

ANNUAL REPORT

2012

Annual report of the Helsinki Committee of the Republic of Macedonia on human rights in the
Republic of Macedonia in 2012

Skopje, June 2013

INTRODUCTION	5
I. JUDICIARY.....	6
1. Administrative Court.....	7
2. Interference from the executive branch of government.....	7
3. Lack of transparency of the courts in cases of already protected witnesses.....	8
4. The courts do not pay due attention to cases of domestic violence	9
II. LEGISLATURE	10
1. Law on a Special Register for Persons Convicted of Paedophilia	11
2. Law on Interception of Communications	11
3. Law on Police.....	12
4. Implementation of the Law on Witness Protection	12
5. Law on Employment and Unemployment Insurance	13
III. POLICE CONDUCT	15
1. Double murder in Gostivar	16
2. Police action “Monster” (Monstrum).....	16
IV. LUSTRATION.....	18
V. DISCRIMINATION.....	22
1. Introduction.....	23
2. Trends and vulnerable groups	23
VI. FREEDOM OF EXPRESSION AND FREEDOM OF THE MEDIA	25
1. Law on Civil Liability for Insult and Defamation - Introduction to Censorship?..	26
2. Hate speech	27
VII. PENITENTIARIES	28
1. Torture of detainees in the Remand Prison Skopje	29
2. Health care.....	29
3. Legal aid	29
4. Reconstruction of the prisons.....	30

5. Psychiatric institutions	30
-----------------------------------	----

VIII. ECONOMIC AND SOCIAL RIGHTS.....32

1. Citizens' initiative AMAN.....	33
-----------------------------------	----

2. Energy Regulatory Commission	34
---------------------------------------	----

3. Social financial aid.....	34
------------------------------	----

IX. CIVIL AND POLITICAL RIGHTS36

1. Political pressure and obstruction of peaceful protest by civic initiatives and activists	37
--	----

2. Attack on the constitutional order of Republic of Macedonia-24.12.2012.....	40
--	----

3. Political prisoners and political influence.....	41
---	----

4. Violation of the principle of secularism of the state	45
--	----

X. LGBTI Community47

1. Introduction.....	48
----------------------	----

2. LGBTI Support Centre	48
-------------------------------	----

3. Homophobia	49
---------------------	----

4. Advocacy and lobbying	50
--------------------------------	----

5. Legal aid	53
--------------------	----

6. Attacks on the Centre	55
--------------------------------	----

7. Media	55
----------------	----

8. Institutions	57
-----------------------	----

9. Religious communities	60
--------------------------------	----

INTRODUCTION

In accordance with its mission to monitor the situation with human rights and freedoms in the Republic of Macedonia, each year the Helsinki Committee publishes an annual report in which it presents its views and opinions regarding all areas in which human rights and freedoms have been affected. The 2012 report is also a summary of the Committee's work throughout the year in terms of monitoring human rights and freedoms, which we have reported on in our monthly reports. The assessment is that in 2012, serious violations of the freedoms and rights of citizens were found, as well as severe violations of the principle of rule of law and legal state. It particularly concerns that the registered violations of human rights and freedoms in the reporting year indicate systemic problems in the functioning of authorities and institutions and the abuse of their competencies. The annual report is a summary of the analyses of the identified human rights situations in the following areas:

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- Judiciary
 - Legislature
 - Police conduct
 - Lustration
 - Discrimination
 - Freedom of media and freedom of expression
 - Penitentiaries
 - Economic and social rights
 - Civil and political rights
 - LGBT Community
-

Considering that the Constitution and the ratified international treaties guarantee the possibility of exercise and protection of human rights and freedoms, the Helsinki Committee will continue to monitor the human rights situation and to promote them, as well as to provide legal protection to citizens whose rights and freedoms are violated.

I. JUDICIARY

1. Administrative Court

Acting on requests for free legal aid related to the areas regulated by the administrative procedure, the Helsinki Committee for Human Rights monitored the work of the Administrative Court of the Republic of Macedonia during 2012. The Helsinki Committee found that the right to a trial within a reasonable time was violated by the administrative authorities and the Administrative Court in all received cases. Precisely, requests for free legal aid for violation of this right were addressed by persons who have been conducting proceedings for exercising their rights against the administrative authorities for 17 years, and which the Administrative Court fails to protect¹. In some of the cases, the Administrative Court has made even six decisions annulling the decisions of the administrative authorities, but they have not been executed or respected at all. Therefore, the authorities made decisions that are contrary to the instructions of the Administrative Court. Hence, the question arises whether the administrative authorities respect the Administrative Court? Are they familiar with Article 5 of the Law on Administrative Disputes, according to which the decisions of the courts made in administrative disputes are binding and enforceable? Or, for instance, with Article 52 according to which, when the court annuls an act, the competent authority is obliged to adopt a new act without delay and no later than 30 days from the day of delivery of the judgment. Thereby, the competent authority is bound by the legal opinion of the court, as well as by the remarks of the court regarding the procedure. It is also unclear why the Administrative Court does not apply the legal provisions that allow it to decide the dispute on its own and make a decision based on the facts? We believe that if the Administrative Court shows the courage to apply these provisions, the vicious circle that occurs in cases of annulment of disputed administrative acts by the court will be terminated so that citizens will reach justice faster and the state will not suffer damage due to the trial in an unreasonable time.

2. Interference from the executive branch of government

While monitoring the work of the courts in the Republic of Macedonia, the Helsinki Committee for Human Rights established that the judiciary is under the constant influence of the executive branch of government, as a result of which the courts cannot manage to provide protection of the rights of citizens, nor can they provide fair trials in some of the procedures. Hence, it is necessary to point out the restriction of the right to strike of health workers by the Basic Court Skopje 2 Skopje, proposed by the Ministry of Health. Namely, the Helsinki Committee for Human Rights considers that with this decision, the Basic Court Skopje 2 Skopje unjustifiably prevented the announced strike, which directly endangered the right to strike

1 See the section Court cases - Slavcho Mitevski and Stamen Filipov

guaranteed by the Constitution. According to Article 287 of the Law on Health Care, it is the duty of the director to provide emergency medical care and minimal function of all organisational units in the work process. The directors had more than enough time to make a work schedule and organise a minimal function of all organisational units from 07 September 2012 to 24 September 2012, when the strike was supposed to start. The 18 days period between the notification and the beginning of the strike even exceeds the meaning of urgent. It is also noticeable from the content of the decision that the union proposed the adoption of specific acts for the organisation of health care institutions by the directors. Still, it was not responded to at all. Such proposals for resolving the situation that would occur during the strike are in order not to endanger the health of any citizen at any time, which is proof that the Union has complied with Article 286 of the Law on Health Care, which refers to the right to strike, as well as Article 287 paragraph 2 according to which employees are obliged to act according to the appropriate measures. With this decision, the first instance court allowed abuse of the law and made the inaction of the hospitals' directors legitimate and unjustifiably restricted the exercise of the right to strike, which is guaranteed by the Constitution, the Labour Law, and the Law on Health Care.

3. Lack of transparency of the courts in the cases of already protected witnesses

The Helsinki Committee has been monitoring the implementation process of the institute "protected witness" for a long time, both in terms of implementation of legal provisions related to witness protection but also the procedure of questioning these witnesses in court and their impact on the principle of a fair trial.

While monitoring the trial for the murders of Marijan Tushevski and Kiro Janev, committed in 2001, in which 15 people were charged, three of them for direct execution and the other 12 for aiding, including Ljube Boshkovski (Minister of Interior at that time), we have once again witnessed the exclusion of the public from the interrogation of the protected witness with the pseudonym "FF15". The public prosecutor, as a representative of the prosecution and proposer of the witness, gave a positive opinion on not excluding the expert community from the interrogation of the protected witness, which for the first time showed the will of the public prosecution for greater transparency in the interrogation of a protected witness. However, the court decided to exclude the public entirely, including prof. Gordan Kalajdziev, PhD, Professor of Criminal Procedure at the Faculty of Law Iustinianus Primus, Ss. Cyril and Methodius, as a representative of the expert community.

We are of the opinion that constant decisions of the court to exclude the public in cases where protected witnesses appear do not provide space for determining whether the principle of a fair trial is being achieved. In particular, we do not consider the exclusion of the expert com-

munity justified, as it would only monitor the specific manner of questioning the protected witness in order to determine the application of the legal provisions that regulate the manner of witness protection in the Republic of Macedonia and its impact on the principle of a fair trial.

4. The courts do not pay due attention to the cases of domestic violence

While monitoring cases of domestic violence, the Helsinki Committee identified a violation of the procedure by the Appellate Court Skopje in one of the cases. Precisely, due to the absence of the public prosecutor at the main hearing before the first instance court, even though he was duly summoned, the injured party, i.e. her attorney, took over the representation of the prosecution and the court adopted a public decision finding the defendants guilty of “bodily injury”.

Dissatisfied with this judgment, the injured party, through her attorney, filed an appeal with the Appellate Court Skopje. The appeal was rejected as inadmissible because the injured party had the right to challenge the judgment only regarding the court decision on the criminal proceeding costs. The Basic Public Prosecutor’s Office also filed a complaint regarding the criminal sanction, but it was rejected as unfounded, and the first instance verdict was upheld.

According to Article 455 paragraph 7 of the Law on Criminal Procedure, if the public prosecutor did not attend the hearing (Article 454 paragraph 1), the injured party has the right as a plaintiff to appeal against the verdict, regardless of whether the Public Prosecutor also appeals. Therefore, it can be concluded that the Appellate Court unjustifiably restricted the right to appeal in this case.

The Helsinki Committee found that the Appellate Court Skopje has violated the provisions of the Law on Criminal Procedure and has unjustifiably disabled the right to explain the allegations of the injured party for the sentenced criminal sanction due to failure to act with due diligence in the specific case. We are of the opinion that this conduct should not become a practice in the courts in cases of domestic violence, given the sensitivity of the cases. Moreover, the courts should ensure that victims of domestic violence will receive effective and efficient legal protection and exercise the rights that belong to them according to legal regulations.

II. LEGISLATURE

1. Law on a Special Register for Persons Convicted of Paedophilia

The Law on a Special Register for Persons Convicted by an Effective Judgment for Criminal Offenses of Sexual Abuse of Minors and Paedophilia² was adopted by the Parliament of the Republic of Macedonia in January 2012. The Helsinki Committee commends the country's efforts to act preventively in relation to the protection of children's rights, however, the Committee considers that the publication of names, as well as other personal data in the Register, is contrary to Articles 18 and 25 of the Constitution of the Republic of Macedonia, which guarantee the right to privacy of personal data, personal and family life and protection against breach of personal integrity arising from the registration of information about them. In practice, published data may be inaccurate, incomplete, or outdated. Disclosure would mean an extension of the punishment, difficulties in finding employment or housing for the convict who has completed his/her sentence, the creation of the risk of convicts being attacked by third parties, as well as a potential for networking between sex offenders. In addition to these violations of the constitutional rights of convicts and social risks, the impact of the published data on the dignity, honour, and reputation of their families, especially in the environment in which they live and work, cannot be ignored. Instead of resorting to an unconstitutional method of prevention, the state should apply the techniques offered by modern medicine, such as anti-hormone therapy (chemical castration) and psychotherapy. For successful application of these methods, it is necessary to provide special treatment for perpetrators of crimes related to sexual abuse and paedophilia in the programs for resocialisation and social adaptation of convicted persons serving prison sentences.

