initiatives for amendments and additions to laws to the drafters in charge f) the National Ombudsman submitting a proposal to the Constitutional Court for assessment of the constitutionality of the laws and of the constitutionality and legality of other regulations and general acts; g) the National Ombudsman pointing a concrete state institution where there is inequality and unjust representation of communities, etc. [13] The Helsinki Committee

12 Furthermore, without a substantiated debate and explanation, the Parliament adopted the decision for deployment of units of the Army as part of the coalition forces in the Freedom for Iraq operation. Such a decision can practically be interpreted as a decision to declare a war, especially if one takes into account that in the last reports of experts there were not sufficient grounds established to account for military intervention in Iraq, while the losses of the so called "anti-terrorist coalition" are greater in the so called "post-war stage" than in the "war" stage.

13 Instead of the above stated, in the promotional campaign regarding the new competencies the present National Ombudsman, inter alia, stressed that this institution is "a protector of the good state administration" and that "whenever it will be attacked without any ground it will be protected." Instead of an information campaign regarding the new legal solutions regarding all concerned groups (employees in the administration organs, in police stations, in prosecutor's offices and courts, persons in organizations and institutions in which the freedom of movement is limited) one could witness something that was very similar to an election

expresses the concern that the next Ombudsman shall also be from the ranks of proven party soldiers (by which this institute will become part of the party bargaining and with its work will not threaten the structures of power). It is also concerning that structures the competencies of which envisage such control do not perform such a function. [14]

The referred to processes in the Republic of Macedonia are not favorable to the advancement of the protection and promotion of human rights and freedoms. The rule of law, the existence of accessible and efficient means to protect human rights and freedoms of citizens remain at the level of most loosely defined aspiration, which is not confirmed or supported by the practical activities of any of the segments of the authority.

In 2003 the Helsinki Committee paid special attention to several areas related to the

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campaign. In 2003 the National Ombudsman openly stood in defense of the positions and interest of the SDSM (the power) with legally ungrounded suggestion for the publication of new public advertisement for allocation of social apartments.

14 The Parliament in its new composition did not raise the issue of the gross violation of human rights by the President of the Republic of Macedonia in the course of the 2001 crisis (the use of the army on the territory of the Republic of Macedonia without a declared state of war by the Parliament of the Republic of Macedonia and the bombardment of civil facilities which resulted in great number of civilian victims in the course of the armed conflict. It is necessary to raise this issue from the point of view of locating the responsibility of high ranking officials in the state administration for gross violations of human rights and freedom and for purposes of preventing such actions in the future.

In 2003, the current President of the Republic made "and intrusion in the system" by his decision for abolition of the former Minister of the Interior, Mrs. Dosta Dimovska, without proper explanation, which represents such a violation of democratic principles that is directly against the essence of democracy in which the citizen is the holder and source of the sovereignty of power. By preventing the procedure for proving the violation of Article 17 of the Constitution (documents for tapping signed by the pardoned persons) the President himself became an accomplice in the violation of this Article.

The President often derogates other segments of authority (again at the expense of citizens) ignoring the Law on Conclusion, Ratification and Execution of International Agreements, when deciding upon the "Iraqi question". Namely the President, practically without consultations with any relevant body in the state "decided' to give clear support to the campaign of the USA and the UK against "axes of evil" basing his decision only on "Republic of Macedonia being part of the Antiterrorist coalition." The inclusion of Macedonia in any given manner in the military coalition against Iraq based on such a presidential "decree" and without proper decision of the Parliament undoubtedly goes beyond the constitutional competencies. The state Security Council even discussed this issue after the start of discussion regarding his acts.

The lack of cohabitation among the President, Government and Parliament resulted in disastrous consequences on the functioning of the state in several segments (for example the non-appointment of ambassadors and the incomplete list of members of the Constitutional Court and the Sate Judicial Council and the sensitive issues such the fate of the dismissed person, in respect of which the President, without coordination with the Government, gave futile promises).

In his work, the President allowed himself to violate the constitutional provision for separation of state from the religion. According to several media the promotion of General Stamboliski was made in a religious facility. The Helsinki Committee contacted in writing on several occasion the Cabinet of the President in order to get information about the event, but it has received no reply (which can be interpreted as admitting to the allegations stated in the media).

promotion and protection of human rights that were of priority interested in the said period, i.e. were areas in which there were the greatest human rights violations.

2. Violations of economic and social rights of citizens

Contrary to the constitutional definition of the Republic of Macedonia as "sovereign, independent, democratic and welfare state" (Article 1) which is "to secure social justice, economic welfare and progress in the personal and common life" (preamble to the Constitution) and contrary to the obligations undertaken under the Covenant on Political, Social and Cultural rights , in 2003 the negative development trend continued, directly threatening the elementary existence of great number of the population.

Last year, there were no positive steps made in terms of improving the economic and social situation of citizens. On the contrary, there were further restrictions, especially in the sphere of social and health protection of citizens. The production was still featured by negative trends (with slight positive changes in brief periods). The number of unemployed reached 400.000; no major production facility was opened, while investments in agriculture are minimal and quite insufficient for any progress in this area (0.57% of the total 2003 Budget). Foreign investors still consider the territory of the Republic of Macedonia as risk area and there was no major investment in any area.

According to the researches of the UNDP and the World Bank, poverty becomes the largest problem in the Republic of Macedonia. The income of the population is bellow the subsistence minimum for most part of the population (the average monthly salary in the Republic of Macedonia in 2003 was about 200 EURO, while social benefits are continuously decreased by the state. The maximum amount of monthly social assistance for four-member family is 50EURO, which does not cover the monthly food costs for one person. In the last period, the list of free of charge medications (i.e. those covered by the medical insurance) was reduced, and the participation in the cost of each health care intervention was increased.

Poverty, directly and indirectly, threatens the exercise of a series of fundamental rights and freedoms. In the Republic of Macedonia this is reflected primarily on the exercise of the right to education, health care, protection of disadvantaged groups, (old persons, children, women, disabled person), exercise of the right to healthy environment, labor rights and protection at work, the right to appropriate standard of living and ultimately human dignity.

The 2002 situation is repeated which was featured by enhanced social tensions and violation of many labor and social rights of citizens. This year too the greatest number of complaints of citizens, submitted to the Helsinki Committee are in this area. If one takes into consideration that the change of power was to a great extend owed to the threatening of the rights in this area then the present authorities have responded to none of the chief priorities for which it was elected.

By one of its first decisions (December 2002)[15] the Government started applying restrictive social policy. As a result of this policy, the fact that more than 20.000 persons shall cease receiving social assistance was proudly announced. The Helsinki Committee cannot find understanding for the Government interpretation of the principle of social justice, and the right to social pecuniary assistance by work capable socially underprivileged persons. It is certain that there are people who have misused or will misuse the protection system. However, it is also certain that the number of such persons is not 20.000. In addition, it seems that we have all forgotten that it is matter of less than dignified 2.400 denars. The Government seems to forget that the essence of social solidarity is that each citizen in the country is to be provided with social minimum that would consist of: financial subsistence minimum (not less than 6.200 denars per person), roof over the head and medical package. It is once more stressed that this is the minimum. The mechanical decrease of the number of welfare beneficiaries by introducing new or making the existing criteria stricter, in conditions

15 In December 2002, the Government adopted a Decision (Official Gazette of the Republic of Macedonia No. 91/2002) by which the criteria are made stricter on two grounds: a) hence upon submitting the application, applicants are to submit electricity bills in the name of the holder of the right or a member of his/her family" and b) "upon submission of the application, the applicant is to submit lease contract for use of the relevant housing facility". Upon publication of the "new criterion" – electricity bill, the Helsinki Committee submitted a request to the Ministry of Labor and Social Policy upon which the State Secretary of this Ministry replied that: a) the Ministry submitted an information to the social work centers to receive the social assistance applications regardless of the fact whether the electricity bill has been enclosed with the application; b) that the possibility of having electricity meter in one's name i.e. the reasons for which the household does not have such meter will be established through direct inspection; c) that by this "there is an opportunity given to acquire and exercise the right to pecuniary social assistance" to applicants who do not posses electricity bills if they are part of one of the referred to 13 categories of persons.

However, contrary to this, the Helsinki Committee was contacted by several citizens who complained that they were deprived of social pecuniary assistance in most cases because they did not submit electricity bills of the holder of the right or a member of the family, and in some cases on grounds of not possessing an apartment lease contract. Hence, it results that the corrective criteria referred to in the reply of the Ministry were de facto not applied.

of extreme unemployment, can in no case be perceived as positive step in achieving budgetary savings and covering the budget deficit. [16]

Some of the Government decision meant intervention in the social sphere in a manner that interrupts the legal continuity and openly violates the laws and unjustly limits the rights of citizens excised in the previous period. [17]

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16 At its session held on 22 May 2003, the Constitutional Court of the Republic of Macedonia abolished Article 1 and Article 2, paragraph 3 and 4 of the Decision amending and additioning the Decision on the criteria, amount, manner and procedure for establishing and exercising the right to social assistance adopted on 2 December 2002.

In the said decision (Official Gazette No. 37/03) the Constitutional Court considers that such "competence of the Government does not encompass operationalization of the legal provisions contained in Article 29, paragraph 2 of the Law on Social Protection, but it is the basis for determining the right to social pecuniary assistance" which is not part of the competencies of the executive, but of the legislative power. Hence, this is contrary to one of the basic values of the constitutional order – separation of the power into legislative, executive and judicial.

After the abolishment of the ungrounded provisions of the Government which were promoted with the last unpopular changes (electricity bills and apartment lease contracts) in respect of which the Helsinki Committee reacted on several occasions, the entire strategy of the Government of the Republic of Macedonia in the field of social protection is put under question. The new Government Decision on the conditions and criteria for allocation of apartments constructed under the Project for construction of apartments to be leased to low income persons (Official Gazette of the Republic of Macedonia No. 51/03) which practically abolished the Decision on the manner and procedure for allocation of apartments constructed under the Project for construction of apartments to be leased to low income persona (Official Gazette of the Republic of Macedonia No. 104/00, 97/01 and 8/02), creating additional tensions and uncertainty in terms of the successful realization of this ambitious social project.

