

HELSINKI COMMITTEE FOR HUMAN RIGHTS

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КОМИТЕТИ И МАКЕДОНИЈА
HELSINKI CUMHURİYETİ'NİN
PER TE DRETTAT E HURUT
I REPUBLIKES SE
MAKEDONISEE
HELSINKI
İNSAN HAKLARI KOMİTESİ

COMITET DI
HELSINKI
TI- NDREPTULI-A
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M A C H E D O N I A

HELSINSKO
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REPUBLIC OF MACEDONIA

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by the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC) in collaboration with the World Organisation Against Torture (OMCT), Institute for Human Rights (IHR), HOPS – Healthy Options Project Skopje, REACTOR – Research in Action, HERA – Association for Health Education and Research, and Coalition 'Sexual and Health Rights of Marginalized Communities' (CSHRMC)

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A. INTRODUCTION

This submission was prepared by the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC) with the assistance of the World Organisation Against Torture, Institute for Human Rights (IHR), HOPS – Healthy Options Project Skopje, REACTOR – Research in Action, HERA – Association for Health Education and Research, and Coalition 'Sexual and Health Rights of Marginalized Communities' (CSHRMC). These organizations joined forces to prepare this submission for the third reporting cycle on the Republic of Macedonia within the CAT, to present our observations on the situation with regard to prevention and protection of torture and inhuman or degrading treatment or punishment. Our views are presented through the prism of the List of issues prior to the submission of the third periodic report of the Republic of Macedonia. All torture and ill-treatment cases summarized in this submission have been reported to the organizations who prepared this text.

B. OBSERVATIONS AND RECOMMENDATIONS

ARTICLES 1 AND 4

1. Definition of torture

The Committee against Torture has raised the issue whether the definition of torture in Article 142 of the Criminal Code includes all elements specified in Article 1 of the CAT. When compared to national legislation, differences in the definition of torture can be noticed in two elements. First, the Convention defines “torture” as any act which causes “severe pain or suffering, whether mental or physical”, while the definition in the Macedonian Criminal Code under Article 142 refers to “severe physical or mental suffering” omitting the “pain” referred to in the Convention. The legislator has made an effort to make up for this in another provision - Article 143 of the Criminal Code, which refers to “Ill-treatment while acting in official capacity” and includes intimidation, insult or degrading treatment, but relates to mental suffering only. Second, the Macedonian Criminal Code foresees that a perpetrator can commit an act of torture while acting in official capacity or at the instigation or with the consent of an official. However, unlike the Convention, the Criminal Code does not include the acquiescence of a public official. Moreover, prosecutors do not qualify acts of torture or other ill-treatment as such which results in dismissal of cases. Practical implications were noticed in the following cases:

CASE No. 1 (MHC): In July 2014, Helsinki Committee brought a criminal complaint against medical personnel in a mental health institution, where a young deaf-mute Roma child at the age of 9 was being held tied with a rope to a bed on several occasions. According to the personnel, this was being done so in order to “protect the child” and prevent him from escaping the facility. This however, and the wrongful diagnosis of his medical condition, has significantly contributed to deterioration of his health and well-being. The basic and higher public prosecutors have both decided that there was no act of cruel, inhuman or degrading treatment in line with article 142, and criminal proceedings were not instigated. This signifies two problems: one, the public prosecution does not recognize when torture, inhuman or degrading treatment has taken place and stated that “the prohibition of torture is not absolute”,¹ and second, the lack of appropriate penalties in accordance to the gravity of the crime, prevents the prosecution from criminal

¹ Higher Public Prosecution Shtip, Notification RO No. 1/15, 27.01.2015, pg. 2

charges when cruel, inhuman or degrading treatment, which does not amount to torture, has taken place.

2. Low or no penalties imposed on persons who committed torture

In 2009, amendments were introduced to the CC, increasing the penalties for acts of torture under article 142 and 143. Currently, one who commits an act of torture and other cruel, inhuman or degrading treatment or punishment under article 142, will be sentenced to prison from three to eight years. Article 143, which refers to “abuse in the line of service”, foresees a penalty of one to five years in prison. In spite of these amendments, public prosecutors fail to recognize and prosecute acts of torture even in cases in which it is obvious that a torture related crime has taken place. Thus far, not a single person has been pronounced guilty of torture, while only a handful of persons have been found guilty of “abuse in the line of service”. The majority received suspended sentences, while those few who received prison sentences spent less than six months in prison after which they were allowed to return in their previous job positions.

CASE No. 2 (MHC): Following a brutal attack by a security guard against a prisoner who entered a restricted area inside the Idrizovo Prison in Skopje in 2013, surgery was necessary to remove the left kidney and spleen of the prisoner. The public prosecutor, instead of identifying this case as a typical example of torture, and instead of prosecuting the security guard on the basis of Article 142 CC, an indictment was lodged for the Severe Bodily Injury crime, Article 131 CC. The Basic Court in Skopje sentenced the defendant to six months in prison. Following an appeal by the public prosecutor, the sentence was increased to one and a half years for the Severe Bodily Injury crime by the Appellate Court. During the appeal proceeding, the prison guard continued working as a security guard in the same prison.