2. Law on Interception of Communications

The latest amendments to the Law on Interception of Communications³ were adopted in September 2012. For several years now, the Helsinki Committee has been monitoring with particular interest the amendments to this law, which may have far-reaching negative consequences for the fundamental freedoms and rights of the citizens. In 2010, the Committee prepared a special analysis of the provisions and application of the law, identifying a number of inconsistencies and risks of violation of fundamental rights.⁴

Despite said indications, even more intrusive amendments were adopted in September 2012, which provide that wiretapping may be proposed by any police officer, rather than only by the Minister of Interior as before. Previously, the law stipulated that the wiretapping could last up to 30 days, and according to the amendments, this period is extended to 4 months, but there

2 Official Gazette of Republic of Macedonia No. 11/2012.

3 Official Gazette of Republic of Macedonia Nos. 121/2006; 110/2008 and 116/2012

4 Privacy under scrutiny: Comments to the draft amendments and supplements to the Law on Electronic Communications. Available at: https://mhc.org.mk/wp-content/uploads/2010/01/Privacy_under_scrutiny_1_.pdf

is a possibility for additional extension up to 14 months. While it was previously provided that legal wiretapping could last only a certain amount of time, as necessary for data collection in order to achieve the purposes of monitoring, this provision has been deleted in the new law. In practice, this means that the persons for whom an order for monitoring has been issued will be under constant four-month wiretapping, even if they are not a perpetrator of criminal acts during the surveillance period.

3. Law on Police

The latest amendments to the Law on Police⁵ were adopted in November 2012. Without any expert discussion, in an extremely non-transparent manner, during the summer holidays, the Ministry of Interior proposed the changes which were later adopted in their entirety. The law provides for the establishment of “enhanced operational control” of persons and facilities without adequately defining the type of control. The control methods have not been determined, due to which there is a risk that the citizens will be subjected to secret audio, video and electronic monitoring, and the duration of the control depends on the decision of the police and not the court. The law envisages “covert police action”, collection of information from citizens (informants) as “covert sources of information” and “intensified covert surveillance and operational surveillance in public places”. There is no definition for any of these terms. It is especially unclear whether the enhanced covert surveillance means only visual observation of a particular person or includes video, i.e., electronic surveillance. The maximum allowed period in which the person could be observed has not been determined either. These measures can lead to arbitrary and illegal conduct by the police. Such conduct can result in serious violations of personal integrity, disrespect for privacy, personal and family life, as well as the dignity and reputation of citizens. There are 50 types of records that the police should retain for a certain period of time, ranging from 2 years to indefinitely. If a citizen crosses the street illegally and is summoned to court, the police will retain his/her name and data for 5 years. The same amount of time the citizen will be on the list of the police if he/she has filed a complaint against a police officer. For participation in a traffic accident, the data will be stored for 10 years. For the citizens who commit crimes, regardless of the sentence, the police will retain information as long as they are alive. The Helsinki Committee submitted its specific comments and remarks to the Parliament of the Republic of Macedonia, but they were not taken into consideration during the adoption of the law.

4. Implementation of the Law on Witness Protection

During the police operation “Monster” (Monstrum), another crucial issue was raised regarding the Law on Witness Protection.⁶ Following the arrest of Haki Aziri, a procedure was initiated

5 Official Gazette of Republic of Macedonia No. 114/2006; 6/2009 and 145/2012

6 Official Gazette of Republic of Macedonia No. 38/2005 and 58/2005.

for his inclusion in the witness protection program. After his arrest, he was detained for six days in an unknown location. Before being granted the status of a protected witness, and after his complaints before the investigating judge, Haki Aziri, instead of the status of a potential witness, gained the status of suspect. The case creates serious concern that there is a real possibility that the law, "according to the needs of the procedure", could be abused, especially in the pre-investigation procedure. Precisely, the law stipulates that a protected witness can be any person who will volunteer as such and that neither his/her lawyer nor a member of his/her family must be notified of this decision. This situation may cause a particular person, through police threats, to sign an agreement under duress for inclusion in the witness protection program. Despite the fact that the Public Prosecutor submits the proposal for inclusion in the program, and the Witness Protection Council (composed of representatives of the judiciary and the Ministries of Justice and Interior) decides on the inclusion, none of these persons comes in contact with the witness, and only his/her written request provided by the Ministry of Interior is sufficient. The Helsinki Committee considers that it is in the interest of the protected witnesses to be given the opportunity to consult a lawyer prior to signing the written consent for inclusion in the program, and if the person does not agree during the procedure, they may be interrogated by the public prosecutor or the Witness Protection Council during the verification of the written statement.

5. Law on Employment and Unemployment Insurance

During 2012, the Helsinki Committee for Human Rights noted the unconstitutionality of the proposed amendments to the Law on Employment and Unemployment Insurance, which were nevertheless voted by the Parliament of the Republic of Macedonia on 20 June 2012.

We have emphasised that the new amendments to this law endanger the right to free choice in the employment process, which is guaranteed by the Constitution of the Republic of Macedonia and which cannot be taken away from the citizens. These provisions directly endanger the right to choose employment guaranteed by Article 32 of the Constitution. Furthermore, by forcing a person to accept work inadequate to the level of education or skills acquired, in order to prevent deletion from the register of unemployed persons in the Agency, they also violate the moral integrity of the citizen, which according to Article 11 of the Constitution is inviolable, same as the prohibition of forced labour, provided in Article 11 of the Constitution.

The provisions of the law that alter the current manner of keeping records of unemployed persons are contrary to the abovementioned fundamental human rights and indeed contrary to the intended goals. The objectives of the Law are improving the records of unemployed persons in order to enhance the quality of services provided to unemployed persons who are actively looking for a job, due to which these provisions can be qualified as an unsuccessful

and deceptive attempt to cover the high unemployment rate in the Republic of Macedonia in an unrealistic manner. This is further proof that there are a large number of highly educated unemployed people while the state has neither plans nor capacities to employ these persons.

III. POLICE CONDUCT

1. Double murder in Gostivar

At the end of February 2012, a double murder was committed in Gostivar by an off-duty police officer. Two boys aged 26 and 30 lost their lives, and a quarrel over a parking place was cited as the reason for the unfortunate event. The police officer committed the murder with his service pistol, and it happened in front of his minor daughter. The suspect is of Macedonian ethnicity, while the victims were members of the Albanian community in Macedonia. Immediately after the event, the Ministry of Interior (MoI) announced that the suspect had used the gun in self-defence because he was physically attacked by four people. Following the further development of the case, the Committee concluded that the Ministry of Interior had provoked public reactions, which led to civil protests in Gostivar and Skopje, which were a kind of continuation of the 2011 protests against police brutality. This unfortunate event again raised the issue regarding the effectiveness of the Ministry of Interior's training and education regarding the professionalism of police officers, i.e., their attitude towards resolving conflict situations and carrying service weapons in public places. The trial in this case was supposed to start in September 2012, but the Ministry of Interior refused to assist in the transportation from the detention centre to the court in Gostivar twice, under the excuse that "it is not safe." The Helsinki Committee considers that non-compliance with court decisions, by giving illogical explanations, is illegal and undermines the constitutional principle of separation of powers. The Basic Court in Gostivar in 2013 adopted a first instance judgment and sentenced the defendant to life imprisonment.

3. Police action "Monster" (Monstrum)

The manner in which the police investigation into the five-count murder at Smilkovo Lake in Skopje in May 2012 was conducted once again placed the focus on the discussions regarding the methods of the police's uncompromised fight against crime in the country. Immediately after the police action, the Minister of Interior Gordana Jankulovska stated that the Ministry of Interior had discovered the perpetrators of the murder. The constitutionally guaranteed right to presumption of innocence stipulates that persons charged with a criminal offense will be presumed innocent until an effective court decision has established their guilt. Additionally, immediately after the police action, videos and photos made by the Ministry of Interior appeared in many media outlets. These materials were published without paying attention to the protection of the arrested persons' identity. Furthermore, the naming of the police action "Monstrum" is a form of violation of the right to presumption of innocence. The Helsinki Committee was approached by the families of five (out of six) persons directly accused of the murder, which are in custody or on the run. Some of these people were detained in a police station, and three of them were placed in short custody of 48 hours. According to them, they were denied the right to counsel, the right to remain silent, and the right to use their mother tongue and script (Albanian). The persons also complained that they had been intimidated, that a masked person had conducted the interrogation, and that they had been given false

information about their family members' deaths. Some of the detainees also stated that they had suffered humiliation in terms of their religious affiliation and religious rights and they had received threats to their physical and moral integrity. The Helsinki Committee sent a complaint to the Sector for Internal Control and Professional Standards, which replied that the police procedure was conducted in accordance with the applicable legislation.

IV. LUSTRATION

In 2012, the lustration process continued to be implemented outside the framework defined with the decisions of the Constitutional Court, but also contrary to the opinion of the Venice Commission, which explicitly identified all those inconsistencies in the law previously identified by the Helsinki Committee. These inconsistencies were the basis for the Helsinki Committee's Initiative for Examination of the Constitutionality of the Law on Additional Requirements for Exercising Public Function, which was submitted to the Constitutional Court in September 2012.

Precisely, during 2011 the parliamentarians passed amendments to the Law on Additional Requirements for Exercising Public Function (Lustration Law)⁷, which are entirely opposite to the previously repealed Decision of the Constitutional Court from 2010, which found that: lustration after 1991 questions the existing democratic constitutional order of the Republic of Macedonia and that the lustration of non-governmental organisations, universities, the Macedonian Academy of Sciences and Arts, etc., is an interference of the state in the sphere where there are no constitutional competencies.

In addition, these legal changes envisaged a duty for universities, non-governmental organisations, the Macedonian Academy of Sciences and Arts, religious communities and other organisations to incorporate the results of the lustration in their employment conditions, which provided for a penalty - termination of the employment if the statement for non-cooperation is not verified. This conduct is contrary to the legal principle that there is no punishment for an act that is not stipulated with the Criminal Code as a criminal offense.

The Constitutional Court issued the latest Decision on 28 March 2012⁸, once again determining the contradiction of the Constitution with 12 articles of the new Lustration Law, including the same provisions that it previously repealed (which is a legal precedent of unconstitutionality in Macedonia).

Regardless of the circumstances, the implementation of the new Law on Determining a Restriction Condition on Exercising Public Function, Access to Documents and Publication of Cooperation with State Security Authorities began in July 2012.⁹

According to this Law, the lustration is envisaged to take place after 1991, i.e., after the entry into force of the Republic of Macedonia's current Constitution, and until the entry into force of the Law on Free Access to Public Information, i.e., until 1 September 2006. Those provisions were envisaged although the Constitutional Court of the Republic of Macedonia, with two previously adopted decisions, determined that the lustration process has no constitutional justification after the entry into force of the current Constitution. This would mean denying the values and institutions established after the adoption of the Constitution. Otherwise, such a

7 Official Gazette of Republic of Macedonia No. 14/2008, 64/2009 and 24/2011

8 U. No. 52/2011 and U. No. 76/2011 (Official Gazette of Republic of Macedonia No. 48/2012)

9 Official Gazette of Republic of Macedonia No. 86/2012

process would appear as a modern alternative to the existing legal system and the established institutions, thus losing the Law's historical dimension and justification.

The new Law stipulates that the Commission for Verification of Facts, after checking the persons determined with the scope of the Law, should keep a Register for them and publish on its website their names and the documents that were used as evidence for assessing the cooperation of the person with the state security authorities.

The publication of the decision, the names and the documents takes effect automatically, without waiting for a possible court decision. One of the previous decisions of the Constitutional Court of the Republic of Macedonia stipulated that the publication of names is a violation of the dignity and the moral and personal integrity of the citizen. The same decision states that the public announcement of the names of the persons means unverified, flat and public condemnation and that it has the character of a sanction, which can have consequences on all spheres of their lives, and not just a ban on holding public function, which is the purpose of the Law.