17 Explaining that the distribution of apartments constructed for the purpose of affording social assistance to low income families, made by the previous Government is not based on appropriate criteria and that there were de facto violations of the law in the composition of the lists of beneficiaries, the Government annulled the already completed public advertisement and reinstituted the entire procedure. After the annulment of the public advertisement for the social apartments by the Government, citizens who had already acquired the lease right submitted a lawsuit for institution an administrative dispute before the Supreme Court of the Republic of Macedonia against the Decision for annulment as well as for institution of the initiative for assessment of the legality of the said Government decision before the Constitutional Court of the Republic of Macedonia.

On 13 February 2003, the Supreme Court adopted a decision by which it rejected the lawsuit declaring it inadmissible. Namely, according to the Supreme Court, administrative dispute legal proceedings may be instituted only against an administrative act and the Court has established that the Decision for annulment is not a regulation appropriate for constitutionality assessment. (According to the Court, which starts with the contents of the disputed decision, " according to its character the decision may not be regarded as regulation within the meaning of Article 11-, sub-paragraph 2 of the Constitution " since "it has legal effect only on persons who have concluded lease contracts on the basis of the now annulled public advertisements."). Furthermore in its explanation the Constitutional Court concludes that ": In this case too the Public Advertisement is a general call for unlimited number of interested person to conclude contracts and by its character is not a regulation, but an action undertaken to realize a previously regulated concrete procedure for allocation of precisely defined apartments for lease." By these decisions citizens are placed in a situation of legal vacuum and impossibility of protecting their rights.

In order to provide for legal validity, the Government adopted a new Decision on the conditions and criteria for allocation of apartments constructed under the Project for construction of apartments to be leased to low income persons (Official Gazette of the Republic of Macedonia No. 51/ 03) by which the Decision on the manner and procedure for allocation of apartments constructed under the Project for construction of apartments to be leased to low income persons (Official Gazette of the Republic of Macedonia No. 104/00,

Even the positive measures adopted in order to reduce the number of social assistance beneficiaries by providing them with production means, such the allocation of unutilized farm land, are not implemented in a manner that could be truly treated a step forward in the resolution of the problem. [18]

Violations of labor rights are also significant part of the negative trends in the human rights protection. In continuity with the previous year, 2003 is too featured with large-scale violations of the employment legislation[19], employment related rights[20], the unconscientious role of trade unions, which forget their role[21], "personnel, structural and technological changes" are the most often disguise which with its abstract, ungrounded explanation most often covers up the mass scale[22] unsubstantiated dismissals of workers. This year too, the pactice of dismissing workers due to their participation in strikes[23] continues. The personnel changes at the Ministry of the Interior have a specific impact on the exercise of rights by

97/01 and 8/02) was abolished. By this new decision the principle of retroactive application negative for the citizens directly involved in the case is applied, then there are new criteria established, however equally general and imprecise as in the previous decision. The Government has unilaterally interrupted the obligation relation established with the citizens and did not find manners of resolving the problem that would take into consideration the specific features of each individual case.

According to the latest information received via the media, the Government started reallocating some of social apartments (in Gostivar three apartments have been allocated to persons who are not on the lists made following the new criteria, for the needs of the Government.)

18 In the context of lack of elaborated policy for development of agriculture, the small number of widely defined criteria may put under question the just allocation of the farmland. There is no consideration for the proper registering of the individual farmers that would enjoy the right to health and social insurance; future beneficiaries are not exempt from payment of administrative taxes, there are no subsidies guaranteed in the form of fertilizer assistance, granting favorable credits for procurement of mechanization and equipment and similar.

19 The dismissal of Gabriela Trajcevska by Germanos Telecom on grounds of leave during pregnancy; dismissal of a group of citizens on grounds of absence from work in the course of the 2001 conflict, contrary to the conclusion and recommendations of the Government – the cases of the workers of the Mavrovo Construction Company, Foundry, Mak-Stil Company Skopje – Aracinovo Municipality.

20 The Helsinki Committee appealed to the Government about the dismissals to respect the legal obligations and procedures in the cases of dismissals, especially in the part of explanation and transparency of such decisions (the cases of lack of explanation and early dismal decision for the Director of the Department for Security and Counterintelligence, the Director of the Public enterprise of management of housing and business premises, illustrate this practice of the Government).

21 In the Kiro Kucuk case in the struggle to gain influence, the two separate trade unions completely forgot the protection of the rights of workers.

There is the indicative Government Decision (Official Gazette of the Republic of Macedonia No. 51/2003) to grant one quarter of the total funds allocated to associations of citizens to the Association of Trade Unions (which is a non profit organization and is not registered as a citizens' association according to the Law on Association of Citizens and Foundations).

22 The dismissals of large number of workers of the Electric Power Company without proper legally based procedure, and in some cases with gross violations of the national laws and accepted international norms, (as in the two cases of dismissed workers in the course of their maternity leave); dismissal of large number of persons from the Health Insurance Fund;

23 The case of Kiro Kucuk Factory-Veles continues this year too burdened with 39 new decisions for dismals.

employees. [24]

The State Labor Inspectorate, as the institution in charge of the supervision of the application of labor legislation and employment rights legislation has not responded to its tasks and requests for greater efficiency in the cases of forged documents, respect for laws and legal procedures, affording assistance and legal advice upon applications of employees for protection of their rights. [25]

The general conclusion that can be drawn in connection with the situation of the rights of citizens in the field of economic, social and labor law is that in this area there is largest scale violation of the national and international legislation by all segments of power and that the authorities are building such a strategy by which the entire burden of the alleged "reforms" is placed on the already impoverished citizens, creating thus conditions of continuous social tensions and a situation of possible social conflict.

Perhaps the best illustration for the avoidance by the current authorities to fulfill obligations is the fact that Macedonia still has not undertaken the steps towards ratification of the revised European Social Charter, a document which in the economic-social sphere is equal to the European Convention for Human Rights in the sphere of the civil-political rights and freedoms of citizens.

24 In respect of the suspicious transfer of employees of the Ministry of the Interior to other jobs (often to inappropriate positions) some of the employees were recognized the right to compensation of costs for separate family life in the amount of 60% of the average salary of an employee paid in the economic sector in the Republic of Macedonia in the last three months starting from the date of transfer. Despite the fact that the persons have decisions singed by the Minster of the Interior in which the said right is recognized (i.e. that they have fulfilled the conditions stipulated in Article 27 and Article 87, paragraph 1 subparagraph 4 of the Collective Agreement of the Ministry of the Interior) the compensation for separate family life was not paid at all or the payment was interrupted with the explanation that there are no funds in the budget.

25 Very often the violation of the rights consists of lack of explanation and lack of legal advice in the decision for dismissal.

3. Human Rights

3.1. The Police and Human rights

Last year the process of bypassing and degrading the role of the police continued following two parallel directions. On one hand, the police continued violating the law, remain outside the reach of justice. On the other hand, part of the population, especially persons belonging to the Albanian community continued to nurture open mistrust towards the uniformed police and opposed any form of actions of the police, protesting at each arrest of persons belonging to this community, placing themselves above and outside the law, creating a situation of legal and institutional chaos.

Specific priority tasks that the police was to accomplish in 2003 were: changes in the ethnic composition of the police; reforms for purposes of rising the level of its efficiency ad for purposes of higher level protection of human rights and freedoms; rising the level of the overall security of the population and especially the security in the 2001 conflict affected areas.

The results of the one-year declared commitments are far from being satisfactory:

1. Despite the evident changes in the ethnic structure of the police (which unfortunately is oriented only towards greater representation of persons belonging to the Albania ethnic community, and not towards true multicultural changes of the composition) has not raised the sensibility of the police about the cultural, religious and ethnic differences. [26] It is odd that in none of the training courses for the uniformed part of the police there is focus on this deficiency of the police.

2. The ethically mixed police patrols, which were to return the trust of the population in the police, could not establish effective control in areas where they operated and their presence remained at the level of formal presence on the field. The police continued using

26 The lack of sensibility on the part of the police about specific aspects of the interethnic tensions and conflict was most evident in the action for search of homes in the Sopot case. The assessment of the Helsinki Committee about the inappropriateness of the Sopot police action in respect of the special needs of persons who were directly involved in the forced searched of homes (the clear indications for disrespect of the human dignity, privacy, personal integrity and not acting in the best interest of children) coincided with the results of the direct inspection by the team of the Ombudsman. The results show "obviously inappropriate, inhuman treatment of persons by police officers who conducted the search, even overstepping of official authorities, i.e. acting contrary to the Constitution and the law. However, according to the high ranking officials of the Ministry of the Interior, the results of the work of the seven member "mixed" committee at the Ministry of the Interior (having a representative of the OSCE) showed that the police action was "duly prepared" and that there was only "minor" overstepping of authorities. What type of "minor" overstepping of authorities it was about one could see from the information of the OSCE, which was not accessible for the public. Unfortunately, no one accounted for the biased and false presentation of findings of the Commission, which does not serve the purpose of returning the lost trust of the public in the police.

the "services" of the Army in conduction operations on the territory of the Republic of Macedonia (the Brest case) claiming that the suspects of certain criminal activities are not civilians and using the military rhetoric not, not usual for the criminal law. [27]

3. Instead of fulfilling its role of maintaining the peace and order and enforcing the law, the police very often assumed the role of generator of tensions in the field of interethnic relations and in terms of use of force against unarmed citizens who do not pose any threat on any ground. The mistrust of the population has enhanced since the police does not arrest, but punishes and kills, does not protect, but threatens and intimidates, does not cooperate, but demonstrates power and causes fear.

4. The presumption of innocence is very often violated when official representatives of the Ministry of the Interior give public statements, i.e. through the official statements and press conferences of the Spokesperson of the Ministry of the interior. [28]

5. Citizens submitted numerous complaints against the police activities: against illegal searches, arbitrary arrests (without a warrant, followed by several day detention of the person and with inappropriate treatment at the police station) and against other actions in which there was overstepping of police authorities. The range of systematic violations

27 The police started the action for "elimination of criminal/extremists/terrorist groups" without showing appropriate court orders and without stating the crimes in respect of which there are reasonable grounds for suspicion. This lead to dramatic fall of the trust of citizens towards the law enforcement officers, even harboring sentiments of animosity due to the "sudden arrest" of villagers that are not evidently linked to the criminal structures operating in that region.

