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Report of the Helsinki Committee For Human Rights of the Republic of Macedonia on the human rights situation in 2004 - ANNUAL REPORT

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A certain amount of data and knowledge was gathered within the Macedonian Helsinki Committee under the projects: "Legal aid" and "Monitoring of the human rights situation in the Republic of Macedonia", which were presented on a regular basis in the monthly reports of the Committee, in the press releases as well as in specific thematic articles. The annual report is a sublimate of all these reports as well as an attempt to draw general conclusions on the basis of the specific cases the Committee worked on, and on the basis of the information it holds.

The actions of the Helsinki Committee are based upon the assumption that human rights and freedoms represent a constitutional category, the basic promoter and guarantor of which is the State. The main duties of the State in this respect (arising from the Constitution and from the accepted and ratified international documents) are the following: to create conditions for one to exercise his/her human rights and freedoms; to avoid violating the human rights and freedoms through the acts of any authority, structure, individual state servant or elected official of its own; if a mistake was made that resulted in human rights violation - to note it and correct it and to eliminate or mitigate the consequences thereof to the largest possible extent, i.e. to punish such behavior and thereby to protect the human rights and freedoms.

The general conclusion that can be drawn from the data held by the Helsinki Committee is that the State failed to fulfill any of the duties mentioned above in the year 2004. In other words, there were no conditions in the Republic of Macedonia for exercising and protecting the basic rights and freedoms at a level characteristic of the European democratic states. Moreover, there were several cases when the State itself violated and endangered the rights and the freedoms of its citizens.

1. Human rights and freedoms cannot be exercised by citizens that are neither free nor independent, in conditions of inexistence of a democratic state and of breach of the law by the State.

a) Economic and social rights

The year 2004 was characterized by a further negative trend in the economy, further fall of the citizens' standard of living and a continuous restrictive policy with regard to the social and the labor-related rights of the citizens. The number of unemployed people in the Republic of Macedonia continued to rise (reaching approximately 400.000), while the remaining production plants are gradually closing down through bankruptcy procedures (which in many cases look more like unhidden frauds). The State gave up possible revenues and inflow of funds in the State budget on several occasions (e.g. the case of sale of the "Nova Makedonija" newspaper, or the sale of the market-places in the capital city). In contrast to this phenomenon (justified with the need for savings in the budget), the State introduced restrictions with regard to the following: the number of people on welfare; the amount of the welfare (especially for disabled people); the list of free-of-charge medicines that are paid by the social security; part of the benefits of the disabled people and part of the children's benefits have been actually reduced. Amendments to the Law on Employment and Insurance in case of Unemployment were enacted in the beginning of 2005, and one is currently working on the amendments to the Labor Relations Law. These amendments are reducing (contrary to the Strategy on Fighting Poverty) both the rights of workers and the responsibilities of the State. Those that are the most affected by this policy include elderly and helpless people, disabled people, children and women (in the last year, the first cases of suicides because of annulment of the welfare and cutting off the electricity for the reason of unpaid bills were registered, as well as cases of death from hunger).
- Workers are exposed to inappropriate working conditions (the basic legal norms on technical protection are not complied with), overtime work (lack of observance of the legal norms on maximum working hours/rest), and complete self-will of the employers regarding the amount/payment of the salaries and the laying off issues. This is particularly characteristic of the textile industry, which primarily employs women. In a large number of cases, workers have not been paid salaries for several months, and employers have failed to pay the money for pension and health insurance of their staff. The Trade Union showed no willingness to stand up to the authorities (even in the cases of large scale collective dismissals, hidden under the slogan of structural reforms), and towards the end of the year the majority of its members manifested a tendency to break away in order to set up a new Trade Union structure.