The stipulated provisions are contrary to Article 8 (the rule of law and division of state power into legislative, executive, and judicial), Article 9 (equality of citizens in front of the Constitution), Amendment XXI (legal protection against individual legal acts), Article 18 (security and secrecy of personal data and protection from violation of personal integrity), Article 25 (respect and protection of privacy of personal and family life, dignity, and reputation), Article 50 (judicial protection of the legality of individual acts of the state administration) and Article 51 (restriction of the freedoms and rights of the citizen only under conditions stipulated in the Constitution) of the Constitution of the Republic of Macedonia.

Specifically, the rule of law and the division of power into legislative, executive and judicial, envisages that all legal acts are adopted by a holder of power, in accordance with the provisions of the Constitution. No one can and must not arbitrarily restrict citizens' rights without meeting the conditions established by the Constitution. In this particular case, it means that the Parliament of the Republic of Macedonia, as the holder of the legislative power, has no competence to restrict rights or their protection through an executive body such as the Commission, without providing legal protection by a competent court as a holder of judicial power. The lack of legal protection from individual legal acts undermines the rule of law. It contributes to inequality among citizens and arbitrary interference by the state with the manner in which citizens exercise their rights and freedoms.

The Helsinki Committee filed an Initiative for assessing the constitutionality of the Law, thus challenging this Law in front of the Constitutional Court and proposing a decision to stop the execution of actions taken based on the Law, with the aim of avoiding consequences that would be difficult to eliminate for the citizens.

In the meantime, the Commission for Verification of Facts continued to publish on its website the names of alleged collaborators with the state security authorities, before confirmation of such status by the Administrative Court. The Administrative Court has annulled two decisions made by the Commission.

On 17 December 2012, the Venice Commission of the Council of Europe issued its legal opinion (*amicus curiae*) on the Lustration Law. The document states that the legal opinion was prepared at the request of the President of the Constitutional Court of the Republic of Macedonia, addressed to the Venice Commission on 7 September 2012, i.e., four days after the Initiative submitted by the Helsinki Committee. While analysing the legal opinion, the Helsinki Committee found that the Venice Commission had referred to all provisions challenged by the Committee. The opinion is presented into four main parts: 1) the time scope for which the Law applies, 2) the entities it covers, 3) the procedural guarantees of the persons being prosecuted, and 4) the publication of their names on the Internet. The main conclusions arising from the document (based on international standards, the case law of the European Court of Human Rights, and comparative study of legislation and case law in other European countries that have implemented or have conducted the lustration process) are:

- 1) Introducing lustration measures after a long period from the beginning of the democratic processes in a country can lead to the risk of raising doubts about the real purpose of such measures. Revenge must not prevail over the protection of democracy.
- 2) The practice of lustration measures for entities that hold positions in private or jointly owned enterprises exceeds the purpose of lustration.
- 3) The absence of the person against whom the lustration procedure is conducted during the procedure before the Commission for Verification of Facts is not in accordance with the right to defence, especially with the right to "equality of arms."
- 4) The name of the person considered an associate should be published only after the effective decision of the court.

These conclusions represent a confirmation of the Helsinki Committee's argumentation in drafting the Initiative challenging the Lustration Law before the Constitutional Court of the Republic of Macedonia.

V. DISCRIMINATION

1. Introduction

Throughout 2012, the Helsinki Committee for Human Rights monitored discrimination in the Republic of Macedonia. Even though two years have passed since the beginning of the implementation of the Law on Prevention and Protection against Discrimination, effective protection is still lacking, especially for marginalised groups. The Law on Prevention and Protection against Discrimination remained unchanged despite criticism from the expert community and the non-governmental sector, particularly for allowing state administration employees to be members of the Commission for Protection against Discrimination and disregarding sexual orientation and gender identity as grounds for protection against discrimination. The intensity of the Commission's work and its visibility in public was not increased in 2012, which left the citizens uninformed about the possibilities for protection in case of discrimination and the Commission's competencies for their protection. The fact that in 2012 there was still no court case to determine discrimination, shows the awareness of citizens about the mechanisms of protection against discrimination.

2. Trends and vulnerable groups

Acting on the complaints submitted by citizens and monitoring the situation in society and the media, we found that in 2012 LGBTI people were the most exposed to discrimination. In this situation, there is systemic discrimination due to not including sexual orientation and gender identity in several laws that could have provided effective protection against discrimination and inclusion.

The Helsinki Committee did not note any progress in protecting against discrimination or raising awareness of social discrimination when it comes to the Roma people, who remain one of the most vulnerable communities in our society. Despite the numerous remarks of the Committee on discrimination against the Roma community, especially when it comes to the education and segregation of Roma children, so far, no initiative has been taken by the state to address this problem.

Discrimination against Roma children and their systematic segregation due to lack of mechanisms and established practices for assessing children and their psychological and physical development, as well as the lack of education and information among parents from the Roma community, indicate the need to inspect schools and take appropriate measures to change the current practice. The right to education and equal access to it is the right of every child regardless of ethnicity; thus, children's development should be a priority of all relevant institutions in the Republic of Macedonia.

Gender equality was questioned again in 2012, primarily due to the representation of

women by government and church officials only in the role of mother and wife, which continually challenges the equality of women in society and their full social inclusion.

Employment based on political affiliation in the state and public administration remains one of the biggest problems that the state refuses to deal with. In 2012, it was evident that the trend of political employment and discrimination on political grounds in labour relations in the state and public administration continued, thus limiting the right of many citizens to work due to political neutrality or different political affiliation of the ruling parties.

VI. FREEDOM OF EXPRESSION AND FREEDOM OF THE MEDIA

During 2012, the Helsinki Committee expressed its concern about the situation in the area of freedom of expression and freedom of the media, which are constitutionally, guaranteed rights in the Republic of Macedonia. In that regard, the media outlets, the journalists, and the right to freedom of expression and freedom of the media was an issue under constant monitoring and interest of international organisations.

Namely, when it comes to this right, the eminent "Freedom House" notes a drastic decline of the Republic of Macedonia by 20 places compared to last year. As a result, the Republic of Macedonia currently shares the 115th-116th place with Moldova.

The remarks of international organisations, which are almost identical to those of the Helsinki Committee, state that freedom of the media is generally tarnished by the influence of political parties on the editorial policy, which is more than obvious, as well as by ignoring the recommendations presented in the European Commission Report on 2011¹⁰.

1. Law on Civil Liability for Insult and Defamation - Introduction to Censorship?

At the end of 2012, the Law on Civil Liability for Insult and Defamation was adopted, decriminalising insult and defamation. The adoption of this law represents a severe burden on the journalists' work given their confrontation with the self-censorship phenomenon and the envisaged high fines for perpetrators of insult or defamation, including the political pressure which is mainly exerted over the courts.

During the law-enactment process, the Helsinki Committee and other civil society representatives noted that the proposed law was an introduction to censorship. The Committee pointed to the missed opportunity to adopt it in a broader public debate and consultation with civil society organisations. A more transparent process would have contributed to greater credibility of the law in public and would have removed suspicions that the whole law-making process resulted from political interests.

Due to inconsistencies in the law that directly affect the right to freedom of expression of individuals, after its adoption, the Helsinki Committee in cooperation with a group of other civil associations submitted an initiative to the Constitutional Court of the Republic of Macedonia to assess the constitutionality of the provisions of the Law on Civil Liability for Insult and Defamation.

¹⁰ Working version of the Commission services, Former Yugoslav Republic of Macedonia, Progress Report - Brussels, 12.10.2011 Sec (2011) 1203 final version http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf

The Helsinki Committee also notes that at the time of writing this report, a new Law on Media and Audio-visual Media Services is being adopted, and the Committee would like to emphasize that this law will prevent the development of the media and further restrict freedom of expression and freedom of the media.

2. Hate Speech

The Helsinki Committee for Human Rights, both in past years and during 2012, has repeatedly stated that the presence of hate speech in our daily lives is increasing, causing irreparable damage to our social life, while the trend of escalation of hate speech is not omitted. In this regard, the Helsinki Committee for Human Rights has continuously monitored the media, social networks, and statements of senior public officials and representatives of political parties and also noted that during 2012, hate speech has increased, which also results in physical violence that is becoming part of everyday life in the Republic of Macedonia.

Following the events that marked this year, the Helsinki Committee for Human Rights has identified numerous events that produced a causal relationship where the occurrence of hate speech has resulted in additional hate speech. The fact that the situations where hate speech leads to hate crimes are not uncommon is also concerning.¹¹ The result of these situations is an impression that in the last few years, citizens have been collateral damage to social groups that deliberately incite hatred among people to achieve their personal goals, while the social or state interests are marginalised.

It is important to note that defining hate speech and its criminalisation in the Republic of Macedonia is problematic and quite often manipulated with statements that sanctioning the hate speech leads to restriction of freedom of expression. Under this pretext, we have witnessed labelling, conducting negative campaigns against specific public figures, slandering, homophobia, transphobia, and considerable misogyny and incitement of ethnic and political hatred.

11 The Macedonian flag was set on fire. Available in Macedonian at: <http://telma.com.mk/index.php?task=content&cat=1&rub=6&item=13949>;

Several churches in Struga and the Struga region were set on fire. Available in Macedonian at: <http://dnevnik.mk/default.asp?ItemID=ED90E54492C0454BAA6F47E00FD65AB0>

In the last few days, there were mass physical clashes between young people in PTC buses and in western parts of Macedonia. Available in Macedonian at: <http://www.telma.com.mk/index.php?task=content&cat=1..&rub=6&item=20572> and <http://daily.mk/cluster/6c9cf9c632ce7f6b8c89284bb3155898>

VII. PENITENTIARIES

1. Torture of detainees in the Remand Prison Skopje

During October 2012, a group of anonymous persons submitted a complaint and photographs to the Helsinki Committee stating that employees of the remand unit of the Skopje Prison tortured three detainees. In the remand unit, three detainees who were Albanian citizens were handcuffed to radiators and left in that position for about 3 hours. The Minister of Justice, Blerim Bexheti, told the media that there was an abuse of detainees and that appropriate measures would be taken immediately, including filing criminal charges for the perpetrators of this crime. The Directorate for Execution of Sanctions told the media that criminal charges would be filed against unknown persons who illegally photographed and documented the event. The Helsinki Committee considers that the real purpose of filing of criminal charges is intimidating officials in penitentiaries and preventing the reporting of torture cases. On the other hand, the impunity of the employees in these institutions, in case it is established that they have committed some human rights violation, confirms the fact that such human rights violations are not disclosed to the public. According to Article 364 paragraph 1 of the Criminal Code, the act of omitting to report a crime represents a crime itself. The Helsinki Committee notes that in accordance with Article 142 paragraph 1 of the Criminal Code of the Republic of Macedonia, the offenses described in the complaint are punishable by imprisonment of one to five years.

2. Health care

During 2012, several prisoners addressed the Helsinki Committee via telephone and letters, stating that they needed assistance in exercising their right to health care, in accordance with Article 124 and Article 129 paragraphs 1 and 2 from the Law on Execution of Sanctions.¹² Due to their poor health condition, at the initiative and expense of these persons, they requested to be transferred and receive medical treatment outside of the prison where they are serving their sentence. In 2012, the Helsinki Committee concluded that the authorities in prisons unnecessarily delay the process of treatment and transfer for medical treatment of prisoners, thus leading to a situation that harms the health of these persons, violating their legally guaranteed right to health care.

3. Legal aid

Many prisoners who contacted the Helsinki Committee in 2012 complained about the non-functioning of the legal services in the penitentiary institutions. Some of the prisoners who requested free legal aid from the Committee were not at all aware of the possibility of receiving legal aid in the prisons. Although the legal team of the Helsinki Committee advised them about

¹² Official Gazette of Republic of Macedonia, Nos. 2/2006 and 57/2010

their rights, and instructed them to file complaints and requests to the directors of the prisons, the prisoners, almost without exception, stated that they did not trust the system and that if they did file the necessary complaints and requests, they would only complicate the already difficult situation in prison. Faced with this distrust, the Helsinki Committee instructed the prisoners to file a written request for the Committee representatives' visit. However, it is concerning that some of the requests of the prisoners who accepted this recommendation did not arrive at the Helsinki Committee office at all. This issue is most persistent in the Idrizovo Penitentiary. Hence, there is a reasonable suspicion that certain prison officials do not act upon the prisoners' written requests, and thus they are possible perpetrators of the crime "Violation of the right to submit a legal remedy" under the Criminal Code of the Republic of Macedonia.