28 Instead of using the wording present in the Law on the Internal Affairs, in the Criminal Code in the Criminal Procedure Code, she uses wording by which the innocence of certain persons is prejudiced (that are called "well known criminals") without stating the crime that they are reasonably suspected of having committed, without stating whether proposal for instituting of criminal charges is presented, without stating whether eventually the Public Prosecutor has raised criminal charges. For example, in the letter published in Dnevnik (23 October) signed by the Ministry the Interior, in addition to denying the statement of an association of citizens there was a claim presented that the person M.S. who was dismissed damaged the Ministry embezzling 17 million denars. In the same latter, the present leading officials of the Ministry presented the claim that the oil and cigarettes smuggling was the trade mark of their predecessors, who "conducted such transports of oil and oil derivatives with the knowledge of the Government and the Director of the Customs Administration and with the blessing of their coalition partners (Dnevnik 30 October). After that in the letter published in Dnevnik ("The Crocodile tears of Gruevski") the Ministry of the Interior blamed that "the greatest manipulation with the defenders (reservists and officers of the Rapid Deployment Unit Lions) was made by the VMRO-DPMNE and the then Minister of Finance". In addition, the Ministry informs us that the last arrest warrant for Dime Ickovski "for the crime of theft was issued three days after the parliamentary elections when the members of the VMRO-DPMNE still had the leading positions in the police and judiciary." Instead of the role of an organ collecting evidence for purposes of instituting criminal charges, the Ministry of the Interior performed the role of prosecutor and judge.

Faced by the media with the numerous indications for human rights violations in the investigative procedure against the suspect Slobodanka Sukleva, the Minstry of the Interior, at a press conference presented "for public judgment' "invoices" which were to serve as the crown evidence in the court procedure against the suspected person. In this case as in many other previous cases there was a position assumed that human rights violations can be justified if there is "certain evidence" about the guilt of the suspect and that "certain evidence" make the entire justice system unnecessary.

- is wide scope: apprehension without a warrant and without giving information about the reasons for the apprehension; forced apprehension to the police station and exposing the person to the public ; not informing detainees of their rights, non-issuance of written documents in which the grounds and reasons for the detention are to be stated; offensive and unprofessional speech; maltreatment and humiliation when checking the identification documents, not preparing reports about the checking of the identity documents. Here are several illustrative examples:[29]

29 In Sveti Nikole, instead of court order, the police officers showed a piece of paper on which there were about ten names of juveniles written with a pen that were to be apprehended.

Jovce Lazaroski (driver at OKTA) was questioned at a police station in Kumanovo by two civilian cloth officers who did not present their badges, he was not informed about the reasons for the arrest and about his rights. Two weeks later (6 August 2003) Lazaroski was again apprehended by authorized officers again without any explanation.

The cameraman of TV Tera, Toni Petrusevski was prevented with force to tape a group of special force officers of the Minstry of the Interior in the "hostage drama" in Bitola. Petrusevski was grossly offended by the police officer, the tape was taken and he was taken to police station without being informed about the reasons and his rights.

On 6 November 2003, about 02.00 hrs. in the morning Petre Nikolovski, former officer of the Lions Unit was apprehended with use of force by police officers without a warrant and was taken to the Prilep police station without being informed about the reasons for the apprehension.

Arbitrary arrests continued in 2003 and their targets are primarily persons with different political (party) conviction. The victims of illegal apprehensions and of police violence were certain former officers of the Ministry of the Interior (officers of the former controversial unit Lions). There is continuation of the practice of non-registering the detained persons, by which the responsibility for apprehension without a court warrant is avoided. There is still use of the institute apprehension for informative talks (which was abolished for quite some time through a decision of the Constitutional Court). In Stip the invitation for "informative talk" with the remark" to respond immediately" was sent to the nine year old son of the former commander of the Lions unit! The Monitor of the Helsinki Committee witnessed a person who had already been called several times to report to the police, being handed an invitation to report "immediately" to the police, after the person voluntary reported previously to the police station.

In great number of cases "informative talks" are used as a form of pressure on the citizens to give a statement before the police. After being released, citizens are not given documents on the grounds for the apprehension and for the stay in the police station, which prevents them from lodging complaints about the grounds and legality of the detention, then they cannot account for their absence from work etc. When the Helsinki Committee asked for explanation about the detention of Ana Kunovska (without a warrant, without being informed about the reasons and without being taken before an investigative judge) the Committee received a reply from the Kisela Voda Police Station in which it was stated that A.K. was detained at the police station at 21.45 hrs. by the inspectors of Illegal Trafficking Unit at the Skopje Internal Affairs Department." The same inspectors first violated the right to inviolability of her home, and then acquired a search warrant, without making minutes of the search.

The Helsinki Committee points to numerous omission in the conduct of the search: search without a warrant, searched in respect of which in fact it is not known what is searched for; search in premises which are not stated on the court warrant (for example in the controversial searches in Stip, the warrant states the address Vera Ciriviri Trena No. 29 in Stip while the search was made according to the minutes in the place called Suitlak - weekend cottage), search by only presenting the warrant without the warrant being forwarded to the citizen, as in the case of the search of the home of the former Lions Commander Stojkov, in the evening hours); search without witnesses (without any explanation) non-issuance of minutes of the search; giving false information in the minutes; non-issuance of certificates of the impounded objects (Sopot case) etc.

The lack of information on the part of citizens about their rights is taken advantage by the police by referring to already abolished legal provisions. In a communication signed by the Kisela Voda Police Station Commander it is stated that the person was apprehended following the **Rules for conduct of duties of**

6. The methods of torture and inhuman treatment are still everyday practice in the police work and are not subject to any control, prosecution or appropriate sanctioning. Persons deprived of freedom and detained in police stations do not have regular access to a doctor, let alone a doctor of their choice. The right to medical treatment is not regulated in law or bylaws and is resolved on case-to-case basis. In some cases, when the emergency medical teams had to intervene at police stations, persons who had received medical treatment could not receive the medical certificate from the police station. In numerous cases the information in the medical certificates does not state how the injuries were inflicted. [30] This year there were two cases of police ill treatment of media workers. [31] Neither the courts, nor the Public Prosecutor used their legally prescribed competencies in order to prevent police abuses, showing no will to undertake any action in this respect.[32]

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the Public Security Department. However these rules of 1985 were annulled in February 1998 with the entry into force of the new R**ules for work of the Minstry of the Interior.**

Despite the fact that the Constitutional Court has been persistently adopting for several years now decisions by which it attempts to interrupt the practice of unlawful arrests by the Macedonian police, the Minstry of the Interior persistently ignores the decisions of the Constitutional Court. In 1999, the Constitutional Court abolished several provisions of the Rules of the Minstry of the Interior of 1998 (Article 21, paragraph 1, subparagraph 3, Article 29, and Article 31). However, instead of informing the officers about the said changes, in 2003 the Minstry of the Interior published a police Handbook which contains the Rules for Work of the Minstry of the Interior (which entered into force in February 1998) containing the already abolished provisions.

Lawyers are not given possibility to contact in private with the suspects so that they can provide legal advice, and when they are allowed to be present they can only observe the questioning passively.

In the apprehension of Jovce Lazarovski his lawyer was not allowed to be present, although she was already at the police station. She claims that she persistently requested to be present at the questioning of her client to which it was replied that she would be arrested if she did not leave the police station. Lazarovski was released the following day at 09.00 hrs. after he was forced to sign the minutes in which it was stated that he did not request the presence of a lawyer.

The conditions for detention at police stations are bad and inhuman, especially in the winter period because usually the detention facilities are in the basement, without heating. Persons in prolonged detention are not provided with food although this is envisaged in the Rules of the Minstry. There are no standards for treatment of vulnerable groups, such as juveniles, disabled persons etc. In the course of the detention visits by family members are restricted and in some cases not allowed at all.

The police continue with the uncontrolled use of fire arms in arresting suspects. In 2003, this lead to the death of several suspects for crimes in the course of their arrest, In the case of Dimce Ickovski the family of the killed person stated openly suspicions that in fact there was summary execution (the circumstances of the case are suspicious, and the contradictoriness of the statements in respect of the forensics examination add to this impression). However, the commission established to examine the case (in which there was OSCE representative) established justified use of force.

30 A drastic example is the death of Blagoj Stojanovski, on 5 December 2003 at the Crn Most Bitola Investigative Jail, who died due to the fact that he did not receive necessary medical treatment for obvious health problems.

31 The TV Tera cameraman Toni and TELMA TV Station cameramen Mr. Mitko Zatkovski.

32 As opposed to 2001 and partly 2002 which were featured by territorial and personal focus in cases of torture and inhuman or degrading treatment or punishment, i.e. occurrence in crisis affected areas and ethically determined cases, in 2003 this occurrence was spread over the entire territory and the ethnic determination was spread to cover the majority population. Namely most victims in cases in which the Helsinki Committee was involved in one or another manner were ethnic Macedonians (about 20 cases),

The Helsinki Committee once again stresses that human rights cannot be protected without efficient, trained, organized and responsible police force.

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followed by Roma (4 processed and 2 pending cases), and then 4 ethnic Albanians. The most serious cases are the following: an Albanian form Kosovo (held in detention without medical treatment to take out the bullets he received in the shooting with the Macedonian police officers), and the case of the ethnic Macedonian who died in detention in Bitola (latest case- the elements are still being established).

Another significant feature was that the entire range of typical cases occurred: cases of torture in detention and examination in police stations (for example the case of Avni Ajeti charged with the crime of terrorism held for four day of police processing, after which he gave self-incrimination statement before a judge; the case of Josko and Dalibor Vjacoski brutally beaten in the police garages; the case of the former Lions officer Petre Nikolovski); to inhuman or degrading treatment in the course of searches of the home and persons, all the way to abuse of legal institutes such as detention used to extort confession (especially the Sukleva case).

