

HELSINKI COMMITTEE FOR HUMAN RIGHTS

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KOMITETI I MAKEDONYA COMITET DI HELSINSKO ХЕЛСИНШКИ  
PER TE DREJTAT E NJERIUT CUMHURİYETİ'NİN HELSINKI COMITETI BASO КОМИТЕТ ЗА ЛЃДСКА  
I REPUBLIKES SE HELSINKI TI- NDREPTULI-A E MANUSENGERE ПРАВА РЕПУБЛИКЕ  
MAKEDONISE E INSAN HAKLARI KOMITESI MACHEDONIA REPUBLKA MAKEDONJA МАКЕДОНИЈЕ

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REPUBLIC OF MACEDONIA

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by the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC)

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## **A. INTRODUCTION**

This submission was prepared by the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC) for the third reporting cycle of the Republic of Macedonia within the International Covenant on Civil and Political Rights (ICCPR). This submission was prepared in an effort to present our observations and findings on the situation with regard to the respect, protection and promotion of civil and political rights. All cases summarized in the submission have been reported to the Helsinki Committee for Human Rights.

## **B. OBSERVATIONS AND RECOMMENDATIONS**

### **1. Status of Ombudsman (Article 2)**

The Ombudsman Office has not been operating in full compliance with the Paris Principles and is accredited with B Status. Given the fact that the appointment of the Ombudsman is a political agreement between ruling parties, there are serious concerns about its independence. A financial lack of independence contributed to these concerns, since the Ministry of Finance and the Parliament have the possibility to intervene in its budget. Another issue represents the lack of multidisciplinary expertise, i.e. the strictly legal professional background of the staff in the Ombudsman's Office. Although the Ombudsman often publically reacts when violations of human rights take place, his recommendations are rarely taken in consideration.

After the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading treatment (OPCAT), in 2011 the Ombudsman was designated to perform a monitoring role as a National Preventive Mechanism (NPM). As such, the NPM operates as highly understaffed, since only two employees perform all duties. At the same time, there is serious lack of cooperation with non-governmental organizations. Although the NPM functions as a separate organizational unit of the Ombudsman Office, it does not have a separate budget. Instead, it provides its resources from the general budget of the Ombudsman.

**Recommendations:** *The State must secure financial independence and multidisciplinary expertise in the Office of the Ombudsman, which will lead to full implementation of the Paris Principles and obtaining A accreditation. A transparent appointing procedure of the Ombudsman must be established.*

### **2. Non-discrimination of LGBTI (Article 2, 3 and 26)**

Sexual orientation and gender identity are not specifically listed as possible grounds for discrimination in the Law for prevention and protection from discrimination or the Criminal Code. However, the Commission for Protection from Discrimination (CPD) indeed does process such complaints, classifying them sometimes under 'other grounds and sometimes as sexual

orientation. Also, CPD in very similar cases have different decisions whether there is discrimination or not, which means that CPD does not have systematic approach and unified standing when it comes to discrimination based on sexual orientation. Until now there is no example that CPD established discrimination based on gender identity.

Ministry of Labor and Social Policy (MLSP) itself, in the National Strategy for equality and non-discrimination as a "national document, whose basic purpose is to improve the status of the most vulnerable categories of citizens in society and provide continuous development of the realization of equality and non discrimination"<sup>1</sup>, considers that "most vulnerable categories" are only those groups which are discriminated on the grounds of ethnicity, age, mental and physical disability and sex. Moreover, in its Report from November 2013, the MLSP notes that "the largest risk of intolerance has been noticed against members of the LGBTI community",<sup>2</sup> a group of people which was not even mentioned in national strategies for combating discrimination.

Transgender people are facing great difficulties and double standards when attempting to exercise their basic rights. There are no clear procedures for changing personal identification number, which is necessary for legal recognition of a person's gender reassignment. The absence of procedures that specifically regulate the legal recognition of a person's gender reassignment has produced confusion in the actions of the public servants as well as to transgender persons. Although, the State provides endocrinological and psychological treatment for transgender persons, this is not effective or appropriate because there is no practice or trainings for the professional health care workers in cases of gender reassignment. The state does not provide surgery for gender reassignment and there is no reimbursement by the State Health Fund even where transgender persons had conducted the surgery in a foreign country with private funds. Intersex people are born and treated in a legal vacuum, without appropriate standards of care, and without clearly defined rules of treatment.<sup>3</sup>

Furthermore, in the two bluntly discriminatory attempts of the Government to introduce constitutional definitions of marriage and extramarital unions solely as unions between one man and one woman, reaction was absent from the other protection mechanisms as well. Both the Commission for Protection from Discrimination and the Ombudsman did not react to the proposed texts, despite having legal jurisdictions to do so.

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<sup>1</sup> Ministry of labor and social policy of the Republic of Macedonia, National strategy for equality and non-discrimination on the grounds of ethnicity, age, mental and physical disability and sex, 2012-2015.

<sup>2</sup> Report of the Ministry of labor and social policy on the assessment of the implementation of the Law on prevention and protection against discrimination, 2013 (at the moment of writing this document, the Report is in the phase of *Proposal* of the Working group).