- Poverty in the Republic of Macedonia represents a continuously present basis for global violation of the human rights and freedoms, and makes it impossible for the latter to be exercised by a large portion of the population. The fight against poverty was given priority at no moment and in no segment of the exercising of power, and the level of declared concern was not gone beyond. This approach has become evident since as early as the adoption of the 2004 budget (in which, for instance, 58% of the budgetary allocations for agriculture were intended for paying the administrative services related to the operations of the Ministry of Agriculture and of the Agency for Supporting the Development of the Agriculture; or, where the allocations for all health services, without those for the Ministry of Health, more or less equaled the funds provided for electoral activities). The 2005 budget has retained a similar structure, which was adopted after a short and immaterial discussion on December 29, 2004. Just as an illustration: a) in the Government programs section of the new budget, 20.000.000 denars are provided for rehabilitation of villages, 10.000.000 denars for electrification of villages, and 499.824.000 denars for the state administration reform (which has been carried out for the last 14 years), b) for capital projects, under the allocations from the general budget, 35.000.000 denars are provided for reconstruction of the building of the Parliament, 180.000.000 denars for reconstruction of different buildings of governmental bodies, and 58.562.000 denars for reconstruction of primary schools (or, altogether with all assumed donations - 78.282.000 denars for the last item). Allocations for agriculture amount to 0,9% of the budget (unlike the double figures which the EU countries can

recommend them with), and the budget for scientific research is the same as the budget of the State Electoral Committee.

The ongoing impoverishment of the population makes the exercising of the state and political rights impossible. A citizen that cannot provide for a minimum living for himself/herself and for the members of his/her family is neither free nor independent, and is very unlikely to fight for his/her rights and freedoms.

b) Regress in the functioning of the democratic state

The general democratic processes in 2004 were characterized by a further shift of the power from the legal and legitimate structures of the authority to the top managements of the political parties. The continued persistence of the political agreement as source of law (this relationship has been established in the Republic of Macedonia since 1998 when the negotiation between the political parties most openly substituted the parliamentarian and governmental discussions) brings about, as a final consequence, the party rule and dictate, which negate both the democracy and the rule of law. The monoethnic nature of the political parties in the Republic of Macedonia reinforces the negative implication of such negotiations. We have already deeply entered a situation when the changes made only through compliance with the party's will, and not with the laws, rules and procedures, have reached a critical level leading to a direct violation of the human rights and freedoms. The dysfunction of the overall state system expands this violation onto the overall social life, and negates any form of systemic and appropriate protection of the citizens.

- The overall democratic development is still determined by the implementation of the Ohrid Framework Agreement. Following 3 years of the signing thereof, a large portion of the due legal and practical changes have been introduced. However, a part of these changes failed to result in an overall improvement concerning the exercising of the basic rights and freedoms in the country, another part of the stipulated objectives have not been achieved at all, and this Framework Agreement is to a certain extent becoming a specific tool for negating the legal state authorities.

Under the wing of implementation of the Ohrid Framework Agreement and the raising thereof to the level of a legally relevant basis for making direct decisions (contrary to the Constitution and the existing legislation), the political parties have negated the Parliament as a forum for negotiation and agreement-reaching, and emerged as substitutes of the overall state apparatus and of the legal structures of the authority.

Contrary to the clear stipulation in the Agreement that only the development of democracy and of the state society can provide for a real protection of the interests of all citizens of the Republic of Macedonia as well as of the specific needs and interests of the ethnic minorities, one initiated changes in practice that reduced a part of the democratic categories, i.e. limited the space for practicing the basic rights and freedoms.

In the name of establishing interethnic confidence:

- No full disarmament of the armed groups of ethnic Albanians was accomplished, nor were the weapons from the Police reservists recovered, including the citizens that got hold of weapons on any grounds in the period before and during the 2001 armed conflict. This resulted in a multiple decrease in the security of the citizens and in an enormously increased number of cases of firearm use (in armed raids, robberies and murders, but also in incidents and accidents). The uncontrolled possession of arms makes on the one hand the investigations of the Police impossible (resulting in an increasing number of unsolved murders, such as the latest case of the girl that got killed during the New Year 2005 celebration). On the other hand, it establishes the violence as equal political method for problem solving (such as in the municipality of Kondovo case).
- The democratic procedures and the participation of the citizens in the resolution of issues of local interest, which are defined in the Constitution and in the Law on Local Self-Government were negated (the institution referendum was declared undesirable and dangerous; the positions and opinions expressed by the citizens at local or expert level were completely ignored; a situation of confronted positions on ethnic grounds was constructed).
- The application of the principle of equitable representation negated in many cases the principles of competence and expertise in the staffing of the state authorities and of the public administration. In addition to this, it also neglected the less numerous ethnic communities and established the belonging to a certain political option a unique criterion for the recruitment of new staff, enjoyment of any type of benefits or avoidance of sanctions.