CASE No. 3 (MHC): In June 2013, a 28 years old person was called by police officers in the police station in the City of Demir Hisar for an informative talk without being given reasons for it. Immediately after entering the station, one police officer begun to shout, insult, and blame him of theft of car batteries, while another police officer started to beat him without any reason. The victim asked for medical help in a hospital. Due to the pain and injuries, he was held in the hospital for a two-day treatment. The victims’ lawyer, instead of lodging a criminal ill-treatment complaint to the public prosecution, lodged a private lawsuit for the Bodily Injury criminal offense to the court. Even though the court should have forwarded the lawsuit to the public prosecution, given that the act of torture has to be prosecuted *ex officio*, it accepted the lawsuit and scheduled a trial. By a first instance judgment, the police officer was found guilty and received a six-month suspended sentence. The perpetrator lodged a complaint after which the second instance court ordered a retrial. After the retrial the perpetrator was proclaimed not guilty.² The case is now being dealt by the second instance court for a second time, following an appeal by the victim.

ARTICLE 2

3. Investigation into Torture allegations

² Basic Court Bitola, Case No. K-564/14, Verdict from 23.02.2015

According to reports of the Public Prosecution,³ in 2009 there were three official requests for conducting an investigation in reported cases of torture, under article 142 of the Criminal Code, which, however, did not lead to any meaningful investigations. Between 2010 and 2013, there were no investigations or criminal proceedings initiated by the Public Prosecution with regard to the crime of torture or other cruel, inhuman or degrading treatment or punishment under article 142 CC or “abuse in the line of service”, under article 143 CC.

This is rather striking, given the fact that in 2009, there were 252 complaints submitted to the Ombudsman regarding police conduct, out of which 61 regarding excessive use of force and violence. In 2010, the number of such complaints to the Ombudsman was 238, out of which 31 on the excessive use of force, while in 2011, 20 complaints were submitted alleging excessive use of force by police officers out of 179 police related complaints. According to the Sector for Internal Control and Professional Standards (SICPS), operating within the Ministry of Interior, out of the total number of complaints in 2012 (1644), 73 referred to complaints of “excessive use of force by police officers”.⁴ The SICPS has found that 46 of them were unfounded, in 23 cases there was no sufficient evidence of wrongdoing, and only in 4 cases criminal or disciplinary procedures were initiated. In 2013, there has been a slight decrease in the number of complaints submitted for excessive use of force by police officials, which from 73 came down to 57. The SICPS found that in 33 of the cases there were no grounds to proceed, in 23 of the cases there was no sufficient evidence of wrongdoing. In only one case throughout the whole year, the SICPS had established that there are enough grounds to initiate criminal proceedings against a police officer.⁵ Between 2009 and 2014, the Helsinki Committee received more than 40 torture related complaints by citizens. A dozen criminal complaints were submitted by the Helsinki Committee to the Public Prosecution but they were never processed.

CASE No. 4 (CSHRMC): In November, 2008 the police executed a raid in Skopje, arresting more than 30 people and detaining them overnight on suspicion of “involvement of prostitution” (a misdemeanor). The majority of them were women sex workers. The police failed to act in accordance with the law and to respect due process rights of people deprived of their liberty. Partners and other parties were soon released and only the sex workers spent the night in the police station. The sex workers were exposed to humiliation when they were forced to demonstrate how they pose while providing services to clients. The police officers were using their private mobile phones to film the victims in order to make fun of them.

The photos of the sex workers taken in the police station were put on the web site of the Ministry of interior together with the information on the police action called "Eradication of street prostitution". The pictures were not blurred and it was easy to recognize who are the alleged "suspects". The videos made in the police station were shared with all national and local media which further distributed the news on the arrest nationwide. All sex workers were put in one cell of 10m², without sunlight and ventilation. The cell had concrete floor, three walls and bars and it was equipped with only one bench. The sex workers were left all night in the cell without access to food, water and sanitation facility. Nine sex workers were drug users who had withdrawal syndrome and experienced severe pain and suffering. There was only one bottle of water for all

³ Available at: <http://jorm.gov.mk/?cat=8>

⁴ Available at:

⁵ Annual reports of the SICPS available at: <http://www.mvr.gov.mk/desktopdefault.aspx?tabindex=0&tabid=130>

19 detainees and some of the women were using the water to clean their faces after episodes of vomiting. This situation was extremely humiliating for them and disturbing for the others who were not drug users. The following day, the sex workers were subjected to compulsory testing for HIV and hepatitis B and C. Representatives from several national and local media were present at the Clinic for Infectious Diseases. Media subsequently published and broadcast photos of the women being escorted from police vans into the Clinic, as well as information that they had been arrested for “involvement in prostitution”. The testing was performed without informed consent by the victims but instead, the police threatened them to give blood if they want to be released. The conduct of the police in this case intentionally inflicted mental suffering and was directly aimed at humiliating sex workers. HOPS submitted a criminal complaint in regard to the case which was later dismissed by public prosecution.

Recommendations:

Abide to the commitment to absolute prohibition of torture by condemning torture and cruel, inhuman or degrading treatment; Promptly investigate all allegations of torture, if appropriate, prosecute and punish the perpetrators and provide redress to the victims.