The police did not attempt to extort a confession only in connection with serious crimes (as in the cases of the persons charged with terrorism or even witnesses for example the crown witness in the Sopot case who was not charged) but also in cases of thefts. The Helsinki Committee has registered the cases of torture of: Skender Sadikovic beaten in his own yard in front of his three minor children and several neighbors, after which he was detained in the police station where he was heavily beaten by 6 police officers with the purpose of extorting a confession about a theft in the St. Petka Church in Bedinje where the money from sold candles disappeared. The police officers used ax handle in the beating and hit him on the spine and kidney area. Senad Rustemovski and Ejvas Serifovski from Prilep and Jasar Ramadan from Bitola on 8 February 2003 were detained in the Prilep police station (for identification) where they were offended beaten and ill-treated by about 15 police officers. After 4 hours they were forced to sign a statement that they have no remarks about the conduct of the police and then they were released. The Forum for Rights of Roma ARKA from Kumanovo informed that on 2 April 2003 about 16.30 hrs. near the Memorial Ossuary, in Kumanovo two persons of Roma ethnic origin were beaten by the police. According to the information of ARKA this event was preceded by an argument between the damaged persons and the guard at the Memorial Ossuary, who tried to chase them away because they played basketball. After he failed the guard called the police that came immediately and started beating the persons. As a consequence of the beating one person suffered from visible injuries in the area of the back, hands and legs. He asked for medical treatment and was issued a medical certificate. The other person - juvenile was punched but had no visible signs of injuries, and also asked for medical treatment. Dalibor Vjacovski received no written documents and explanation about the detention in the Krusevo Police Station, being taken to the police station through the garages and not through the main entrance “so that the entire town could not see him being taken to the police station.” After being released from the police station, it was evident that Dalibor had serious damage of the right eye, after which he was placed in hospital where he remained 9 days for hospital treatment at the Ophthalmologic Clinic, and his father suffered from fracture of the ribs (from the 6th. to the 8th. rib) on the right side of the chest. On 28 May 2003, Mitko Zatkovski in the early morning hours was visited by three police officers who informed him that they have a warrant to bring him with force if necessary to the court in the capacity of a witness- the document was not shown. After he was physically overcome, in the course of which there were bodily injuries inflicted, in his under shirt, Mitko Zatkovski was taken to the Gorce Petrov Police Station, and instead of being taken to the Vinica Court, he was released.

It is especially concerning that the state, despite the numerous reactions (both by the media and by NGO’s) has not undertaken any activities to overcome the situation. On the contrary one gets the impression that there is not even internal sanctioning of the police officers (let alone court sanctioning). The police even intentionally protect such officers (which applies to all referred to cases). The internal control at the Ministry for such and similar overstepping of authorities is without participation of citizens, it is not consistent and is featured by collegial solidarity. The Professional Standards Unity as a rule “gives the benefit of the doubt” to statements of involved police officers, without including the damaged persons in the investigations. In one case the Police persistently present other police officers for recognition line up (not the involved ones). In another case it denied in writing the existence of a case of torture despite the documentation of the Ministry of Defense and the Ombudsman about the case. Very often reaction of the police when invited to give information in cases of suspicions for physical ill-treatment (usually when the injuries are visible or when there is medical documentation) is that the suspect suffers from self-inflicted injuries. The establishment of an efficient body for fight against overstepping of police authorities imposes itself as a priority.

The Committee once again points to Article 1 of the Law on Internal Affairs according to which the main task of the police is to "protect the life, personal security and property of citizens" and "to protect the freedoms and rights of citizens", as well as that suspects, persons charged and convicted persons are also citizens.

The Helsinki Committee supports the changes of the composition of the police for purposes of more realistic reflection of the multicultural character of the society, considering this to be very important for the appropriate performance of duties and basis for return of the trust of citizens. However, these changes should in no case be made in a manner which implies bypassing the procedures, rules and criteria.

The Committee turns the attention especially on the lack of appropriate internal and external control of the work of the police and the loose and very limited application of sanctions in the cases of violation of the legislation and abuse of official duties.

3.2. The Judiciary and Human Rights

In 2003 the process of erosion of the dignity of courts as the third independent branch of power continued. Despite the fact that there was certain progress made in terms of the autonomy of the judiciary (with the entry into force of the new Law on Independent Court Budget) there was no significant progress made in terms of the independence and impartiality of the judiciary.

The election of judges and public prosecutors is still directly influenced by ruling political parties (the election is made by the Ministry of Justice and the Ministry of the Interior). Each new Government attempts to instrumentalize the judiciary by "installing" proven party soldiers in the judiciary, especially at key positions for example in the State Judicial Council, at the Supreme Court, Constitutional Court and at leading and other management positions in other courts and in the Public Prosecutor's Office.

In 2003, courts and judges were exposed to continuous pressure by other branches of power (especially by the executive one) and on several occasions and in various manners there were direct attacks launched against their organizational and functional independence. [33]

33 For example the case of the Gostivar Court, when the Minister of the Interior openly interfered with the decision of the judge not to issue detention order against the suspect which resulted in the change of the judge and adoption of a decision contrary to the decision of the judge.

Regardless of the ideals for separation of power into legislative, executive and judicial, courts are more or less quasi-civil servants and in the long run very rarely oppose the authority. The amendments that were prepared in respect to the penal procedure in reply to the threats posed by organized crime and corruption (special investigative measures, witness protection and similar) serve the purpose of establishing more efficient control of crime, but do not take into consideration the right of the person charged and the right to privacy. The new Action Plan for fight against organized crime, is especially concerning. This is a document which insists upon closer cooperation of the police, prosecutor's office and the courts (which is contrary to the international standards which provide for fair and impartial trials).

In a series of cases, judges showed insufficient knowledge of the international and national legislation related to human rights and freedoms, and did not manage to perform their role of providing the highest protection of these rights, directly violating citizens' rights. [34]

Human rights and freedoms violations connected with the implementation of minimal standards and guarantees envisaged in Articles 5 and 6 of the European Convention for Human Rights can be located in all these areas and at all levels of the judiciary.

34 An indication for the lack of human rights awareness of judges is their lending a deaf ear to the claims for torture and inhuman treatment, and the neglecting of the practice established under the European Convention for Human Rights, that the burned of providing acceptable explanation for the reasons of the injury fall on the authorities an not the defense (in a case in which a person is detained in good health conditions, but upon release it is established that the person suffers from injuries). The most illustrative example was the conduct of the Court in the Selam Seljami case, who "disappeared" after he headed to the court to ask for the search warrant. The defense had a series of medical evidence, including a report signed by the Director of the Public Security Bureau (dated 29 August 2002) that "Selam Seljami is at the Skopje Clinical Center for brain hemorrhage, occurring as a result of hypertension, caused by psychosomatic reason". Neither the Public Prosecutor's Office nor the court took measures that would lead to finding and punishing the responsible persons. In several other court procedures, against persons charged with the crime of **terrorism,** the defense presented the claim that the key evidence upon which the charges are based are statements extorted with use of police force. Even more the statement of the charged Avni Ajeti (presented as evidence against the commander Cakala and Dzejmi Sej) and of the witness Ramadan Bajrami (the Sopot case) were denied in the main hearing with the explanation that they were given under force by the police. Although the court was presented appropriate medical evidence about the injuries inflicted in the course of the detention, even traces of injuries shown in the course of the main hearing (the case of Avni Ajeti) as well as indication for unlawful detention, the court remained indifferent to the claims for torture and inhuman and degrading treatment and punishment. The first instance courts did not ask for implementation of efficient official investigation that would result in the establishment of the facts of the case in respect of indications that the evidence (statements) are gathered by violations of human rights and adopted convicting decision (in the Sopot case and in the Ajeti, Cakala, Sej cases) grating the benefit of the doubt to the initial statements given before the investigative judge.

1. In 2003 too, Courts failed in protecting the inviolable right to freedom and security of the person both in terms of disputing the legality of the deprivation of freedom and in terms of adopting decisions for detention and disputing its legality. [35]

2. Courts did not fulfill the requests to complete procedures within a reasonable period. [36]

3. The principle of equality of arms of the defense and of the prosecution was violated in several cases. [37]

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35 Judges ignore the presumption of innocence and that the burned of proof in respect of the admissibility of the reasons belongs to those who have deprived of freedom. Judges prescribe maximum detention (30days) in cases when such a strict measure is not necessary without giving appropriate explanation about the substantive legal and factual reason for the deprivation of freedom that would provide the person possibility to dispute the legality of the detention. Usually the court refers to a formal provision without stating the grounded factual reasons. Judges very often renew the detention automatically, literally copying the wording from the previous decision, without examining whether the reasons for the detention still exist. For example the explanation of the reason for renewal of the detention for another 30 days for Orce Milenkovski, Tome Bajdovski, Dragan Zdravkovski and Sasa Stojanovski dated 7 November 2003, is copied word by word from the decision dated 10 October 2003. In the de facto unexplained decision the court council even went as far as stating the prescribed punishment for the crime the persons are suspected of per se as a reason for renewal of the detention measure.

In 2003 there were several cases of extensive detention, which in some cases was selective, aimed against opposition or former members of the NLA/ANA. Sukleva N. a renowned member of the opposition party VMRO-DPMNE was held in detention for 4 months without argumentation that would substantiate the necessity of the detention. The former member of Parliament, Amdi Bajram was held in detention for nine months (after the criminal council abolished the decision of the investigative judge for release from detention) regardless of the fact that there was bail offered that surpassed the amount for which Bajram was charged. Osmani Krenar was in detention for 11 months (at the end on grounds of the initially prescribed sentence of 6 years which was later abolished) after which the prosecutor's office dropped the case for lack of evidence. The charged person and potential witness Safet Beluli was held in detention for 12 months, and the procedure was interrupted for lack of evidence in the case of Vulnet Kazimi, amending the initial verdict by which Kazimi was pronounced guilty and punished with suspended prison sentence, with the intention of "covering up" the seven months that Kazimi spent in detention.

36 The extensive length of procedures is connected to the long periods in which no actions are undertaken in the procedure which is owed to inefficiency, unpaid claims of expert witnesses , unduly submission of court documents and similar. The length of the procedures is also connected to the preparations in the course of the pretrial procedure. Namely, some for the charges are instituted without sufficient evidence which implies the need for its gathering in the course of the procedure itself.

For example the First Instance Court Skopje I Skopje has still not decided upon the request for establishment of the legality of deprivation of freedom of Mr. Belja due to the silence of the police as of 9 July 2002. When the Minstry of the Interior finally replied ("that the Criminal police at the Ministry of the Interior –Skopje has not deprived the person Muhaedin Belja and has not undertaken measures and activities against the referred to person!?" the court continued delaying the case despite the fact that Mr. Muhaedin Belja was in possession of a communication sent to the Ombudsman by the then Minster of Defense Professor Dr. Vlado Popovski, in which it is stated that Muhaedin Belja was detained in the Avtokomanda Police Station. Furthermore, the Kumanovo First Instance Court has still not adopted a decision upon the request for examination of the legality of the deprivation of freedom of Jovance Lazarovski, submitted on 7 August 2003. The reaction with the President of the Kumanovo First Instance Court (on 26 September 2003) remained without reply.

