



Implementation of the
UN Convention against Torture

**(THE FORMER YUGOSLAV)
REPUBLIC OF MACEDONIA**

**Shadow Report
UN Committee Against Torture**

40th session

May 2008

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Human Rights Violations in Macedonia

ALTERNATIVE REPORT TO THE UNITED NATIONS
COMMITTEE AGAINST TORTURE

General part by:



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I. INTRODUCTION

I.1. Notes about the NGO submitting the general part of the report

The Civil Society Research Center¹ (hereinafter CSRC) was founded and is working with the aim of ensuring growth and promotion of a society based on a solid civil premise, respect for human rights and the principle of rule of law.

To achieve the following goals CSRC is taking the following *activities*:

- researching the country situation concerning human rights, civil society, conflict resolution and preparing reports, analyses and advocacy initiatives regarding national legislation and human rights practices;
- providing direct legal aid to those whose human rights have been violated;
- spreading information on human rights issues through seminars, conferences and campaigns; publishing human rights publications, particularly on the topics of the European Convention on Human Rights and the European Court of Human Rights, refugees, minorities, etc.

Inter alia, CSRC has designed and/or implemented the below mentioned *projects*:

- 1999-2008: Free Legal aid to refugees (implementing partner of UNHCR since 2000 and coordinating agency of the UNHCR Sub-project since 2001);
- 2001-2005: Technical cooperation program (implementing party of OHCHR);
- 2004-Jan.'05: Human Rights Support Project (implementing partner of OSCE in a project of Free legal advice to victims of police abuse);
- 2001: Improving human rights protection and human rights standards in Macedonia (legal aid and advocacy project supported by the European Commission);
- 1999-2000: Human Rights Caravan (human rights classes in all high schools; publication and distribution of 100,000 UDHRs, several thousands ECHR etc.);
- 1998-1999: Free legal advice to citizens (free legal advice to victims of human rights violations, following distribution of 500,000 valet cards in 6 languages).

The list of publications of CSRC includes the following *books and analyzes*:

- 2007: Cases against Macedonia before the European Court of Human Rights 2002-2006 (with explanation and annexes);
- 2003, 2005: Social integration of refugees;
- 2003: Human Rights Standards for Law Enforcement Officials (translation of OHCHR publication + CSRC annex with comparative analysis of international instruments and national legislation, and distribution of this pocket guide for police to 10,000 employees of the Ministry of Interior);
- 2002: Cases against Macedonia before the European Court of Human Rights 1998-2001 and influence of the ECHR on national laws and practices;
- 2001: Report of CSRC on Human Rights Practices.

I.2. Origin of the information

The information used from this report was collected by using CSRC investigations or analyses or other, publicly available sources. In each case reference is given to a particular used source, unless some statement or conclusion of CSRC is at stake.

¹ The Civil Society Research Center was registered in 1999 as a non-governmental organization titled "Civil Society Resource Center", according to the Law on Associations of Citizens and Foundations.

2. GENERAL BACKGROUND

2.1. Historical and political background

2.1.1. Practice of torture and ill-treatment in the period 1998-2008

1. The Committee against Torture in its Concluding Observations on Macedonia in the process of consideration of the State's first report submitted under CAT, noted positive aspects and also recommended *inter alia* the following: "The State party is urged to investigate complaints of maltreatment by government officials particularly those that relate to ethnic minorities. The investigations should be prompt and impartial and those officials that may be responsible for such maltreatment should be prosecuted."²

2. In the report on its first (May 1998) visit to Macedonia, issued in 2001, the CPT concluded that "physical ill-treatment of persons deprived of their liberty by the police in Macedonia is relatively common"³ and recommended to the authorities to make it clear to police officers that the ill-treatment of persons in their custody is not acceptable and will be dealt with severely.⁴

3. The CPT delegation during its October 2001 visit to Macedonia gathered allegations of beatings, some of them severe or sustained enough to induce repeated loss of consciousness and/or lasting sequelae, as well as allegations of beatings with batons, metal rods, wooden sticks and baseball bats, repeated struck on the palms of the hands and/or the soles of their feet; threats with the infliction of other forms of grievous bodily harm, including castration, or mock executions. *Inter alia*, CPT recommended that judges, public prosecutors and the Sector for Internal Control and Professional Standards (SICPS) record allegations of ill-treatment, obtain forensic evidence and process such cases.⁵

4. At the end of the July 2002 visit the CPT delegation informed the national authorities on its particular concern by the persistence of ill-treatment of persons deprived of their liberty by law enforcement officials and the inadequate response by the authorities. CPT stressed that if such a state of affairs were to persist, it would be obliged to consider having resort to making a public statement on the matter according to Article 10 § 2 of the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.⁶

5. In the report on its November 2002 visit CPT welcomed the Government conclusions regarding the need of combating torture and complying with the CPT's recommendations. However, the delegation gathered information from a variety of sources concerning ill-treatment or torture in some cases, allegedly inflicted on persons deprived of liberty by MoI's security forces and found evidence of recent ill-treatment by law enforcement officials.⁷

6. Two years later CPT welcomed the positive developments that occurred since the November 2002 visit (system-wide reforms of the Ministry of Interior, including professional

² Concluding Observations of the Committee against Torture, 05/05/99, A/54/44, paragraphs 106-117.

³ Report to the Government of the "former Yugoslav Republic of Macedonia" on the visit to the former Yugoslav Republic of Macedonia" (hereinafter: "Macedonia") carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: "the CPT") from 17 to 27 May 1998, Strasbourg, 11 October 2001, CPT/Inf (2001) 20, § 17.

⁴ *Ibid.*, p. 51.

⁵ Report to the Government on the visit to Macedonia carried out by the CPT from 21 to 26 October 2001, Strasbourg, 16 January 2003, CPT/Inf (2003) 3, § 20.

⁶ Report to the Government on the visit to Macedonia carried out by the CPT from 15 to 19 July 2002, Strasbourg, 16 January 2003, CPT/Inf (2003) 5, § 8.

⁷ Report to the Government on the visit to Macedonia carried out by the CPT from 18 to 27 November 2002, Strasbourg, 9 September 2004, CPT/Inf (2004) 29, § 19.

training and incorporating human rights principles to new police officers; adoption of a Code of Police Ethics; and of amendments to the Law on Criminal procedure). However, regarding ill-treatment, CPT assessed that "while the magnitude of the problem appears to have diminished, the amount of information indicative of ill-treatment of diverse categories of persons - including minors - remains significant. It comprises allegations of practices ranging from excessive force at the time of apprehension to severe beating with batons or wooden sticks in order to extract a confession or obtain information; in some cases, the allegations were supported by other evidence, including of a medical nature."⁸

7. In its report on the 2006 visit to Macedonia CPT *inter alia* concluded that "the authorities should invest greater efforts to tackle the systemic deficiencies, for example in relation to prison service and to combating impunity within the law enforcement agencies." Therefore, the Committee reiterated many of its recommendation and stressed that a persistent non-implementation of its recommendations by the national authorities, notably as regards combating impunity, the condition of detention in prisons and the treatment and care of particularly vulnerable persons, might leave the Committee with no choice but to consider having recourse to the procedure provided for in Article 10, paragraph 2 of the Convention.⁹

8. The Helsinki Committee for Human Rights in the Republic of Macedonia (hereinafter: "MHC") in its 2004 report noted that many cases of physical violence against citizens neither end up with taking victims to an investigative judge, nor are criminal charges brought against the perpetrators.¹⁰ A year later MHC stated that prosecutors and judges continue the practice of tolerating impunity and even conducting procedures against ill-treated persons, and that the judges due to lack of funds are reluctant of asking the Forensic institute to establish findings as regards to whether torture or ill-treatment had been inflicted.¹¹

9. In its 2004 report the Ombudsman warned on persistence of various methods applied on persons in police custody with an aim of obtaining information on a criminal offence or a criminal perpetrator. The Ombudsman further expressed concerns regarding unreasoned refusals of the Sector for Internal control and professional standards (SICPS) of the Ministry of Interior to provide requested information and failures of the Public Prosecution office to prosecute police officers in spite of existence of solid evidence. The 2005 report informed on increase of the number of requests submitted on ground of various police abuses, possibly owing to the public critic of the work of the SICPS. The 2006 report claimed that unlawful police work originates from insufficient education on rights and freedoms of citizens and from awareness that use of means of coercion is still the most efficient way of extracting confession or securing evidence, also noting the persisting practice of non-proportional use of means of coercion by police officers and the unprofessional work of the SICPS.¹²

10. The 2006 EU report on the progress of Macedonia, noting that incidents of ill-treatment continued to occur, particularly during arrest and detention, highlighted the need of strengthening mechanisms for investigating degrading treatment, including the co-operation between the Ombudsman and the Ministry of Interior.¹³

⁸ Report to the Government on the visit to Macedonia carried out by the CPT from 12 to 19 July 2004, Strasbourg, 15 November 2006, CPT/Inf (2006) 36, § 11.

⁹ Report to the Government on the visit to Macedonia carried out by the CPT from 15 to 26 May 2006, Strasbourg, 13 February 2008, CPT/Inf (2008) 5, § 7.

¹⁰ Helsinki Committee for human rights in the R. of Macedonia, Annual report 2004 (<http://www.mhc.org.mk>).

¹¹ Helsinki Committee for human rights in the Republic of Macedonia, Annual report 2005.

¹² Ombudsman, Annual reports 2004, 2005, 2006 (<http://www.ombudsman.org.mk>).

¹³ European Commission, Macedonia 2006 Progress Report, Brussels, 08.11.2006, SEC (2006)_1387.

2.1.2 Minorities problems and armed conflicts

11. The 1999 Concluding Observations of CAT recognized the importance of the issue of securing investigation and prosecution for ill-treatment, with a special emphasize on cases affecting ethnic minorities as alleged victims. The ill-treatment of members of ethnic minorities by law enforcement officials and the follow-up of the respective cases gave raise to "concerns at the apparent lack of will by the authorities to thoroughly and impartially investigate allegations of police ill-treatment and torture and to bring suspected perpetrators to justice".¹⁴ One source noted that the excessive use of force and inappropriate treatment by the police in the arrest and detention of persons belonging to the Roma ethnic community is of specific concern,¹⁵ while another source placed allegations on police harassment of Roma in the context of possible pattern of societal discrimination.¹⁶

12. Allegations and reports of ill-treatment by police increased during the armed conflict in 2001 between Governmental forces and armed group of ethnic Albanians known as National Liberation Army (NLA).¹⁷ The delegation of CPT during its October 2001 visit collected information from a variety of sources concerning ill-treatment, or even torture, allegedly inflicted upon persons deprived of their liberty by security forces under the authority of the Ministry of the Interior and, in some cases, police reservists.¹⁸

13. The Ohrid Framework Agreement, which ceased the 2001 armed conflict, also anticipated constitutional changes that enabled increased inclusion of ethnic Albanians in State bodies. Four years later the European Commission stated that "effective and timely implementation of the police reform, including the relevant provisions of the Ohrid Framework Agreement, remains crucial, also for inter ethnic trust and further stability in the country" and that "trust on the part of all communities has improved, notably thanks to the first results achieved in the police reform and, in particular, the establishment of mixed police patrols, ... still, there are parts in the country in former crisis regions where police must refrain from taking routine activities with a view of avoiding possible escalation."¹⁹ Even nowadays police actions in such regions provoke concerns, regardless legitimacy of such actions.²⁰

2.2. Situation of human rights defenders

14. Article 24 paragraph 1 of the Constitution stipulates that "Every citizen has a right to submit petitions to state and other public bodies, as well as to receive an answer." Article 50 paragraphs 2 and 3 of the Constitution further stipulate: "Judicial protection of the legality of

¹⁴ Amnesty International, Continuing failure by the Macedonian authorities to confront police ill-treatment and torture, 2003, EUR 65/008/2003.

¹⁵ Helsinki Committee for Human Rights of the Republic of Macedonia Annual Report 2002, Para 4, (http://www.mhc.org.mk/eng/a_izveshtai/a_2002gi.htm).

¹⁶ The U.S. Department of State 2001 Country Report; and reports covering consequent years as well.

¹⁷ The NLA was also involved in threatening civilians through expulsions, kidnappings, and destruction of personal property, but such abuses are not analysed here as the report aims to analyse implementation of CAT by the State. However, it should be mentioned that such crimes (with few exceptions) have not been processed after the 2002 election, following which a number of former NLA leaders became members of the Parliament. Recently the Prosecution of the ICTY decided to give up of prosecuting these cases and to hand them over to the Macedonian authorities.