4. Reconstruction of the prisons

In 2009, the Ministry of Justice was supposed to launch a project on rebuilding and restoration of penitentiaries across the country, financed with a EUR 52 million loan provided by the Bank for Reconstruction and Development of the Council of Europe, IPA funds, and the Government of Norway. The project included a thorough rehabilitation of existing facilities and demolition of some of the facilities and construction of new ones with larger capacities. The project also envisaged a completely new appearance of the "Idrizovo" Penitentiary, the Skopje Prison, the Juvenile Detention Facility Tetovo, and the finalisation of construction activities in the new prison in Kumanovo. More than three years have passed since the loans were provided; however, the field work on the project has not started at all. In an extraordinarily bureaucratic and slow procedure related to technical projects, elaborates, and procurement procedures, the Ministry of Justice, failed to use the already provided funds. Even though this project was supposed to start in 2011 at the latest and should have now been in an advanced phase of construction, at the moment of writing this report, procurement procedures were being annulled and no contractor has been selected. Due to the Ministry of Justice's unprofessionalism, thousands of prisoners are residing in substandard living conditions. Meanwhile, prison overcrowding is growing, reaching around 120% in 2012. The Republic of Macedonia has failed to fulfil the recommendations of the Committee for the Prevention of Torture of the Council of Europe and has further worsened the human rights of prisoners.

5. Psychiatric institutions

The Helsinki Committee for Human Rights during 2012 visited the following psychiatric institutions: PHI Psychiatric Hospital "Skopje"– Skopje in Bardovci, PHI Psychiatric Hospital "Negorci", Special Institute for Severely and Profoundly Mentally Handicapped individuals – Demir Kapija, PHI Psychiatric Hospital - Demir Hisar and PI Institute for Protection and Rehabilitation

- Banja BANSKO.¹³ The general problems that exist in these institutions are: a) a small number of specialist doctors, internal medicine doctors, nurses, caregivers, and hygienists, b) an inadequate number of day care centres for people with mental illness (especially concerning alcohol and drug addicts) c) lack of professional training for staff, d) an inadequate number of preventive internal and other appropriate examinations (e.g., gynaecological, dental, viral, etc.), e) poor living conditions due to a prolonged period of inactivity in the area of reconstruction or construction of new buildings (insufficient number and inadequate bedding, beds, toilets and personal lockers for all patients) and f) failure to use appropriate therapies that would offer a genuine bio-psychosocial approach to treatment.

13 Please see: "Report from the visit of the Helsinki Committee for Human Rights of Republic of Macedonia to the special institutions and psychiatric hospitals in Republic of Macedonia for 2011 and 2012" Available in Macedonian at: <https://mhc.org.mk/wp-content/uploads/2019/08/Poseta-na-specijalnite-ustanovi-i-psihijatriskite-bolnici-vo-RM.pdf>

VIII. ECONOMIC AND SOCIAL RIGHTS

The year 2012 can be remembered as the year of struggle against social injustice and realisation and protection of economic and social rights. This conclusion stems from a series of protests through which citizens demanded the state to protect their rights including: consumers (citizens' initiative AMAN), bankruptcy workers (Repair of railways, OHIS and civil association UNIT) and health workers (strike of health workers). The Helsinki Committee for Human Rights also noted violations in the exercise of the right to social financial aid and irregularities in the work of the Regulatory Commission.

1. Citizens' Initiative AMAN

The citizens' initiative AMAN was formed as a reaction to the decisions of the Energy Regulatory Commission regarding the increase of electricity prices, specifically the abolition of the low electricity tariff and the amendments to the Heating Energy Supply Rules, which established that citizens who are disconnected from the heating supply systems still have to pay a certain amount of money to the heat supplier. Citizens protested in several cities in the Republic of Macedonia against the Regulatory Commission's decisions, demanding from the state to protect their rights as consumers and prevent further endangerment of the already low living standard. In addition to expressing their dissatisfaction through protests, the citizens' initiative AMAN, with the support of 13,000 citizens, managed to submit a draft Law on amending the Law on Energy. The proposed amendments demanded that the Energy Regulatory Commission include prices of low daily rates for 3 hours during the day, in the period from 10 am to 6 pm and for 24 hours on Sunday, in the tariff systems for sale of electricity to households as tariff consumers and households supplied through suppliers of last resort. Furthermore, the proposed amendments required that the consumers excluded from the electricity, heat, or natural gas supply network cannot be obliged to pay any compensation. The draft law was not supported by the majority of MPs of the ruling party at the beginning of the debate in the Parliament of the Republic of Macedonia. It was decided not to have a second reading on the proposed changes. Despite this decision of the Parliament, the citizens' initiative AMAN is the only successful example of practicing the right to direct democracy and proposing legal changes in the Parliament, directly from the citizens of the Republic of Macedonia.

The Helsinki Committee for Human Rights received a request for free legal aid by the activists in the citizens' initiative AMAN, and thus monitored the situation with the rights of citizens as consumers considering that this case was endangering the living standard of the citizens. The Committee found that households as consumers are not protected from the constant increase in electricity prices and the monopoly position of heat distributors. Therefore, it is necessary to amend the legal provisions in a manner that will protect the rights of households as consumers from the bylaws of the Energy Regulatory Commission, which endanger the existential well-being of many citizens in the Republic of Macedonia. Moreover, it is necessary to protect the economic and social rights of the citizens of the Republic of Macedonia, guaranteed by the Constitution of the Republic of Macedonia through protection from the monopoly position

of the companies on the energy market and protection from the imposition of obligations for services that the citizens do not agree to use.

2. Energy Regulatory Commission

During the analysis of the regulations adopted by the Regulatory Commission, the Helsinki Committee concluded that the abolition of the low daily tariff was the result of two regulations adopted on the basis of non-existent provisions of the Energy Law. Furthermore, an additional eleven regulations were adopted by the Commission on the basis of erroneously or inaccurately determined provisions of the Energy law. As our findings identified omissions in a total of thirteen regulations, we informed the public that the Commission is making substantial mistakes in its work. At the same time, we sent our analysis to the Commission, pointing out that the adoption of such regulations is inadmissible and calls into question their legitimacy. We asked the Commission for an answer on whether it plans to repeal or amend its acts, and we warned that in the absence of an appropriate response, we will challenge them before the Constitutional Court.

Twenty days after the letter was submitted, the Commission sent a response informing us that in the two regulations that abolished the low daily tariff, “technical errors were made and they were sent for publication in the Official Gazette.” Soon, one correction was officially announced. For three of the disputed regulations, the methodology of their adoption was explained to us, after which we determined that they are in fact, not disputable. No answer was offered for the other regulations that we pointed out as disputable, which led us to the conclusion that the Commission tacitly agrees that they have made a mistake. Therefore, after the corrections and the explanation for some of the regulations, there are still eight acts that are in force, but they have shortcomings. Such conduct confirms our initial position that the Commission has committed substantial violations in the exercise of its powers.

3. Social financial aid

The Helsinki Committee found a violation of the right to use social financial aid, and thus a violation of economic and social rights in the cases of Dobra Petkovska and Semedin Nebi¹⁴. Precisely, the cases of Dobra Petkovska and Semedin Nebi, raised the question of whether social security and social justice are just principles that do not actually have their real implication for the life and well-being of people at social risk.

¹⁴ More details on the cases can be found in the monthly report of Helsinki Committee for Human Rights for April-May 2012 http://mhc.org.mk/system/uploads/redactor_assets/documents/147/quarterly_mk.pdf

It is noteworthy that the competent institutions have made two diametrically opposite decisions while deciding on the exercise of the right to social financial aid in these two cases. Therefore, despite the almost identical factual situation for termination of social financial aid, in the first case, the right to social financial aid was re-established with a new decision, while in the second case it was terminated. The decisions adopted in these two cases speak of the inconsistency in the implementation of legal regulations.

The manner in which the competent authorities are processing such cases is quite concerning considering that these cases involve households that are financially insecure and which cannot provide means for living on the basis of other regulations or in another way. The Helsinki Committee for Human Rights expresses its concern regarding the manner, conditions and procedure according to which vulnerable groups in society exercise their rights to social protection. Thus, the Helsinki Committee for Human Rights considers that there is an urgent need to amend the Rulebook on exercising and application of the right to social financial aid, in a manner that will accurately determine a certain amount of income that will not be considered as household income. This will undoubtedly reduce the possibility of inconsistency and contradiction of the competent authorities' decisions and it will also achieve the goal of social protection - overcoming the primary social risks to which the citizen is exposed during life, reducing poverty and social exclusion, and strengthening the citizen's capacity for self-protection.

IX. CIVIL AND POLITICAL RIGHTS

1. Political pressure and obstruction of peaceful protest by civic initiatives and activists

In 2012, the civil and political rights in the Republic of Macedonia were primarily expressed through the exercise of the right to peaceful protest (public assembly), freedom of association, and freedom of expression by several social groups, organisations, and informal associations of citizens. During this year, the observation of peaceful protests became a particular interest and practice of the Committee. The observation practice began at the request of individuals and groups due to expressed fear, disagreement with police officers who are supposed to ensure the right to peaceful protest, threats, blackmail, restriction of rights, pressure in the form of counter-protests and political discrimination due to membership in a political party. During the past year 2012, the Helsinki Committee witnessed several events that indicate serious interference of the state in the exercise of these rights by citizens, through monitoring the following peaceful and violent protests and public gatherings:

- Stop police brutality - informal association of citizens
- Citizens' Initiative "AMAN"- informal association of citizens
- Civil Association UNIT - registered association of bankruptcy workers
- March of Tolerance: "STOP Misogyny, Homophobia and Transphobia" organised by the Helsinki Committee with the support of an informal network of NGOs – registered NGOs and human rights activists
- "The "People's Front" on the one hand and the sympathizers and members of the opposition on the other - a public gathering of supporters/sympathizers, citizens and members of political parties

The freedom of association and expression of dissatisfaction through a peaceful protest present a correlation between civil and political rights that all people in the Republic of Macedonia enjoy equally. These rights are extremely important for the development of parliamentary democracy, having in mind that their practice achieves balance or control over the citizens' executive power and expresses dissatisfaction with a certain policy, manner of governing, etc. The Committee considers that any obstruction or attempt to restrict these rights also constitutes a violation of human rights, specifically civil and political rights, as part of the corpus of international human rights and freedoms. In this regard, the Committee regrettably concludes that violations of these rights and escalation of peaceful protests into violent protests with minor injuries to citizens and police officers were registered in 2012. In this regard, the Committee found violations of human rights and freedoms in each of the abovementioned groups of citizens, as follows:

1.1. Stop police brutality – violation of the right to free movement and expressing dissatisfaction of a group of citizens on the occasion of marking one year since the death of Martin Neshkovski by restricting access to the Ministry of Interior by police officers without justifiable reason. Beside the unlawful restriction of the right to free movement and freedom of expression through a form of peaceful protest, the Committee found that there was a reasonable suspicion of abuse of power by the officials who acted upon an order to restrict the movement of citizens, thus violating the right to free movement, the right to peaceful protest, the freedom of public assembly and the freedom of expression.