The following is especially indicative example: the procedure for just compensation in the court procedure of Jadranka Ivanovska from Skopje which is underway for 16 years and is still not complete, which per se represents grounds for submitting an application to the Strasbourg Human Rights Court.

37 In several cases (for example the Ljuben Paunovski case), the defense was not allowed to invite

4. There were volitions of the right to defense and defense lawyer of one's choosing,[38] as well as the right to public hearing[39], and in absentia trials only in special circumstance and as an exception.[40]

5. Among the most often violations of Article 6 of the European Convention is the lack of competent expert interpreter in cases when one of the parties (especially the person charged) does not speak the language in which the trial is conducted. The Court very often starts with the presumption that understanding the language is sufficient.[41]

A special aspect of the judiciary seen through the prisms of human rights and freedoms is its control and legality of work. Based on some statements of certain representatives of the Association of Judges regarding the public criticism, one can get the impression that the independence of the courts in fact is interpreted as irresponsibility, unaccountability, non-

witnesses as opposed to the numerous witnesses invited by the prosecution.

The status of inequality of the defense in respect of the prosecution (the Public Prosecutor's Office) are to be seen in the high taxes, payment for examination of documentation gathered in the course of the investigative procedure, and getting copies of certain documents.

The right to equality of arms and the right to presumption of innocence were violated in the procedures against former NAL/ANA members when the prosecution in lack of evidence invoked "notorious facts". For example, at the trial of a persons charged with terrorism in the Kumanovo First Instance Court the Court did not react to the closing remarks of the prosecution according to which it is a notorious fact that the charged Cakala and Dzejmi Sej are proven terrorists (despite the remarks of the defense for violation of the right of presumption of innocence) and it confirmed them convicting all charged persons with seven year prison sentence each. The Courts accept almost all evidense of the prosecution regardless whether it has been acquired illegally or by violation of human rights and freedoms.

38 In the case of Ljuben Paunovski, the judge violated the right to defense prescribing ex offico defense counsel (despite the fact that the person charged had already appointed his lawyer) who on his part did not have sufficient time to prepare the defense considering the complexity of the case.

On the other hand ex officio defense counsel is restrictively provided for poor persons. Even in an action for opening offices for provision of free of charge legal services, organized by the Bar Association of the Republic of Macedonia and financially supported by the US Government, it is incredibly difficult to get the addresses of these offices and names of lawyers.

39 In smaller towns the principle of public hearing is very often violated with the excuse that the court room is too small. The trials are conducted in such small rooms that there is not even room for the closest family members of the persons charged. Unfortunately, there is still the practice of holding the trials in the judge's offices. The courts are most often not transparent in terms of information about the place and time of the trial. On 2 October 2003, the authorized monitor of the Helsinki Committee was not allowed to attend and monitor the trial at the Kumanovo First Instance Court against the charged Sulejman Sulejmani.

40 In criminal procedures, in absentia trials are very often used (especially in connection with crimes of terrorism and threatening the security). The persons charged are proclaimed inaccessible (which in some cases in not correct, since some of the involved persons could even be found in the court room as part of the public attending the trial).

41 This occurs when the person charged belongs to the Albanian community that speaks peak Macedonian, but insufficiently in order to understand all the charges and participate in all procedures on equal footing.

transparency and inaccessibility of judges.[42] Obviously, there is much work to be done in raising the awareness about the responsibility of judges, which is a necessary precondition for securing fair trial. [43]

In 2003, the Public Prosecutor's Office failed to apply international human rights and freedoms standards in its work. In most cases the Prosecutor's Office acted in direct violation of the these rights or as passive observer of such violations by the Ministry of the Interior, state organs and courts. The Public Prosecutor's Office did not take active role in instituting procedures against officers of the Ministry of the Interior in cases of evident violations of the law [44] and in cases of indicated overstepping of authorities (for purposes of protecting the rights and freedoms of citizens).[45]

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42 In this context, the press release of the Supreme Court (dated 5 September 2003) is symptomatic. It refers to the wave of public criticism against the work and functioning of the judiciary. "The crème de la crème" of the Macedonian judiciary (supreme judges, and presidents of court of appeals) came to the conclusion that those who offer "the concept for resolution of pending court cases" are equal destructors of the judiciary as those who bomb the courts and the judiciary."

43 Avoidance of responsibility by proclaiming the court as incompetent occurred when the Supreme Court and the Constitutional Court proclaimed themselves as incompetent in the case of "social apartments" leaving citizens without legal advise how to exercise the constitutionally guaranteed d right to appeal, against the Government decision to annul the public advertisement for "social apartments". The avoidance of personal responsibility for consequences of court orders, for example when an investigative judge at the Stip First Instance Court issues a search warrant, without stating for which crime the order is issued or which objects are important for the criminal procedure, while the search is conduced at another address. The reactions of the Helsinki Committee were ignored by the President of the First Instance Court, while the investigative judge arrogantly commented that the comments are "irrelevant" without offering appropriate argumentation.

It is especially concerning that judges avoid responsibility for execution of court decisions. It seems that judges forget that this task remains for the judge in case no other state organs undertake measures for execution of court decisions. For example, the Law on Administrative Disputes (Article 75) clearly envisages the obligation of the Supreme Court to undertake all actions necessary to "establish state of law". However, obviously discouraged by the practice, the Supreme Court "raised its hands" from this obligation and has not even envisaged in its Rules of Procedure any mechanism by which it would take due consideration of the execution of its own decisions. Hence, the law becomes "nude" (jus nudum), and conditions are created enabling the state to selectively execute court decisions, i.e., instead of rule of law, legal anarchy is established.

44 Despite the obvious and presented grounds for institution of criminal charges (Article 377 paragraph 3 of the Criminal Code – non execution of court order) against all those persons who continue to apply in the practice abolished articles of the Law on Internal Affairs and of the Rules for work of the Ministry of the Interior, the Public Prosecutor's Office has not undertaken appropriate action.

The Public Prosecutor's Office has not shown great interest in the Rastanski Lozja case and the role of the representatives of the Ministry of the Interior in the execution of the seven Pakistan nationals, nor in the case of Muhaedin Belja and the indicated overstepping of official authorities by officers of the Ministry of the Interior.

45 In performing the protective role in respect of the Police, the Public Prosecutor's Office allowed itself use of double standards (after entire eight months of the trial before the Veles First Instance Court, in which the person Spase Dimovski is the damaged party, the Prosecutor in the closing statement renounced further prosecution of the charged police officers invoking exactly the Law on Amnesty. In the case four police officers are amnestied who on 11 August 2001 at local Rasani-Buzalkovo road fired in blind 45 bullets in the tractor in which the damaged person was, who survived by pure luck (in which respect all necessary evidence has been gathered) contrary to the persistent continuation of the procedure against Krenar Osmani in which the Law on Amnesty is not fully applied despite the fact that there is not a single

The established relations of cooperation and understanding between the Public Prosecutor's Office and the courts result in a number of charges which do not fulfill even the elementary procedural requirements and can in no case be considered as sufficient for institution of court procedures. [46]

The Helsinki Committee considers that in 2003 too in the Republic of Macedonia there were no conditions secured for appropriate protection of human rights and freedoms within the justice system. In their work, courts continued not to apply the minimal human rights standards guaranteed in the European Convention for Human Rights. Courts are not independent, they are not impartial and do not secure fair and just procedure under equal conditions for all citizens. The impact of the executive authority continues to dominate and helps promote the party-political modus, at the expense of the legal-lawful one. Thus, one of the basic pillars of the human rights concept is undermined.

4. Internally displaced persons and refugees

Two years after the end of the conflict the problem of internally displaced persons is still not resolved. Currently, there are amore than 1500 officially registered internally displaced persons in the Republic of Macedonia (accommodated in collective centers) and a certain number of unregistered displaced persons accommodated with relatives or who have resolved their status by themselves.

valid evidence against the person charged. The Deputy Public Prosecutor of Veles, needed almost two years to submit a proposal for institution of certain investigative action (30 July 2003) based on which the decision is pending whether charges will be brought in the case when on 9 August 2001 the house of Sabir Vejselov from the village of Rastani was attacked when his son Tafik Vejselov was wounded and died on the spot. The charged officers were tasked with guarding the secured area of the murder of the juvenile.

46 The charges against Ljuben Paunovski for example have the introduction and the explanation clauses which are word by word the same that should have been established by the court as early as upon the examination of the charges and reject them due to lack of arguments that would explain the introductory clause and the lack of evidence based on which the conclusions presented in the introductory clause were drawn; the situation is similar with respect to the charges against Selam Selami in which it is evident that the Public Prosecutor's Office not having what to state in the explanation in addition to repeating the conclusion of the introductory clause stated the personal data about Selami (place of birth, address of residence etc).

The activities of the Government and of the Ministry of Labor and Social Policy are directly aimed at one and only option – forced repatriation[47]

According to the reactions of the internally displaced persons regardless of their ethnic origin, the suffered traumas, threats, loss of jobs, impossibility of providing subsistence due to destroyed houses and businesses, lack of conditions to attend school, non-reconstructed homes (those that have been reconstructed do not provide even the elementary conditions for life which is confirmed by the monitoring of the Helsinki Committee for Human Rights that visited the regions of origin of the internally displaced persons), lack of guarantees for the life, property and their security are exactly the reasons which make the claims of the Government ungrounded and are the cause due to which these people do not intend to return even if their houses are reconstructed.

In undertaking activities in the 2001 conflict affected areas, the Government does not respect the national laws[48], equally not respecting the accepted international standards[49] and by undertaking restrictive measures, terminating the social assistance for these persons, ignoring the basic conditions for life in collective centers, it attempted to motivate the internally displaced persons to return to their homes.