4. Lack of Independent External oversight mechanism

The work of the Ministry of the Interior is subject to internal and “external” control. The Assembly of the Republic of Macedonia and the Ombudsman perform “external” while the Sector for Internal Control and Professional Standards at the Ministry of the Interior performs internal oversight. The parliamentary oversight of police work is foreseen to be performed by a Parliamentary Commission for Defense and Security (PCDS).⁶ The process of monitoring and oversight however, is highly confidential and given the fact that classified information are concerned, the findings and conclusions in these reports must correspond with the same level of classification. Transparency of the PCDS is therefore non-existent and thus far there are no visible outcomes of its work. The PCDS is a highly political body as it consists of Members of the Parliament (MPs). The Minister of Interior neither attends PCDS’s meetings, nor submits annual reports to it, as foreseen in Article 2(2) of the Law on Police.⁷ The PCDS consists of a president and his deputy, and 12 members and deputies, all representatives of political parties in the Parliament. Members are not elected and appointed in accordance with their professional experience or knowledge, which seriously undermines the expertise of the PCDS and its capacity to perform oversight. Furthermore, for the past several years, the president and the majority of members of the PCDS have been elected by the ruling party. After series of incidents in the Assembly and turbulent political scenes in the country, the main opposition party MPs boycott the work of the Assembly by not attending its sessions for the past two years. The fact that this monitoring mechanism is highly dependent on the political situation in the country, and the lack of transparency of its work, makes its monitoring abilities rather limited and its capacities disputable. The PCDS has never in its existence taken any specific actions on torture or ill-treatment by the police. The lack of independence and objective functioning of the Sector for Internal Control and Professional Standards (SICPS) has been criticised for a long time. The most disputable issue often raised here is the independence and objectivity of the SICPS, given

⁶ Article 3, Heading 3, Decision on establishing permanent working bodies of the Assembly of the Republic of Macedonia, Official Gazette No. 85/2014

⁷ Korunovska, 2013. Parliamentary control over the Government of the Republic of Macedonia. Available at: http://soros.org.mk/CMS/Files/Documents/podelbata_na_vlasta_vo_praksa_ang.pdf

the fact that in charge of all activities is an Assisting Minister which by definition is a political function.

CASE No. 5 (REACTOR): In 2011 the PCDS requested to inspect the work of police in the case against Ljube Boshkovski by sending a request to Ministry of Interior. The case involved an alleged illegal wiretapping of Mr. Boshkovski, former Minister of Interior. Forty days following the request the Ministry replied but did not allow direct inspection by the PCDS. It claimed that in the particular case did not involve illegal wiretapping, but special investigative measures, as prescribed by the Criminal Procedure Code. The PCDS, not being satisfied with the answer, sent another request so that it could inspect the work of the law enforcement in regard to the particular case. The Ministry of Interior replied that the police has already submitted all evidence to the court and that there is nothing further for the PCDS to inspect.

The “Stop Police Brutality” movement was established in 2011. It organized 40-days protests with participation of thousands of citizens demanding external supervision over the police and establishing responsibility for the death of a young man as a result of disproportional use of force by a police officer. The ruling coalition rejected these demands. In 2012, all opposition parties in the Parliament motioned a proposal for Law on Police Ombudsman, but the parliamentary majority rejected it. In April 2014, the Ministry of the Interior stated that it will establish an independent and external oversight mechanism, but currently this idea has been put on hold.

5. Ombudsman

The Ombudsman Office does not operate in full compliance with the Paris Principles. This does not only concern its lack of financial independence, but also the lack of multidisciplinary expertise of its employees (the majority of them have an education background in law). The Ombudsman’s appointment is a political agreement between the ruling parties which raises concerns about its lack of independence. In 2012, the Ombudsman was accredited with status B (partially independent), *inter alia*, due to the possibility given to the Minister of Finance and the Parliament to intervene in its budget. Even though the Ombudsman occasionally criticizes the work of the police, both in writing and in public, the recommendations of the Ombudsman are not followed through.

As a monitoring and prevention mechanism, the NPM has succeeded to influence change in some areas (for example, a wing of Idrizovo Prison has been closed due to an intervention by the NPM for below-standard conditions), but there are also significant downsides to its work. Initially, it consisted of three human rights experts, who perform all operations. In 2013, one expert left the Office and currently the NPM consists of only two people. Regardless of their expertise or hard work, it is unlikely that a team of two (or even three) people can monitor all the situations in a proper and effective manner that will ensure improvement of the treatment and detention conditions and the prevention of torture, inhuman or degrading treatment.

Efforts have been made to overcome this problem in 2012, when a Memorandum for cooperation with the Association of psychiatrists of the Republic of Macedonia was signed with an intention to include psychiatrists in the team that visits places of detention. In 2013, this type of collaboration was arranged with 7 other experts and NGOs. No cooperation with civil society organizations existed until 2013 even though there were no legal obstacles for such

collaboration. Although the NPM functions as a separate organizational unit of the Ombudsman Office, it does not have a separate budget. Instead, it provides its resources from the general budget of the Ombudsman.

Recommendations:

Establish an independent monitoring and oversight mechanism on the conduct of the police; Review the composition of the Ombudsman, strengthen its independence and authority; Ensure the effectiveness of the NPM, guarantee its functional, financial and operational independence and its involvement with civil society; Provide the necessary human and financial resources to ensure the independent and effective operation of the Ombudsman and the NPM; Ensure that different independent oversight mechanisms cooperate within the Human Rights Unit of the Ministry of Exterior.