¹⁸ Report to the Government on the visit to Macedonia carried out by CPT from 21 to 26 October 2001, 16 January 2003, CPT/Inf (2003) 03.

¹⁹ Commission of the European Communities, Analytical report for the Opinion on the Application from Macedonia for EU membership, Brussels, 9 November 2005, SEC (2005) 1425, {COM (2005) 562 final}

²⁰ E.g., the police intervention in the village of Brodec gave a raise to concerns expressed by few sources: Amnesty International, "Amnesty International calls for investigation into police killings", 11 September 2007; Macedonian Helsinki Committee, Fact Finding Mission concerning the police action in the village of Brodec on 7 November 2007 (<http://ww.mhc.org.mk>).

individual acts of state administration, as well as of other institutions carrying out public mandates, is guaranteed. A citizen has the right to be informed on human rights and basic freedoms as well as to actively contribute, individually or jointly with others, to their promotion and protection." The implementation of the Law on Freedom of Information is often hindered because of refusal of some agencies to provide information (e.g. the SICPS).²¹

15. The overall effectiveness and impact of the human rights defenders' community is satisfactory, even though there are not many NGOs truly devoted in the field of human rights protection.²² Certain developments were achieved through involvement of NGOs' donors, but this fact hardly speaks in favour of the strength of the domestic NGOs, which are unable to pursue their goals if their intended actions do not match donors' priorities. Good practices also include co-operation of NGOs with the Ombudsman's office,²³ willingness of the Ministry of Interior to discuss general human rights issue in the context of the work of the police (the "MINOP" group²⁴), publication and dissemination of human rights brochures etc.²⁵

16. Obstacles towards effective and sustainable work of the human rights defenders' community include lack of free legal aid act and serious deficiencies in its draft form (since it excludes anyone else apart from Bar Chamber members from the possibility to seek remuneration for provided legal service), lack of efficient and transparent mechanisms for prevention and protection of human rights etc.²⁶ There are substantial gaps between legal provisions and practice, considerable lack of political will from a part of authorities to improve the overall application of the rule of law,²⁷ especially in cases of alleged ill-treatment by police officials. Having in mind the societal momentum, one should not have expectations that civil society and in this context HRD might produce a breakthrough in the matter. And there are lesser and lesser HRD that are ready to put into question their and theirs' family condition and even lives for it.

17. In a report on her 2007 Mission to Macedonia, issued a year later, the Special Representative of the Secretary General on the situation of human rights defenders (HRD) evaluated progress and challenges for HRD in the four-year period between the first and her last visit. She observed a lack of sufficient capacities of defenders to work on monitoring and protection, additionally emphasized by the insufficient mechanisms (absence of a transparent complaint procedure that encourages impunity), as well as by lack of access to information in many crucial areas, such as violations committed by the police. Thus, she recommended that the established co-operation among various bodies (the circulars of the Ministry of Interior instructing the police to collaborate with the Ombudsman) should be further improved.²⁸

²¹ Ombudsman, Annual report 2005, p. 2 (<http://www.ombudsman.mk/default.aspx?cId=104&Lan=MK>)

²² The Civil Society Research Center (CSRC) - providing free legal assistance to refugees and persons wishing to apply to the European Court of Human Rights; the NGOs working in the Human Rights Support Project provide free legal advice to victims of police abuses; the Organization for Emancipation, Solidarity and Equality "ESE" focuses on gender issues; the First Children Embassy Medjashi is specialized on the rights of the child; the coalition of "All for Fair Trials" monitors trials in the domestic courts, the Helsinki Committee for Human Rights in the Republic of Macedonia monitors the human rights situation in the country, prepares monthly/annual reports and analyses, etc.

²³ Ten years ago CSRC contributed to the promotion of the newly established Ombudsman office by including the Ombudsman into the CSRC's 'valet' card "Citizens, do you know your rights?", and providing 50,000 valet cards for the Ombudsman's needs (see the US State Dpt. Report 1999).

²⁴ CSRC participated in the work of the MINOP group from its establishment in the framework of the OHCHR's 5-year technical cooperation program (also involving Government as a third party).

²⁵ In 2003 CSRC published a Pocket guide for police and delivered 13,000 copies to MoI officials.

²⁶ Analysis of CSRC in response to the Questionnaire of Special Representative of the UN SG on the question of human rights defenders, Hina Jilani, 2005, p. 5.

²⁷ *Ibid.*, p. 6

²⁸ Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Hina Jilani, Addendum, Mission to Macedonia, 3 March 2008, A/HRC/7/28/Add.4

2.3. Competence and practice of some domestic bodies

2.3.1. Legal possibilities available to victims to seek redress

18. According to Article 50 paragraph 1 of the Constitution, every citizen may refer upon protection of the freedoms and rights as prescribed with the Constitution before the courts and before the Constitutional Court of the Republic of Macedonia, in a procedure based on the principles of priority and urgency. Victims who sustained a minor injury (established by a doctor) are entitled to bring a private criminal lawsuit (Article 48 LCP) against the responsible law enforcement official(s), while those who sustained more severe injury should bring criminal charges to the Public Prosecution office (Articles 49 and 143 LPC), which is entitled to request investigation from the investigating judge. On the basis of the outcome of the investigation, the competent Public prosecutor (i.e. of one of his deputies actually involved as a prosecutor in a particular case) is entitled to submit indictment against a certain person, or to reject criminal charges, informing an alleged victim on the possibility of taking over prosecution as a subsidiary plaintiff. If criminal proceedings are instigated, an alleged victim is entitled to pledge for sanctioning of accused persons. Following imposition of a sanction against perpetrator of a criminal offence, the competent criminal court refers victims who have sought damages to pursue the procedure before a civil chamber of (usually) the same court. There is nothing to prevent victims to instigate civil proceedings independently of possible instigation or of the outcome of the criminal proceedings, yet chances of winning such a case without criminal punishment of an offender are quite low and this should not be considered as a reasonable, and even less, as an obligatory option. Therefore, resort to a civil lawsuit is practically ineffective remedy,²⁹ which has been confirmed by the European Court of Human Rights in several key admissibility decisions, rejecting objections by the Government.³⁰

2.3.2. Competence and practice of the Public Prosecution Office and regular courts

19. According to Article 106 paragraph 1 of the Constitution, the Public Prosecution Office is competent to prosecute perpetrators of criminal offences and to undertake other measures prescribed by law (including measures of protection of human rights and freedoms).³¹ The Public Prosecutor of the Republic of Macedonia is elected to a 6-year term of office by the Parliament and dismissed by it (Article 106 paragraph 3 of the Constitution), upon a proposal from the Government (Article 91 line 12 of the Constitution).³² According to Article 5 paragraph 1 of the Law on courts, protection of human rights and freedoms falls in the competence of courts, unless it is specified that the Constitutional court is competent to provide such a protection. The manner of election of judges by the Parliament to indefinitely long term of office, upon proposal by the State Judicial Council was changed few years ago toward further increase of the role of the latter in the election process. Both the Public Prosecution office and judiciary were criticized over the previous years for failing to timely bring alleged perpetrators of crimes before justice - a task possibly hindered by external pressures.

²⁹ CSRC, Effectiveness of domestic civil remedies for protection of the right under Article 3 of ECHR, Analysis considered by the European Court of Human Rights on the hearing of 19 January 2006.

³⁰ *Jasar v. Macedonia*, appl. 69908/01, 11 April 2006 (dec.); *Dzeladinov v. Macedonia*, appl. 13252/02, 6 March 2007 (dec.); *Sulejmanov v. Macedonia*, appl. 69875/01, 18 September 2006 (dec.).

³¹ Law on the Public Prosecution office, Official gazette no. 150/07/2007, Article 5 paragraph 1.

³² In practice, each State Public Prosecutor ever since 1990's was a choice of the ruling political party and each party replacing the previous one immediately proposed a new State Public Prosecutor, electing him through the majority in the Parliament.

20. The statement from 2001 that "judiciary is generally weak and subjected to political influence and corruption ..." ³³; was perhaps still relevant in 2005 for the president of the Judicial Council to be concerned that "the judicial independence is threatened by the manner judges are elected and released ...", ³⁴ Several years ago the Council's Office was visited by police officers who allegedly intended to make a pressure towards sanctioning a judge who has released a person suspected by the police. A former member of the Parliament in the period 2002-2006 from the political party on power at present, in a statement broadcast on a national television channel said: "Nowadays, the judges are pretty dependant on the Parliament and work pursuant to the directive by the ruling party". ³⁵ And last, but not least, the former Public Prosecutor of the Republic of Macedonia unambiguously alluded to alleged pressures by the political parties, publicly stated: "I am the last fool to take the function of a Public Prosecutor. There shall be no another one!" ³⁶ The current president of the Supreme Court of R. Macedonia, at the thematic discussion for the government strategy on reform in the judiciary prior to its adoption: "We should put end to the politics in the judiciary. Everything else is nonsense." ³⁷ Further on, answering to a journalist question "What is the way to reduce the possibility for influence over the judges?", he ascertained the following: "A systematic protection must be established. There are guarantees for independence and integrity of the judges, but that is not enough". ³⁸ In order to provide safeguards against supremacy of politics over judiciary, the Judicial Council of the Republic of Macedonia became entitled to elect and dismiss judges, ³⁹ and Academy for training of judges and public prosecutors started its work. ⁴⁰

2.3.3. Competence and practice of the Administrative court and the Constitutional court

21. By virtue of the new Administrative Law adopted in May 2006 and applicable as of May 2007, ⁴¹ an Administrative court established in November 2007 replaced the Supreme court in deciding upon lawsuits lodged against second instance administrative decisions, including those of the Ministry of Interior (MoI). Even though examination of claims of torture or ill-treatment inflicted by law enforcement officials or by other persons falls in the competence of ordinary courts, the Administrative court has, *inter alia*, an important task of adjudicating lawsuits of refugees who fear torture or ill-treatment in their country of origin. Four months after its establishment, the court was solving less than 1 case per day, partly owing to lack of type-writers and associate staff. ⁴²

22. Claims of ill-treatment fall outside jurisdiction of the Constitutional Court, but an alleged victim claiming violation of his rights (such as the right to psycho-physical integrity) on discriminatory ground is obliged to submit a request for protection of a right or freedom to

³³ US State Department (Bureau of Democracy, Human Rights and Labour, 4 March 2002), Country reports on human rights practices 2001 - Macedonia, (<http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8293.htm>).

³⁴ "Vreme", 19 February 2005 (www.vreme.com.mk).

³⁵ "A1" TV-Daily, 5 February 2005 (www.a1tv.com.mk).

³⁶ "Vest", 14 September 2005, The last fool has no intention to resign, (www.vest.com.mk); "Rule of Law - Major Misperception", "Dnevnik" 22 July 2006 (www.dnevnik.com.mk).

³⁷ "Dnevnik". Interview with the President of the Supreme Court: "Stop for the Politics in the Judiciary", 18 December 2004,

³⁸ "Dnevnik", 26 December 2005

³⁹ Law on courts, Official gazette of the Republic of Macedonia, no. 58/06.

⁴⁰ Law on Academy of judges and public prosecutors, Official gazette of the Republic of Macedonia, no. 13/06.

⁴¹ Official gazette of the Republic of Macedonia, no. 62/06.

⁴² "Vest", 7 March 2008, Administrative judges do not solve even a case per day (<http://www.vest.com.mk>). In addition, recently a substantial delay has been encountered in the work of the second instance Governmental Commission in charge of deciding upon appeals against decisions of the Section for Asylum.

the Constitutional Court (Article 110, line 3), as a prerequisite for eventually pursuing the claim of discrimination in conjunction with ill-treatment.⁴³ CSRC is not aware of any decision of the Constitutional court establishing a violation of an individual right upon so-called request for protection of a right or freedom protected by the Constitution.