In the case of the "forgotten and neglected" part of the refugees from Kosovo, who came in Macedonia in 1999, the most desired solution by the Government is repatriation. The year 2003, is featured by activities which lead to the conclusion that the international community and primarily the Government avoid the responsibility that they have in respect of refugees which is based on international documents which the state has acceded to and in respect of which it seems that it is forgotten that they are integral part of the national legislation. [50]

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47 This was confirmed in February 2003 with the Conclusion of the Government (17 February 2003) for repatriation of internally displaced persons to Tetovo and to the Tetovo villages and the information of the Ministry of Labor and Social Policy of June 2003 by which "the conditions for use of the services of the collective centers cease", followed by the cease of the food assistance. All of these activities are based on the conditions (according to the views of the Government) that there are no more reasons that would serve as grounds for these persons to acquire the status of internally displaced persons. Furthermore, even the minimum conditions for the return of the persons to their places of origin are not provided. The destroyed houses are not reconstructed, no security is guaranteed in the place of residence, there are no reactions to violence against returnees, and there is no material and financial assistance for returnees.

48 According to which the state is responsible for compensating the damage caused by state actions (Article 166, paragraph 1 of the Obligation Law.)

49 The non-refoulement principle is not respected, internally displaced person are not enabled to participate in the adoption of decision regarding repatriation, displacement or in general the adoption of decisions affecting their lives and future (Guiding Principles on Internal Displacement, paragraph 28, subparagraph 2).

50 There are about 2700 temporarily humanitarily assisted persons in the Republic of Macedonia (Roma, Aeshkali, Egyptians from Kosovo-Serbia and Montenegro) half of whom were accommodated in the collective centers, most of them in the Suto Orizari Camp while others in private accommodation. The fate of these persons changed when the Government in cooperation with the UNHCR adopted a

The Government and the UNHCR placed those persons in a situation of having only one option for resolution of their fate – either to apply for asylum or to return to Kosovo.[51]

This ultimatum is in collision with the principle of voluntary application for asylum and the principle of voluntary return/repatriation in the country of origin. The return to Kosovo is completely unacceptable solution since the security situation in the country of origin for these persons has not changed and they are not guaranteed security. The first option for submitting an asylum application is practically unviable considering the brief practice that Macedonia has in terms of resolving cases in this field, especially in light of the legal asylum provisions which raise skepticism in the positive resolution of the applications.[52] Another aspect that does give grounds to believe in the positive decisions is the very small number of positively resolved cases of asylum applications. Additionally, there is the impossibility of considering the option of primary responsibility of the authorities of Serbia and Montenegro for displacement of its population (in this case the RAE) to territories that were not affected by the crisis, non application of the principle of solidarity by the international community in cases of mass scale deportation envisaged in the 1967 UN Declaration on Territorial Asylum and in the 2001 decision of the European Union regarding persons under temporary protection.

The Helsinki Committee reminds the authorities that internally displaced persons and refugees are especially sensitive group the rights of whom are as rule already violated or can be very easily violated. The responsibility of the state in the protection of this group is especially

unilateral decision to close the camp despite the demonstrated revolt of the representatives of the local self government of Suto Orizari where they allegedly wanted to be integrated in and the protests of the representative body of the refugees. Practically, these persons after such Government action are illegally staying in the country since they no longer have residence or stay address which was a condition for renewal of the previous status of temporary humanitarily assisted persons. Hence, these persons could not be reregistered. The revolt was expressed through self-organized relocation of about 7000 Roma Aeshalki and Egyptians at the Medzitlija border crossing at the Macedonian-Greek border on 19 May 2003, The saga for better life continued with the requests that the Republic of Macedonia lets these persons to seek asylum in some of the West European countries since after so many years Macedonia has not provided them with conditions for dignified and normal life. In utterly inappropriate conditions for life, without elementary assistance the refugees among whom there were large number of women, old persons and children, tried to attract the attention of the international public on their status. The international public remained silent to the humanitarian crisis which lasted three months (until 9 August 2003). In obvious lack of interest by the international community whether these persons will survive or not, they agreed to be again accommodated in the Katlanovo collective center, in the Jug Tourist Hotel and in private houses. The Helsinki Committee monitoring appealed to the Government and the UNHCR to provide more appropriate conditions for life than the current ones, since the efforts and promises for improvement of the situation were not made i.e. realized.

51 According to the last information 2200 refugees in the Republic of Macedonia applied for asylum. A smaller number agreed to voluntary return on the territory of Serbia and Montenegro.

52 According to the new Law on Asylum and Temporary Protection, Article 29/1-3 in assessing the asylum application if it is established that the person may seek protection in another part of the country of his/her origin i.e., " if the persecution is limited to only a part of the territory of the state of which the applicant is a national or if the applicant is stateless in the country of his/her usual place of residence and there is possibility to receive efficient protection in another part of the state, unless in light of all circumstances it can be expected that the person cannot seek protection there" the application will be rejected.

great in conditions of prolonged continuation of the situation which has lead to the displacement. The state has especially great responsibility when it is the state that is the main cause for the displacement of the persons. No solution related to the internally displaced persons can be adopted without their proper and active cooperation and without application of the principles of consent and voluntary return. Any act of forcing represents an act of further violation of human rights and freedoms.

5. Freedom of expression and the media

The general assessment is that in 2003 too there is the trend of improvement of the situation with the media compared to the post-conflict period in 2001 when there was a drastic fall in the journalism standards with most media outlets in the Republic of Macedonia.

In 2003, the media outlets attempted to become active participants in the human rights and freedom defense. In a series of programs they initiated, discussions about violations of human rights and problems related to their protection, and then elaborated specific cases of gross violations of human rights, there were even actions to open hot lines in the Editorial's Office, through which citizens could report their own cases and experiences. In large number of cases the public received appropriate information and it was mobilized for the purpose of exerting pressure on the state organs to undertake proper steps to protect citizen's rights. Last year the media outlets had an especially positive role in the presentation of information about violation of the right to clean environment.[53] The dominant focus on interethnic relations is replaced with much wider scope covering of various aspects of human rights (the rights of children, of women, of sexual minorities and similar).

53 The case of the lead smelting works in Veles, the case of landslides in the settlement of Ramina in Veles, the outflow of oar remains from the Zletovo mines; violation of the environmental equilibrium and safety of citizens through inappropriate construction in Skopje, the Trnodol case.

It should be stressed that very rarely one can see hate speech, although one could also notice that there is still division along ethnic lines when reporting about critical events. [54] Citizens were exposed to one sided information, often unchecked, serving the interests of a political party. A characteristic feature (especially of the Albanian language media) is the lack of any criticism against representatives of their own ethnic community in respect of violations of rights of persons belonging to other ethnic communities. Very often in these media outlets (especially in The Fakti daily newspaper) persons belonging to one's own ethnic community who show minimum self-criticism or raise problems or issues are immediately labeled as "kauri" (offensive name for Christians). One of the great problems in the last period is the violation of the presumption of innocence by or through the media. Persons suspected of having committed a crime are charged and convicted prior to court procedures, and in case of their release the public does not receive appropriate information.[55]

In 2003, the two most influential independent daily newspapers (Dnevnik and Utrinski Vesnik) were bought out by the German concern VAC. The Government did not react to this (although an issue of certain media monopoly by VAC could be raised). On other hand, the signing of the OSCE Charter for respect of the freedom of speech by VAC should be welcomed. The issue of the monopoly position and the specific support by the state was raised in respect of the Macedonian Information Agency (MIA). The case is pending before the Constitutional Court of the Republic of Macedonia. The party based policy pursued in all segments under the influence of the authorities was reflected in the changes made in the Macedonian Radio and Television, as a state owned media outlet. The personnel and organizational changes to a great extend follow the party directive and create a situation of mistrust of citizens towards

54 This could be noticed when the media informed about problems with secondary education, in which case journalists took sides - they placed themselves in the role of protectors of the Macedonian or of the Albanian cause. For example, at the begging of the year in lack of official results about the census i.e. regarding the ethnic structure of the population, all media were filled with speculations about the number of various ethnic communities, which caused enhanced mistrust and interethnic tensions. Some Macedonian language media continued with the one-sided and partial informing about sensitive issues such as the case of the Semsevo; problems of the secondary students in Kumanovo, the students' violence in Skopje or the continuation of the speculation about the large scale illnesses of the Kumanovo students in the text "Where does the poison come from?" Speculations and one sided informing was equally present in some Albanian language media outlets regarding issues such as the protests against non-respect for the Law on Amnesty, the pending trials against ethnic Albanian, and especially the debate about the Law on special rights of members of the security forces and their families. An evident example of selective informing is the Fakti Newspaper which published the Press Release of the Helsinki Committee about the Rastanski Lozja case, but did not publish the Press Release about the violence as precedent that must not be repeated (Addendum 1).

But the Commander Cakale case shed new light - as different from 2001 this time the media both in the Macedonian and in the Albanian language were unanimous - they condemned the act of kidnapping police officers by Commander Cakala.

55 The reports related to the case of Selam Seljami (charged with the murder f two police officers) were not accompanied with appropriate informing about his release.

information broadcast by this media outlet, i.e. its turning into a media in charge of the party propaganda.

However, a specific feature of 2003 is the large number of court procedures instituted against journalist.[56]

Five cases of court proceedings against journalists attracted the attention of the Helsinki Committee:

1. In November, the Skopje I First Instance Court fined 2003 Sonja Kramarska with 20.000 denars for a commentary (use of the word lies about a statement by Stojan Andov member of Parliament). Explaining the verdict the Court stated that the fine was prescribed as a correctional measure.

2. Zoran Markozanov, editor at The Zum weekly magazine was sentenced to 3-month prison sentence, 2 years conditional sentence for the same crime of libel.

3. Bobi Siljanovski, journalist at the Radio Bitola and correspond of the Macedonian radio and Televisions and the of the Start weekly newspapers was sentenced to 5 moth prison sentence, 1 year suspended sentence and was fiend with 21,00 denars for the crime of libel.

4. Dragan Anotonovski, journalist at the A1 private TV station, was fiend with 100.000 denars for the crime of libel.

5. Mende Petkovski, journalist of the Radio Bitola and correspond of The Dnevnik and TV Sitel, is currently being tried for the crime of libel against the Deputy Prosecutor of Bitola. The journalist reported the news that the Bitola police equally enforce the law (traffic regulations) for all, which can be clearly seen in the case of the Deputy Prosecutor, whose vehicle was banned form traffic on grounds of driving without license plates. The news is related to an event, which is outside the official performance of duties of the Public Prosecutor, and was reported in several media. The lawsuit by the Public Prosecutor was instituted only against this journalist, before a court that is not competent for the case, the judges of which were criticized by the same journalist in previous articles.[57]

56 According to the information of the Helsinki Committee in the last three years there have been 125 criminal charges brought against journalists. This can have twofold meaning: On one hand it could imply that the trend of the authorities to discipline the journalists continues, but on the other hand this could mean raising the issue of journalist ethics and offenses and libels as part of journalist reporting.