<sup>3</sup> Helsinki Committee for human rights of the Republic of Macedonia - LGBTI Support Centre, (2012), Shadow report on the implementation of the Committee of Ministers of the Council of Europe Recommendation CM/Rec(2010)5

However, the most frightening aspect of homophobia and transphobia in Macedonia is the rate of hate crimes committed on the basis of sexual orientation and gender identity, and the impunity of those perpetrators. In 2013 the majority of hate crimes (84%) occurred due to the different ethnical belonging of the victim. Almost all of these incidents involve Macedonians and Albanians. Sexual orientation, together with gender identity, was the second highest rate, and reason for 9% of 9 cases from 116 registered hate incidents on all grounds. In 2014, the rate of hate crime incidents due to the sexual orientation of the victim is third. It accounts 10% or 9 cases from the registered 87 cases for different grounds. However in 2014, 90% of the incidents targeted individual members of the LGBTI community as opposed to 40% in 2013 (the other 60% targeted LGBTI organizations and activists).<sup>4</sup>

In the two years since it was opened, the LGBTI Support Center in Skopje and its activities were target of six attacks. The severity of the attacks only escalated, starting with minor property damages at first, and leading up to heavy bodily harm, injured police officer and high property damages. Only for one of those attacks, that was a part of much larger, inter-ethnic demonstrations a court proceeding was started. However, even in that case, the procedure in front of the Appellate Court is still ongoing and today, more than two years later the perpetrators are still not sanctioned.

Also, a court proceeding was initiated for the attack on Kocho Andonovski, Program Director of the LGBTI Support Center and another activist on the International Day of Tolerance on 17<sup>th</sup> November 2012 when Macedonian Helsinki Committee and LGBTI Support Center for the fourth time held a march for tolerance which was dedicated to opposing hate speech against LGBT persons and women. This march was supported by several NGOs that work on LGBT rights, sexual rights and gender equality. The court proceeding started in 2014 and in 2015 the perpetrator was convicted for “Violence and for disturbing the peaceful protest”. This decision is not final because an appeals were submitted to the Appeal court Skopje, including from the victims because this was not qualified as hate crime.

In all of the other cases, the investigation is still ongoing, and none of the perpetrators have been identified. Furthermore, no state authorities or officials have condemned the homophobic nature of these attacks. The lack of public condemnation, together with the trend of impunity, creates an atmosphere where these acts are not discouraged, but might be considered as morally praiseworthy.

### **Chronology of the Attacks against the LGBTI Support Center and its activities**

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<sup>4</sup> In 2013, the Helsinki Committee for Human Rights established a platform for reporting hate crimes, named “Report Hate Crimes” available at: [http://zlostorstvaodomraza.com/main?!=en\\_US](http://zlostorstvaodomraza.com/main?!=en_US)

**CASE no. 1:** The LGBTI Support Center – Helsinki Committee for Human Rights started working on 22.10.2012. During the following night, a group of three unknown assailants vandalized the object. The group threw stones and glass bottles in to the windows, causing material damage. The attack was reported to the police and the investigation is still ongoing. None of the assailants has been identified yet. Criminal charges were submitted against unknown perpetrators for the acts of Damaging of other’s property (Art. 243 Criminal Code of Republic of Macedonia – CCRM) and Racial and other discrimination (Art. 417 CCRM).

**CASE no. 2:** Having in mind the previous experience, the LGBTI support Center installed some basic security measures and equipment. The glass windows and door now had shutters, and the object was under alarm protection and video surveillance. A security agency was also hired, to react upon our call or upon activation of the alarm systems. During the night of 17<sup>th</sup> of December, unknown group of assailants damaged the shutters, attempted to set fire to the building, and wrote “Tremiti” on the large shutter. Tremiti is the name of the concentration camp where homosexuals were taken during World War II. Despite the activation of the alarm systems none of the assailants was caught at the scene. The attack was reported to the police and the investigation is still ongoing. None of the assailants have been identified yet, despite the fact that this time video surveillance was delivered to the police. Criminal charges were submitted.

**CASE no. 3:** 02.03.2013 Several days prior, the Government of Macedonia appointed Mr. Talat Dzaferi as Minister of Defense. Mr. Dzaferi fought on the side of ONA during the armed conflict in 2001 in Macedonia (opposite of the police forces). This appointment resulted in mass protests that lasted for several days. These protests were interethnic and resulted in enormous material damages. In the old Bazaar, the only premises that were destroyed were the offices of the LGBTI Center. Luckily, as is the case with most public incidents of interethnic violence in Macedonia, this case was solved quickly and the perpetrators were tried and found guilty. During the trial, the only evidence that the prosecution had for identification of the perpetrators, was the surveillance video from the security cameras. Upon our request, the Judge took into account the fact that the Center was attacked solely due to the nature of its function, and the perpetrators were punished accordingly. However, this case is now in front of the Appellate Court and more than two years later the perpetrators have not been sanctioned yet.