2.3.4. Competence and practice of the Ombudsman

23. The Ombudsman of the Republic is protecting constitutional and legally prescribed rights of citizens and all other persons which have been violated by acts, activities and omissions of State bodies or other bodies and organizations with public authorizations and is taking actions and measures for the protection from non-discrimination and proportional representation of ethnic minorities in the State bodies, local self-government, public organizations and services (Article 1 of the Law on Ombudsman). For the purpose of examination of a complaint, the Ombudsman may seek necessary explanation, enter official premises and make immediate insight in cases and affairs of their competence, to call in an interview another official to provide certain information, to seek for an opinion by experts etc. (Article 24). The State bodies are obliged to co-operate with the Ombudsman, who is bound to keep the State and official secret in a legally prescribed manner (Article 27). The Ombudsman may visit and inspect prisons without announcement or approval and talk to persons deprived of liberty without supervision of official persons (Article 31). If the Ombudsman has established that constitutional and legally prescribed rights have been violated, he may issue recommendations, proposals, opinions and indications for the manner of removing the established violations; to suggest reopening of a certain legal procedure, to submit initiative for instigation of a disciplinary proceedings or to submit a request to the Public Prosecutor to instigate criminal procedure for the purpose of determination of penal responsibility. (Article 32).

2.3.5. Competence and practice of the Sector for Internal control and professional standards

24. The Sector for internal control and professional standards is competent *inter alia* to declare unlawful the work and overstepping of authorizations of police officers and violations of human rights in the course committed of performance of duties, and it also assesses whether use of force by police officers has been justified in particular circumstances of each case. The SICPS works upon receiving complaints from citizens, their legal representatives or non-governmental organizations, requests from employees of the Ministry of Interior, and orders of the Minister (Article 4 of the SICPS's Rulebook). The person who has submitted the complaint should receive information within 30 days, or explanation on the reasons of delay after expiration of the 30-day limit. (Article 17 of the SICPS's Rulebook). If the complaint was well-founded, the SICPS may propose dismissal of the responsible law enforcement officials. In spite modification of the organizational background of the sector and publication of its 2007 report on the MoI's web site (for the first time ever), the Ombudsman and human rights NGOs never stopped perceiving the SICPS as a body which failed to impartially and properly perform the responsible role of controlling and, where appropriate, sanctioning law enforcement officials for their misbehaviour. In particular, the NGOs working in the Human Rights Support Project (HRSP) commented that the provision of Article 17 paragraph 3, which states that processing of cases by the SICPS may last up to 6 months constitutes a possibility of deceiving the justice, because the time limit of 6 months is stipulated only for violations committed by law enforcement officials, while on the other hand the Law on labour disputes prescribes that after 6 months from the day of committing a breach of the working discipline imposition of any sanction would be time barred. HRSP also objected the lack of detailed explanation of the procedure upon received anonymous complaints and the lack of any provision in the new Rulebook of the SICPS (we well as the formerly valid one) on the

⁴³ *Sulejmanov v. Macedonia*, appl. 69875/01, 18 September 2006 (dec.).

right to alleged victims to be advised on their rights in the procedure. The HRSP noted that this body is lacking independence and impartiality (as being hierarchically linked to the Minister of Interior in 2007), it is not transparent (because complainants are not always informed on the measures undertaken against the respective police officer) and its non-decisive policy (mild sanctions) contributes to impunity of law enforcement officials. HRSP welcomed the fact the SICPS has left the practice of giving strange reasons to its negative decisions, yet regretted the fact that in 2007 there was increase of the number of cases in which the SICPS concluded that there were no sufficient evidence to decide on the respective police officer's responsibility.⁴⁴ On the other hand, the US State Department in its 2007 report concluded the following: "The Unit's officials were slow to complete investigations and bring charges in outstanding human rights cases from previous years. Nevertheless, international observers noted continued improvements in the Interior Ministry's response to new cases of individual police misconduct and more frequent and consistent disciplining of officers found guilty."⁴⁵

⁴⁴ Human Rights Support Project, Police and Human Rights, Annual report 1.11.2006-01.11.2007.

⁴⁵ The U.S. Department of State 2001 Country Report for Macedonia, 8 March 2002.

3. RELEVANT LEGAL BACKGROUND

3.1. International legal background

3.1.1 Legal effects of ratified treaties

24. Article 8 line 1 of the Constitution stipulates respectively that fundamental values of the constitutional order include "rights and freedoms of a citizen recognized by the international law and determined in the Constitution". Provisions of several major human rights treaties are essentially incorporated in the Constitution, such as those regarding the right to life (Article 10), the prohibition of torture, inhuman or degrading treatment and punishment (Article 11), the right to liberty (Article 12) etc. Since these rights and freedoms are characterised as fundamental values of the constitutional order, from a substantive point of view these treaties can be considered as legal acts with a constitutional significance. Further, direct legal effect (application) of ratified international treaties is explicitly recognized by Article 2 paragraph 1 of the Law on Courts, which stipulates the following: Courts adjudicate and base their decisions on the Constitution, the laws and the international treaties ratified in accordance with the Constitution."⁴⁶

25. Article 118 of the Constitution prescribes that "international treaties ratified in accordance with the Constitution are an integral part of the domestic legal order and cannot be changed by law". The above provision defines their legal effect and hierarchy of ratified international treaties in the domestic legal system. The first part of the sentence suggests that by virtue of ratification treaties are equalized with domestic laws, thus the former should be directly applicable as well. Regrettably, instances of direct application of international human rights treaties (especially if a certain legal standard is not explicitly covered by a domestic piece of legislation) are hardly known, even in situations when a party in procedure has invoked a particular treaty-based right. Certain domestic judicial and administrative authorities to some extent still perceive relevant international human rights instruments as an 'alien body' intruding into the domestic legal order, while many citizens refer to these instruments mainly as a means of pursuing their legal struggle out of the reach of the domestic legal order. The second part of Article 118 indicates the place of ratified international legal treaties in the domestic legal order. They have weaker legal effect than the Constitution (as their ratification is subject to a Constitutional procedure) and stronger legal effect than the laws (because ratified treaties cannot be amended or derogated by laws).

26. Article 110, lines 1-2 prescribe that the Constitutional court is competent to evaluate compatibility of laws to the Constitution and compatibility of other regulations and collective agreements to the laws and the Constitution. However, there is no explicit provision regarding the possibility of evaluation compatibility of laws and regulations to the ratified international treaties (the latter having stronger legal effect, as explained above), which in practice resulted in persistent refusal of the Constitutional court to determine issue of such a possible contravention. Even though the list of fundamental values of the Constitutional order includes "respect for generally recognised norms of international law" (Article 8, line 11), and possible failure of providing citizens with effective enjoyment of a treaty-based right due to one of the above said reasons (such as legislative gap) might *de facto* constitute a disrespect of, for example, the norm of complying to international obligations in a *bona fide* manner. Therefore, any future procedure of amending the Constitution must take this issue as a matter of utmost importance and priority.

⁴⁶ Official gazette of the Republic of Macedonia, no. 58/06.

*3.1.2. Some UN human rights instruments
signed and/or ratified / accessed / succeeded by Macedonia⁴⁷*

27. Macedonia became member of the United Nations Organizations in 1993. The same year it made a decision to succeed to international legal documents on fundamental human rights and freedoms adopted by the UN Organization.⁴⁸

<i>Treaty</i>	<i>Status</i>	<i>Signat. date</i>	<i>Rec. of Instr.</i>	<i>EIF date</i>
CAT-Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	Succession		12/12/1994	12/12/1994
CAT-OP-Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment	Signature only	01/09/2006		
CCPR-International Covenant on Civil and Political Rights	Succession		18/01/1994	17/09/1991
CCPR-OP1-Optional Protocol to the International Covenant on Civil and Political Rights	Succession		12/12/1994	12/03/1995
CCPR-OP2-DP-Second Optional Protocol to the International Covenant on Civil and Political Rights	Accession		26/01/1995	26/04/1995
CEDAW-Convention on the Elimination of All Forms of Discrimination against Women	Succession		18/01/1994	17/02/1994
CEDAW-OP-Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Ratification	03/04/2000	17/10/2003	17/01/2004
CERD-International Convention on the Elimination of All Forms of Racial Discrimination	Succession		18/01/1994	18/01/1994
CESCR-International Covenant on Economic, Social and Cultural Rights	Succession		18/01/1994	18/01/1994
CRC-Convention on the Rights of the Child	Succession		02/12/1993	17/09/1991
CRC-OP-AC-Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Ratification	17/07/2001	12/01/2004	12/02/2004
CRC-OP-SC-Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	Ratification	17/07/2001	17/10/2003	17/11/2003
CED-Convention for the Protection of All Persons from Enforced Disappearance	Signature only	06/02/2007		
Convention relating to the Status of Refugees	Succession		18/01/1994	18/01/1994

⁴⁷ Source: <http://www.unhcr.ch/tbs/doc.nsf/Statusfrset?OpenFrameSet>. Few rows were deleted from the table available on the above link (as being irrelevant for this report) and some new were added. The places of the two columns in the right part [the date of receipt of [ratification] instruments (Rec. of Instr.) and the date of entry in force (EiF date)] are interchanged for reasons of convenience.

⁴⁸ Official gazette of the Republic of Macedonia, no. 57/93.

3.1.3. CoE human rights instruments signed and/or ratified by Macedonia.

28. Macedonia became member of the Council of Europe (CoE) in 1995 and harmonised its internal legislation to the CoE's treaties according to the obligations undertaken by virtue of the membership.

<i>Treaty</i>	<i>Status</i>	<i>Signat. date</i>	<i>Rec. of Instr.</i>	<i>EIF date</i>
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Ratification	14/06/1996	06/06/1997	01/10/1997
Protocol 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Ratification	14/06/1996	06/06/1997	01/03/2002
Protocol 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Ratification	14/06/1996	06/06/1997	01/03/2002
Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	09/11/1995	10/04/1997	10/04/1997
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	14/06/1996	10/04/1997	10/04/1997
Protocol 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	14/06/1996	10/04/1997	10/04/1997
Protocol 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	14/06/1996	10/04/1997	01/05/1997
Protocol 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	14/06/1996	10/04/1997	01/07/1997
Protocol 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	09/11/1995	10/04/1997	01/11/1997
Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	04/11/2000	13/07/2004	01/04/2005
Protocol 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	04/11/2000	13/07/2004	01/11/2004
Protocol 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms	Ratification	15/09/2004	15/06/2005	Not in force yet
Council of Europe Convention on Action against Trafficking in Human Beings	Signature only	17/11/2005		Not in force yet

3.2. Domestic provisions guaranteeing human rights of detained persons

3.2.1. Rights of detained persons in pre-trial proceedings

29. Article 12 §1 and 2 of the Constitution of the Republic of Macedonia stipulates that freedom of man is inviolable and that no one's freedom may be restricted, except by a court decision and in cases and in procedure determined by law. The Constitution amended as of 1998 by the Amendment III in its Article 12 paragraph 5 provides the following: "Detention until the indictment may last up to 180 days from the day of commencement of the detention, on the basis of a court decision. Following submission of the indictment, detention shall be extended or determined by the competent court in a procedure determined by law." The above provision is reflected in the Law on Criminal Procedure (LCP): "The total duration of pre-trial detention, including the time of duration of deprivation of freedom before the decision on the detention has been made, shall not exceed 180 days. With the expiry of this time, the detainee

shall be released immediately." (Article 205 §4).⁴⁹ The provision of Article 1, §2 of the Law on criminal procedure according to which rights and freedoms of the accused and of other persons may be limited only to an extent necessary and under conditions proscribed by this Law is particularly further elaborated by Article 198 LCP,⁵⁰ according to which the duration of pre-trial detention must be set to a shortest period that is deemed necessary and all agencies participating in the criminal procedure and agencies providing legal assistance are obliged to act in the most urgent manner if the accused is detained. The above provision experienced controversial implementation, since the judiciary has been strongly criticised on account of rather automatic or even unbalanced resort to the measure of pre-trial detention.⁵¹

30. A person can be detained on the basis of a written order issued by the competent court for the purpose of bringing him/her to premises of police or other authority, from 6 am to 10 pm, unless there are exceptional circumstances (Article 46 of the Law on police). According to Article 199 LCP,⁵² detention may be ordered if there is a grounded suspicion that a person has committed a criminal act, if: (a) The person is hiding, the identity cannot be determined or there are other circumstances indicating the danger of escape; (b) There is justified fear that he/she will destroy the evidence of the crime or certain circumstances indicate that he/she will obstruct investigation by influencing witnesses, accomplices or conceivers; c) Specific circumstances justify the fear that he/she will commit crime again, or he/she will complete the attempted crime or will commit crime with which he/she threatens. The statement in paragraph 22 of the Government's report regarding obligatory detention should be updated by the information that on 31 May 2006 the Constitutional court abolished [then] Article 185 paragraph 2 and Article 185 paragraph 1 in the part "except when the detention is obligatory".⁵³ The detainee may appeal within 24 hours against the decision of the competent investigative judge and the chamber of the court must decide within 48 hours (Article 206).⁵⁴

3.2.2. Rights of detained persons in trial proceedings

31. Following submission of indictment, the competent court decides on extension of detention, which may last one year at most for crimes for which the prison sentence of 15 years may be delivered, and two years at most for crimes for which a life sentence may be delivered. The chamber deciding on detention is obliged even without proposal by the parties, upon expiry of 30 days after legal effectiveness of the last detention decision, to review whether the reasons for detention still persist and to make a decision on cancellation or extension of detention. If the accused escapes detention, the prescribed periods start over again (Article 207 LCP).⁵⁵

32. Execution of detention measure may not hurt personality and dignity of the accused and only restrictions necessary for preventing escape or a deal that may harm successful conduct of the proceedings may be applied. (Article 209 LCP). Detainees have the right to 8-hour uninterrupted rest within 24 hours, the right to stay in open air at least 2 hours a day, the right to provide food at their expense, wear their clothes and use their bed linen, and may buy books, newspapers and other items to meet their regular needs, if enjoyment of these rights is not interfering with the successful conduct of the proceedings (Article 210 LCP), as well as

⁴⁹ The duration of the pre-trial detention was formerly regulated by Article 189 of the LCP amended as of 2004, that was applicable before adoption of the March 2005 Amendments.