57 In November 2003 the Public Prosecutor's Office renounces the prosecution in this case and it was left to the private person to institute a lawsuit.

Recently, there has been a debate initiated regarding the issue of criminal liability of journalist for the crimes of libel and offense. Hence, the Association of Journalists stated that the proposed amendments to the Criminal Code are too strict and do not correspond to the recommendations of the Council of Europe and especially remarked about the fact that the amendments had been drafted without participation of journalists. The drafters, on the other hand, claim that the proposed amendments are in the spirit of European laws and call upon journalists to participate in the drafting of the amendments. In fact it is a matter of maintaining and precisely defining the criminal liability for the crimes of libel and offense through the amendments of the Criminal Procedure Code and requests of journalists to be given privileged status as compared to other citizens when it comes to this crime. The Helsinki Committee supports the idea for elimination of prison punishment for any citizen on grounds of these crimes, but it does not support the elimination of criminal liability and fines (which should be drastically increased).

A special problem in the media reporting are "columnists". These are usually renowned personalities from the academic or political circles who regularly publish articles in the printed media. In these articles hate speech and open offenses and vulgar words directed towards a concrete person are very often used.[58]

It is with pleasure that the Helsinki Committee concludes that there has been great progress made in the media and media reporting in terms of human rights protection and promotion. Further training and raising the awareness and primarily increasing the knowledge about human rights can even more strengthen the role of media in animating and mobilizing the public for protection of these rights.

The media must dedicate serious efforts to the further overcoming of the ethno-orientation of their information and to breaking free from the party influences in the selection and manner of presentation of information.

58 Especially drastic examples in this respect are the articles of professors of the Law Faculty Ljubomir Frckovski and Gorgi Marjanovic who are regular columnists in the Dnevnik newspaper.

6. Inter-ethnic relations

Contrary to the declared commitment to integrative processes, in 2003 there was a visible and open disintegration of the population on the territory of the Republic of Macedonia on ethnic grounds. The issue of rights of minority communities and the establishment of such democratic environment in which all citizens of the Republic of Macedonia would feel equal and comfortable, have gradually become issues related to the exercise of power by certain parties, granting privileges, and redefinition of the state's priorities. In such processes and activities, the Republic of Macedonia gradually losses the character of a multiethnic state and is in fact transformed into a bi-ethnic state.

The exclusiveness of the ethno-identification in each segment of the establishment of the power threatens to a great extend the global transformation processes and disables the strengthening of civil democracy. These processes have en exceptionally negative impact on strengthening the importance of the individual as the pillar of the human rights and freedom concept. The relations among and between persons belonging to different ethnic communities do not surpass the level of relations among and between collectives and prevent the flexibility in all other forms of interest based association of citizens.

The parallelism of the communities has been transformed into a rule and ruling political power do not discourage this but instead they support any activity aimed at establishment of parallel institutions (there is even parallelism supported at the level of basic infrastructure facilities: clinics, bus stations, shops, sports grounds), structures and housing areas of persons belonging to different ethnic communities.

In a situation in which the interaction of ethnic communities is reduced to relations between and among collectives, the elimination of all that is common and that could serve and a link, the decrease of the opportunities for direct communication and sharing of problems, very logically leads to renewed tensions among persons belonging to different ethnic communities. Mutual intolerance is manifested in the every day life in the form of silent denial and non-recognition and in the form of open demonstrations of hate and in denial and violation of fundamental human rights and freedoms in certain conflict moments. The fact that the conflicts are most often in the relations between the majority Macedonian ethnic community and largest minority community – the Albanian one, does not exclude the other ethnic communities from direct involvement or from suffering the direct consequences on their rights and interests.

1. Ethnic cleansing and ethnic delimitation is the most dangerous process which was enhanced in 2003. The process began in areas affected by the 2001 armed conflict; where from most of the non-Albanian population was displaced. Considering the fact that in 2003 too no conditions were created for the return of displaced persons the situation gains the dimension of a lasting solution. [59] In parallel, there was a process of internal migration of the population in the populated areas (especially the towns) by which certain ethnic boundaries are drafted.

2. The process is further exasperated by the ethnic cleansing in the primary and secondary education. In 2003, there was significant decrease of the number of schools in which instruction is carried out is several languages. Even when children belonging to different ethnic communities are under the same roof, usually they attend school in different shifts and have no contacts in the course of school or extra-curricular activities. [60] Large number of the cases of inter-ethnic tensions last year were connected with the education in which field the present authorities demonstrated themselves to be very rigid and lacking sensibility, attempting to turn decree measures into changes which in one or another way affected the interethnic relations. [61]

59 This process was to a great extend supported by the local population of the Albanian community which was manifested by damaging the already reconstructed houses owned by non-Albanian population (for example in the villages of Matejce, Aracinovo), violent behavior and intimidation of persons belonging to the Macedonian community and the impossibility to perform farming works (the St. Nikola Monastery in the village of Ljuboten).

60 One of the rare examples of a secondary school in which students of different ethnic communities attained school at the same time is the Gostivar Pance Popovski Secondary School (although in this school there are already visible signs of the disintegration process – hence there are three different graduates yearbooks, for students who have attended instruction in the Macedonian, in the Albanian and in the Turkish language.)

61 In Kumanovo after the failed attempt of the Ministry of Education to resolve the problem with the secondary school students belonging to the Albanian community who did not want to return to the central school building of the Goce Delcev Secondary School following the step by step principle, and after the attempt to return part o the students to the central Nace Bujoni Secondary School (after they were prevented by a group of students and persons belonging of the non-Albanian communities) and upon their reaction (blocking the entry road to Kumanovo and hunger strike by some of the parents), the Ministry of Education and Science decided upon “a temporary solution while passions calm down.: - 800 students ethnic Albanians to complete the academic year in the facilities of the Kumanovo Agriculture Complex and 910 students to attend instruction at the Worker’s University facilities.

The Minstry of Education adopted a decision to establish a secondary school class in the Albanian language of instruction in Bitola (that would be accommodated in the Goce Delcev Primary School). The decision is legally and educationally grounded, but it was adopted in a non-transparent manner without prior consultations with the secondary school management, the primary school management, with parents and pupils and without appropriate explanation and argumentation before the public which lead to ethnically based protests by parents and students of the Macedonian community (as well as of the wider public in Bitola) interruption of the instruction, and withdrawal of the request for establishment of the class i.e. the class has gone “undercover”. Again the problem is not solved but covered up and as such is a possible source for future conflicts.

At the beginning of the 2003 academic year, the Minstry of Education adopted a decision for transfer of the detached classes of Albanian language of instruction to the central Secondary School Arsenie Jovkov in Skopje. According to the received information this decision too was adopted without prior analysis of

3. An especially great problem occurred in respect of the adoption of the Law Establishing a Third University in the Republic of Macedonia (in which the instruction would be carried out the Albanian language)[62]. The resolution of this problem is again evidently featured by lack of alternative, wider debate, clear definition of intentions and procedures. [63] The constitutional amendments give the opportunity for establishment of a University in which the instruction would be carried out in the Albanian language, but then the question is why the Draft Law for establishment of this University was considered in an summary procedure, as well as the question as to how this project could be incorporated in the best manner in the declared integrative processes. The debates at the Parliament showed that the lack of alternatives of the proposals could threaten the true resolution of the problems related to this issue.

4. The use of languages became an important segment of the exercise of the rights by persons belonging to ethnic communities, and a source of tensions and conflicts throughout 2003. [64] The exercise of this right by the exclusive application of the principle of percentage representation is another attack on the multicultural character of the Republic of Macedonia. Namely, the entire debate about the use of languages is focused on the use of the Macedonian and the Albanian language while other languages are gradually completely withdrawn from public use. [65] Seen from different perspective,

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the situation, without informing and consulting the management, teachers and students and parents of the central school, and of the detached classes, as well without appropriate explanation of the decision, about the consequences of the decision and offered solution. As a result of the non-transparency, series of disinformation and manipulations, an atmosphere of mistrust was created which ultimately resulted in a conflict. Great number of the students missed classes and were involved in protests and manifestations to a great extend ethnically based. A compromise decision (instead of 11, 7 classes of Albanian language of instruction to be transferred to the central school) enabled the return of the students to classes, however it did not decrease the tensions that in the coming period are threatening to again escalate in an open conflict. The involved did not accept to consider other alternative solutions (for example transfer of the I, II and III year secondary school classes both of Macedonian and Albanian language of instruction in the central school and dislocation of all classes of IV year to a facility that satisfied the needs for practical training.).

62 Considering that this in fact is to facilitate the legalization of some of the faculties within the illegal University of Mala Recica, the problem gains specific weight and goes beyond the educational sphere. The problem is further complicated by the issue of recognition of diplomas issued by these faculties until their legal establishment within the system.

63 This of course cannot justify the mass scale nationalistic demonstrations of students of the Skopje and Bitola University, supported by the President of the Senate of the Sts. Cyril and Methodius University in Skopje and many professors and deans of faculties of these universities

It is especially concerning that in the Parliamentary debate and in the support to the students' protests the opposition party VMRO-DPMNE openly took a negative position towards the idea for establishment of a University in the Albanian language.

64 After reached agreement for use of languages (Macedonia and the Albanian) the Parliamentary debate was focused on the dispute as to which language should be used at the sessions of the Parliamentary committees chaired by persons belonging to the Albanian community. The dispute was resolved after one month debates and bargaining.