6. Violence against women including domestic violence

In light of the recommendations by the Committee on the Elimination of Discrimination against Women (CEDAW), as regards the high prevalence of violence against women in the Republic of Macedonia, the Committee against Torture raised the issue of measures the State has taken to protect women from violence, including domestic violence. According to a recent research, the number of women - victims of domestic violence still significantly prevails over men - victims of domestic violence, which makes domestic violence gender-based violence.⁸ There are four shelter-centers for victims of domestic violence and children, in Skopje, Bitola, Kochani and Sveti Nikole. However the de facto functioning of those in Kochani and Sv. Nikole has been disputed.⁹ The number of gender-based murders that happened in the course of the last year shows the consequences of a dysfunctional system of protection against violence against women.

The definition of rape in the CC envisages that the act must be performed with physical threat and physical evidence, contrary to the European standards and CAT conclusions. The jurisprudence of the court, also requests that the victims give physical resistance. This allows, rape and sexual assaults in closed institutions, where the conditions and threat are specific to be unreported and accompanied with impunity around those acts.

CASE No. 5 (MHC): In May 2014 a woman was found dead and was later discovered that she was killed by her long-time unmarried partner. That same month, another man killed his wife and then killed himself. Then in July, a police officer working as a security guard in the Government first killed a woman, her sister and then killed himself, with his service weapon.

CASE No. 6 (MHC): In October 2014, in the City of Kavadarci, a man murdered both parents and the sister of his wife, who had several times reported him for domestic violence. That same month, in the Municipality of Zletovo, an active member of the army murdered the parents of his wife and another man, with his service weapon. There are two common, noticeable components in these incidents: first, the victims have suffered for a longer period of time and have reported domestic violence or threats to the police; and second, the victims have reported the violence in the Centers for social work but were not protected in a shelter-center.

⁸ Domestic violence in Macedonia in 2012, Euro-Balkan Institute, <http://inspiriraj.mk/sites/default/files/%D0%945-Analiza%20na%20podatocite%20za%20semejno%20nasilstvo%202012.pdf>, pg. 6

⁹ *Ibid.*

In September 2014, Parliament enacted a new Law on Prevention, Deterrence and Protection from Domestic Violence,¹⁰ whose implementation began in January, 2015. Its intention is to enhance the coordination and cooperation between institutions that deal with victims of domestic violence, such as the police, the social work centers and the courts, and at the same time to accelerate the procedure for their protection. In the past three months, however, practice shows that this purpose is not entirely achieved. In three out of four cases that have been reported to the Helsinki Committee by victims of domestic violence, victims have encountered difficulties concerning the approach and behavior of all three institutions. The police have shown the same discriminatory and rude approach to the victims as years before, the social work centers have shown a lack of professional approach, and the time limit prescribed by the new law has not been respected by the courts when acting upon a complaint of domestic violence. This shows that the institutions which have the first contact with the victims fail to provide effective protection, as it was before the new Law was adopted.

In June 2013, Parliament rushed through a restrictive new law on the termination of pregnancy. The new law on abortion introduces mechanisms that violate women's right to safe and legal abortion. These include: a) the woman to submit a written application in order the pregnancy to be terminated, b) the woman is to submit a written consent for the procedure to be performed, c) mandatory pre-abortion counseling, d) mandatory waiting period of three days after the pre-abortion counseling, and e) the doctor is to submit a written confirmation. In October 2014 the Constitutional Court refused an appeal by civil society organisations and human rights groups. The majority of Constitutional judges appear to have made their decision on the basis of personal convictions about abortion.

CASE No. 7 (HERA): In October 2014, a woman who was pregnant for 10 weeks, and whose fetus was diagnosed with serious malformations, was not allowed to choose an abortion since her health was not considered to be under direct threat. "During the humiliating process of counselling, a counsellor tried to persuade me to keep the baby by saying that "it may not be beautiful, but it will be intelligent" the woman said. When the woman wanted to file her request for the termination, she was told that the actual form did not exist and that she had to create her own because the hospital had not received bylaw instructions on the issue from the Ministry of Health, as prescribed by the law. An immediate reaction was necessary because the pregnancy was about to exceed the tenth week. After the woman managed to file a request on her own, the primary commission (expert committee) made no official decision and simply forwarded it to a secondary commission. She was also asked to file a new request for the secondary commission. This represents a significant breach of the law because the secondary commission can process only cases refereed from the primary commission. The secondary commission should be appointed by the Minister of Health and the bureaucratic process took a long time. Eventually, the secondary commission and the Health Minister himself decided that the legal terms for abortion were not met and refused to allow the termination of the pregnancy, even though the woman still legally had the right to start the procedure. At the end the women filed a plea to the Administrative court and had no other option but to continue the pregnancy.

¹⁰ Official Gazette of the Republic of Macedonia No. 138/2014 and 33/2015.

CASE No. 8 (HERA): In September 2014, a 30 year old women in the 7th month of pregnancy during a regular medical check found out that to continue her pregnancy might be life threatening and she was advised to have an abortion. After having a second opinion from other gynecologists, she was admitted at the State Gynecological Clinic. She was informed that since the pregnancy had exceeded the 10th week she needed a decision of the primary commission. However, she would have to wait for the following week because this commission meets only once a week. “Even though I was aware that I was carrying a ticking bomb inside me, I had to run between desks and commissions and to wait several days in order to provide consent for terminating pregnancy.” The woman was waiting for 4 days before meeting the Commission. After going through the documents and medical evidence showing that the chances of having a healthy child were very low and that the mothers’ health is in danger, they were asking for another final examination and they said that there might be a need for confirmation from the secondary commission. Finally the woman was granted a permission to terminate the pregnancy. The gynecologist who performed the abortion sad “If you had waited a minute longer I am afraid we wouldn’t have been able to save you!”