⁵⁰ Article 183 on the Law on criminal procedure amended as of 2004.

⁵¹ Such claims were often raised in the context of prolonged detention and, allegedly, different criteria have been applied depending on the background of accused persons.

⁵² Article 184 on the Law on criminal procedure amended as of 2004.

⁵³ Decision no. 34/2005 of 31 May 2006, Official gazette of the Republic of Macedonia, no. 75/06.

⁵⁴ There was a similar provision labelled as §190 before the 2005 Amendments to LCP.

⁵⁵ There was a similar provision labelled as §191 before the 2005 Amendments to LCP.

the rights to be visited by their close relatives, physicians and other persons, to correspond with persons out of the prison with the knowledge and under supervision of the body conducting the investigation (unless enjoyment of these rights is harmful for the conduct of the proceedings), to send applications, pleas and appeals (Article 211 LCP) etc. The investigating judge, i.e. the Chairman of the Chamber, may pronounce disciplinary punishment-restriction on visits, which may not relate to the communication between the detainee and the counsel. (Article 212).⁵⁶

3.2.3. Rights of imprisoned persons

33. The Law on execution of sanctions prescribe that the persons, against whom sanctions are being applied are treated humanely, by respecting their personality and dignity, for the purpose of protecting their psycho-physical and moral integrity. Any form of torture, inhuman or degrading treatment or punishment is prohibited. Its Article 184, paragraph 1, and article 185 of the Law on the Execution of Sanctions provide for instigation of penal or disciplinary proceedings in case of unlawful use of any means of coercion or firearms. Articles 163-167 of the Law stipulate that the convicts have rights to submit legal remedies, petitions and other requests to the competent organs and to receive answers from them.

3.3. Domestic provisions restricting human rights

3.3.1. Law on police

34. The Law on Police was adopted on 30 October 2006 ("Official Gazette of the Republic of Macedonia" no. 114/2006, published on 3 November 2006). The general provisions of the Law (Part I) *inter alia* stipulate that the police respect and protect rights and freedoms of citizens guaranteed by the Constitution and ratified international treaties. Part II describes the competence of the police to protect life, personal security, property, freedoms and rights, to prevent crimes and to find perpetrators, to maintain public order, to regulate traffic on roads, to control movement and residence of aliens, to provide help to citizens in case of need, to secure certain persons and objects etc. Article 8 of the Law entitles citizens who claim that their rights have been violated (e.g. by application of means of coercion - Article 79) to submit a complaint to the police, which is obliged to provide information within 30 days from the day of its receipt regarding measures that have been taken. However, the law neither explains the internal procedure, nor it provides for any judicial control of such decisions.⁵⁷ In practice employees of the Ministry of Interior who have been involved in ill-treatment are usually punished by the internal bodies with a monetary fine.

35. Article 9 stipulates that the Minister of Interior submits to the Government and to the Parliament and its bodies a report at least once a year on the work of the Ministry of Interior. Article 10 stipulates that the police provide information upon requests to citizens or other persons and bodies for issues of interest to applicants, also stipulating that certain classified information would not be delivered. In practice the Police refused to effectively cooperate with the Ombudsman by failing to provide the requested information.⁵⁸ The enjoyment of the right to complaint is undermined by the fact that complaints are examined by the MoI's Sector for Internal Control, which is not independent and transparent body (it is subjected to a control by the Minister). For example, referring to its experience with this MoI unit following

⁵⁶ Article 196 paragraph 1 of the Law on Criminal procedure (LCP) amended as of October 2004, stipulating restriction of visits is now labeled as Article 212 of the LCP amended as of March 2005.⁵⁶

⁵⁷ Helsinki Committee for Human Rights of the Republic of Macedonia, Analysis of the Law on Police, 2005.

⁵⁸ Ombudsman, Annual report 2005, p. 2.

submitted initiatives for instigation of disciplinary proceeding, the Ombudsman noted four years ago that the "Sector examines allegations of citizens and of the Ombudsman in a partial and improper manner, resulting in inappropriate sanctioning of police officers who have violated constitutional and legal rights of citizens ... the Sector after completing investigations contacts the Ombudsman to explain that no official authorizations have been violated without presenting grounds for such a conclusion."⁵⁹ Therefore, CSRC proposes involvement of civil society representatives in the process of reviewing claims of police violence. Alternatively, there could be a provision that any Ombudsman's requests for information regarding certain cases of alleged torture and the MoI's response must be forwarded *ex officio* to the Public Prosecutor.

36. Article 50 paragraphs 2 and 3 stipulate that a police officer may hold a person who has been caught in committing a minor offence or who threatens public order, providing that there is such a need and in a period not exceeding 12 hours. A similar provision of Article 29 § 1 of the Law of internal affairs has already been abolished by the Constitutional court.⁶⁰

37. Even though relevant standards for law enforcement officials suggest that a person convicted of a serious crime cannot be a police officer,⁶¹ there is no such a provision in the law, apart from the provision of Article 95 paragraph 5, according to which the person applying for employment in the Ministry of Interior must not be banned (by a court order) to perform a profession, activity of duty. The above is due to the fact that the Constitutional Court has abolished a number of provisions in various laws, including Article 48 paragraph 1 item 4 of the Law on internal affairs, hereby preventing automatic application of effects of a criminal judgment which could not serve as a basis for banning employment if no court prohibition has been imposed on a person.⁶² It appears that the courts (and not the legislature itself) are ultimately responsible to assess the need of imposing ban on employment in law enforcement agencies to those perpetrators for whom such a 'security measures' shall be necessary and appropriate.

38. "Informative talks", which were subject to many criticism over the past years because of their abuse by the police⁶³, found their place in Article 43 of the Law on Police, which stipulates the following: 1. The police is authorized to summon in writing citizens for the purpose of gathering information necessary for conducting police affairs. 2. The summons shall contain: name and surname of the summoned person, title and address of the seat of the organizational unit of the police where a person is summoned, reasons for summoning, time and venue of summoning, as well as advice on the right to counsel in police procedure, and consequences in case of failing to respond to the summons. 3. The summoned person can be

⁵⁹ Ombudsman, Annual report 2005, p. 27.

⁶⁰ Decision U.br. 229/97 of 3 June 1998, Official gazette of the Republic of Macedonia, no 27/98.

⁶¹ Helsinki Committee for Human Rights of the Republic of Macedonia, Analysis of the Law on Police, 2005.

⁶² Decision 212/00 of 23 May 2001, Official gazette of the Republic of Macedonia no. 43/01; decision 26/02 of 10 April 2002, Official gazette of the Republic of Macedonia no. 26/02, decision 98/03 of 17 December 2003, Official gazette of the Republic of Macedonia, no. 84/03.

⁶³ US State Department (Bureau of Democracy, Human Rights and Labour, 8 March 2008), Country reports on human rights practices 2007 - Macedonia: "There were reports that police continued to call suspects and witnesses to police stations for "informative talks" without informing them of their rights." US State Department (Bureau of Democracy, Human Rights and Labour, 28 February 2005), Country reports on human rights practices 2004 - Macedonia: "there were several reports of police detaining individuals for "informative talks," although according to official information, all individuals were either released within 24 hours, or taken to an investigative judge for further proceedings. For example, in May, police in Prilep brought a group of young Roma to the police station for "informative talks," stating that there was an increase in the percentage of Romani youths using narcotics and that the youths were brought in as a preventative measure".

forcefully apprehended only by virtue of a court order and when he/she obviously avoids to respond to properly delivered summons in which he/she has been warned on the consequences of forceful apprehension and when he/she shall not justify his/her failure to arrive. 4. The person who shall respond to the summons and who refuses to provide information shall not be summoned again for the same reasons. 5. The person summoned or forcefully apprehended shall be advised on his/her rights under Article 34 of this Law, as well on the fact that he/she is not deprived of liberty and that he/she can leave after providing or refusing to provide information. Other provisions of the Law on Police prescribe safeguards, such as the indication that summons should be delivered from 6 am to 10 pm, except in case of a risk of delay (Article 44 LP); in a verbal form as well (Article 45, §1 LP), through media (Article 45, §2 LP); and through parent or guardian when a minor is to be summoned (Article 45 §3).

3.3.2. Law on the Public Prosecution Office

39. The 2004 Law on the Public Prosecution Office was lacking safeguards against failure of the Public Prosecution office (hereinafter: "PPO") to timely process criminal charges submitted to the PPO. In the previous decade a number of crimes of torture and related ill-treatment allegedly committed by the authorities were not investigated by the prosecutorial authorities, thus some cases became time-barred, while alleged victims were (and still are) entitled to bring a subsidiary criminal lawsuit only after rejection of the criminal charges by the PPO.⁶⁴ In order to advocate for remedying this legislative imperfection, on 6 July 2007 the European Roma Rights Centre (ERRC) and the CSRC sent a letter to the highest Macedonian authorities (the Prime Minister, the Minister of Justice, the President of the Parliament, Coordinators of the Political Parties in the Parliament, Public Prosecutor and Ombudsman of the Republic of Macedonia) calling for amendments to the Draft Law on the Public Prosecution, which were necessary in order to eliminate the existing shortcomings with respect to the prompt and effective protection by the Public Prosecutor of citizens who are victims of a criminal offence. The letter called for the inclusion of provisions in the draft law that prescribe time limits for the Public Prosecution Office (PPO) to investigate and to inform the victims of the outcome of the investigation and reminded the Macedonian government on the obligation to create legal conditions for the timely functioning of the PPO, making it accountable to citizens who have the right to an effective legal remedy which, by definition, requires authorities to act promptly and without delay.⁶⁵ This position was reiterated by the European Court of Human Rights, which established "procedural" violation of Article 3 of ECHR in few recent cases on account of the failure of the Macedonian authorities to undertake effective investigation regarding claims of torture.⁶⁶

⁶⁴ Law of Criminal Procedure, Article 56, §§1 and 2; Article 152 §1.

"1. When the Public Prosecutor finds that there is no ground for taking prosecution for a crime prosecutable *ex officio* or when he/she finds that there is no ground for taking prosecution against someone of the charged accomplices, he/she is bound to inform the damaged party about it within 8 days and to advise him/her on the possibility of taking over the prosecution. In the same manner the court shall proceed if it made a decision on discontinuation of the procedure because of withdrawal of the Public Prosecutor from prosecution

2. The damaged party is entitled to take over prosecution, that it to pursue the prosecution within eight days from the day of receipt of the information from paragraph 1 of this Article.

... "

⁶⁵ Letter of ERRC and CSRC "The Draft Law on the Public Prosecution Office Calls for Amendments", sent by mail and fax on 6 July 2007.