65 This is supported by the long year delays of the Republic of Macedonia to ratify the Charter for Regional and Minority Languages.

this is an issue of special concern in light of the occurrence or at least tendency the second official language to be used mono-linguistically in the performance of public offices. Furthermore there is evident lack of understanding the meaning of bilingualism (especially in the work of the local administration and local authorities), which implies excellent knowledge of the languages in official use in a given municipality. [66]

5. In terms of the rights of persons belonging to other ethnic communities, the position of the persons belonging to the Roma ethnic community continues to be of concern. In 2003, no steps were undertaken to improve the standard and conditions for life of persons belonging to this ethnic community. [67] The ghettoization of the Roma settlements continues and facilitates discrimination in the communal services, infrastructure changes and construction of facilities of importance for the community development. Due to the sub-standard conditions for life these settlements arte often exposed to natural disasters and suffer great material damage or represent direct threat to the life and health of its inhabitants. In such cases, politicians very easily give promises for assistance; however these promises are usually not fulfilled. [68] The Roma are again subject to open racial discrimination and marginalization. [69]

In the context of the Turkish language there are cases of bypassing the right to primary education in one's mother tongue. For example, as early as 1992 the Minstry of Education decided 300 primary school pupils who attended Turkish language instruction to be transferred from the Jordan Konstantinov Dzinot School in Dolno Kolicani to the Tefejuz School in Gazi Baba, which is about 20 kilometers from their homes. In January 2003, upon request of the parents a decision was adopted according to which 129 pupils from I to IV grade are to return to the Jordan Konstantinov Dzinot School. Parents hope that their request for return of all other primary pupils from V to VIII grade will be satisfied as well.

Furthermore there is an evident tendency of "forgetting" the Macedonia language exactly by persons belonging to the Turkish Community (which is especially evident in Western Macedonia.)

66 Taking into consideration the complexity of the issue of use of languages and the series of wrong steps in its application ever since independence until today, the Helsinki Committee supports the initiative by the Government, taking into account the still applied Law on the use of the Macedonian language, to adopt a separate law for use of languages. However, this should not be a law on use of languages of minorities or ethnic communities, considering the fact that the use of a language is not nor can it be the only criterion for affiliation to certain ethnic community and should not be used as a pretext for not knowing the Macedonian language as state language. Thus, it is necessary to create legal and practical conditions for true bilingualism of linguistically differentiated communities, but at the same time to encourage their social inclusion in all other fields.

67 The Roma population is still at the bottom of the education ranks, at the bottom of the employment ranking, at the top of the lists of beneficiaries of social assistance. The percentage of unemployed Roma women is three times greater that the total percentage of the unemployed women in the Republic of Macedonia.

68 As in the case of the alleviation of the consequences of the land slide in the Ramina settlement in Veles.

69 The Skopje Court of Appeals in the case of Dz. E. abolished the decision of the Kriva Palanka First Instance Court since the Court has established that "… a social case, unemployed person … it is obvious that neither his material income nor his contribution (remark!? Whatever this means) could afford him to buy for his own needs 10 sets of bed linen, 13 T-shirts, 20 scarves, and 4 nightgowns..." (In order to authentically present the decision there have been no interventions in the wording or in the sense of this statement.)

6. On several occasions in 2003, persons belonging to the Turkish community openly presented remarks about the decrease of their rights, i.e., about acts of discrimination. The Helsinki Committee received several information which indicates that the small percentage of the representation of the ethnic Turks in the public sector is inter alia owed to the lack of educated persons, which is a result of the inappropriate presence of the Turkish language in the primary, secondary and higher education in the Republic of Macedonia. [70]

The Helsinki Committee considers that in 2003 there were no positive steps undertaken for the improvement of interethnic relations. The ethnic parallelism threatens the true enjoyment and protection of the fundamental human rights in their entirety. A significant attack was made against the multicultural character of the Macedonian society, which on its part is basis for the development of civil democracy. The is evident further marginalization of the influence of the non-Albanian minority communities and lack of interest on the part of the state to respect great part of the provisions of the Framework Convention for the Protection of National Minorities, i.e. to ratify the Charter for Regional or Minority languages.

70 The Association for education culture and art- Adeksam presented the request for opening new classes in the Turkish language in the primary and secondary schools in accordance with the needs and applied laws and an initiative for establishment of separate groups of Turkish language of instruction at the Stoel University, taking into consideration the information that this not only necessary (pressure on about a hundred students-ethnic Turks to attend instruction in the Albanian language although they do not understand or speak the language) but also that there are available facilities.

The Association for development of media in the Turksih language issued a public statement calling upon reaction to the change of the timing and duration of the programs in the Turkish language at the Macedonian Television. They point to the dangerous precedent made on 13 December 2003 when after 35 years the program in the Turkish language did not broadcast news in the Turkish language. This association warns that in Macedonian there is no other electronic media in the Turkish language and the only printed media in the Turkish language Birlik was closed.

7. The Right to freedom of Conviction and Religion

The general position of the Helsinki Committee in respect of the exercise of the freedom of conviction is that the Republic of Macedonia should undertake all measures in order to reach complete secularization of the state, while changes in respect of religious communities are to be made in a legally valid form.

After the abolishment of about ten articles of the Law on Religious Communities and Religious Groups by the Constitutional Court, there were several attempts made to draft a new law all of which failed. In none of the drafting exercises representatives of all religious communities in the Republic of Macedonia were included (their number is 25).

After the Constitutional amendments made based on the recommendations contained in the Ohrid Framework Agreement, Article 19 of the Constitution contains reference to five religious communities, while the others are guaranteed equal status. [71] This compromise definitely shows that there is not even elementary knowledge of the meaning of the freedom of conviction and there is confusion about the terms that will have far reaching consequences on major part of the legal and other solutions. [72]

The Constitution guarantees separation of the state from the religion (church). However, in the practice a special position of the Macedonian Orthodox Church is allowed and encouraged and in great number of cases the separation of the state from the church is violated. [73]

71 Thus, the Constitution has retained one very important element of discrimination on grounds of religion and conviction. Based on this the conclusion can be drawn (which was recently expressed by the President f the VRMO-DPMNE, Nikola Gruevski) that the church is a constitutional category and this should serve as basis for all other legal solutions). Thus, the human rights and freedoms section of the Constitution of the Republic of Macedonia instead of containing provisions for freedom of conviction contains provisions establishing privileged position of a given religion, i.e. belief.

72 Lately there is evident persecution of representatives of the Serb Orthodox Church who are prohibited entry on the territory of the Republic of Macedonia while their followers (Macedonian citizens) are exposed to continued pressures (house searches, invitation for interview at the police, impounding material in the Serbian language and libeling in the media). These acts are justified with the dispute between the Macedonian and the Serb Orthodox Church in which the authorities of both countries are greatly involved. According to the latest information the amendments to the Law on Religious Communities and Religious Groups are in Government procedure by which the work of those groups will be disabled. It is interesting that very often in the assessment of the work of other religious communities wording characteristic of the previous period is used (Such as for example the expression “enemy activities” “enemy propaganda”).

73 In its claims for special privileged position in respect of all other beliefs and in respect of other religious communities, the Orthodox Church uses primarily channels from the past (the historic presence in key development stages of the culture of the Macedonian nation) and attempts to establish a link with each important event in the history of the nation and of the state. The basic argument used by the Orthodox Church is the identity of Macedonia, placing itself in a situation of unavoidable parameter of the past,

Smaller religious communities complain that they are exposed to continuous pressures, threats and they are often prevented from usual conduct of activities.[74]

The current situation in the Republic of Macedonia is not favorable at all to the freedom of expression of the conviction and religion. In the practice, people in the Republic of Macedonia have very little freedom of choice of their own belief. Pressures ranges from those most fundamental (the issue of the identity) to the ordinary ones, but not less important (employment, political orientation, education). Individuals are prevented from acting individually, and are instead pushed towards the specific "flock" in which the individuals can only be appropriately valued and recognized.

In the present constellation of relations, the freedom of religion is transformed into freedom of the church, which per se is a limitation of the possibility of making choice, of flexibility of one's identity and represents an anachronism which most developed democracies have managed to free themselves from (in the case of Macedonia these are the initial stages of its acceptance).

present and any other future identification. The Orthodox Church sets the problems of its own recognition and independence in direct relation with the recognition and existence of the state both in the past and presently; requests (and receives) direct engagement by state structures for resolution of its own problems. Even such formal aspects such as the place of an event (as for example the session of the ASNOM) is used for this purpose in order to establish a false link between the formal establishment of the statehood of Macedonia in 1944 and the Orthodox Church. A concrete link is an absurd and an offense to the delegates of this session which have to a great extend supported the position not only of separation of the church from the state, but also for elimination of any church markings and activities in the public life. The close links between the Macedonian Orthodox Church and the state established in the course of the mandate of the previous ruling structures, continues with the new authorities. This is demonstrated with the continued presence of representatives of the Macedonian Orthodox Church at celebration and events of state character, large presence in the state owned media and presence in the international activities of the country's leadership.

74 Most problems can be located in the regulation of ownership relations (the Bekteshi Community cannot exercise the ownership rights over the Arabati Baba Teke facility, which is usurped by the Moslem Community and its purpose is changed with the construction of a mosque. The construction of new facilities (the urban plans do not have sufficient locations for construction of religious facilities) , insufficient room for religious activities (according to the law religious activities of all religious communities except the Orthodox Church and the Moslem Community are limited to the premises of the community specially registered and envisaged for that purpose), open attacks against persons and facilities (in Strumica Orthodox Church priests and their followers have prevented the laying of foundations for construction of a facility of the Jehovah witnesses), obstacles in the religious rites and lectures by invited guests from abroad (according to the law a special approval is necessary for any religious lecture or service by a foreign national), prohibition of establishing Orthodox Christian Churches in which the service will be an another language (Vlach, Serbian, Greek).

Conclusion

The human rights and freedoms situation in the Republic of Macedonia in 2003 has not undergone significant changes as compared to the previous period. In some spheres (especially the social, health care and the labor relations rights sphere) there are evident retrograde trends. The state has not managed to establish such a system of institutions and mechanisms that would provide for the human rights and freedom protection and promotion and the state is even greatest violator of these rights.

The year 2003 is featured by the completion of the total partization of the state structure, development of ethno-democracy at the expense of civil democracy and further erosion of the law as the basic guarantor of the protection of a person.

Last year none of the declared commitments of the newly elected structure of power was fulfilled (improvement of the security situation in the country, improvement of the economic situation and standard of living of the population, global democratization, respect for the law and development of a state governed by the rule of law, development of integrative instead of disintegrative processes in the Republic of Macedonia and such level of human rights protection and respect for human rights and freedoms that would help the country come close to the European trends and enable its accelerated inclusion in the European structures.

Skopje (15.01.2004)

COMMITTEE FOR HUMAN RIGHTS OF THE REPUBLIC OF MACEDONIA