1.2. Citizens' Initiative "AMAN" – the monthly and quarterly reports of the Committee register several violations of the right to peaceful protest, association, and freedom of expression in the civil informal initiative "AMAN", having in mind that this informal initiative lasted seven months and took part in several forms of direct democracy through civic and political participation. The rights of this informal group of citizens who protested against the increase in energy prices and their impact on the household budget were violated in several occasions:

- Violation of the right to peaceful protest: Activists of the citizens' initiative "Aman" faced direct threats to life by as yet unidentified persons, although all cases of threats were duly reported to police stations. Activists reported the cases, made statements but none of the reports were fully processed. Specifically, the police have not initiated an investigation nor have the perpetrators been identified for any of the reported cases. Furthermore, at one of the protests a young activist of a ruling party made a direct threat to the activists in the presence of a police officer. The activists were forced to report the case again to a police station. Similar to the previous threats, in the cases of obstructing a public assembly no investigation had been initiated, nor have the perpetrators of the acts been identified.

- Violation of the right to participate in public decision-making through forms of direct democracy: On 18 October 2012, the Citizens' Initiative "AMAN" initiated a procedure to collect 10,000 signatures in accordance with the Law on Referendum and other forms of direct vote of citizens¹⁵ in order to make changes in the Law for energy¹⁶. However, the Government of the Republic of Macedonia breached the undefined deadline for informing the authority of the state administration responsible for registration of the right to vote, precisely the State Election Commission in accordance with Article 67 paragraph 1 of the law. Although the initiative was properly submitted and approved by the President of the Parliament and two parliamentary committees within the legal deadlines, the Government did not notify the State Election Commission to act immediately upon the initiative, thus significantly shortening the 3-month deadline for collecting 10,000 signatures. The procedure started on 06 December 2012 and lasted until 30 January 2013. The Government directly endangered this right and limited the

15 Official Gazette of Republic of Macedonia No. 81/2005

16 Official Gazette of Republic of Macedonia No. 16/2011 and 136/2011

duration of the procedure to one month out of the three months provided by law.

- Political discrimination, discrediting and labelling: Some of the activists of this initiative were labelled by several media as activists of the opposition political party. The labelling alluded that they are not eligible to express their dissatisfaction as citizens through forms of peaceful protest and civic activism. This conduct directly discriminates citizens who have not only civil but also political rights. Furthermore, it introduces a trend of ineligibility due to political affiliation. Thus, there is an inaccurate opinion in the public that citizens who belong to a political party cannot enjoy their civil rights such as the right to protest.

1.3. Civil Association UNIT - On 27 September 2012, a group of bankruptcy workers and their representative Liljana Georgieva went to a previously announced protest in front of the Parliament of the Republic of Macedonia. The Helsinki Committee monitored the protest due to received information that the citizens could not peacefully exercise their right to protest and public assembly and that they were prevented by several groups that appeared at the scheduled protest. Upon arrival before the Parliament of the Republic of Macedonia, the Helsinki Committee attempted to obtain information from the police officers regarding the identification of two groups standing opposite each other, separated by a police cordon. However, such information was not obtained. The bankruptcy workers clarified that the police officers did not respond to the threats that were addressed to them nor were the appropriate conditions provided so that both groups could enjoy the right to protest as a result of the inadequate reaction of the police officers. Upon arrival of a representative of the Committee, the citizens exercised their right to protest.

1.4. March of Tolerance: "STOP Misogyny, Homophobia and Transphobia" - on 17 November 2012, the Helsinki Committee held a "March of Tolerance" which marked the International Day for Tolerance for the fourth time. The Committee has repeatedly informed the public that there are campaigns in the media for deterioration of the women's social status through an indirect attack on the right to vote, the imposition of blame for the nation's declining birth rate, the homophobic and transphobic propaganda that directly alleges that LGBTI community cannot contribute to the development of a 'healthy nation'. As a result of this campaign, the "March of Tolerance" began with a physical attack on two human rights activists, during the preparation of stands for the non-governmental organisations that supported the event. This attack represents a violation of the right to a peaceful protest and obstruction of a public assembly, therefore attempting to prevent or disable the right of citizens to freely express their opinion.

1.5. Protest of the "People's Front" and the sympathizers and members of the united opposition: public gathering of supporters/sympathizers, citizens and members of political parties – on 24 December 2012, representatives of the Committee went in front of the Parliament of the Republic of Macedonia where they monitored protests of two groups. In a short time,

the protests turned from peaceful to violent. The police officers intervened due to the disturbance of public order and peace, as well as the security of the participants in the protests. At these protests, the Committee noted the use of excessive force by police officers directed at only one group of participants, members of the united opposition and citizens - supporters/sympathizers. However, the excessive force was not applied to the citizens representing the "People's Front". The Committee also noted that the police officers did not separate the groups at an appropriate distance in a timely manner, which resulted with several injured police officers and citizens who were transferred and hospitalized to the City Hospital.

24.12.2012 2. Attack on the constitutional order of the Republic of Macedonia

The Helsinki Committee is concerned with the latest developments on the Macedonian political scene and regretfully concludes that on 24 December 2012 a direct attack was made on the constitutional order in the Parliament of the Republic of Macedonia. The Committee prepared a special report¹⁷ on the developments inside and in front of the parliament building and found serious violations of the basic principles of legal state and rule of law, as follows:

- Violent expulsion of journalists from the Parliamentary Gallery who duly announced their presence to monitor the public debate on the adoption of the State Public Budget of the Republic of Macedonia for 2013.
- Use of physical violence against MPs from several opposition parties by unidentified officials at the Ministry of Interior in an attempt to block the adoption of the State Public Budget after not accepting the debate and amendments proposed by the opposition.
- The fact that the opposition MPs stated that they were forcibly removed from the parliament hall by members of special police units is especially concerning.

In accordance with the abovementioned, the Committee has proposed an independent investigation into the events related to 24 December. At the same time, senior officials of the European Commission have requested the establishment of an independent inquiry commission which was supposed to present the facts and the actual impression of the events as of 1 March

¹⁷ The special report on the forty-ninth session of the Parliament of the Republic of Macedonia held on 24 December 2012 can be found on the web site of the Helsinki Committee, in the reports section (<http://www.mhc.org.mk/pages/reports#.URJveB1X0l8>)

2013. Until the publication of this report, such commission has not been formed, nor have the facts been determined for both the MPs and the journalists who were forcibly removed from the Parliamentary Gallery.

The Committee concludes with concern that such actions represent an attack to the constitutional order of the Republic of Macedonia, and the events represent a previously unseen and frightening precedent which is contrary to the basic principles of legal state and rule of law.

3. Political prisoners and political influence

3.1. Political influence due to a membership of a political party

- Political party "United for Macedonia" During 2012, the Committee identified political influence on two members of the political party United for Macedonia, Vladimir Vangelov and Mitko Janevski, manifested through the judicial system. Representatives of the presidency of the political party "United for Macedonia" addressed the Helsinki Committee and presented their allegations of increased influence on themselves personally as well as on their political party. The influence is usually in the form of intimidation, threats, bribery attempts, layoffs, job promises for those leaving the party etc. Allegedly, while leaving the former premises of the party's central office, former members and other unknown individuals destroyed a database containing important documents related to the party, and a large number of applications and other documents disappeared. The members of the party believe that this is a coordinated action to destroy the party, an action that began with the criminal prosecution of the party president - Ljube Boshkoski, whose criminal prosecution continues to this day.

- **Vladimir Vangelov**

Vangel Vangelov, a member of United for Macedonia, addressed the Helsinki Committee, informing us that his mother's property in the Municipality of Zelenikovo had been usurped without initiating an expropriation procedure. The mayor of the municipality issued a permit for construction of a local road that passes through the property of the Vangelov family. The permit was issued despite several notices from the family that the road will pass through private property. During the construction of the road, several fruit trees and poplars were destroyed. This procedure caused a serious violation of the right to property, even though that right is protected and guaranteed by the Constitution of the Republic of Macedonia. Following several verbal notices, Mr. Vangelov sent a written complaint to the mayor. After the complaint, Mr. Vangelov received a response that the "defamation" that Mr. Vangelov was perpetrating against the municipality and the mayor, including the involvement of the institutions and the media, might be a result of their different political affiliation. The Helsinki Committee attended several court hearings in which the municipality was sued, and will continue to follow the case

until its completion. At the time of publishing this report, the case was returned to the first instance court following an appeal before the Appellate Court.

- **Mitko Janevski**

The pressure exerted on the members of United for Macedonia is evident in the case of Mitko Janevski, Advisor at the Ministry of Foreign Affairs with the diplomatic rank of First Secretary. The case of Mitko Janevski deals with allegations of workplace harassment on two grounds: political affiliation and sexual orientation. Mitko Janevski has been employed in the Ministry of Foreign Affairs for 26 years. In 2009, after his early return from the Diplomatic-Consular Mission in Venice, which confirms his diplomatic experience and engagement in the diplomacy of the Republic of Macedonia, he was a victim of workplace harassment for the first time. Since 2009, Janevski has constantly been requesting a job promotion, but has received negative responses from the authorities in the Ministry, and the last rejection was registered in 2011 in a call for filling a job position at the Embassy of the Republic of Macedonia in Belgrade. The Committee provided free legal aid to Janevski, who allegedly suffered harassment in 2009 primarily because of his homosexuality and afterwards because of his membership in the United for Macedonia political party. Although Janevski has since withdrawn from the battle for his job position until the publication of this report, the Committee has identified harassment of a political nature when Janevski received threats on his life due to his affiliation with the political party United for Macedonia. Soon after these threats, he left the Republic of Macedonia indefinitely.

This case is a confirmation of the pressure that the ruling party exerts on citizens with different political affiliation. We believe that such actions are unacceptable in a democratic society where political pluralism is one of the fundamental values. Such actions directly endanger Article 20 of the Constitution of the Republic of Macedonia which guarantees freedom and protection of political rights and beliefs of citizens. Such actions can further lead to endangering security and endangering the right to life.

Case of Dushko Ilievski due to alleged connection with an opposing party

Following a trial that lasted over two years, Dushko Ilievski, known as Dushko-Mlekarot (Dushko the Milkman), was acquitted. Ilievski, his brother and his father were prosecuted for alleged "unauthorised production and distribution of narcotic drugs, psychotropic substances and precursors", i.e. growing over 200 marijuana seedlings. During the trial, it was determined that the plant in question was hemp, a variety of Cannabis which does not possess the properties of a narcotic drug without additional processing. The Public Prosecutor's Office failed to prove that members of the Ilievski family had planted, grown or processed the hemp themselves, thus the defendants were acquitted.

Dushan Ilievski believes that the trial against him and his family members has a political background due to his position as President of the Pelagonija Farmers' Association "Pelagonija-Renewal". More precisely, he believes that he was being persecuted due to the protests of the farmers, in which they demanded responses regarding the failure of the "Swedmilk" dairy processing company and the possible role of the current government in those events. The pressure against Dushko started in 2009 when his family house was subject to an official search, the aim of which was finding illegal weapons. During the search, the police found only a hunting rifle for which he had a permit. Furthermore, SIA Bitola filed a misdemeanour charge against him and over 20 other participants in the protests for allegedly disturbing public order and peace during a protest in front of the municipal building in Bitola. The court however found that the suspects in this case should not be charged. In 2010, Dushan Ilievski and his family members were charged with growing marijuana and a detention measure was ordered, against which the Committee responded.