⁶⁶ *Jasar v. Macedonia*, 69908/01, §§55-60, judgement of 15 February 2007; *Dzeladinov v. Macedonia*, no. 13252/02, 10 April 2008; §§69-74, in particular §73: "The inactivity of the public prosecutor prevented the applicants from taking over the investigation as subsidiary complainants and denied them

40. On 3 December 2007 the Macedonian parliament enacted the New Law on the Public Prosecution Office (hereinafter: LPPO), "Official gazette of RM no. 150/2007. The new law (like the older one as of 2004) maintains the provision that obliges the PPO to consider criminal charges (complaint) within 30 days from the day of submission (Article 39 §. 1). The LPPO also maintains that a higher PP instance can supervise the work of the lower one, inter alia, in order to establish whether there has been a delayed performance of PP duties (Article 21 paragraph 3 item 6) and entitles a higher PP to issue obligatory guidelines to the lower one, inter alia, regarding human rights protection (Article 25 §3). However, even though the 2007 LPPO maintains the former provision entitling citizens to submit various (undefined) statements and submissions to the PPO (Article 39 §1), a person claiming to be victim still does not have an effective access to a higher PP to complain in case of a total passivity of the competent PP, since there is nothing in the law regarding obligation of the PPO to respond to the complaint. The recent legislative amendment, as failing to introduce an effective legal remedy, will have no impact *pro futuro* as far as legal preconditions for protection of Article 3 ECHR rights are concerned.

access to subsequent challenges in the context of the criminal proceedings. The applicants are still barred from taking over the investigation as the public prosecutor has not yet taken a decision to dismiss the complaint (see the *Jasar* judgment, cited above, § 59)."

4. DEFINITION OF TORTURE AND CRIMINAL LEGISLATION (ARTICLE 1, 4)

4.1. Definition of torture

4.1.1. Prohibition of torture (general)

41. Article 11 of the Constitution prescribes that "The right to physical and moral dignity is irrevocable. Any form of torture, or inhuman or humiliating conduct or punishment is prohibited". The prohibition is further elaborated in Article 10 of the Law on Criminal procedure, which forbids extraction of a confession or a statement from an accused or another person participating in criminal proceedings. CSRC is not aware on case law explicitly mentioning that torture cannot be justified by any exceptional circumstances or order by a superior officer.

4.1.2. Definition of torture in the Criminal Code

42. Following the 1999 recommendations by CAT, the Republic of Macedonia has passed amendments to Article 142 of the Criminal Code, supplementing its title "Torture" by adding to it "Other cruel, inhuman or degrading treatment or punishment"; introducing incrimination of incitement of torture, as well as infliction of severe suffering in its §1; increasing the lowest legally prescribed punishment (from three months of imprisonment applicable until adoption of the said Amendments to one year) and prescribing that the maximal penalty for aggravated cases is ten years of imprisonment. The new text of the said provision is given below:

"Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"

(1) A person who while performing his duty, as well as a person instructed by an official person or based on an agreement of the official person, shall apply force, threat or some other unlawful instrument or an unlawful manner with the intention to force a confession or some other statement from a defendant, a witness, an expert witness or from another person, or will inflict on another person severe bodily or mental suffering, punishing him/her for an act he/she or a third person has committed or is suspected of having committed, or intimidating or coercing him/her to forfeit some of his/her rights, or shall cause such suffering due to any form of discrimination, shall be punished with imprisonment of one to five years;

(2) If, due to the acts stipulated in paragraph 1, the damaged party has suffered severe bodily harm or other especially severe consequences, the perpetrator shall be punished with imprisonment of 1 to 10 years."⁶⁷

Article 142 CC transposes the CAT's formulation "any act" into "force, threat or some other unlawful instrument or an unlawful manner". Instead, perhaps the word "all" should be placed instead the words "some other", or even more - it should be made clear (*argumentum a contrario*) that no "lawful" instrument or "lawful" manner, regardless its possible inclusion in a domestic law cannot serve as a justification for acts of torture. The legal definition in Article 142 uses the phrase "with the intention [to force a ...]" rather than "intentionally" [inflicted], which could be misleading in the sense that particular intentional infliction of a torture may be wrongly interpreted by a domestic court as not matching the definition in case of failing to establish an intention of causing the exact consequences referred to in Article 142?! It should be also noted that this law is using the phrase "damaged party" to denote a person affected by a criminal offence instead of using the word "victim", as prescribed elsewhere in CAT and other relevant international human rights instruments. Incrimination of causing suffering due to discrimination is welcome legislative development, but it is regrettable that Macedonia still does not have a comprehensive anti-discrimination law (not counting the Law on equal opportunities for men and women).

⁶⁷ The Amendments were published in Official Gazette of the Republic of Macedonia, no. 19/04.

The provision of Article 143 incriminates degradation of human dignity in performing duty:

"Maltreatment in performing duty

(1) A person who while performing his duty maltreats another person, intimidates or insults him/her or acts toward him in a manner degrading human dignity and human personality, shall be punished with fine or with imprisonment of up to six months."

4.2. Other legal provisions

43. The general provisions of the Criminal Code implicitly cover an attempt to commit a torture,⁶⁸ as well as various forms of complicity in committing torture.⁶⁹ The chapter 'Criminal offences in armed forces' contains a provision which disregards an order of superior officer as a possible justification for committing a serious crime or a war crime.⁷⁰ Such an explicit provision is lacking in the context of torture, apart from a vague provision that disobeying an illegal order does not constitute a criminal offence.⁷¹ Yet, Article 37 of the Codex of police ethics of 4 June 2007 prescribes that police officers must not cause, incite or tolerate any act of torture, inhuman or degrading treatment or punishment.

44. Immunity can be invoked by high ranking officials, and it can also be revoked. Several years ago the Parliament lifted the immunity of the former Minister of Interior, who was Member of the Parliament at the critical time, hereby creating a prerequisite for opening a procedure against him in relation to a case of alleged human rights abuse. The Parliament's Rules (which served as a legal basis for lifting the parliamentary immunity in the above case) were challenged by the person concerned, but the Constitutional court refused to open a procedure of evaluation whether the Rules are compatible to the Constitution and the respective laws.⁷² The Law on Amnesty stipulated that the provision for granting amnesty shall not refer to persons who have committed crimes relating to the 2001 conflict that are under jurisdiction of ICTY and for which ICTY has instigated procedure for grave breaches of the international human rights law on the former Yugoslav's territory since 1991.⁷³ Four of the ICTY's cases have been returned to the Macedonian authorities. Witnesses in proceedings

⁶⁸ Criminal Code, Article 19:

"He/she who by intention commences to commit a crime but will not complete it, shall be punished for an attempt to crime for which a legally prescribed punishment of 5 or more years can be pronounced."

⁶⁹ Articles 22-24 of the Criminal Code provide respectively that joint perpetrators of a crime are punishable with a sanction prescribed by the law; a person inciting another to commit an intentional crime shall be punished as he/she has committed the crime by himself (herself); a person helping another to commit a crime shall be punished as he/she has committed the crime by himself (herself), but he/she may be punished with a lesser punishment.

⁷⁰ Criminal Code, Article 352:

"An inferior shall not be punished if he/she has committed a crime under an order of his superior officer, provided that this order was related to the service, except if the order was directed towards committing a war crime or other serious criminal offence or if he/she knew that by obeying the order he would commit a crime."

⁷¹ Criminal Code, Article 353-b, paras. 1 and 3:

"1. An official who in the course of performing his/her duties of preventing and finding criminal offences, or maintaining public order, peace and security of the country shall not enforce or refuses to enforce an order of a superior officer to take a certain action, resulting in severe violation of rights of another person, severe violation of public order and piece or significant property damage, shall be sentenced to imprisonment from three months to three years.

...

3. There is no criminal offence if the official fails to enforce an unlawful order."

⁷² Decision of the Constitutional court of 20 September 2004, Official gazette of the R.M., no. 63/04.

⁷³ Law on Amnesty, Article 1 §4, Official gazette of the Republic of Macedonia, no. 18/02.

who might become victims of ill-treatment are protected by the Law on protection of witnesses.⁷⁴

⁷⁴ Official gazette of the Republic of Macedonia, no 38/05..

5. MEASURES TO PREVENTS ACTS OF TORTURE (ARTICLE 2)

5.1. Measures of combating torture and ill-treatment

5.1. General overview and actions taken by the highest authorities

45. In spite of some assessments regarding general respect for human rights in the country, the practice of use of excessive force on suspected and accused persons was sometimes occurring,⁷⁵ and appropriate response by the authorities was lacking. The situation in prisons and psychiatric facilities has been constantly assessed as unsatisfactory, particularly in regard to the conditions of detention.⁷⁶ Following the CPT's visit to Macedonia in November 2002, the delegation noted *inter alia* that Macedonian officials continued to resist providing information to the Committee,⁷⁷ and that the Government had failed to follow recommendations regarding informing police of previous CPT findings,⁷⁸ which failures gave raise to possible consideration of making an Article 10 statement regarding refusal to improve the situation.⁷⁹ Even though following its 2006 visit to Macedonia, the CPT welcomed the adoption of certain limited measures in response to the recommendations made by the Committee in the previous years; however, it noted that the fundamental measures required to improve the situation in, for example, the prisons and the psychiatric hospital visited were lacking. Thus, the CPT was forced to reiterate its recommendations and the possibility of making Article 10/2 statement, suggesting to the Government to invest greater efforts to tackle the systemic deficiencies, for example, in relation to the prison service and to combating impunity within the law enforcement agencies; to improve co-operation and coordination among the relevant ministries and government bodies, and a more proactive stance by prosecutors and judges.⁸⁰

46. Even though the phenomenon of police abuse is still a serious problem of the Macedonian society and the highest State authorities and highly ranked MoI officials still do not seem to have expressed [publicly and/or more often] a clear position regarding discontinuation of the practice of police abuses.⁸¹ In her statement given 10 months ago in relation to serious accusations by a citizen on severe violations on his rights, the Minister of interior stated the following: "Every accusation, if not substantiated by evidence is much closer to a false reporting [a crime],⁸² than to actual involvement of persons who are being accused, therefore you should really prove if you accuse someone."⁸³ If we accept such logic, citizens would have to prove that visible bodily injuries have been inflicted upon them, that they have been subjected to torture or that their rights and freedoms have been violated in other ways, failing which the MoI could accuse them of false reporting of a crime.⁸⁴ Another statement of a former Minister of Interior, given few years ago following Ombudsman's

⁷⁵ The U.S. Department of State 2006 Country Report on Macedonia and others.

⁷⁶ For example, in its 2005 annual report the Ombudsman concluded that with exception of two prison facilities, detained persons serve their sentences in inhuman conditions which degrade human dignity.

⁷⁷ Report to the Government on the visit carried out by the CPT from 17 to 29 November 2002, Strasbourg, 9 September 2004.

⁷⁸ *Ibid.*, p. 11.

⁷⁹ *Ibid.*, p. 12.

⁸⁰ Report to the Government on the visit to Macedonia carried out by the CPT from 15 to 26 May 2006, Strasbourg, 13 February 2008, CPT/Inf (2008) 5, § 7.

⁸¹ Human Rights Support Project, "Police and Human Rights", Annual report 1.11.2006-31.10.2007, p. 5

⁸² The full title of the crime is "false reporting of a crime", but the latter two words were not quoted by the State official.

⁸³ Statement by Gordana Jankulovska, Minister of Interior, Skopje, 11 June 2007, quoted from the Introduction to the 2007 HRSP project.

⁸⁴ Human Rights Support Project, "Police and Human Rights", Annual report 1.11.2006-31.10.2007, p. 5

involvement in processing claims concerning ill-treatment, targeted the Ombudsman's background and attempted to give a political "spice" to the response, rather than to publicly express a zero tolerance regarding ill-treatment practices.

47. The analysis below summarises some key observations regarding the practice of the bodies in charge of taking part in prevention from abuses, as well as protection and providing redress to victims. It clearly indicates common practices and even patterns (in spite missing to address some issues inherent to an alternative report, owing to lack of time due to delayed preparation of this report).