- The degradation of the Parliament was rounded off by the Constitutional Court with its latest decision, which allows the transfer of Members of Parliament from one to another political party. If one takes into account that the proportional model was applied for the 2002 parliamentarian elections, meaning that the citizens voted for political parties rather than for individuals (i.e. they voted for the programs offered by these political parties), this solution is in fact a direct violation of the citizens' right to vote (who elected a concrete political option, with a four year mandate). The freedom of an MP's opinion can very easily be achieved by way of expressing one's own position and by voting differently from the party's stand, since there is nothing that legally binds the MP to vote according to the party's instruction or in the same way as the party's majority.

- The spreading of the political agreement to the sphere of the state and public administration (instead of enforcement of the rules, procedures and criteria included in the laws) destroyed the organizational structure in all state authorities and public institutions (including the system of accountability and sanctioning), and enabled the creation of an incompetent, unskilled and inefficient administration, thereby endangering in a direct manner the exercising and the protection of the human rights and freedoms.

These processes are manifested through:

- Dismissal of appointed individuals without explanation and legal remedy; appointment of new staff irrespective of whether they fulfill the requirements stipulated by the law; practices where ministries fail to comply with the decisions of their own bodies responsible for supervision and inspection (such as in the cases of appointment of school principals contrary to the Law on Secondary Education and notwithstanding the anomalies noted by the State Educational Inspectorate).
- Taking the competencies off the Agency for State Servants (ASS). The Law on State Servants, adopted in the year 2000, and the establishment of the ASS (which, inter alia, was assigned the task to see to the "uniform application of the laws and regulations" and had even, to this end, the position of its Director elevated to the level of Parliamentarian official) had the following goal: the state servants should carry out their duties in a "professional, politically neutral and unbiased" manner and with view of observing human rights and freedoms and providing for the exercising thereof. The Agency was gradually taken away all its responsibilities related to the advertising of vacant posts, selection, assignment, career development and sanctioning of the administrative workers. As a result, the situation today is the following: female Director as a party's confidential person, appointed to the post of the unlawfully ousted the original Director; hiring and firing of administrative staff according to party's orders, while the ASS, instead of caring for a consistent enforcement of the laws, sees to the consistent enforcement of the party's decisions (standing up for an open discrimination of punishing a state servant and failing to call to account the responsible Minister, i.e. State Secretary; failing to oppose in the cases of unlawful treatment of state servants, unjustified dismissals and assignments to inappropriate positions following a fully discretionary decision of the respective Minister; standing up for the open violations of the law committed under the slogan of "structural reforms"). The ultimate loser in this situation is the citizen, who is deprived of the possibility of the State providing him/her with a professional, politically neutral and unbiased service, i.e. with a possibility to fulfill his/her needs and interests in a procedure that provides for observance of his/her basic rights and freedoms.
- **The spreading of the way of work based on politics and belonging to a political party to the area of public administration as** well (which includes all those whose salaries are paid from the Budget of the Republic of Macedonia) lead to a situation: of such deterioration of the health system that it is no longer able to protect the lives and the health of the population, i.e. it severely endangers them (irresponsibility of doctors has escalated to a point which means direct threat to the life of citizens without any real sanctioning of the culprits); of such deterioration of the work of inspection services that this has resulted in a complete inefficiency thereof (either in the detection of the perpetrators or in terms of the care for the enforcement of the adopted decisions, which is proved by the examples of the Environmental Inspectorate, Labor Inspectorate, and Educational Inspectorate); of such disorder in the structure of the holders of educational and upbringing functions that this resulted in a large scale corruption, visible decline of the quality of education and direct violations of the rights of the children in the process of education.

c) Serious undermining of the rule of law

During 2004, the authorities have on multiple occasions violated directly the law.

This type of violation of the law is manifested as:

- Failure to fulfill one's own obligations undertaken with the signing of certain agreements. The most obvious examples of open negation of the own responsibility of the State as a contracting party include: a) the strike of those employed in the education sector in the beginning of the year, when the Government failed to fulfill the contractual obligations undertaken with the signing of the Collective Agreement and to create conditions for negotiations, while compelling the strikers to end the strike by means of threats and pressures, thereby violating the right to a strike; b) the case of allocation of the "social apartments", when the Government simply annulled the former procedure and announced a new competition for allocation of the apartments (in this manner unilaterally canceling the previous contract), thus manifesting absolute self-will and negating the principle of continuity of law; c) the case of the "economic apartments", when the Government terminated the previously signed agreement and retroactively applied regulations that were less favorable for the citizens.