**CASE no. 4:** The first Pride Week in Macedonia started on 22.06.2013, with a promotion of manual about health rights of transgender persons in Macedonian legal system. At 18:25 hrs, a group of forty masked assailants stoned the Center. At the time, there were more than thirty five people inside. A security estimate was made and the event was reported to the police several days prior. The Police sent eight officers that were not equipped with special protective

gear. Despite our efforts this attack was not prevented and the epilogue was one injured police officer and trauma inserted into the minds of the entire community. This was the first attack that happened during a public event, while people were inside. Also, it is the first one that ended in injuries. Despite the police presence, none of the assailants was caught at the scene. The attack was processed by the police and the investigation is still ongoing. None of the assailants has been identified yet, despite the fact that the video surveillance was delivered to the police.

Several NGOs submitted criminal charges against unknown perpetrators for the acts of Violence (Art. 386 CCRM), Harming citizen's equality (Art. 137 CCRM) Causing general danger (Art. 288 CCRM), Damaging of other's property (Art. 243 CCRM), Attack against official while conducting matters of security (Art. 383 CCRM), Participation in a mob that will obstruct an official in conducting matters of security (Art. 384 CCRM) and Racial and other discrimination (Art. 417 CCRM). On 15<sup>th</sup> of July, 2013, the Ministry of interior submitted a Special Report to the Public Prosecutor. There has been no institutional condemnation of the incident.

**CASE no. 5:** On the 4<sup>th</sup> of July, the Diplomatic Corps in Macedonia came to the LGBTI Center to express its condemnation of the ant-LGBTI violence that was becoming more frequent. However, during the night, an unknown group of perpetrators climbed on the roof of the building, removed several roof tiles, poured flammable fluid (most likely gasoline) on the roof structure and set the building on fire, resulting in enormous material damages. According to Macedonian national law, the building where the offices of the LGBTI Support Center were settled is declared to be of enormous cultural significance and the punishment for its damaging is much more severe. The attack was reported to the police and the investigation is still ongoing. None of the assailants has been identified yet.

Several NGOs submitted criminal charges against unknown perpetrators for the acts of Causing general danger (Art. 288 CCRM), Harming citizen's equality (Art. 137 CCRM), Damaging of other's property (Art. 243 CCRM) and Racial and other discrimination (Art. 417 CCRM). There has been no institutional condemnation of the incident.

**CASE no. 6:** On 23.10.2014 at 9:30 p.m., a stampede of around thirty young people advanced with lightning speed from both sides of the street leading towards the Damar Coffee Bar, where the LGBTI Support Centre – Helsinki Committee for Human Rights was celebrating its second anniversary. Wearing hoods over their heads and armed with glass bottles and other hard objects, the thugs stoned the Coffee Bar and, as quickly as they had appeared, vanished in the nearby alleys. At the time of the incident, more than sixty people were attending the celebration in the Damar Coffee Bar, two of which, a young man and a woman, were standing outside in front of the main entrance of the bar. They were attacked by the violent group with glass bottles and sustained injuries on their heads and bodies. During the attack, the assailants

kept telling them that they should leave and that faggots were not welcome there. Several people who were inside the bar at the time of incident sustained small cuts from flying glass. The attack was reported to the police, and the investigation is still ongoing. Representatives of the National Network against Homophobia and Transphobia are cooperating with the Police in the course of the investigation. The Police submitted a Special Report to the Public Prosecutor. None of the assailants has been charged yet. There has been no institutional condemnation of the incident.

***Recommendation:*** *Include sexual orientation and gender identity as grounds for discrimination in the Criminal Code and the Law on Prevention and Protection from Discrimination; Include gender identity as a prohibited ground for discrimination in the Labour Relations Act. Amend the Criminal Code in order to sanction act of hate speech and hate crime on basis of sexual orientation and gender identity; Identify the perpetrators of the attacks on the LGBTI Support Center and prosecute them for Hate Crimes; Undertake measures that will provide effective access to appropriate gender reassignment services for transgender people, including gender reassignment surgery Adopt provisions that will clearly regulate the procedure of legal gender recognition without the requirement for forced sterilization and performance of gender reassignment surgery as pre-condition.*

### **3. Violence against women and domestic violence (Article 2, 3, 6, 7, 23, 24 and 26)**

In spite of limited efforts of the State to prevent violence against women and domestic violence and to enhance the protection of women and children, statistical information show increased number of victims of domestic violence.<sup>5</sup> In fact, statistics show that women prevail as victims in domestic violence which shows that this is gender based violence. In September 2014, the Parliament enacted a new Law on Prevention, Deterrence and Protection from Domestic Violence<sup>6</sup>, whose implementation began in January, 2015. The intention was to enhance the coordination and cooperation between institutions that deal with victims of domestic violence, such as the police, social work centers and courts, and at the same time to accelerate the procedure for their protection. In the past three months, however, practice shows that this purpose is not entirely achieved. In three out of four cases that have been reported to the Helsinki Committee by victims of domestic violence, victims have encountered difficulties concerning the approach and behavior of all three institutions. The police have shown the same discriminatory and rude approach to the victims as years before, the social work centers have shown a lack of professional approach, and the time limit prescribed by the new law has not been respected by the courts when acting upon a complaint of domestic violence. This shows that the institutions which have the first contact with the victims fail to provide effective

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<sup>5</sup> [http://www.sozm.org.mk/images/Dokumenti/finalen\\_lokalni.pdf](http://www.sozm.org.mk/images/Dokumenti/finalen_lokalni.pdf)

<sup>6</sup> Official Gazette of the Republic of Macedonia No. 138/2014 and 33/2015

protection, as it was before the new Law was adopted. Several gender based murders took place in the course of 2014, which testifies of the dysfunctional institutional system for protection from domestic violence.