5.2. Notes on cases (including statistical data)

5.2.1. Perpetrators and places of ill-treatment

48. Ill-treatment (including torture, in some cases) by police officers usually occurs in the course of police duties. Most of the detained persons alleged that they were ill-treated in police stations, even though occurrences out of police premises are not rare (usually consisting of injuring citizens in the course of fighting). Several victims claimed that they were subjected to severe ill-treatment amounting to torture during *incommunicado* detention out of police premises.⁸⁵ Degrading treatment usually took form in the course of police procedures or as a side-effect of detention and imprisonment associated with poor conditions of detention (overcrowded cells and lack of sanitary and related facilities)

49. The circumstances under which excessive force has been applied in some cases perhaps do not match the CAT's definition of ill-treatment, yet its repeated occurrence in some cases and the severity of the ill-treatment in these or some other cases are issues of concern. In most of the cases analysed by the Ombudsman or human right NGOs in which there was not an explicit intention of extracting a confession or statement, it appears that resort to excessive force was not absolutely necessary and there are even cases in which use of force seems completely aimless and/or meaningless. Violations committed by special police forces usually consisted of use of excessive force in the course of identifying, apprehending, arresting suspects or during other police operations. Various special units were involved in ill-treatment cases, such as the "Lions" unit (engaged in security operations in 2001 and shortly afterwards being re-structured into a Unit for quick intervention), the "Tigers" unit and the "Alphas" (Alfi") unit. The latter unit, established by virtue of a Minister's decision with the aim of fighting "street" crime, was particularly criticised recently upon claims of involvement of its members into maltreatment, injuring citizens etc.⁸⁶

50. The statistical breakthrough of police officers' background registered by the HRSP is as follows: in the report issued around the end of 2005, 95 MoI officials were involved in the HRSP's cases, of whom 47 were uniformed police officers, 7 police station commanders, 12 MoI inspectors, 6 officers from the Sector for unauthorised trade and smuggling, 11 members of special police units, and 12 other officials. The percentage of involvement of various police officers in cases of alleged ill-treatment registered in the 2006 HRSP report was as follows: uniformed police officers - 58%, MoI inspectors - 27%, special units members - 10%, police stations commanders - 3%, others - 2%. In 2007 the HRSP informed that maltreatment or misconduct was done by uniformed police officers in 30 cases, police station commanders - 4 cases, inspectors of MoI - 6 cases, traffic police officers - 2 cases, "Alphas" ("Alfi") special unit - 9 cases, Unit for quick intervention (EBR) - 1 case.⁸⁷

⁸⁵ Registered in cases of persons charged with terrorism and related charges.

⁸⁶ In the 2007 report HRSP noted that cases involving "Alpha" unit members represented 15% of the total caseload.

⁸⁷ HRSP, reports 2004-2007.

5.2.2. *Victims*

51. In general, practices of ill-treatment affected a wide profile of persons throughout the country. Many victims have a feeling of not being provided with sufficient protection from ill-treatment by the police and some allege the facts relating to ill-treatment only on court hearing. Some other changed their initial statements upon intimidation of perpetrators. Minorities were affected in a number of cases (at least in certain years covered by this report), and many such cases were registered in west and north-west parts of the country. The information below originates from few sources that disaggregate the relevant data.

52. The Ombudsman statistics is as follows: In 2005 there were 412 complainants regarding violations in police proceedings, of which 77 ethnic Macedonians, 171 ethnic Albanians, 30 others and 134 not declaring their ethnic belonging; in 2006 - 224 complainants, of which 47 Macedonians, 34 Albanians, 28 other and 115 not declaring their ethnic belonging; in 2007 - 201 complainants, of which 40 Macedonians, 49 Albanians, 7 others and 105 not declaring their ethnic belonging.⁸⁸

53. The HRSP report issued around the end of 2005 (thus covering mostly 2005 cases) registered 122 alleged victims (increase of 141.8% compared to the previous report issued around the end of 2004), of whom 52 ethnic Macedonians (42.62%), 47 ethnic Albanians (38.52%), 18 ethnic Roma (14.75%) and 5 others (4.11%). 75 alleged victims counselled by the HRSP from 30 October 2005 to 1 November 2006 were belonging to the following ethnic groups: 48 Macedonians (64%), 11 Roma (14.67%), 9 Albanians (12%), 2 Turks (2.67%), 2 Serbs (2.67%) and 3 other (4%). The 2007 report provided information on the following ethnic structure of the 57 alleged victims, of whom 37 ethnic Macedonians (64.91%), 11 ethnic Albanians (19.29%), 7 Roma (12.28%) and 2 Boshniaks (3.52%). Huge majority of the alleged victims assisted by the HRSP were men (95.08% encountered in the 2005 report, 92.00% in 2006) and adults (97.54% registered in the 2005 report, 98.67% in 2006).⁸⁹

5.2.3. *Types of ill-treatment*

54. The CPT reports had recorded allegations of the following types and methods of ill-treatment: beatings, some of them severe or sustained enough to induce repeated loss of consciousness and/or lasting sequelae, caused by punches and kicks on various parts of the body; beating with buttons, metal rod, wooden sticks and baseball bats, repeatedly hitting on the palms of persons' hands, threats to inflict bodily harm or subjecting persons to mock execution (following October 2001 visit); essentially the same types as above inflicting repeated blows on the gluteal region the soles of the feet and or the palms of the hands, plus deprivation of sleep (following July 2002 visit); essentially the same types of ill-treatment and injuries (following the November 2002 visit); excessive force at the time of apprehension, severe beatings with batons or wooden sticks in order to extract confession or obtain information (following the 2004 visit); kicks, pinches and blows with batons or various other objects, often inflicted prior to and during questioning, in some cases with a view of extracting a confession or obtaining information, excessive use of force (following the 2006 visit).

55. The NGOs implementing the Human Rights Support project in the period between January 2004 and 31 October 2005 have recorded 100 cases of alleged abuse by the police, of which 73 were ongoing and 27 were concluded. In total 122 alleged victims complained on violations of their rights by the police. From 1 November 2005 to 31 October 2006 the NGOs

⁸⁸ Ombudsman, Annual reports 2004-2007.

⁸⁹ HRSP, reports 2004-2007.

implementing the Human Rights Support project registered 62 cases and from 1 November 2006 to 31 October 2007 - 51 cases with 57 alleged victims.⁹⁰ The 2006 HRSP's report listed the following rate of violations committed by law enforcement officials: bodily injuries - 47%, rude and improper behaviour - 33%, failure of MoI to perform their duties - 15%, detaining a person in police custody more than 24 hours - 3%, failure to provide medical care to a detainee - 2%. The HRSP's caseload at the end of 2007 related to 30 cases of maltreatment and infliction of bodily injuries (53%), 15 cases of rude and improper behaviour (26%), 7 cases of failure of police officers to perform their duties, 3 cases of unauthorized entering into houses and 2 cases of detention in police custody longer than the legally prescribed period of 24 hours. In 3 of these case the families of detained persons have not been informed, in 2 cases the persons did not have access to lawyer, in 2 cases the detained persons were not informed on their rights and police actions in 3 cases constituted inhuman treatment and insulted human dignity (such as undressing a person and debasement during the search, burning cigarettes on their bodies etc.)⁹¹

56. The number of submissions to the Ombudsman office regarding various alleged disrespect of rights by officials of the Ministry of Interior in the last four years is as follows: 2004 - 243 complaints, 2005 - 391 complaints with 412 complainants; 2006 - 215 complaints (25,6% of them relating to police violence or excessive use of force) by 224 complainants; 2007 (including special police authorizations and excluding so-called civil and other internal affairs) - 193 complaints by 201 complainants.⁹²

57. The Helsinki Committee was involved or got information during 2004 on indicated torture and inhuman or degrading treatment in 18 new cases, involving a total of 35 individuals (26 ethnic Macedonians, 3 ethnic Serbs, 2 ethnic Albanians, 2 Roma and 2 foreign citizens), of which 15 cases occurred in police procedure and 3 in the Idrizovo prison.⁹³

5.3. Notes on processed cases

5.3.1. Notes on cases processed by the SICPS (the Ministry of Interior)

58. The first part of the domestic control mechanism - the Sector for Internal control and professional standards (SICPS) - seems to be the weakest part because of its organizational background within the Ministry of Interior. The shortcomings observed in its work range from occasional failure to fully and timely investigate allegations of ill-treatment and mild policy of sanctioning in some cases, to lack of co-operation with other institutions, such as occasional refusal to provide information to the Ombudsman and failure to refer serious cases (indicating use of severe or even lethal force by police⁹⁴) to the prosecuting and judicial authorities.

59. Responding to the CPT, the Government informed that from 1998 to 2000 due to excessive use of physical force by police officers 10 disciplinary proceedings against 13 authorized officials of the Ministry have been instigated, of whom three were dismissed from their work, and 10 were exposed to financial sanctions.⁹⁵ As of 2007, the Sector for internal

⁹⁰ HRSP, reports 2004-2007.

⁹¹ *Ibid.*

⁹² Ombudsman, Annual reports 2004-07 (<http://www.ombudsman.mk/default.aspx?cId=104&Lan=MK>).

⁹³ Helsinki Committee for human rights in the Republic of Macedonia, Annual report 2004.

⁹⁴ For example, the 2006 Annual report of the Ombudsman stated that in spite of explicit Ombudsman's request for processing the case of a minor losing his life as a consequence of unprofessional activities of the special police units "Alfi" ("Alphas"), the SICPS failed to request a further investigation by other authorities.

⁹⁵ Responses of the Government to Macedonia to the report of the CPT on its visit to Macedonia from 17 to 27 May 1998, Strasbourg, 11 October 2001, CPT/Inf (2001)21, p. 23.

control and professional standards (SICPS) introduced a practice of publication of its report. In 2007 it examined 974 cases of alleged overstepping of authorisations and abuse of duties by official. 61 of those cases related to use of physical force on citizens, of which 33 complaints were found to be groundless, in 19 cases there were no evidence to substantiate the allegations and use of force was considered groundless and unjustified in 9 cases (of which in special reports were submitted in 3 cases, dismissal of police officers was proposed in 2 cases and disciplinary measures were proposed in the remaining cases). The SICPS received 50 submissions by the Ombudsman (responding to 44 of them), and 60 complaints from non-governmental organizations (some of which were repeatedly submitted). The 2007 SICPS' report also mentioned increase of number of criminal charges filed by the SICPS and disciplinary measures and dismissal of MoI officials proposed by the SICPS (though these data are not disaggregated so as to show data relevant for this report).⁹⁶

60. The HRSP staff claimed the following data indicating how (properly and timely) cases submitted to the SICPS were processed. Throughout 2004 and 2005 (until 1 November 2005) the HRSP NGOs filed complaints in 71 cases and received responses in 47 cases (of which response in 8 cases arrived after a delay of more than 6 months and in cases after 10-11 months): no violation was found in 37 cases, monetary fine was pronounced in 3 cases, 1 criminal charge was filed, 1 victim was advised to file civil lawsuit, MoI accepted to implement a court decision in 1 case, no information was provided on measures taken in 2 cases and offenders were not known in 2 cases. In the 2006 report 62 new cases were registered (the total number of their active cases at the end of the reporting period was 99, including 55 of the newly registered ones). The HRSP staff sent 55 complaints and received information for 60 cases (including some older cases). The rate of the SICPS' findings in these cases is as follows: no violation - 75% of cases, disciplinary measures - 11%, assignment of the person on a new position within MoI - 2%, monetary fine - 5%, proposal for dismissal - 3%, written warning - 2%, filing of criminal charges - 2%. In the 2007 report HRSP noted that complaints to the SICPS were filed regarding 49 cases, while the number of received information (including former cases) amounted to 53, with a few to several months of delay following the submission of some complaints. The last year, deciding upon complaints submitted through the HRSP staff, the SICPS established unlawful conduct by police officers in 9 cases (16.36% of the HRSP's cases), of which in 1 case requested the PPO to establish a criminal liability, in 3 cases monetary fine was imposed, in 3 cases disciplinary measures were pronounced, in 1 case a police officer was downgraded and in 1 case a proposal for dismissal was given to the competent commission of MoI. 26 of the total complaints were dismissed as unfounded, another 14 (25%) complaints were dismissed without any reasons whatsoever and for 7 complaints information was provided by the SICPS that due to lack of evidence no decision could have been made. The SICPS reportedly applied only the measure of fining those whose responsibility was established, and apparently no police officer involved in the cases reported by HRSP was fired by MoI.⁹⁷

5.3.2. Notes on cases processed by the Ombudsman

61. The overview of violations established by the Ombudsman in cases of alleged police abuse is as follows: 2004 - 66 violations in police proceedings (of which interventions were accepted by MoI in 51 cases); 2005 - 133 violations (83 successful interventions); 2006 - 192 violations (159 successful interventions), 2007 - 158 violations (133 successful interventions). The proportion of citizens' complaints of police abuse cases in the total workload of the Ombudsman varied from 11.60% in 2004, 12.81% in 2005, 16.25% in 2006 and 12.05% in 2007.⁹⁸ It should be noted that the above figures (unless specified otherwise) do not

⁹⁶ SICPS, Report on the work in 2007 (<http://www.mvr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=130>)

⁹⁷ HRSP, reports 2004-2007.