Both examples clearly show that the law on termination of pregnancy complicates the procedure and may cause severe physical and mental pain and suffering. The physical pain and suffering resulting from the denial of abortion can be so severe that it amounts in some cases to inhuman or degrading treatment and in some cases even to torture. The Committee against Torture has affirmed that the denial of abortions may amount to torture where there is a blanket ban¹¹ and where the pregnancy is the result of rape.¹²

Recommendations:

Increase the efforts to prevent, combat and punish violence against women, improve training of the police, social services and the courts on responding to allegations of violence against women and their appropriate coordination; Ensure the availability of a sufficient number of shelters throughout the country with sufficient financing; Launch a public awareness campaign to sensitize the Macedonian society to the gravity of domestic violence; Review the abortion law and policy to ensure women’s reproductive health rights and in particularly to ensure that women whose lives are at risk can receive abortions.

ARTICLE 3

7. Gazi Baba detention centre

In 2014 and 2015 the Republic of Macedonia has seen an unprecedented numbers of refugees transiting through the country in an attempt to enter the EU Schengen zone. Most of them are considered illegal migrants by the authorities and once discovered, most of them are detained in the “Reception centre” in Gazi Baba in Skopje pending deportation to their home countries (Afghanistan, Pakistan, Syria, and a number of African countries). At the end of 2014 and the beginning of 2015, a minimum of thirteen refugees, including children and women, lost their lives, being hit by a train along the rail line leading to Serbia. A man of Syrian origin addressed the Helsinki Committee claiming that eight of his compatriots have been subjected to torture and

¹¹ Committee against Torture, *Concluding Observations: Paraguay*, ¶ 22, U.N. Doc. CAT/C/PRY/CO/4-6 (14 Dec. 2011)

¹² CAT Concluding Observations: Paraguay, ¶ 22; CAT Concluding Observations: Nicaragua, ¶ 16.

other ill-treatment in the Reception centre. He claimed that they were unable to lodge an asylum request and were kept locked for a longer period of time, some of them longer than five months. Helsinki Committee asked the Ministry of Interior for a permission to visit the Centre. The permission was initially granted, but two days before the visit was about to take place, a police officer from the Border police department informed the Helsinki Committee that the migrants have been transferred to the Asylum centre in Vizbegovo, Skopje. Due to this reason, according to the police officer, there was no reason for the Helsinki Committee to visit the Centre. It is alleged that the Centre in Gazi Baba has a capacity for 100-150 people, but there are currently more than 300 refugees held there. Additionally, Helsinki Committee received a number of pictures from within the Centre in which the inhuman conditions in which these people live are appalling.

Recommendations:

Stop threatening refugees as illegal migrants and allow them to freely lodge asylum requests, should they request so. Take immediate steps to improve the living conditions in both the Reception centre in Gazi Baba and the Asylum centre in Vizbegovo. Take preventive measures to ensure that refugees who are transiting through the country are not allowed to walk along the rail lines passing through narrow rocky paths along which their lives are put in jeopardy. Allow NGO's and other stake holders to visit the centres and offer their services to the refugees/asylum seekers.

ARTICLE 11

8. Conditions of detention

The largest problems identified in the field of closed institutions include: overcrowding, inadequate hygiene at prisons, insufficient work activities for inmates, absence of any education programs for inmates, inmates are not allowed more than 1 hour per day outdoors, inefficient legal services, etc. Prisons are overcrowded and living conditions have deteriorated. According to the Directorate for Execution of Sanctions, the total overcrowding rate in November 2014 was 147%. The prison in Tetovo had an overcrowding rate of 181%, while that rate in the prison in Strumica was 232%.¹³ Pre-trial detention lasts too long (42% of detainees spend longer than 5 months in detention centres)¹⁴ and there is insufficient use of alternative measures. Judicial supervision does not yield any results. According to the Criminal Procedure Code, all individuals deprived of their liberty have: prompt access to an independent lawyer of their choice; obtain, on their request, immediate access to an independent medical examination; and may contact a family member. These Criminal Procedure Code provisions are however sometimes not respected by the authorities. This holds especially true when it comes to immediate access to an independent medical examination, which is almost never respected.

On annual basis, the Helsinki Committee receives over 50 complaints from inmates who complain about non-implementation of programs for re-socialization and re-integration. No treatment is provided for inmates who serve life sentences. State Commission for Supervision over Penitentiary and Correctional Facilities is established only on paper. It is inactive and does

¹³ Statistics shared during a conference organized by the Council of Europe in Skopje at the end of 2014.

¹⁴ Directorate for execution of sanctions, Annual Report for 2013, pg. 51, Available at: <http://www.pravda.gov.mk/UIS/godisen2013.pdf>

not perform its competences. Hence, with the exception of the Ombudsman (including its NPM department), there are no mechanisms for supervision over prisons and Directorate for Execution of Sanctions, whose recommendations and observations would be compulsory for the said institutions. The Law on Execution of Sanctions (LES) is not implemented in its entirety. Over the past three years, a considerable number of prisoners has contacted the Helsinki Committee claiming they needed assistance to realize their right to healthcare. These persons, due to their poor health, on their own initiative and at their own expense demand that the prison officials send them to receive medical treatment outside the prison where they are serving their sentence. The Helsinki Committee established that the authorities in the prisons unnecessarily postpone the process of treatment of the prisoners and do not send them to receive medical treatment, a situation which does not favour the health of these persons, whereby their legally guaranteed right to healthcare is violated.