**CASE no. 7:** In May, 2014 a woman was found dead and was later discovered that she was killed by her long-time unmarried partner. That same month, another man killed his wife and then killed himself. In July, 2014, a police officer working as a security guard in the Government first killed a woman, her sister and then killed himself, with his service weapon.

**CASE no. 8:** In October, 2014 in the City of Kavadarci, a man murdered both parents and the sister of his wife, who had several times reported him for domestic violence. That same month, in the Municipality of Zletovo, an active member of the army murdered the parents of his wife and another man, with his service weapon.

There are two common, noticeable components in these incidents: first, the victims have suffered for a longer period of time and have reported domestic violence or threats to the police; and second, the victims have reported the violence in the Centers for social work but were not protected in a shelter-center.

There are four shelter centers for victims of domestic violence which operate in Macedonia, in Skopje, Bitola, Kochani and Sveti Nikole. However, the de facto functioning of those in Kochani and Sv. Nikole has been disputed. There is especially problem when young female victims between the age of 16 and 18 (which can be legally married with court consent) are mothers and victims of domestic violence, they cannot be placed in shelter centers since they are considered unaccompanied minors. This is mostly the case with Roma women and represents a serious problem since there is no proper protection for victims of domestic violence.

***Recommendation:*** Full implementation of the Law on Prevention, Deterrence and Protection from Domestic Violence must be provided, by enhancing the cooperation and coordination between first contact institutions with victims of domestic violence; awareness raising campaigns (which include the participation of men) should be implemented regularly which will encourage victims to report acts of domestic violence; civil society must be actively included in states` policy and laws preparation; fully functional shelter centers must be established in more areas of the State and must guarantee the protection of all victims of domestic violence, including women, unaccompanied children and underage mothers.

#### **4. Right to life, prohibition of torture and other cruel inhuman or degrading treatment**

***Police brutality against Roma persons (Article 2, 7, 9, 10 and 26)***



On numerous occasions complaints are submitted over unprofessional conduct of police officials which often include allegations of torture and ill-treatment. The most concerning is the conduct of special police unit “Alfi”, which operates in countering urban crime and in plain clothes. It continues to operate with very little accountability and liability, due to the lack of effective monitoring mechanisms. In spite of the fact that the Sector for Internal Control and Professional Standards within the Ministry of Interior, the Parliament, the Ombudsman, the Public Prosecution and all primary courts have the jurisdiction to oversee their work, not one member of the unit has ever been prosecuted. The Ministry of Interior considers this unit the most efficient one when it comes to combating street crime. In practice, the “Alfi” unit operates selectively and their methods of work include refusing to identify, no respect for the presumption of innocence, verbal abuse, excessive and unnecessary use of physical force.

**CASE No. 9:** In May 2013, in the Topaana Roma neighborhood in Skopje, the Ministry of Interior conducted an action to arrest a convicted person who did not return to serve the rest of the sentence in the Idrizovo prison. Media reported about disproportionate use of physical force by the police officers who participated in the action for the arrest. Members of the Alfa unit were also dispatched to the neighborhood. Four Roma stated that they were direct victims of police ill-treatment which consisted of physical and psychological abuse. Despite the fact that they were innocent victims, they were arrested and brought before an investigative judge who initiated an investigative procedure in which they were accused for an alleged criminal act “Assault on an officer while performing security activities”. According to the statements of a larger group of Roma citizens, witnesses of the event, the policemen in an organized and prompt fashion started to attack the citizens that were on the street. According to estimations of people interviewed, around 50 policemen participated in the action and at first around 10 citizens were attacked. The action did not only take place on the street, but also the policemen, entered 2 households and 2 stores without a court order or any information or indications of a committed criminal act. In the first store there is a video material where it can be seen that the police attacks random citizens who were surprised by the attack.<sup>7</sup> In the second store three other persons were attacked. In one of the households a person was attacked while standing on the terrace of his house and did not provoke the officer in any way. Four Roma were transferred to a police station. There, they were placed in 2 cells and although they were locked their handcuffs were not removed. They remained handcuffed for 2 hours and at their request to have their handcuffs removed the police officers replied that the keys were in the possession of members of the special unit Alfa. These persons were later released and cleared of their charges. The investigation by the public prosecution with regard to the police abuse is still ongoing.

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<sup>7</sup> <http://youtu.be/YANe1cn2zFM>

**CASE No. 10:** In May 2014 in Skopje, while searching for suspects who had stolen a purse, two Roma minors aged 12 and 17 were encountered by the Alfa police unit whose members started beating them in order to extract confession that they committed the robbery. After the beating the minors were brought to a police station where they were kept and interrogated for two hours without the presence of their parents or a police officer dealing with juvenile crime and offenders (as required by the laws of the country). A criminal complaint was lodged against the Alfa unit members but no proper, effective investigation by the public prosecution has been conducted to the present day.