- Breach of the Constitution and the law (like in the case of the enactment of the Law on Territorial Organization of the Local Self-Government, which in terms of the procedure in which it was enacted and its contents is contrary to: the Constitution, the Law on Local Self-Government, and the Spatial Plan of the Republic of Macedonia; as regards the extra-legal regulations - it is contrary to the Ohrid Framework Agreement).

- Failing to fulfill the obligations undertaken towards the internally displaced people during the 2001 conflict. The Government is trying to avoid the responsibility (undertaken also with the signing of the Ohrid Framework Agreement) concerning the internally displaced people and the resolution of their problem. At the end of 2004, over 2000 people from the 2001 conflict areas are still living in collective centers or in individual accommodation. After several meetings, initiative and concrete suggestions of the Permanent Survey Committee for Human Rights within the Parliament of the Republic of Macedonia, interventions of the Ombudsman and reactions of several non-governmental organizations, nothing has been done for individualization of the approach to the resolution of this specific problem, i.e. on a case by case basis. The slogan "all displaced people should return to their place of living" actually hides a total idleness of the Government in this area (no alternative solutions for the families that cannot return to their place of living for objective or subjective reasons are offered; no material means for the return of those that are willing to do that are provided; no solutions for revival of the agricultural economies that could provide for independent living of some of the displaced people are offered). Instead of an appropriate solution to the problem, at the end of November 2004 (three years after the displacement), the Ministry of Labor and Social Policy sent out legally invalid documents (without signature, explanation and appropriate clause on legal remedy) to inform part of the internally displaced people that they lost the status of internally displaced and that the State had no longer any obligations towards them. Following interventions from different sides, part of the notifications was withdrawn (which once again only prolongs the uncertainty for these citizens), and yet, some of the internally displaced people were deleted from the lists (thereby the State definitely renounced its responsibility for the situation these people got into).

- The involvement of the State (Parliament, Prime Minister, Ministry of the Interior and the courts) in the resolution of intra-church

disputes, as well as the restriction of the freedom of conviction was contrary to the Constitution. The Parliament tried to respond to the requests of number of citizens by adopting a Declaration that "supports the autocephalous status and the unity of the Macedonian Orthodox Church" (for which it provided support from a large number of political entities). However, in this way the Parliament was put in the role of a direct advocate of one religious community and the secular character of the country was called into question. The inappropriate interference of the State in this area was also manifested through the direct engagement of the former Prime Minister (Branko Crvenkovski) in the negotiations between the Macedonian Orthodox Church and the Serbian Orthodox Church, and through the request addressed to the Russian Orthodox Church for direct assistance; the police and court proceedings against a group of priests and monks that broke away from the Macedonian Orthodox Church; the treatment of the Serbian priests transiting the territory of the Republic of Macedonia, when contrary to the clear provisions of the Law on Stay and Movement of Foreigners, their mantles were treated as military or police uniforms and the border police restricted their right to move.

The interference of the State in this specific case continues with pressures on the citizens (calling them in the police station for questioning, threats, constant checks) that are in any way willing to help the monks degraded by the Macedonian Orthodox Church.

Specific form of interference of the State in the religious conviction was the intervention of the Police in certain cases when the parents did not agree with their children entering a monastic order. Given that these people are adults that have made their choice freely, any kind of intervention by the authorities is a violation of the freedom of conviction.