Last but not least, between 2012 and the beginning of 2014 Helsinki Committee was allowed to visit prisoners, but only after they have submitted an official written request, and only in the room for visitations. As of 2014, the Directorate for Execution of Sanctions has systematically denied such requests without providing an explanation. There are currently no other NGOs that are allowed to independently visit prisoners and inspect conditions of detention. A number of journalists complained to the Helsinki Committee that their requests to visit certain prisoners have also been denied. This was not the case before 2011.

CASE No. 9 (MHC): In the course of 2014 prisoners serving their prison sentence in the Kumanovo Prison turned to the Helsinki Committee and complained they are facing serious problems due to the inappropriate living conditions. Prisoners claimed that they are often left without water for about two or three days, and that hot water was not supplied at all. Even though opened in 2013, the prison does not have a water-supply system or wastewater sanitary infrastructure. The water used for drinking, cooking, washing and bathing is brought in tanks. The water is drawn from a well. The Helsinki Committee located the well and sent a sample for testing to the Institute of Public Health in Skopje. The report on the laboratory tests stated: "The tested sample of raw potable water does not meet the laws and professional regulations for bacteriological analysis due to an increased total number of bacteria". The report also states that the water has fecal pollution. After Helsinki Committee informed the public and responsible state bodies and inspectorates, according to the prisoners, water is not being supplied more frequently and from another well containing potable water. The prison however continues to operate without water-supply system or wastewater sanitary infrastructure.

CASE No. 10 (HOPS): In August 2010, the police detained a 45 year old man for execution of a sanction of eight months imprisonment. The victim was HIV positive man who was at the time on anti-retroviral treatment (ART) and opioid substitution treatment (OST). Both treatments should have been administered on daily basis without interruption. Otherwise, the patient is exposed to serious threat for his health and life. The prison failed to secure medical care to the victim four days after his imprisonment and consequently he experienced withdrawal syndrome. When the victim met the prison doctor, he was not allowed to speak to him in private. Therefore, his medical condition was disclosed in the presence of a prison guard. The information of HIV positive prisoner was spread shortly after the doctor's examination of the victim. He was immediately transferred to the Idrizovo prison, although according to the law he was supposed to

serve his prison sentence in Prison Skopje. During his stay in Idrizvo, he was isolated in quarantine and during the group meals he was exposed to humiliation and threats by other prisoners and prison staff because everybody around him were familiar with his HIV status. The information was even published in the media with the title "AIDS panic in Idrizovo". Coalition Sexual and Health Rights of Marginalized Communities submitted a criminal complaint in regard to the case which was later dismissed by public prosecution. After 27 days in prison, the sentence was interrupted and the victim was released due to deteriorated health condition. The sentence continued four years later while he was in outpatient on OST treatment and ART treatment. Meanwhile the victims' mental health deteriorated and he was hospitalized in the Psychiatric Clinic Skopje. In September, 2014 he was arrested and brought to Idrizovo prison again. Since the prison failed to provide proper medical care, the victim died in prison as a result of his injuries in October, 2014. This can be confirmed by close relatives and supported by photo-documentation. The investigation by the public prosecution with regard to the death of the victim is still ongoing.

CASE No. 11 (MHC): In 2011, after spending 40 days in the pre-trial detention centre in Skopje, in the so called "Pajazina" (Spider-Web) case, a pregnant woman suffered miscarriage in the sixth week of her pregnancy. After spending 30 days in custody, the court extended the detention for all the suspects in the case, despite appeals from the defense warning that there are pregnant women and people with poor health among those detained. Prior to the miscarriage, Helsinki Committee requested to visit the detainee, but received no answer from the investigative judge. According to the president of the court (now a president of the Supreme Court) after they found out that she was pregnant, they were considering the possibility of releasing her to house arrest, but according to the president of the court, the defense lawyers, by filing constant formal complaints, made the administrative aspects of the case more complicated and postponed the court's decision to send the pregnant woman to house arrest. Amid the uproar following the woman's miscarriage, the investigative judge ruled the next day that she could be released to house arrest. The investigation led by the public prosecution concluded that the Basic court in Skopje had no responsibility for what has happened.

Recommendations:

Develop a genuine and effective system for independent monitoring of all places of deprivation of liberty, including via the national preventive mechanism that should effectively and regularly monitor and inspect all places of detention without prior notice, reports publicly on its findings, and raises with the authorities situations of detention conditions or conduct amounting to torture or ill-treatment; Allow civil society to conduct independent monitoring of places of deprivation of liberty. Ensure that the recommendations of the monitoring bodies are considered with respect to implementation; Pursue efforts to combat prison overcrowding, improve hygienic conditions in the prisons, ensure adequate medical treatment for the prisoners and make reintegration programmes available to the prisoners.