**Recommendations:** *Independent and effective oversight must be established over all police units, especially over police unit “Alfi”; all cases or allegations of torture and ill-treatment must be promptly investigated, prosecuted and punished. Special police unit “Alfi” must discontinue the practice of operating in plain clothes and wear uniforms while performing duties.*

***Detention and prison conditions, prohibition of torture (Article 2, 6, 7, 9 and 10)***

Closed institutions are often identified as places where most serious human rights violations take place. Detention facilities and prisons as well, face inadequate hygiene and inhuman overcrowding and lack educational and work programs for inmates. According to official statistics from the Directorate for Execution of Sanctions (DES) the overcrowding rate in November 2014 was 147%, pre-trial detainees spend excessive amount of time in detention (42% of detainees spend longer than 5 months in detention centers) and there is insufficient use of alternative measures. Although Macedonia has ratified all international human rights instruments which guarantee crucial rights in detention, such as the right to medical examination, access to lawyer and right to a phone-call, not too often are all together provided to detainees. In fact, the Helsinki Committee receives over 50 complaints a year from detainees whose right to healthcare has not been respected. Instead, they are forced to seek healthcare on their own initiative and at their own expense, to be transmitted to a hospital in order to be treated.

In the last three years, the Helsinki Committee has received a number of requests for visit from prisoners who seek legal aid, which are further communicated to the DES. However, access to these institutions is constantly denied, either to visit prisoners or general monitoring purposes.

Official reports of the Public Prosecution show that in 2009 there were only 3 official requests for conducting investigations on allegations of torture under article 142 of the Criminal Code which refers to “torture and other cruel, inhuman and degrading treatment and punishment”, which were not followed through. In the period from 2010 to 2013 there were no proceedings initiated by the Public Prosecutions with regard to the crime of torture under article 142 or “abuse in the line of service” under article 143. This is rather symptomatic, given the fact that

the Ombudsman receives 223 complaints in average in regard to police officials conduct and 40 complaints in average per year with allegations of ill-treatment or torture. The Sector for Internal Control and Professional Standards (SICPS) operating within the Ministry of Interior, receives in average 60 complaints for excessive use of force, but only in a handful of cases decided that there are grounds to raise criminal or disciplinary proceedings. In the period between 2009 and 2014, the Helsinki Committee received more than 40 complaints by citizens on torture, for which a dozen of criminal complaints were submitted to the Public Prosecution but were never processed.

**CASE No. 11:** Following a brutal attack by a security guard against a prisoner who entered a restricted area inside the Idrizovo Prison in Skopje in 2013, surgery was necessary to remove the left kidney and spleen of the prisoner. The public prosecutor, instead of identifying this case as a typical example of torture, and instead of prosecuting the security guard on the basis of Article 142 CC, an indictment was lodged for the Severe Bodily Injury crime, Article 131 CC. The Basic Court in Skopje sentenced the defendant to six months in prison. Following an appeal by the public prosecutor, the sentence was increased to one and a half years for the Severe Bodily Injury crime by the Appellate Court. During the appeal proceeding, the prison guard continued working as a security guard in the same prison.

**CASE No. 12:** In 2011, after spending 40 days in the pre-trial detention centre in Skopje, in the so called “Pajazina” (Spider-Web) case, a pregnant woman suffered miscarriage in the sixth week of her pregnancy. After spending 30 days in custody, the court extended the detention for all the suspects in the case, despite appeals from the defense warning that there are pregnant women and people with poor health among those detained. Prior to the miscarriage, Helsinki Committee requested to visit the detainee, but received no answer from the investigative judge. According to the president of the court (now a president of the Supreme Court) after they found out that she was pregnant, they were considering the possibility of releasing her to house arrest, but according to the president of the court, the defense lawyers, by filing constant formal complaints, made the administrative aspects of the case more complicated and postponed the court’s decision to send the pregnant woman to house arrest. Amid the uproar following the woman's miscarriage, the investigative judge ruled the next day that she could be released to house arrest. The investigation led by the public prosecution concluded that the Basic court in Skopje had no responsibility for what has happened.

**Recommendations:** *Develop an effective system for independent monitoring of all places of deprivation of liberty, including via the national preventive mechanism that should effectively and regularly monitor and inspect all places of detention without prior notice, reports publicly on its findings, and raises with the authorities situations of detention conditions or conduct amounting to torture or ill-treatment; Allow civil society to conduct independent monitoring of*

*places of deprivation of liberty. Ensure that the recommendations of the monitoring bodies are considered with respect to implementation; Pursue efforts to combat prison overcrowding, improve hygienic conditions in the prisons, ensure adequate medical treatment for the prisoners and make reintegration programs available to the prisoners.*