- The Helsinki Committee is of the opinion that there were violations of the Constitution in several cases for which it filed initiatives to the Constitutional Court of the Republic of Macedonia. These initiatives relate to: the decision of the Parliament to appoint Mr. Siljan Avramovski Minister of the Interior (this also applies to the decision to appoint Mr. Ljubomir Mihajlovski Minister of the Interior in the newest Cabinet); the Law on Ratification of the Agreement between the Government of the Republic of Macedonia and the Government of the United States of America related to the Handover of Individuals to the International Criminal Court; the Law on Raising Funds for the Purpose of Assisting Municipalities to Remove the Consequences of the June 2004 Floods; the amendments to the Law on Criminal Proceedings regarding the issue of arrest; under preparation is an initiative addressing the constitutionality of the election of the new Ombudsman. The Constitutional Court has so far given its judgment on only one of these initiatives (the Law on Raising Funds for the Purpose of Assisting Municipalities to Remove the Consequences of the June 2004 Floods, which it declared against).

d) Restriction of the electoral right and of the citizen freedom of expression

- The early presidential elections showed an obvious retrogressive process in the exercising of the citizen electoral right in the Republic of Macedonia. Compared with previous elections, the turnout rate was very low. According to the State Electoral Committee (SEC), out of a total of 1,695.103 registered voters, 55.18% voted in the first round, whereas 44.82% did not go to the polls. In the second round, 53.84%, voted and 46.16% failed to go to the polls. In this way, part of the citizens tried to convey a clear message to the governing structures that they were not satisfied with the continuing failure to solve their problems. This message was also conveyed through the abstention from voting of (almost) whole villages (Ognjanci, Kazandol, Crn vrv, Novakje, Trnovci and around ten other settlements).

The basic shortcoming of this electoral cycle, as well as of all previous elections, was the absence of an appropriate response by the responsible authorities (SEC and the Ministry of Justice). Namely, in all cases of violation of the electoral right, instead of viewing this violation as an infringement of an individual, guaranteed human right, it has been viewed from the aspect of the impact it had on the final election results. Neither the SEC nor other responsible authorities (in particular the Ministry of Justice) undertook any measure to improve the system in the interim period, nor did they introduce changes according to the comments given and the anomalies observed. This approach, on the one hand, makes the real protection of citizen rights impossible, and on the other hand it amnesties the responsible authorities from further work on the problems and enables repetition of the violations to a larger or smaller extent during the next elections as well. Part of the shortcomings and problems indicated during the previous elections (which were left unsanctioned) are gradually becoming practice at certain polling stations (lack of labelling of the polling stations, unlawful filling up of the ballot boxes, avoidance of control, forcing of members of electoral committees).

The violations of the electoral right were for the most part concentrated in the communities with predominantly Albanian population. The repeated (like at the previous presidential elections) instrumentalization of the polls of the Albanian community, given their number and thereby the impact on the final result, points not only to the unwillingness of the Albanian political structures to take active part in the democratization of the country, but on the contrary - to an open undermining of the key foundations of the authentic democracy concept.

Special form of violation of the electoral right was the inappropriately organized voting for around 200 internally displaced persons. At the two polling stations where the internally displaced persons from the municipalities of Lipkovo and Ara?inovo were supposed to vote, many of them could not find their names in the electoral registers.

- A specific form of restriction of the right to make a choice was the appeal of the Government of the Republic of Macedonia to boycott the referendum (organized in relation to the Law on Territorial Organization). On the one hand, with threats and open anti-referendum campaign, the authorities showed unwillingness to accept the institutional confrontation of the citizens with one solution of theirs. With the declaration: "Those who are against this law are against the Ohrid Framework Agreement and they slow down or obstruct the entry of Macedonia into the EU and NATO", the governing structure: turned the attention away from the fact that the law, in the way it was enacted and as it is formulated, is not at all serving the purposes of decentralization, is not at all based on the provisions of the Law on Local Self-Government and does not reflect the terms of the Ohrid Framework Agreement. Furthermore, the Government avoided the obligation to explain and justify the specific solutions included in the law; prevented one to put forward

alternative solutions that would be more appropriate for the implementation of the Law on Local Self-Government; and usurped the local government. In the efforts to discredit the referendum, the Government initiated the idea of the monoethnic character thereof, thereby providing this whole problem with a purely interethnic dimension. The willingness of a large number of participants in the pre-referendum campaign to accept this approach only increases the responsibility of the Government, which in this way became a direct instigator of ethnic and national intolerance between the citizens. On the other hand, particular problem from the aspect of exercising the right to make a choice was the possibility (in a situation of an appeal to boycott the referendum rather than to give an answer to the referendum question) for the Government to obtain information (with a simple examination of the electoral registers and of who went to the polls, without any need to find out how one voted) as to who was against the Government's proposal. This possibility was enhanced with the composition of the electoral boards (consisting only of representatives of the ruling political parties). In conditions of huge unemployment, ongoing structural changes and unexplained dismissals and changes of staff, such information becomes a weapon in the hands of the authorities against all state servants, beneficiaries of the state budget, their close relatives and family members, as well as against all those that have or will have any claims whatsoever towards the State.