The Committee believes that the case against Dushko Ilievski and others is an example of flagrant violation of the principle of presumption of innocence by state officials and law enforcement authorities. Immediately after the arrest of Dushko Ilievski, prior to the beginning of the trial, Prime Minister Nikola Gruevski stated in an accusing manner that the Ilievski family was growing and cultivating marijuana. Although the judgement of acquittal indicates that the Prime Minister's statement was incorrect, this statement was broadly reported in the media in Macedonia, which in addition to the presumption of innocence, violated the privacy, reputation, honour, and dignity of Dushko Ilievski and his family members. The Helsinki Committee reminds that no one can be pronounced guilty without being declared as such by a decision of the court. The Committee reiterates the constitutional principle of presumption of innocence and the case-law of the European Court of Human Rights, which stipulates that the authorities must refrain from prejudicing guilt. Ministers, the police¹⁸ and senior officials (such as the Prime Minister)¹⁹ should in particular avoid giving such statements. In addition, the Strasbourg Court has ruled that conducting negative media campaigns for suspects or accused persons and prejudice of their guilt is also not allowed under the European Convention on Human Rights.²⁰

The Helsinki Committee commends the judgments of the Basic Court and the Appellate Court in Bitola, as well as the impartiality of the relevant judicial councils which acted independently in this case. However, the Committee expresses regret for all the inconveniences faced by Dushko- "Mlekarot" in the last three years. Dushko has contacted several lawyers, however they all refused to represent him in a procedure for compensation for unjustified deprivation of liberty, as well as other material (destroyed plantations and lost profits) and non-material damages (suffered mental pain, damage to reputation and honour, etc.). The Helsinki Com-

18 *Allenet de Ribemont v. France* (15175/89), 10 February 1995, §41.

19 *Butkevičius v. Lithuania* (48297/99), 26 March 2002, §53.

20 *Craxi v Italy* (34896/97), 5 December 2002, §98.

mittee, at the request of Dushko, agreed to provide him with free legal aid. The Committee informs that, at the period of publication of this report, the compensation procedure has been initiated before the competent court.

3.2. Political prisoners

The work programme of the Helsinki Committee includes monitoring of criminal proceedings as one of the planned activities. In 2012, the Helsinki Committee for Human Rights monitored the two trials in which Ljube Boshkovski, the president of the political party "United for Macedonia", appears as a defendant. The Committee has identified abuse of special investigative measures and possible irregularities in the protected witness procedure in both trials against the defendant. The statement of the protected witness was the basis for one of the judgments that sentenced Boshkovski to 7 years in prison. The judgment was appealed, and the appeal was partially accepted by the Appellate Court Skopje, which reduced the sentence to 5 years in prison. The Committee considers that, having in mind the circumstances and the conduct of the procedure, there exists reasonable doubt that Ljube Boshkovski can be considered a political prisoner.

The first case against Boshkovski deals with charges of abuse of office and illegal financing of the election campaign. The court has decided to exclude the public from the proceedings in this case, and the Helsinki Committee reacted against such decision. Moreover, there are concerns that the special investigative measures have been abused in this case. Finally, the change in the composition of judges in the Skopje Court of Appeals remains unclear.²¹ During the trial, Boshkovski noted that he was not able to provide a response to the judgment of the Basic Court Skopje 1 Skopje because he was "drugged" and that a "rigged political process" was being conducted against him. These allegations were neither denied nor verified by the competent authorities. For the majority of the proceedings, the public was excluded with an explanation that special investigative measures have been used, precisely a "protected witness". The judgment is mostly based on the statement of the "protected witness".

In 2012, another trial was initiated against the defendant. Publicly known as "Rover", this case entails charges against Ljube Boshkovski for aiding the commission of a crime by removing the obstacles for its perpetration and promising to cover up the crime while in public office as Minister of Interior. In accordance with its work programme, the Helsinki Committee for

21 The Helsinki Committee stated that the change in the composition of the judges during the trial was a questionable moment in the case, for which no explanation has been given by the court to this date. Namely, according to the Rules of Procedure of the Appellate Court, court cases are assigned to judges at the beginning of the year and their change can occur only in case of lack of judges. The court case of Ljube Boshkovski was initially assigned to Judge Katerina Orovchanec and, immediately before the hearing it was assigned to Judge Safet Kadrii, LL.M, as President of the council and members of the council Mirjana Dukovska, Zuica Naumova, Gordana Sajkovska and Velche Panchevski.

Human Rights monitored the trial for the murder of Marijan Tushevski and Kiro Janev, committed in 2001. Fifteen people have been charged with double murder, three of them for direct execution, and the other 12 for aiding. In the case "Rover" a special investigative measure "protected witness" was used. Considering the importance of the protected witnesses in criminal proceedings and the manner of interrogation, prof. Gordan Kalajdziev PhD sent a request to the Basic Court Skopje 1 Skopje to monitor the trial in the role of researcher, i.e. Professor of Criminal Procedure at the Faculty of Law "Iustinianus Primus", at the University of Ss. Cyril and Methodius. The public prosecutor, as a representative of the prosecution and proposer of the witness, gave a positive opinion on not excluding the professional community from the interrogation of the protected witness, which for the first time showed the will of the public prosecution for greater transparency in the interrogation of a protected witness. However, the court decided to exclude the public altogether, including the professional community.

We are of the opinion that the consistent decisions of the courts to exclude the public in cases where protected witnesses appear inhibits the possibility to determine whether the principle of fair and equitable trial has been implemented. We do not consider the exclusion of the professional community justified, considering that it would only monitor the manner of interrogation of the protected witness. This monitoring would provide the opportunity to determine the application of legal provisions that regulate the manner of witness protection in the Republic of Macedonia and its impact on the principle of fair and just trial.

In addition, the category "Political prisoners and detainees" was added in two consecutive annual reports of the US Department of State on the situation of human rights and freedoms in the Republic of Macedonia for 2011 and 2012, which also cover the trials against Ljube Boshkovski. They are assessed as non-transparent procedures by the state authorities. The criticism is mainly focused on the violation of the right to presumption of innocence as well as the use of special investigative measures, i.e. the role of the protected witness.

The Helsinki Committee strongly opposes attempts to exclude the public, especially in cases with a political background, which leaves space for suspicions that there is a tendency to conceal information, especially given the suspicions of abuse of special investigative measures in the procedures.

4. Violation of the principle of secularism of the state

The Republic of Macedonia is based on unequivocal secularity or separation of church and state, constituted as a sovereign, independent and civil and democratic state, whose fundamental value is to build the rule of law and the separation of powers into legislative, executive and judicial. Therefore, the Committee appeals to the representatives of both major religious communities and their legal entities, the Macedonian Orthodox Church (MOC) and Islamic Re-

ligious Community (IRC), to refrain from interfering in politics, state organisation and encouraging interreligious and interethnic division among the citizens of the Republic of Macedonia.

This reaction of the Committee is based on the recent statements of the head of the MOC Archbishop Stefan and the head of the IRC Reis-ul-ulema Sulejman Efendi Rexhepi and the appeals to the believers for national unification. Such statements and the proclamations of religious leaders regarding the inviolable sovereignty arising from the Constitution of the Republic of Macedonia and international law, can be misinterpreted and may deepen ethnic tensions between citizens of the Macedonian and the Albanian ethnic community.²² At the same time, the neglect of other religious groups, the close connection of religion with the national unity of individual ethnic groups and the statements and appeals to citizens by religious leaders, may cause deep divisions on religious grounds. Furthermore, those actions deepen the already severe ethnic division and contribute to the violation of sovereignty which arises from and belongs to all citizens equally, in accordance with Article 2 of The Constitution of the Republic of Macedonia.

22 Article 19 of the Constitution of the Republic of Macedonia regulates that the Macedonian Orthodox Church, as well as the Islamic Religious Community, the Catholic Church, the Evangelical Methodist Church, the Jewish Community and other religious communities and groups are separate from the state and equal before the law. There is no state religion in the Republic of Macedonia. The state is secular and religion is separated from the state. This means that the state has no right to interfere in church affairs, nor does the church have the right to interfere in state affairs. The Law on State Administration Bodies established the Commission for Relations with Religious Communities and Religious Groups as a separate body of the state administration. This body has the status of a legal entity. Article 29 of this Law stipulates that the Commission for Relations with Religious Communities and Groups regulates the legal status of religious communities and religious groups and the relations between the state, religious communities and religious groups.

X. LGBTI COMMUNITY

1. Introduction

Unfortunately, in 2012 LGBTI people in the Republic of Macedonia still faced legal and social prejudices, discrimination, as well as an extremely homophobic environment that affects access to legislation and legal protection. People in this community are forced to adapt to a society and environment that is very homophobic and transphobic. These people are not considered to be citizens with equal rights and freedoms in accordance with state laws. Over the years, the legislature has not shown the will to improve access to justice and full enjoyment of basic human rights guaranteed by the Constitution of the Republic of Macedonia and international documents that are an integral part of the Constitution. The Parliament of the Republic of Macedonia has adopted several laws that are necessary for the EU integration process; however there is uncertainty in their implementation without a broader state action in the area of equality of LGBTI people. The LGBTI community is invisible and does not have the assistance to necessary obtain access to justice and an active and fulfilling life like the rest of the citizens of the society in which we live.

2. LGBTI Support Centre

Three years after the establishment of the LGBTI programme in the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC), the programme received its new, more advanced edition in the form of the LGBTI Support Centre. This branch of MHC was officially opened on 23 October 2012 in the Old Skopje Bazaar.

The LGBTI Centre started operating in a period of clearly defined institutionalised homophobia and transphobia, expressed in the statements of the public officials who hold executive positions in state authorities. There is an obvious synergy between the actions of state authorities and their executives, and the actions of religious communities and pro-government media, which is a major front dedicated to the repression of LGBTI people and the deprivation of their rights. The repression is confirmed by evident cases of physical attacks and domestic violence against LGBTI people, organisations, and activists. These cases of attacks are further elaborated in this Report. This strongly institutionalised homophobia has strengthened and defined the support of the LGBTI population by human rights organisations and activists, interpreting this campaign as an absurdity that must come to an end.

The good cooperation between the Helsinki Committee and the relevant police stations Beko and Bit Pazar is of great importance. The police officers perform their duties professionally and provide the necessary security for the events organised by the Helsinki Committee and the Support Centre. The attacker on the March of Tolerance was promptly arrested and the procedure against him has been initiated. In an attempt to damage the security camera of the Centre, one of the attackers accidentally recorded himself. All the materials related to this

incident have been handed over to the police and we expect a quality investigation and further action. We remain in constant communication with the Bit Pazar police station regarding the security of the Centre.

The mission of the LGBTI Support Centre is to strengthen the LGBTI community for self-advocacy, as well as to change the legal and social status of LGBTI people in the Republic of Macedonia. In addition to the main purpose, the Centre offers assistance to other formal and informal associations and groups working in the area of human rights. In 2012, in addition to the opening of the Centre, the LGBTI movement grew with the formation of another organisation, LGBT United with a seat in Tetovo.

3. Homophobia

Homophobia and transphobia are still at a high level in the Republic of Macedonia. This conclusion stems from the expression of opinions on social networks, the attacks on the Support Centre, the hate speech in the media and the attacks on activists of the organised March of Tolerance. The silence of government authorities, who failed to condemn the spread of hatred towards a certain group of people and did not punish the violation of existing laws, but only worsened the situation with the exclusion of certain people from the society, also confirms the conclusion. The Minister of Labour and Social Policy raised the issue of so-called "gay marriage" at a time when no one had submitted such an initiative. Instead of using his position as a Minister to promote diversity, he stigmatised the LGBTI population, stating that such population is not part of a "healthy nation". Following the statements of Minister Spiro Ristovski, there was a strong wave of apparent government campaigns containing homophobic statements and disrespect for the rights and dignity of the LGBTI population in Macedonia. The statements of the public officials who represent state authorities only strengthened the idea and the status of the LGBTI population as a deviation in society. The campaign was supported and intensified by articles in pro-government media outlets, which forgot or ignored their responsibility for the statements and articles published. The media undoubtedly incited anger and homophobia among citizens, which resulted in violence. Following statements by government officials, the Minister of Labour and Social Policy, the Minister of Interior and the Prime Minister, certain groups also expressed their support for government officials regarding same-sex marriage. However, this topic was raised by the Minister without any initiative in the background, and was only an expression of his personal opinion as well as the position of his political party. The situation is completely absurd, given the fact that such an issue has never been raised by the LGBTI community in the country. This seems like an attempt to twist the debate and avoid discussing the real problems in exercising the rights of LGBTI people, as well as twisting the MHK's initiative to the Constitutional Court, regarding the protection of LGBTI people from domestic violence, envisaged in the Law on Family. The statements of the groups opposing gay marriage led to an attack on the integrity of the LGBTI community considering that all of these groups responded to a question that was never raised. Meanwhile, no one

has commented the current initiatives of activists and organisations, or the addition of sexual orientation to the Law on Prevention and Protection against Discrimination and the addition of same-sex relationships in the category of intimate relationships, with the aim of obtaining protection from domestic violence between same-sex partners, as well as gay and trans people who are not protected from their families.