### ***Chemical castration (Article 7)***

In 2014, Article 61 of the Criminal Code was amended to include an additional safety measure that can be imposed by a court - Medical and pharmacological treatment of offenders of sexual assault against a child of up to 14 years of age (chemical castration). The new Article 65-a provides that the court may impose chemical castration if there is a threat that the offender may continue committing sexual assaults in the future. If life sentence is prescribed for the criminal offence, the court may sentence the offender to imprisonment of 40 years, provided that he agrees to chemical castration which shall last until the end of his life or until the time the court considers necessary for the treatment. If a long-lasting sentence of 40 years is prescribed for the criminal offence, the court may sentence the offender to imprisonment of 20 years, provided that he agrees to undergo chemical castration. If imprisonment of 20 years is prescribed for the criminal offence, the court may sentence the offender to the minimum prescribed sentence for that criminal offence. Chemical castration shall be performed once the offender serves his/her sentence, in specialized medical institutions, and will be supervised by the Directorate for Execution of Sanctions. At least twice on annual basis, the Directorate for Execution of Sanctions shall notify the court about the execution of the treatment and about the need of its extension or termination. If the offender does not subject himself to chemical castration or voluntarily stops the treatment, the court may determine to coercively implement the measure in a health or another specialized institution. The court shall mandatorily impose the measure even without the consent of the offender if he or she recommit the criminal offence (mandatory chemical castration). The procedure of conducting chemical castration is prescribed in the Law on Execution of Sanctions (Chapter XXI-a). The administration of this treatment does not require the person to be informed in detail of the procedure, and his or her consent must not be in the form of informed consent. The offender might therefore not be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.

***Recommendation:*** *Given that the interests and welfare of the human being shall prevail over the sole interest of society or science, Amendments of the Criminal Court with regard to sentence bargaining and mandatory chemical castration should be revoked immediately. If chemical castration is to remain a security measure in the Criminal Code, it should be performed only after the offender has received appropriate information on the intervention, its consequences and risks, and only on voluntarily basis.*

## **5. Administration of justice (Article 14 and 26)**

### **Wire tapping affair (Article 2, 14, 16, 17 and 19)**

Opposition party leader has recently began the revelation of recorded materials obtained from secret services in what seems to be the most massive surveillance operation instructed by the Government. The communication interception lasted for more than four years and included public officials and key political figures, reporters, non-governmental organizations and allegedly, even foreign diplomatic representatives which violates international law. In total, the recordings contain conversations of over 20,000 citizens, whose privacy has been invaded. According to Article 9 of the Law on communications monitoring<sup>8</sup> (LCM), an order for monitoring of communication can be issued by a competent Judge and according to Article 260 of the Law on criminal procedure<sup>9</sup> (LCP) the duration of this investigative measure can last up to fourteen months. According to Article 30 and 31 of the LCM, an order for communications monitoring for the protection of the security and defense of the state can be issued by a judge of the Supreme Court, and according to Article 33 this type of communications monitoring can last up to two years. None of these conditions however were fulfilled, which leaves the wire-tapping not only illegal and unlawful but contradictory to all principles of democracy and the rule of law.

Excessive violations of fundamental rights and freedoms can be recognized in the content of the recorded conversations, not only in the act of interception itself. Through brutal and offensive language, key public officials of the ruling party can be heard arranging election frauds, involvement and manipulation of media, using law enforcement for personal purposes and corrupting judiciary. The ruling party questioned the authenticity of the recordings and claims that conversations have been cut and edited by opposition party, although it does elaborate on some of the allegations. The opposition party leader, who is in possession of all materials, submitted a criminal complaint to the Public Prosecution and provided evidence. But in the meanwhile, he and intelligence officials who exposed the affair are being charged for *coup d`etat* and are pending trial.

***Recommendations:*** *An independent, impartial and effective investigation must be conducted by the prosecution in both cases in which all international human rights standards must be respected. Judiciary must be exempt from the influence of the executive and immune to political influence.*

### **Administrative Court - proceedings in due time (Article 14 and 26)**

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<sup>8</sup> Official Gazette of the Republic of Macedonia No. 121/2006, 110/2008, 116/2012;

<sup>9</sup> Official Gazette of the Republic of Macedonia No. 150/2010, 100/2012;

Considering the rule of law due to the work of the Administrative court, there is no effective justice, since the court and its judgments are not respected by the other administrative authorities. The court proceedings are repeated with the same evidence bases before the same (Administrative) court where the previous judgments are not taken in consideration, but they are changed in disadvantage to the plaintiff. Therefore the lack of efficiency of the Administrative court is indicative in whole, when this instance of our judicial system is the main cause for violating the right to trial within a reasonable time.

Most of the cases before the Administrative court that the Helsinki Committee reported about, are pointing out the incapability of the institutions to be services of justice, while cases from previous years have not yet been effectively finalized. An example is the case of Slavcho Mitevski for which the procedure lasts 18 years. The main problem with the delays in the court procedures is the fact that in most of the cases the Administrative Court does not decide on the merits, especially when it comes to the economic and social rights. The absence of willingness on the part of the Administrative Court to decide on the merits and act against the decisions of the administrative authorities undermines the efficient court protection in these cases, thus violates the right to a trial within a reasonable time. This is also reflected in procedures where urgent resolving of the cases conducted before the Administrative Court is stipulated, when delay has been established, as well as non-compliance with the legally set deadlines.

***Recommendations:*** *The State must ensure the independence and impartiality of the Administrative Court, which will be immune to influence from the executive. The Administrative Court must make a practice of deciding on the merits which will considerably influence and limit the duration of proceedings before it.*

#### **Right to a fair trial (Article 14)**

Implementation of new Law on Criminal Procedure (LCP) from 2010 should have started in 2012, but its enforcement is again delayed for end of 2013. In the meantime, other laws and relevant bylaws are not aligned with provisions from new LCP, while the laws adopted are not harmonized among them. Training on LCP intended for judicial bodies resulted in identification of numerous shortcomings concerning a number of provisions. Public Prosecution and Courts are not equipped to respond to new LCP. Attorneys and the Bar Chamber are not prepared to implement provisions from new LCP.