ARTICLES 12 AND 13

9. Police unit Alfa

The Committee against Torture expressed in its Concluding Observations of 2008 in relation to the Republic of Macedonia its concern about the allegations reporting that the most serious

abuses would be committed by a special unit of the police named “Alfi”, mandated to counter urban crimes and work in plain clothes.¹⁵ Despite the fact that the delegation of the Republic of Macedonia mentioned during the review of its combined second and third periodic reports in 2008 that the Special Mobile Police Unit Alfa would soon close down,¹⁶ the Alfa police unit is still operational. Its 128 members continue to perform their duties in plain clothes. As of 2014, the unit operates as an independent special task force under the new name “First response and intervention unit – Alfa”. According to the Ministry of Interior, the unit operates in the capital city of Skopje only. Plans to close the unit have been abandoned. The Ministry of Interior considers this unit the most efficient one when it comes to combating street crime. Allegations of torture and ill-treatment supported by evidence are still being reported to the Helsinki Committee. Even though the Sector for Internal Control and Professional Standards within the Ministry of Interior, the Parliament, the Ombudsman, the Public Prosecution, and the basic courts are all tasked with overseeing and/or sanctioning the unit, not a single member of the unit has been prosecuted to this day. Even though the Ministry of Interior claims that the unit does not operate in other cities, Helsinki Committee registered a brutal act of torture in the City of Ohrid, one day before the local elections in April 2013.

CASE No. 12 (MHC): In March 2013, a 27 year old man, son of the biggest opposition party patron in the City of Ohrid, was physically attacked, abused and humiliated by several police officers, including five members of the Alfa unit. They stopped the victim on a local street and forcefully pulled him out of his vehicle. For no reason, and without any explanation, they pointed automatic guns towards him, handcuffed him, pressed him down on the asphalt and started to kick him and punch him all over his body with the gun butts of the automatic weapons. Two persons witnessed the whole event directly at the spot and tried to help the victim but were forcefully removed from the scene by the armed police officers and were threatened and cursed at. Then the police officers brought him to the police station in Ohrid where the torture continued, after which his health deteriorated and he was transferred to a hospital.

Due to the seriousness of the injuries suffered, the victim was urgently transferred to the hospital in the City of Struga where he underwent surgery and was held for around 15 days at the intensive care unit. Police officers registered the case as an “Assault on an officer while performing security activities”, which according to the victim is a notorious lie so that the police officers could protect themselves from being prosecuted and punished for the violence.

Instead, the victim was prosecuted and sentenced to six-months in prison. No investigation took place with regard to the complaints lodged by the victim of torture and ill-treatment by the police officers. In 2015, the main opposition party accused the government of illegal wiretapping and started publicly playing audio tapes, one of which concerns this incident. The Chief of the Prime Minister Cabinet can be heard talking to the Minister of Interior, asking her to allow him to take a number of Alfa unit members with him to Ohrid. He specifically asks for officers who are apparently notorious for their wrongdoings in the unit. The Minister approved his requests. Soon after the incident, as could be heard from the tape, the same two officials discussed what happened over the telephone. During the conversation the Chief of the Prime Minister Cabinet informs the Minister of Interior that the victim has lodged a complaint to the Sector for Internal

¹⁵ UN Doc. CAT/C/MKD/CO/2.

¹⁶ UN Doc CAT/C/SR.825, para 24.

Affairs (SIA) within the Ministry and asks the Minister to take care of that. In the same audio tape, the Minister can be heard calling the Chief of the SIA telling her that the decision of the Sector must protect “our guys”, after which the Chief of the SIA replies “Of course, our guys will be protected”.

CASE No. 13 (MHC): In May 2013, in the Topaana Roma neighborhood in Skopje, the Ministry of Interior conducted an action to arrest a convicted person who did not return to serve the rest of the sentence in the Idrizovo prison. Media reported about disproportionate use of physical force by the police officers who participated in the action for the arrest. Members of the Alfa unit were also dispatched to the neighborhood. Four Roma stated that they were direct victims of police ill-treatment which consisted of physical and psychological abuse. Despite the fact that they were innocent victims, they were arrested and brought before an investigative judge who initiated an investigative procedure in which they were accused for an alleged criminal act “Assault on an officer while performing security activities”. According to the statements of a larger group of Roma citizens, witnesses of the event, the policemen in an organized and prompt fashion started to attack the citizens that were on the street. According to estimations of people interviewed, around 50 policemen participated in the action and at first around 10 citizens were attacked. The action did not only take place on the street, but also the policemen, entered 2 households and 2 stores without a court order or any information or indications of a committed criminal act. In the first store there is a video material where it can be seen that the police attacks random citizens who were surprised by the attack.¹⁷ In the second store three other persons were attacked. In one of the households a person was attacked while standing on the terrace of his house and did not provoke the officer in any way. Four Roma were transferred to a police station. There, they were placed in 2 cells and although they were locked their handcuffs were not removed. They remained handcuffed for 2 hours and at their request to have their handcuffs removed the police officers replied that the keys were in the possession of members of the special unit Alfa. These persons were later released and cleared of their charges. The investigation by the public prosecution with regard to the police abuse is still ongoing.

CASE No. 14 (MHC): In May 2014 in Skopje, while searching for suspects who had stolen a purse, two Roma minors aged 12 and 17 were encountered by the Alfa police unit whose members started beating them in order to extract confession that they committed the robbery. After the beating the minors were brought to a police station where they were kept and interrogated for two hours without the presence of their parents or a police officer dealing with juvenile crime and offenders (as required by the laws of the country). A criminal complaint was lodged against the Alfa unit members but no proper, effective investigation by the public prosecution has been conducted to the present day.