⁹⁸ Ombudsman, Annual reports, 2004-2007.

necessarily relate only to violation of rights guaranteed by the CAT and the respective national legislation, since they encompass a wide range of issues (police proceedings) covered by the Ministry of Interior. HRSP noted that the proceedings before the Ombudsman were longer than 6 months in some cases.⁹⁹

5.3.3. Notes on cases processed by the Public Prosecution office (PPO)

62. The CPT has repeatedly noted in its reports that public prosecutors (and judges as well) show little interest on allegation of torture, even if there are solid evidence to substantiate claims that there has been ill-treatment. In addition to not processing cases timely or failing to do so whatsoever (the latter resulting in time-barring of the possibility to prosecute), there is not a practice of informing complainants on the procedure before the PPO.

63. For example, the US State Department's 2007 report revealed that a number of cases from previous years remained unresolved. Of five cases of alleged police mistreatment referred to the prosecutor's office by the ombudsman's office in 2005, an investigation was opened in one, and three remained officially under review; the prosecutor declined to pursue the fifth case. After the prosecutor's office dropped its investigation of their assertions that police beat them in a police station in 2005, three Romani filed a civil suit, which was pending at year's end. The same report noted that the third year no developments were reported in the European Roma Rights Center's (ERRC's) criminal complaint over a 2004 police beating of two Romani men, Trajan Ibrahimov and Bergiun Ibrahimovic, in Skopje.¹⁰⁰

64. On 1 November 2005 the HRSP was able to present information that after filing 22 criminal charges, the Public Prosecution office filed 2 indictments and rejected criminal charges in 6 cases, following which 3 subsidiary lawsuits were lodged by the persons concerned. 1 person was prosecuted by the PPO under charges of torture. The 2006 HRSP's report registered submission of criminal charges in 33 cases, following which the PPO submitted 1 indictment to the court and rejected criminal charges in 16 cases, following which a subsidiary law suit was lodged in 9 cases. The last year 21 criminal charges were filed through HRSP staff, 5 indictment were submitted by the PPO against law enforcement officials, there were 22 rejection of criminal charges (total number, including older cases), following which 9 subsidiary criminal lawsuit were filed.¹⁰¹

5.3.4. Notes on cases processed by the courts

65. Courts (in addition to the PPO) continue the practice of tolerating and even conducting procedures in situations in which there are numerous and even very clear indications that the case is based on extorting a confession, especially from detained persons. Judges were reluctant of entrusting statement of complainants in absence of visible injuries on their bodies or documents explicitly confirming their existence. They were sometimes reluctant to refer some cases to the State Forensic institute (SFA), due to lack of funds,¹⁰² or (mis)used shortcomings of medical certificate to often conclude that cause or time of ill-treatment could not be determined. In one exceptional case, upon investigating judge's referral, the SFA has issued a certificate, finding 27 injuries on the body of the accused person. Yet, the trial court was more concerned from the fact that, according to the doctor's findings, the injuries were inflicted few days before the commencement of the official detention, recognized both by the police and the court's chamber, in spite the person's credible claim of being detained *incommunicado* just before he was officially detained. Apparently,

⁹⁹ Human Rights Support Project, Legal Analysis 2006, November 2006, p. 57.

¹⁰⁰ US State Department, Country reports on human rights practices in Macedonia, 2007

¹⁰¹ HRSP, reports 2004-2007.

¹⁰² Helsinki Committee for human rights in the Republic of Macedonia, Annual report, 2004.

some judges are not informed or are forgetting the relevant human rights standards regulating this issue, according to which if injuries were inflicted in police custody or to persons *de facto* under control of law enforcement officials, then it would be sufficient for a person to prove the fact of being detained by the police and the time of sustaining the injuries, but the courts are not absolved from the obligation to examine the facts properly.

66. In some other cases there was a practice of non-attendance of hearings by law enforcement officials (few of which never came before court and proceedings) and reluctance of the court to secure their presence. The case of Saso Kostadinovski, Kumanovo, in which he indicated torture, has still not been resolved since 2003, because the judge does not schedule hearings, or because the hearings were postponed due to absence of police officers charged, or finally because of the absence of the judge herself.¹⁰³ The cases of Julia Gavazova and Makedonka Lozanovska, Skopje which are postponed 7 or 8 times due to absence of witnesses employed in the Ministry of the Interior; the court did not have the courage to issue an order for forced apprehension of witnesses, and did not apply the provisions of the Law on the Ministry of the Interior as a state body.¹⁰⁴ Due to failure of the judge to provide presence of accused police officers, the criminal procedure against the person who has beaten then 13-year old Isak Tairovski became time-barred several years ago, following which he sought damages in civil proceedings, eventually receiving compensation.¹⁰⁵ In its 2004/2005 report, the HRSP noted that civil proceedings for compensation were instigated in 15 out of the 100 cases encountered in the 2005 report and one (pending since 1994!) was completed, awarding around 2.000 Euros to the victim.¹⁰⁶ In the 2006 report the HRSP informed that the civil proceedings were pending.¹⁰⁷

5.3.5. Notes on cases processed by the European court of Human Rights

67. The European Court of Human rights¹⁰⁸ established violations of Article 3 on ground of lack of any investigation by the authorities regarding claims under Article 3 (Jasar¹⁰⁹, Dzeladinov¹¹⁰, Sulejmanov¹¹¹ Trajkoski and Others¹¹²). In addition, several interim measures were indicated to the Government in the best interest of the parties in the proceedings - refugees who feared ill-treatment upon return (Berisha, Eshmanov, Shijaku, "K. and others")¹¹³ and the Government refrained from deporting the persons.

¹⁰³ Helsinki Committee for Human Rights of the Republic of Macedonia, Annual Report 2005

¹⁰⁴ *Ibid.*

¹⁰⁵ Case files.

¹⁰⁶ *Ibid.*

¹⁰⁷ Human Rights Support Project, Legal Analysis 2006, November 2006, p. 51.

¹⁰⁸ www.echr.coe.int

¹⁰⁹ Appl. 69908/01, judgement of 15 February 2007.

¹¹⁰ Appl. 13252/02, judgement of 10 April 2008.

¹¹¹ Appl. 69875/01, judgement of 24 April 2008.

¹¹² Appl. 13191/02, judgement of 7 February 2008.

¹¹³ All these requests for interim measures were filed by CSRC lawyers.

6. CASES

6.1. Various motivations for ill-treatment

6.1.1. Ill-treatment in order to extract confession from suspect or witness

Facts: Mr. M.S. was visited on 8 February 2001 by around 30-40 members of the special police forces, after search of his house on suspicion of hiding weapons (not found there) and then detained by the police and ill-treated. Following his release from the station - where his detention had not been recorded - M.S. was admitted to the Trauma Ward of City Hospital in Skopje on 9 February 2001 because of injuries to the head. The doctor on duty had indicated to investigators that M.S. claimed the injuries had resulted from punches during a beating by police officers. According to the medical record completed at the time of his admission, he displayed visible bruises on the back of the neck, back, buttocks, both arms and legs, as well as excoriations on the right knee, swollen palms and swollen feet. The function of his kidneys was found to be "drastically deteriorated" due to the use of physical force on his back, and he was placed on dialysis equipment as well as respiratory aid equipment because of breathing difficulties. The overall assessment noted on the medical record was that he had sustained "severe physical injuries", and the relevant doctors had indicated to investigators that M.S. was not fit to be conversed with or contacted until 18 February 2001 at the earliest.¹¹⁴

Follow-up: The sanction of dismissal of police officers was immediately commuted to a 15% reduction in salary for six months (three months in the case of the superior). The First-Instance Office of the Public Prosecutor provided information (to the Government responding to CPT) that criminal charges have been filed in the case of M.S. against five officers of the Ministry of Interior. Further inquiries via the Ministry of Interior and the Clinical Center, and consequent urgent appeals had not resulted in provision of the requested information. Finally, the First-Instance Court Skopje II - Skopje has informed the Government that criminal lawsuit have not been filed against this person.¹¹⁵

Facts: A.N., who was apprehended in police facility in a capacity of witness, was beaten by a baseball bat in order to give a statement. The person has documented his allegation of police ill-treatment with photographs and medical reports.

Follow-up: The Ombudsman filed criminal charges, but the Basic Public Prosecution office rejected the charges, advising the person to pursue the prosecution as a private plaintiff.¹¹⁶

6.1.2. Ill-treatment on discriminatory ground

A number of human rights organizations for a long period were expressing concern about continued allegations of police ill-treatment and torture in Macedonia, which affected all ethnic groups including ethnic Macedonians. Yet, some human rights NGOs, such as Amnesty International, have observed that "alleged ill-treatment in certain cases had an ethnic or racial component" to the extent that belonging to a minority ethnicity or faith appeared as

¹¹⁴ Report to the Government on the visit to Macedonia carried out by the CPT from 21 to 26 October 2001, 16 January 2003, CPT/Inf (2003) 4, § 22, p. 16.

¹¹⁵ Response of the Government to the report of the CPT on its visit to Macedonia from 21 to 26 October 2001, Strasbourg, 16 January 2003, CPT/Inf (2003) 4, p. 10.

¹¹⁶ Ombudsman, Annual report 2004 (<http://www.ombudsman.mk/default.aspx?cId=104&Lan=MK>).

to be a sole or one of primary factors in the alleged ill-treatment.¹¹⁷ During the 2001 conflict and some time afterwards, "police abuse against ethnic Albanians remain[ed] a serious concern in Macedonia, despite the [...] signing of a political agreement aimed to end the six-month old conflict."¹¹⁸ Some human rights groups suggested that police continued to perpetrate racially motivated abuses against Roma with impunity and that they are often unable to obtain redress¹¹⁹

Incident: On July 5, three police officers beat **Trajan Ibrahimov** and **Bergiun Ibrahimov**, both Romani men from Skopje, outside Ibrahimov's home. The police approached the home in search of a fugitive, and despite Ibrahimov's response that he was not the fugitive, the officers proceeded to beat both men on the head and body and arrested them. Both men were then taken to a police station and held for more than a day.

Follow up: The European Roma Rights Center (ERRC) filed a criminal complaint of maltreatment as well as a private criminal complaint against the officers for inflicting bodily injuries. A PSU investigation found that police use of force was justified. According to the PSU report, officers acted on an anonymous tip that fugitive Tahir Ibrahimovic, for whom they had an arrest warrant, was located inside the house. The police informed the two men that they were searching for a fugitive named Ibrahimovic, and asked for the men's identification. Trajan Ibrahimov reportedly slapped one of the officers, who struck back in an attempt to subdue him. Bergiun Ibrahimov then struck the officer in the knee. The two men were taken into custody and asked to submit to alcohol testing, which they refused. Police filed criminal charges against both men for assault on a police officer during execution of his duties. Two Romani men who filed civil charges against four police officers in Kumanovo in connection with alleged ill-treatment in 2003 reached an undisclosed financial settlement out of court two weeks after the event.¹²⁰

6.1.3. Use of excessive force

Incidents: On May 16, [2007] a man in Skopje accused police of using excessive force during a routine traffic stop. The Ministry of the Interior's Professional Standards Unit (PSU) determined that the police officers at this location abused their authority and initiated disciplinary procedures. Members of the "Alphas" special police unit beat Alsat television cameraman **Igor Ljubovcevski** on September 26, causing him bodily injuries. The television crew was filming police as they stopped the vehicle of a member of parliament of the Democratic Union for Integration party just outside of Skopje.¹²¹

Mr **Poto Zeghovski**, after telling "Alphas" that he has no information on his former wife sought by "Alphas", was beaten by them with punches and his head has been hit on the ground.

Mr **Z. Stojchevski** has been brutally beaten by "Alphas" in presence of his wife and child. After losing conscience, they brought him before a hospital and left him there.

¹¹⁷ Amnesty International, 2003, Police allegedly ill-treat members of ethnic minorities.