Statements on the unacceptability of “gay marriages” were given by: the Minister of Labour and Social Policy Spiro Ristovski, the World Macedonian Congress, the Islamic Religious Community, the Catholic Church in Macedonia, the Macedonian Orthodox Church, the Union of Pensioners’ Associations, the Social Democratic Union, the Independent Trade Union for Education, Science and Culture of the Republic of Macedonia, the Struga associations Ezerka and its Youth Centre, Enhalon, Rurban Cult, Punte, Varvara, the Association of the Deaf and Hard of Hearing Svetlina, the National Sports Federations and the Minister of Interior Gordana Jankulovska.

Religious communities, along with state institutions, have joined the plethora of statements against gay marriage and the adoption of children by same-sex partners as part of an organised campaign. With statements that promote hate speech, they represent the traditional religious heteronormative values as the only proper values, trying to use religion to influence the status of a group of citizens in a secular state. This is not the first time that religious communities have tried to intervene in the state system when it comes to the LGBTI community.

The activists and organisations working with the LGBTI community have limited, selective and often distorted access to the media. There is an obvious connection of certain media outlets with the government, and as a consequence, the flow of information has been either disabled or unobjective, offering only a one-sided view of the situation in Macedonia. Apart from the limited media space, it was evident that certain media outlets directly participated in the homophobic campaign, by presenting subjective information based on personal views.

4. Advocacy and lobbying

4.1 Initiative in front of the Constitutional Court

On the International Day against Homophobia, 17 May, the Helsinki Committee for Human Rights of the Republic of Macedonia submitted an initiative in front of the Constitutional Court of the Republic of Macedonia, to initiate proceedings for assessing the constitutionality of Article 94-b paragraph 3 of the Law on Family, where members of the LGBTI community (lesbians, gay men, bisexuals, transgender and intersex persons) are not covered by protection from domestic violence. In Article 94-b paragraph 3 of the Law on Family, the legislator has also included close personal relationships as a basis for enjoying legal protection from domestic violence by the persons who have such relationships. The disputed paragraph 3 of

Article 94-b defines close personal relations as personal relations between persons of different sexes, who are or have been in a partnership, and who do not live in an extramarital union. However, the Law narrowly defines the category of close personal relations, which is a broader category than marriage, family or extramarital union, because it covers a much larger number of persons who are or have been in partnership with other persons, but did not live in an extramarital union, and who may be victims of domestic violence. With such a narrow and limited definition of close personal relations as personal relations between persons of different sex, the legislator has caused a direct discrimination against other persons who have personal relations with persons of the same sex, which must be included in the category of close personal relations.

The Constitutional Court has rejected²³ the Initiative submitted by the Helsinki Committee. With such opinions and decisions, an entire population is directly discriminated, excluded from the legal framework and unprotected from domestic violence.

4.2 Shadow Report on the Implementation of Recommendation CM/Rec(2010) 5 of the Committee of Ministers of the Council of Europe (CoE) on Combating Discrimination Based on Sexual Orientation and Gender Identity

With the goal of conducting a thorough analysis of society from the aspect of the fight against discrimination based on sexual orientation and gender identity, while preparing the Report we communicated all relevant state authorities in the specific areas referred to in the CoE Recommendation. Furthermore, in cooperation with the Ministry of Foreign Affairs (which is in charge of distribution and implementation of the Recommendation) we managed to include the Republic of Macedonia in the group of member states which have responded to the subsequent Questionnaire, sent by the Committee of Ministers of the CoE prior to reviewing the implementation of the Recommendation scheduled for March 2013. The conclusion arising from the Report is that the Macedonian authorities have not taken any steps to implement the Council of Europe Recommendation. The Recommendation was not even translated into Macedonian, and the explanation of the Ministry of Foreign Affairs is that the CoE recommendations are not binding on the member states. Moreover, the Recommendation was not submitted to the competent authorities, non-governmental organisations or the LGBTI community itself. MHC submitted copies of the Recommendation to all competent authorities during the implementation of this project. The translated Recommendation and its appendices were submitted to all Members of the Parliament of the Republic of Macedonia.

Some of the conclusions reached in the Shadow Report:

- Sexual orientation was excluded from the Law on Prevention and Protection against Discrimination as a separate basis, while gender identity was not taken into consider-

23 <http://www.ustavensud.mk/domino/WEBSUD.nsf/ffc0feee91d7bd9ac1256d280038c474/3068a98885792e05c1257ad1003bfc9f?OpenDocument>

ation at all while drafting the Law.

- The interests and needs of the LGBTI community were not taken into consideration in the preparation and adoption of the National Strategy for Equality and Non-Discrimination, which includes only four grounds: ethnicity, age, mental and physical disability.
- Same-sex couples are discriminated in the Law on Family in relation to couples with partners of different sexes, but the authorities do not take measures to solve this issue. Same-sex couples are not protected from domestic violence under the Law on Family.
- There are no precisely defined and clear procedures for changing the personal identification number, which is necessary for the legal recognition of sex changes in the case of a transgender person, which creates confusion in the actions of both civil servants and transgender people themselves.
- Although the state offers endocrine and psychological treatment necessary for transgender people, they are not effective or appropriate, as the professional health workers are not trained and do not have any experience in working with transgender people. In addition, the state does not offer sex reassignment surgery and there is no evidence of a refund from the Health Insurance Fund, even in cases where the persons performed the operation abroad, with their own funds.
- In the area of sports, state authorities have done absolutely nothing to overcome discrimination based on sexual orientation and gender identity, as well as hate speech.
- In health care, besides the prevention programmes and behavioural studies within the framework of the Global Fund to Fight HIV/AIDS, Malaria and Tuberculosis, there are no other programmes or services available to LGBTI people.
- Although the national classification of diseases does not stipulate sexual orientation as a disease, authors of textbooks for secondary and high education use interpretations, views and classifications that are not based on modern scientific view and definitions of the World Health Organisation, and are not in line with existing official documents for classification of diseases/disorders.
- The Law on Asylum and Temporary Protection does not list sexual orientation or gender identity of a certain person as specific grounds for seeking asylum, but they can be considered grounds for granting refugee status under the provision "belonging to a certain social group". However, there are no examples or documented cases that would prove that a person was granted refugee status due to his/her sexual orientation or gender identity.

The complete Shadow Report can be found on our website. (<http://www.lgbti.mk/>)

5. Legal aid

The LGBTI Support Centre, as part of the Helsinki Committee, offers free legal aid to members of the LGBTI community whose rights have been violated. In the short existence of the centre, three cases of domestic violence have already been reported, as well as several cases that treat other issues, which are still undisclosed due to the fear of prejudice of the institutions.

Cases

1. A gay man who lived with his partner in Skopje was a victim of physical and psychological violence for a period longer than six months. He suffered two physical assaults and constant psychological harassment. He contacted the Helsinki Committee for receiving free legal aid. A representative of the Committee accompanied him to file a complaint at the police station, which was the first instance of a police officer demonstrating sensitisation on the topic and willingness to help. Due to the victim's several-day absence from the apartment where he lived with his partner for fear of being attacked again, he could not pick up his belongings from the apartment.

The Law on Domestic Violence does not recognise same-sex partnerships as "personal intimate relations" so they are not specially protected. Therefore, while drafting the complaint, the representative of the Committee described the event as a case of domestic violence between persons living in a joint household. This situation would fall under the category "other persons living in a joint household", as stipulated by the Law on Domestic Violence and the Criminal Code, and as recognised by the court.

The police officer informed that she would invite the partner who is the perpetrator of the violence for an interview. During the interview, the victim picked up his belongings from the apartment and moved to another place unknown to the perpetrator of physical and psychological violence.

The victim was not interested in initiating another procedure; therefore the case was successfully completed.

After some time, the perpetrator visited the victim at work and harassed him again, as a result of which another report was filed. The perpetrator was again invited for a conversation with the police. To this day, the harassment has stopped.

2. Another case reported to the Committee involved a girl's parents who exerted pressure on her partner through threats. The parents abused their daughter mental-

ly and physically so that she would not have contact with her partner. Although the case was filed with the Helsinki Committee, the pressure led the partner to leave the country and the two girls withdrew from continuing the process.

3. In February 2012, Andrea Jakimovski, a transgender person (who identifies as a woman despite having the biological characteristics of a man) filed criminal charges against the City Hospital in Tetovo. According to Andrea, the hospital staff committed two crimes, precisely: (1) violation of the equality of citizens and (2) abuse of office and authority. The complaint was filed because in April 2011, after being referred by her family doctor, Andrea tried to see a psychiatrist at the hospital. Upon arrival at the hospital, security guards forcibly removed her from the building, pushing her down the stairs. The event was recorded on a video, and it was broadcasted on Sitel TV. The criminal charges were rejected by the public prosecutor, with an explanation that the reported crimes cannot be prosecuted *ex officio*. After the rejection, Andrea filed a private lawsuit, and her lawyer initiated a procedure for protection of the freedoms and rights related to this discriminatory act of the prosecutor to the Constitutional Court of the Republic of Macedonia. Following a private lawsuit, the judge to whom the case was assigned expressed his opposition to scheduling the trial. The disagreement was reported with the Criminal Council of the Basic Court in Tetovo. The Council issued a decision instructing the judge to accept the lawsuit. The decision stated that the reported crime is a serious form of crime and it is necessary to prove whether it has been committed or not in a judicial procedure. During the first hearing held in July 2012, the judge, assessing that the trial involved unknown persons, reverted the case for an investigative procedure. Andrea informed the President of the Basic Court about this latest obstruction by the judge. The president notified her that a case had been formed in order to investigate the judge's behaviour. No further notice was sent as to whether the investigation was completed and whether irregularities were found in the work of the judge. However, after the investigation for Andrea's case was completed, the materials were submitted to the judge and again, he expressed his disagreement. The Criminal Council ruled that there was no crime. The decision was appealed to the Appellate Court, which upheld the decision of the Criminal Council.

This decision marks the completion of this case. Nevertheless, the Helsinki Committee has been monitoring this case from its beginning and it expresses great concern regarding the procedures and behaviour of the City Hospital and the judicial authorities in Tetovo. For this reason, the Committee, together with Andrea's lawyer, is preparing a case in front of the European Court of Human Rights in Strasbourg, for violation of Article 3 - Prohibition of torture, Article 6 - Right to a fair trial and Article 14 - Prohibition of discrimination under the European Convention for Human Rights. The Republic of Macedonia ratified the European Convention for Human Rights and Fundamental Freedoms on 10 April 1997.

6. Attacks on Centre

The LGBTI Support Centre was opened on 23 October 2012. The event was peaceful, but only a few hours after it concluded, there was an attack by several masked perpetrators whose identities remained unknown. The attackers broke the front part of the window of the Centre, causing material damage that prevented the operation of the Centre for several days. The information was spread through the media, but there was silence from the authorities, who did not condemn the attack.