Recommendations:

All alleged acts of torture or ill-treatment, including verbal abuse and use of excessive force by law enforcement officials, including those committed by members of the “Alfa” unit should be subject to investigation by an effective and fully independent mechanism and prompt response, and if appropriate, prosecuted and punished. Discontinue the practice of “Alfa” unit members operating in plain clothing, and ensure that they - like all other special police units - wear police uniforms while performing their duties.

¹⁷ <http://youtu.be/YANe1cn2zFM>

10. Other issues

Access to naloxone for opiate users (HOPS)

People who use drugs are a highly stigmatized population whose experience of health-care is often one of humiliation and cruelty. Administration of the drug Naloxone, “an opioid receptor antagonist used to reverse depression of the central nervous system in cases of opioid overdose” is also crucial for minimizing overdose risk, but it must be available for distribution and administration. More than ten years, NGOs alert stakeholders about the urgent need of coordinate action in harm reduction from opiate overdose. The lack of naloxone in the health institutions and an emergency medical teams which very often cannot reach all parts of the country on time, violates the right to life to drug users. According to the data from 2010 of the Public Health Institute there are 10.900 injecting drug users form 18-45 years old. Based on the research on opiate overdose, 1/3 of the people who use drugs have experienced opiate overdose. In 2011 there were 14 drug-related deaths (including 1 female), and in 2012 there were 18 (5 females). In 2011 the youngest person to die from overdose was 18 years old, while the oldest was 40. In 2012 the youngest person was 17, and the oldest was 41. In 2011 the majority of DRDs were aged 25–29 (35.7 %), followed by those aged 20–24 (28.6 %). In 2012 the majority of DRDs were aged 35–41 (33.3 %), followed by those aged 30–34 (27.7 %). Most of these deaths could have been prevented if naloxone was available to the drug users, their family of their surroundings.

Access to drug treatment for children (HOPS)

In the last few years, in Macedonia there is an evident trend of increasing number of children who use drugs and on the other hand decreasing age limit of the beginning of drug use. The most concerning issue is the lack of existing programs for treatment, rehabilitation and re-socialization of children who use drugs. There is no systematized statistic on the number of children who use drugs. According to the ESPAD results from 2012 in Skopje among 1146 students at the age of 16: the use of cannabis is 8,7 % in total. The number of students who take ecstasy is 3,75% and 0,9 % take heroin. However, children outside of the educational system were not included. Based on NGOs research there is a serious problem with children who live on the streets in Skopje (around 40 children) and are addicted to drugs, some of them injecting drug users. In 2011 -2012 NGOs documented three cases of drug related deaths of children. In the period of 2001-2005 42% of overdose cases registered in Skopje were children. The lack of effective state drug policies and drug treatment for children leads to their severe physical pain and suffering, which eventually leads to death.

Judgments of the ECtHR in which violation of Article 3 of the ECHR is found (IHR)

European Court of Human Rights (ECtHR) found a violation of Article 3 of the ECHR in seven cases against the Republic of Macedonia. In two judgments, the ECtHR established that there has been a violation of the substantive aspect of Article 3, while in the other five cases, a violation of the procedural aspect was found. In the recent judgment of **Kitanovski v. Republic of Macedonia** from 22 January 2015, the Court has found a violation of Article 3 in relation to the treatment by police officers during the applicant’s arrest. In this judgment the ECtHR found a violation of the procedural aspect of Article 3 of the ECHR because of the absence of an effective investigation into the applicant's allegations that police used life threatening force. In the judgment of the **El-Masri** case against the Republic of Macedonia from December 13, 2012,

the ECtHR found a violation of Article 3 of the ECHR from its procedural aspect because of the absence of an effective investigation by the prosecution authorities of the Republic of Macedonia to lead to the identification and punishment of those who were responsible for the alleged events and to establish the truth. In this case, the ECHR found a violation of the substantive aspect of Article 3 as well, concluding that Macedonia should be held responsible for inhuman and degrading treatment to which the applicant has been exposed by security officials, initially at Skopje airport, then when he was held in a hotel room and finally when he was deported to the US authorities, which put him at risk of further treatment contrary to Article 3 of the Convention. The Court has found a violation of the procedural aspect of Article 3 of the ECHR in the case of **Georgiev v. Macedonia** (judgment from 19 April 2012), because of the failure of the State to conduct an effective official investigation for the applicant's allegations. Absence of an effective investigation into the applicant's assertion that he suffered from torture by the police, the ECtHR has also found in the case of **Sulejmani v. the Republic of Macedonia** (judgment of 24 April 2008). Same violation of procedural aspect, the Court has found in the cases of **Dzheladinov and Others v. Republic of Macedonia** (judgment from 10 April 2008) and **Trajkovski v. Macedonia** (judgment from February 7, 2008). A similar decision was brought in the case of **Yasar v. Republic of Macedonia** (judgment from 15 February 2007) where the ECtHR found a violation of the procedural aspect of Article 3 of the ECHR because of the lack of any investigation into the applicant's allegations that he was subjected to inhuman and degrading treatment by the police while he was in detention.

The execution of these judgments predicts the undertaking of individual and general measures by the State. The payment of just-satisfaction, which is one aspect of the individual measures, is implemented by the State within the time limits. However, in regard to the undertaking of general measures, none of these judgments is executed to the fullest extent.