***Recommendations:*** *Greater commitment and increased budget funds are needed for successful implementation of the new Law on Criminal Procedure, accompanied with adequate changes to said laws and their alignment with the EU directives.*

#### **6. Freedom of movement, non-discrimination and the rights of refugees and asylum seekers**

##### **Discrimination of Roma ethnic community on border crossings (Article 2, 12 and 26)**

The Committee has raised the issue of ethnic profiling of Roma people on state border crossings, which are subjected to discriminatory and humiliating treatment. In violation of the right to liberty of movement, guaranteed under article 12 of the Covenant, citizens of Roma ethnic community are being denied to cross the border by officials under numerous excuses, including that they are not in hold of enough financial means for their stay in the desired country, they lack a letter of guarantee or there are other issues. The problem, which was firstly reported in 2011, persists for several years now even after the Constitutional Court`s decision to annul article 37 paragraph 1 of the Law on travel documents which limited the right to free movement to citizens who want to leave the country and was unconstitutional. This systematic discriminatory practice has been raised as an issue by several civil society organizations, but the State remains deaf to their alerts.

A significant number of citizens of Roma community have submitted complaints to the Ombudsman, the Helsinki Committee and other non-governmental organizations working on Roma issues about being discriminated at a state border crossing when they intend to travel. Some of them have been directly told by police officials that they are considered potential asylum seekers in European Union countries and that there is an order by the “superiors” not to let them cross the border. This however, cannot in any circumstance be an acceptable response because a) border police officials cannot in any way know or confirm that the citizens are potential asylum seekers and b) even if they are, the right to seek asylum belongs to every citizen and cannot be limited in any way. The conduct itself is highly inconvenient and humiliating for the victims, since only Roma citizens are usually picked out from a full bus, are held in for questioning for a longer period, after which they might not even continue the trip.

Several court proceedings have been initiated and there is one effective court decision which confirms that the act of restricting the right to free movement on border crossings to citizens of Roma ethnic community is discriminatory.

***Recommendations:** Officials of the border police must be trained and educated in which circumstances they can limit the constitutional right of citizens to freely leave the country. Court decisions must be implemented and the discriminatory practice discontinued. Citizens of the Roma ethnic community must be well informed and educated of their rights, but at the same time of the requirements for traveling to EU Schengen countries.*

### **Asylum seekers and refugees (Article 2, 6, 7, 12 and 26)**

Macedonia has significantly failed to ensure the exercise of basic human rights of asylum seekers and refugees. In the past two years Macedonia has witnessed a record number of refugees, who in an effort to transit to Western European countries are trapped in the country`s detrimental policies in dealing with refugees and asylum seekers. Almost every week,

groups of men, women and children coming from Afghanistan, Pakistan, Syria and African countries, are discovered either traveling by train or on foot beside train tracks. One week ago, around 160 people were discovered in a hermitically sealed train wagons and were released after cries of women and children were heard by countrymen. They traveled for about 10 hours and started to run out of air. Once migrants are located by police authorities, they are immediately transferred to Gazi Baba- reception center for refugees in Skopje, treated as illegal migrants. The Helsinki Committee received a complaint from a man of Syrian origin, whose compatriots are placed in the reception center Gazi Baba. He reported that they have been subjected to ill-treatment and torture and were unable to submit asylum applications, after being held over 5 months in detention. Reportedly, overcrowding and bad hygiene are only a part of the terrible living conditions in the reception center. It is alleged that the Centre in Gazi Baba has a capacity for 100-150 people, but there are currently more than 300 refugees held there.

Not only restricting their right to free movement, the state has allowed for migrants to be held in inhuman and degrading conditions, which more often than not amount to torture. Furthermore, the state has failed to protect the inherent right to life of persons on its territory, since migrants` routes are often unsafe, unmarked and dangerous. In the past 6 months nearly 27 migrants, including babies, women and children have lost their lives.

**Case no. 13:** On April 24<sup>th</sup>, 2015, 14 migrants were killed and at least 4 were injured by a train near the City of Veles. A group of around 50 people were moving near the train tracks of an international train, an area which is highly inaccessible and unmarked. Allegedly, their intention was to travel to Belgrade. They were buried in a massive grave near Veles, with all religious rituals respected.

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

## **7. Freedom of religion or belief, expression and association**

### **Freedom of religion (Article 18)**

Orthodox Archbishopric of Ohrid (POA), close to Greek and Serbian Orthodox Churches, is trying to get registered from 2004. The State persistently rejects POA's registration under the excuse that there is already one church that represents Orthodox Christians (i.e., Macedonian



Orthodox Church). All applications for POA's registration as a church or religious group have been rejected. In 2011, its followers registered a NGO in order to obtain a status of legal entity. In 2012, as part of the police action "Schismatic", 19 POA monks and supporters were apprehended and are still tried for alleged money laundering by means of donations for the NGO. In 2007, an application was submitted to ECtHR requesting establishment of violation of POA followers' right to freedom of confession.