As a result of these attacks and the apparent state campaign against the LGBTI community, for a second time the March of Tolerance, which has been organised for four years, was dedicated to the rights of women and the LGBTI population in the Republic of Macedonia, affected by the homophobic campaign. Prior to the beginning of the March, while the tents with promotional material were being arranged by the activists who were unprotected, even though the event was reported in the City of Skopje and in the Police Station Beko, two people were attacked. The injured activists had minor injuries sustained by a masked man, who was later taken into custody.

The case is currently under investigation. The authorities remain silent although the attack can be interpreted as a violation of basic human rights, a violation of the right to free expression and the right to public assembly.

On 17 December 2012, another attack was carried out on the premises of the LGBT Support Centre, which included an unsuccessful attempt to set it on fire. The attack was reported to police. In an attempt to damage the security camera of the Centre, one of the attackers of the Centre had recorded himself on the camera. All the materials were handed over to the police. We expect a quality investigation as well as further processing of the case.

7. Media

Based on the news related to the LGBTI community, published in the media during 2012, we can conclude that the media is still discriminatory towards the LGBTI community. Instead of promoting democratic values, inclusion and fight against discrimination, most of the articles published by the media in 2012 clearly show negative stereotyping, prejudice, homophobic attitudes and a clear division of the media outlets into anti- and pro-LGBTI. There are a much smaller number of media outlets that seek to present the reality of social exclusion and discrimination that the LGBTI population in the Republic of Macedonia faces on a daily basis, thus contributing to raising public awareness and social inclusion of marginalised groups.

Most of the articles presented by the media are news regarding foreign countries. The news

include reports on gay parades around the world, sensationalist reports about public figures often based on assumptions and gossip, which emphasise the sexual orientation of the person. Some of the published articles list the cities that are the best or the worst in the world for the LGBTI community and there are articles that talk about homosexuality between animals, thus making a parallel with human homosexuality. Some of the articles also cover topics that discuss sexual practices between people of different sex but that are associated with sexual practices typical of homosexuals. At the beginning of those articles, the media denies any relation of the text with homosexuality, which puts sexual practices between people of the same sex in a negative context or completely excludes them as an option. Transgender people are often mentioned in articles related to beauty pageants, while the problems and discrimination that this population faces on a daily basis are completely ignored. Intersex people are completely unknown or excluded from the Macedonian media space and are not mentioned at all.

The division of the media regarding the situation of the LGBTI community can be easily observed from the news reported in relation to this topic in Macedonia and the region. The media outlets report selectively, covering only certain issues of LGBTI people, while the essential problems related to the acceptance of LGBTI people and the violence they face on a daily basis remain unanswered and absent from media space. Some of the media outlets report neutrally on the work of non-governmental organisations and their projects. These news reports include several announcements for exhibitions, promotional events for publications and researches, the opening of the LGBTI Support Centre and the visit of foreign diplomats and ambassadors to the LGBTI Support Centre. The role of certain media outlets in promoting and supporting the homophobic campaign of the Government, that started with the statement on gay marriage by the Minister of Labour and Social Policy Spiro Ristovski, can be noted as a very powerful instrument in creating public opinion. The campaign started with his statement in which he completely excluded the LGBTI population from the "healthy nation" that Macedonian society is striving to reach, at a time when no one had taken an initiative for legalisation of same-sex marriage. Consequently, the reactions of several non-governmental organisations were published in the Macedonian media. In addition to the homophobic campaign, the newspaper "Večer" published scandalous pornographic cover pages that explicitly show sexual content. In accordance with Article 193 of the Criminal Code, such content must not be available to children. The next few editions of the newspaper had headlines such as "Girls with condoms", "We want grandchildren, not gays" which propagated the traditional marital union as the only form of unity in which healthy children can grow up, excluding any other form of parenting and unity. The result of this homophobic campaign were several attacks on the LGBTI Support Centre and attacks on human rights activists before the start of the March of Tolerance organised by the Helsinki Committee for Human Rights and the LGBTI Support Centre. Several websites have repeatedly published articles in which homosexuality is considered to be equal to paedophilia and necrophilia, without providing any scientific background. The media occasionally uses topics that address LGBTI issues to divert the attention from other issues that are not in favour of the current Government and the media outlets directly related to it.

The division is also noticeable in the journalistic manner of expression used in the media. Although journalistic ethics require that different groups should be named with terms that are acceptable to them, the offensive term “peder” (gay) is still used in many publications. The number of media outlets that publicly support the LGBTI community and are actively involved in the fight for human rights is significantly lower. There are several internet-based media outlets that regularly publish scientific research on the topic of different sexualities, as well as columns in which diversity is cherished and whose foundation is the promotion of different lifestyles.

The right to freedom of speech is often abused and misunderstood. The constant propaganda, along with the published texts and articles that clearly promote sensationalism, stereotypes, and even homophobic and discriminatory attitudes, are the opposite of journalistic ethics. Given that the media plays a major role in creating the public perception of minority groups, the result of such reporting is a destruction of the dignity and degradation of an entire population by creating a distorted image of it, as well as increasing fears and prejudices against marginalised communities, increasing homophobia, discrimination and disrespect for the basic human rights of LGBTI people. The media are equally responsible and involved in creating a violent and socially exclusive society in relation to the LGBTI population.

8. Institutions

During 2012, the LGBTI community in Macedonia was several times included in the statements of state institutions, which demonstrated the high level of institutionalised homophobia and transphobia. These examples included: reactions of representatives of state authorities, silence of the institutions in situations where violence and hate speech were to be condemned, rejection of initiatives to amend laws, etc. The Government and its Ministries, as well as individual ministers in several cases, the courts and other state authorities, political parties, and even religious institutions, have shown a synergy in their conduct, resulting in an organised homophobic campaign that was most intense in the last quarter of the year.

The entire campaign resulted in several physical attacks, both on facilities used by the LGBTI community, in this case the LGBTI Support Centre, and on the freedom of expression, association and peaceful assembly, culminating on the March of Tolerance, that was held on 17 November 2012. The silence of the institutions regarding these attacks shows that the LGBTI community does not receive necessary protection from the institutions, i.e. its rights and freedoms are not equally protected as the rights and freedoms of other citizens.

8.1 The Government and the Ministries

The conservative policy of the ruling party was continued in 2012 as well. Due to its views,

sexual orientation and gender identity have not yet been implemented in the legislation. Furthermore, the statements of the ministers were in full accordance with the views of their political parties, instead of in the interest of the citizens of the state.

The homophobic campaign started in the first half of October, when the Minister of Labour and Social Policy, Spiro Ristovski, was giving a statement on the occasion of the International Day of the Girl Child. During his statement, he began to express views that were not related to the occasion, but were directly aimed at the LGBTI community, specifically on the issue of same-sex marriage and adoption. His statement reflected his party's views that marriage is a union between a man and a woman and that there will be no compromises while his party is in power. He also said that he does not want to discuss the adoption of children by same-sex couples, because he believes that a child should be properly raised, to grow up and develop in a marriage in which there will be a real mother and father in true and biological form of the word. As a result of this statement, which is excluding not only for LGBTI people, but also for all other forms of family, such as single parents and their children, children in cohabitation relationships, adopted children, orphans, etc., an abundance of reactions occurred from a number of entities. Among others, there were reactions from representatives of state institutions, such as the Minister of Interior, associations of pensioners, associations of social workers, several civil society organisations, sports associations and individuals. The reactions of civil associations working with the LGBTI community were misrepresented by the media, which only intensified the negative perception that the public already had as a result of the homophobic campaign.

8.2 Courts

The Macedonian courts dealt with unprecedented cases when transsexual persons were involved, due to the fact that the Macedonian legislation still does not contain any provisions for this population. The first case was related to a person who was forcibly evicted after several attempts to receive health services in a public health institution. The event was recorded and there is video evidence. Criminal charges were filed, but they were dismissed by the public prosecutor, who argued that the reported acts were not criminal offenses prosecuted ex officio. After the rejection, the person filed a private lawsuit, and her lawyer initiated a procedure for protection of the freedoms and rights related to this discriminatory act of the prosecutor to the Constitutional Court of the Republic of Macedonia. After the lawsuit was filed, the judge to whom the case was assigned expressed his opposition to scheduling a trial. The disagreement was addressed to the Criminal Council of the Basic Court in Tetovo, which instructed the judge to accept the lawsuit, indicating that it is a more serious form of crime and it is necessary to prove whether it has been committed or not in a judicial procedure.

During the procedure, it was concluded that there is a lack of regulation that would determine the type of prison for placing a convicted transgender person who has not yet changed their personal identification number. In another case, it was concluded that the status of a

transgender person was not taken into consideration in determining the amount of a fine for non-payment of child benefits. The court did not take into consideration that the person has no finances precisely because they cannot find a job due to the status that is not regulated as a result of the lack of regulation for transgender persons in Republic of Macedonia.

The judicial community was stirred by one more unprecedented case. Namely, two women from Macedonia had entered into a same-sex marriage in Belgium, but they have filed for a divorce, so it is necessary to divide the property in Macedonia that they have acquired during the marriage. The property officially belongs to only one of the spouses, however according to the law, after the divorce, the property is divided between the spouses. The Macedonian law on marriage and family recognises marriage only between persons of different sexes, while, on the other hand, Macedonia has signed an agreement with Belgium for mutual acceptance of documents, so the state is obliged to accept the documents and to act upon them. A request has been submitted to the Supreme Court to decide the court in which the procedure for division of the joint property acquired in marriage will be conducted.

8.3 Other entities

Homophobia was intensively present in other state authorities, as well as in most political entities. As an example, we can indicate the statements of the President of the Commission for Protection against Discrimination, Dushko Minovski. With his contradictory statements²⁴, the President of the Commission on the one hand shows a discriminatory attitude, and on the other hand openly demonstrates the compliance of the Commission for Protection against Discrimination with the executive branch of government, of the basis of which is expressed in his personal views. Undoubtedly the Commission cannot function as an independent authority, among other reasons, due to the fact that Mr. Minovski is simultaneously employed in the Ministry of Labour and Social Policy. The Commission has dealt with complaints based on sexual orientation and gender identity, on the grounds of "other personal characteristics" and "sex and gender", but has shown a selective approach, especially when the complaints concern the executive branch of government. Political parties show different views regarding this issue. After the beginning of the organised homophobic campaign, the parties declared that they were against same-sex marriages and adoption of children within such marriages. There were no individual reactions to the attacks on the LGBTI Centre and the activists of the March of Tolerance, except for the DRM party, which condemned the attack on the LGBTI Centre and spoke out against hate speech and the spread of homophobia, while urging for tolerance.

An MP from the opposition Liberal Party tried to raise the awareness of public authorities and institutions for distancing themselves from hate speech and discriminatory speech, through submitting a Declaration condemning hate speech against LGBT people to the Parliament. Unfortunately, the Parliament did not adopt the proposed Declaration because it did not receive the necessary support from the ruling party.

24 <http://www.dnevnik.com.mk/?ItemID=7311962888940F43AB0B46F3AD6A94C5>

9. Religious communities

The religious institutions (MOC, Islamic Religious Community and the Catholic Church in Macedonia) have maintained their views since 2011 and have recalled their initiative to amend Article 40 of the Constitution where marriage will be defined as a union between a man and a woman. This is not the first interference by religious communities in the functioning of a secular state. After the government campaign, they also gave statements with a form of hate speech, stating their own definitions of moral values and promoting them as the only right values, while spreading homophobia and insulting an entire population in their statements.

The homophobic campaign that started prior to the opening of the LGBTI Centre was designed to defocus the public from real issues, as well as to increase hatred towards the LGBTI population. It was evident that there was an alignment of views between institutions, political parties, religious communities, the media and civil society organisations. The media played a major role in the process by misrepresenting the statements of the activists, which further worsened the situation.



COMMITTEE FOR HUMAN
RIGHTS OF THE REPUBLIC OF
MACEDONIA