¹¹⁸ Human Rights Watch, 22 August 2001, Police Abuse Against Albanians Continues in Macedonia.

¹¹⁹ For a detailed record on ill-treatment of Roma, we refer to the papers of the European Roma Rights Center (www.errc.org.)

¹²⁰ The U.S. Department of State 2004 Country Report on Macedonia.

¹²¹ US State Department, Country reports on human rights practices in Macedonia, 2007.

Case labelled as SK068: victims who reported a criminal offence have been beaten by the "Alphas" because of not being able to recognise persons who have damaged the vehicle.¹²²

6.1.4. Ill-treatment in a psychiatric hospital

Facts: **D.C.** claimed that her husband was beaten by psychiatric hospital staff. The Ombudsman visit to the hospital confirmed the allegations as there were visible signs of beating on the patient's body.

Follow-up: The nurse was suspended from work and the head of the department was downgraded.¹²³

6.2. Follow-up actions (not) taken

6.2.1. The Sector for Internal Control and Professional Standards

Incident: In 2002 during an altercation, a mass fight between 13 members of the special task police unit "Tigers" and several locals occurred. One person was beaten to death and several were injured.

Follow-up: The Dismissal Commission of the Interior Ministry established that the 14 members of the "Tigers" have acted in breach of the working discipline and fined them with 15% salary deduction for a 6-month period. In addition, criminal charges were filed against these officers due to reasonable suspicion that they have committed a criminal act: "taking part in fight". The court pronounced 6 month prison terms against six Tigers who were directly involved in the fight and 3 month prison terms against three who participated briefly in the fight. The others were released without convictions.¹²⁴

6.2.2. The Public Prosecution office

6.2.2.1. Failure to make a decision

Incident: **Jasar Pejrusan** complained that he was ill-treated by police in 1998. He filed criminal charges to the Public prosecution office. The police failed to provide the requested information to the PPO and no decision on PPO level has been made. The civil proceedings ended with rejection of the claims.¹²⁵

Follow-up: Due to lack of any investigation of the person's allegations that he was subjected to IDT by the police, the ECtHR declared 'procedural' violation of Article 3 and granted just satisfaction to him.¹²⁶

Incident: On Monday, August 13, 2001, police officers guarding Skopje's main hospital arrested four persons who had come to the hospital to pick up an elderly Albanian relative undergoing kidney dialysis treatment. The police searched their car and claimed they had found a bullet in the trunk. The persons were taken onto the hospital grounds and beaten continuously for several hours with heavy metal cables, baseball bats, police truncheons, and gun butts, amidst jeering from the civilian crowd that had gathered. The four men were then taken to the "Beko One" police station, where they were subjected to more beatings, had urine and

¹²² Human Rights Support Project, "Police and Human Rights", Annual report 1.11.2006-31.10.2007.

¹²³ Ombudsman, Annual report 2004 (<http://www.ombudsman.mk/default.aspx?cid=104&Lan=MK>).

¹²⁴ US State Department, Country reports on human rights practices in Macedonia 2003.

¹²⁵ He alleged that he was again beaten by the police several months ago.

¹²⁶ www.echr.coe.int.

burning cigarettes thrown at them, and were threatened with execution. Following interventions from their ethnic Macedonian lawyer and a police officer who knew the men, they were released the next morning. One of the men died that day at the hospital from the injuries he received from the police beatings. The statements registered by the HRW clearly indicate that this incident was ethnically motivated.¹²⁷

Follow-up: Criminal charges were filed to the PPO soon afterward. In spite of repeated requests for information, the Public Prosecution Office has not taken any action until 2008.

6.2.2.2. Refusal to prosecute

Incident: Following the information to the Special Rapporteur on the question of torture few days after the incident, by a letter dated 11 November 2004 the Special Rapporteur notified the Government that he had received allegations concerning **Ismail Jaoski**. On 25 February 2002 at 2 pm he was stopped by a policeman outside of Prilep, ordered out of the car and struck from behind the head with a hard object, and kicked several times. He went to the Prilep police station at 2.30 pm to report the incident. Five minutes after he arrived, the policeman who originally beat him entered, accompanied by two others, who repeatedly punched, kicked, and beat him with truncheons until he lost consciousness. On 26 February, he went to the Bitola Hospital, where he was diagnosed with a cracked skull, bleeding from the left ear, concussion, partial amnesia, and bruising and swelling in the region of his kidneys and abdomen.¹²⁸

Follow-up: By letter dated 10 January 2005 the Government informed that the allegations have been investigated and that it was concluded that the police officer concerned acted in accordance with relevant domestic rules and regulations on the use of force. On 17 September 2002 the Public Prosecution office rejected the criminal charges concerning ill-treatment by a public official because medical examination has detected only light injuries sustained by Ismail Jaoski. In September 2002 Mr Jaoski filed subsidiary lawsuit. The procedure is still pending almost 6 years after the events, without any procedural action from the court (no hearing has been scheduled or held).¹²⁹

6.2.3. Courts

6.2.3.1. [Some] courts considered as unfounded allegations not raised before the trial

Incident: In June 2003, the Security and counter-intelligence officers in Kumanovo are alleged to have unlawfully detained and severely mistreated **Avni Ajeti**, who was suspected of planting a mine on the Skopje-Belgrade railroad and a bomb in the Kumanovo central square.¹³⁰ The police extorted a statement from the person, by keeping him several days in a weekend house owned by the police and ill-treating (by bating him with metallic things, burning him etc.), eventually forcing him to sign a confession. The Health carton of Mr Ajeti from the Skopje

¹²⁷ Human Rights Watch's paper of 22 August 2001, Police Abuse against Albanians Continues in Macedonia (<http://hrw.org/english/docs/2001/08/22/macedo1477.htm>).

¹²⁸ Report of Theo van Boven, Special Rapporteur on the question of torture - Summary of information, including individual cases, transmitted to Governments and replies received, 30 March 2005, E/CN.4/2005/62/Add.1

¹²⁹ Report of Manfred Novak, Special Rapporteur on the question of torture - Summary of information, including individual cases, transmitted to Governments and replies received, 21 March 2006, E/CN.4/2006/6/Add.1

¹³⁰ The U.S. Department of State 2004 Country Report on Macedonia.

prison as of 13 June 2003 stated the following: "Operations and injuries: hematomas (heavy bruises) on the back, bottom, legs."

Follow-up: Ajeti was sentenced to 7 years' imprisonment for terrorism; his appeal was pending at year's end. A PSU investigation found no evidence of mistreatment in Ajeti's case, but international observers continued to doubt the thoroughness of the investigation¹³¹ Regarding A.A.'s allegations that the authorized officers of the Ministry of the Interior applied physical force in conducting the activities, the Ministry has established that these allegations are not grounded.¹³² Later on, the Government informed CPT that there was no separate case build regarding the allegations of A.A. about ill-treatment and abuse while in police custody, in light of the fact there were no reasonable grounds to institute relevant procedure against a specific person on the allegations presented as late as the main hearing held on 30 October 2003, which were inconsistent and were not corroborated with any evidence. The PPO in Kumanovo informed that following submission of official notes from the Ombudsman Office there was no official findings by the Sector for Professional Standards of the Ministry of the Interior.¹³³

6.2.3.2 Redress in civil cases

Facts: Police officer ill-treated a person labelled as SK005 in the HRSP's report.

Follow up: The judgement P br.4082/03 of 28 June 2006 was confirmed upon appeal on 17 January 2007. The sued party (but *not the perpetrator himself*) was obliged to pay the sum.¹³⁴

¹³¹ The U.S. Department of State 2004 Country Report on Macedonia.

¹³² Response of the Government to the report of the CPT on its visit to Macedonia from 18 to 27 November 2002; Strasbourg, 9 September 2004, pp. 17-18, CPT/Inf (2004) 30.

¹³³ Response of the Government to the report of the CPT on its visit to Macedonia from 12 to 19 July 2004; Strasbourg, 15 November 2006, p. 7, CPT/Inf (2006) 37.

¹³⁴ Human Rights Support Project, "Police and Human Rights", Annual report 1.11.2006-31.10.2007, p. 35.

7. RECOMMENDATIONS:

To the Parliament

- To ratify the Optional protocol to CAT (on the basis of which a National Protection Mechanism should be created);
- To amend the Law on Police by regulating the procedure of examination of complaints against human rights violations and consequent judicial procedure, as well as to clearly state obligations of the officials of the Ministry of interior (MoI) to provide assistance to other State bodies to pursue consequent or related procedures of investigation and examination.
- To amend the Law on Public Prosecution Office so as to entitle alleged victims to receive decision upon a complain on long-lasting inactivity of the Public Prosecution office;
- To consider the possibility of changing the manner of appointment of the Public Prosecutor of Macedonia (hierarchically above all other PPs), in order to secure its full independence from other authorities; alternatively this post to be given to one of at least few candidates in a competitive election process, based on candidate's background, strategy and program of work, rather than support by the parliamentary majority.
- To amend the Constitution in order to allow the Constitutional court to examine compatibility of the domestic legislation to the ratified international treaties.
- To amend the legislation so that to absolve indigent victims of human rights abuses from payment of fees for issuance of medical certificates (prescribing that a medical certificate should nevertheless be issued to person rejected on the above account whose claim of ill-treatment is credible *prima facie*, obliging him to pay the fees only in case of not succeeding to prove the claims in court proceedings).
- The Parliament's bodies (commissions), in particular the Standing human rights commission, should fully utilise legislative instruments to control the work of the police and its units (*inter alia*, by means of requiring thorough information on allegations of ill-treatment).

To all highest authorities:

- To send message to all law enforcement officials through the respective ministries that no torture or ill-treatment will be tolerated;
- To promote a policy of severe sanctioning of responsible law enforcement officials (e.g., to dismiss police officers convicted on ill-treatment and to request reimbursement of damages paid by the State to victim(s), to downgrade (at least) commanding police officers who have tolerated or failed to prevent ill-treatment, etc.

To the MoI:

- To train police officers on the human rights, with a particular emphasize on their obligations to refrain from committing a crime and to report crimes committed by others;
- To establish a more transparent structure of the SICPS or to create a more transparent and impartial body, entitling civil society representatives to be members of such a body, or at least to have a full insight into investigation of human rights abuses (e.g. presence during the procedure) and the right to inform other bodies on the findings (e.g., the Parliament's Standing Human Rights Commission, the Ombudsman).
- Until creation of a fully independent, impartial and transparent body (out of the MoI's organisational structure), the SICPS should:

- Fully collaborate with other authorities, by means of amending its Rulebook to that extent, and by means of instructing it so;
- To submit to the PPO each case of established violation amounting to crime, failing which the SICPS should at least send the files to the PPO and to explain the reasons for not filing charges against respective person(s).

To the Ombudsman:

- To exercise announced and unannounced visits to police premises, quickly reacting in cases of receiving credible allegations of torture;
- To fully utilise all mechanisms in case of failure of State bodies to provide information and assistance (by complaining to respective superior officers within those bodies, to consider more often possibilities for presenting good and bad practices of various state bodies involved in ill-treatment cases through media and in some other appropriate way);
- To avoid instance of prolongation of procedure before it.

To doctors:

- To issue medical certificates with proper contents (indicating cause and time of infliction of injuries);
- In case of accepting the proposal for *ex lege* absolving victims of ill-treatment from payment of fees, decisions on release of payment of fees must be made quickly.

To the public prosecutors:

- To explore the possibility given by the Law on criminal procedure to open cases following credible information other than criminal charges (e.g., in cases when the victim is afraid to file criminal charges, or has left the country, or has died owing to ill-treatment and no charges have been filed by the relatives, etc.);
- (Until eventual adoption of the legislative measure described above), to report to the immediate superior public prosecutor the reason for delayed investigation of each case relating to ill-treatment at the PPO level;
- To sanction lower Public prosecutors whose delayed work made prosecution in particular cases time-barred.

To the courts:

- To ensure by all means that accused law enforcement officials attend hearings;
- To avoid considering claims of ill-treatment as unfounded only because claims have not been raised before the trial and to investigate such allegations in any phase of the criminal procedure;
- To consider all evidence extorted by force null and void and to exclude consideration of evidence not adduced on a main hearing;
- To consider the possibility of banning law enforcement officials convicted of torture and ill-treatment to perform duty certain period after serving their sentence.