**Recommendations:** *The State must discontinue prosecution of POA followers and register this organization either as church or religious group.*

### **Government influence in media (Article 19)**

Although promoting values and principles of a democratic society, Macedonia has significantly failed over time to provide the basic human right of freedom of expression. In fact, according to Reporters without Borders', World Press Freedom Index, in a period of five years Macedonia has dropped for almost 90 places in ranking<sup>10</sup>, describing the latest years as most difficult for journalists and media.<sup>11</sup> Not only government control and manipulation of media was revealed, but oppression and harassment of journalists took place on several occasions. Recordings of the recent wire-tapping scandal reveal top public officials (the prime minister and ministers) and political figures "arrange" the content and form of information to be presented in the public, including everyday news and documentaries, selective publishing of information on police arrests of political prisoners (case of Ljube Boshkovski, arrested in 2011 for alleged election fraud), murder (the murder of Martin Neshkovski in 2011 on the election celebration), as well as other events of public interest. At the same time, state funds were being selectively allocated to only pro-government media. Recently, the Association of Journalists of Macedonia revealed that in the past 3 months of the last year, the Government spent almost 7 million euro on commercials in electronic and printed media.<sup>12</sup> The Association claims that in this way the Government controls and dictates the published content and influences public opinion.

The already concerning situation with freedom of the media was worsen by the following serious incidents.

**Case No. 14:** On 24<sup>th</sup> of December, 2012 a Parliamentary session was held for the review of the Annual state budget for 2013, among other issues. Due to the political controversies over the budget, protests were organized outside the building. The Helsinki Committee received information that inside the Parliamentary building at the same time, force was being used upon

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<sup>10</sup> Coming from 34<sup>th</sup> place in 2009 to 123<sup>rd</sup> in 2014 out of 180 states

<sup>11</sup> <http://en.rsf.org/macedonia.html>

<sup>12</sup> Public funds in the media- Analysis by the Association of Journalists in Macedonia

[http://www.znm.org.mk/drupal-7.7/sites/default/files/Javnite%20pari%20vo%20mediumskiot%20prostor%20maj%202015\\_0.pdf](http://www.znm.org.mk/drupal-7.7/sites/default/files/Javnite%20pari%20vo%20mediumskiot%20prostor%20maj%202015_0.pdf)

members of the opposition party. Representatives from the Helsinki Committee were present inside the building but were restricted direct access. They received information that reporters were evicted from the “reporters` booth” by the security officers, without any explanation or written warrant and physical force was used upon them.

**Case No. 15:** In May, 2013 journalist Tomislav Kezarovski from the newspaper “Nova Makedonija”, was arrested and charged for revealing the identity of a witness in protective custody in a murder case by writing an article about it 5 years ago. In a controversial court proceeding, he was initially sentenced to 4,5 years in prison, which was followed by protests from journalists and civil society activists. He was held in detention during the whole course of the trial which was violation of human rights instruments since the legal conditions for detention were not fulfilled. After 6 months in detention center and cruel conditions, he was approved house detention, waiting for an effective judgment. The Court of Appeals reduced the sentence and in January, 2015 he was sentenced to 2 years in prison and given the time he spent in detention, there were only 3 months left that he was suppose to serve in prison. He was however released due to health issues. Meanwhile, there were massive protests by the civil society and journalists and increased pressure and criticism by the international community, which was most probably the root cause behind his release.

These cases were considered as a serious downfall in the freedom of media and had a huge chilling effect on freedom of expression in Macedonia. In addition, last few years have been marked by physical attacks, intimidation and death threats to journalists, low professional standards in the media community, increased number of defamation and label lawsuits against journalists by public officials and enhanced political influence on media.

**Recommendations:** *The State must allow for the media community to establish a self-regulatory body and align media legislation with international standards. The process of allocation of state fund to media must be transparent and based on publically announced criteria which will provide for non-selectivity.*

### ***Freedom of association and assembly***

The content of materials revealed in the wire-tapping affair deeply upset and mobilized the public. Due to new information on the murder of Martin Neshkovski, a young boy that was brutally beaten to death by a member of the police on election celebration party in 2011, on the 5<sup>th</sup> of May, 2015 thousands of citizens were gathered in front of the Government building to protest the ruling party involvement on covering up the case. Although peaceful at first, the protest turned violent under the provocation of an infiltrated group and police units used (excessive) force in order to suppress the initially peaceful protesters.

On the following days however, citizens peacefully gathered but were restricted of protesting in front of the Government building. In fact, a significant number of police officials with heavy equipment were blocking public space of around 1 km surrounding the Government building. Even citizens who were not part of the protests were prevented from crossing through the limited public space. This represents direct violation of the right to peaceful assembly and freedom of association, which is a constitutionally guaranteed right in Article 21 of the Constitution, which can only be limited in an emergency situation. Several citizens submitted criminal complaints to the prosecution under Article 155 of the Criminal Code, which refers to “Preventing public gathering” with aggravating circumstances when the act is committed by public officials.

***Recommendations:*** *The State must prevent limitation of public space in times of protests which will enable citizens to exercise their right to assembly in due manner; The public prosecution must accordingly follow through the criminal complaints by citizens whose rights were violated in order to protect constitutional guarantees and basic human rights and freedoms.*