The situation is even more drastic when it comes to the Albanian community. With the fact that this community is much smaller (plus the fact that since the beginning the referendum was labeled as monoethnic - only Macedonian), and with the parties of the Albanian community openly appealing for a boycott, it was actually made impossible for any representative of the Albanian community to go to the polls and to declare for or against the referendum question. The very act of going to the polls would mean open confrontation with the community and clear demonstration of disagreement with the ruling political party (as well as with all other parties of the Albanians), which is punished much more rigorously than only with dismissal or loss of certain privileges.

In this way, the right to make a choice of an enormous portion of Macedonia's population was violated openly, under the wing and with public endorsement of representatives of the international community (in particular the Embassy of the USA, the Delegation of the European Union in the Republic of Macedonia and a British politician of high rank whose visit to Macedonia had only this purpose).

- The freedom of expression has still been limited in a specific way. On the one hand, the Government supported several fabricated or made-up court cases against journalists (the support is obvious even in the newly emerged situation of a possibility of bringing such action only upon private charges), and on the other hand it refused to decriminalize the provisions on slander and insult said in the media. The new law was once again adopted with the same controversial provisions (which do not replace the prison sentence with a fine), and in 2004 a number of criminal proceedings against journalists continued, some of which already ended with court verdicts.

2. Human rights and freedoms cannot be protected in conditions of degradation of all protecting mechanisms that are available for the citizens in a democratic society.

In 2004, the State continued the systematic and sustained destruction of all the mechanisms of the democratic state, which are controllers mainly of the executive power, but also of the other forms of power, and which should at the same time be at citizens' disposal for the purpose of protection of their rights and freedoms.

a) Illegal actions of the bodies of the Ministry of the Interior and of the prisons

By definition, the Police is a structure whose main function is to protect the human rights and freedoms. The delay of the reforms in the Police as well as the lack of efficient control mechanisms and of appropriate sanctioning of mistakes have resulted in a situation of an irresponsible Police to a large extent, which is not able to carry out its duty efficiently, and which uses violence as a regular tool in its actions. In this way, the Police transforms from a tool for protection of human rights and freedoms into a violator thereof.

The most common types of violation of human rights by the Police include:

- Arrest without a warrant. Not even in 2004 did the number of cases of the Police acting contrary to the Law on Criminal Proceedings and contrary to Article 5 of the European Convention on Human Rights decrease. The number of cases has increased if one takes into consideration the use of the measure "forced detainment for questioning" (even against juveniles below 14).

- Physical violence against the citizens in the process of arrest, in the carrying out of the investigation, during the time spent in the police station or in the execution of the duties. Quite often these cases do not end up with the victims being taken to an investigative judge, nor are criminal charges brought against the perpetrators. The Helsinki Committee was involved in or got hold of information during 2004 on indicated torture and inhuman or humiliating behavior in 18 new cases involving a total of 35 individuals. Out of these people ethnic Macedonians were predominant (26), in addition to 3 ethnic Serbs, 2 ethnic Albanians, 2 Roma and 2 were foreign citizens (Peru and Serbia & Montenegro). Among these, 15 cases happened in the framework of the police procedure, whereas 3 cases occurred in the largest prison in Macedonia - Idrizovo.

- Violation of the privacy of home and family life with search of homes with no court order or with an inappropriate one, at an inappropriate time (at 4 a.m.), without appropriate proving of one's identity and with material damage inflicted (damaging of the property of citizens or confiscation of money and personal items without an appropriate record). The constitutional amendments to Article 17 (as an attempt for establishing a basis for regulating by law the restriction of privacy) do not provide a guarantee for protection of the citizens from all unlawful incursions into their privacy. The objectives, for which the inviolability of secrecy is abandoned, are broad enough and defined with sufficiently general terms so as to be interpreted in a very flexible way and used as a justification for a very large range of deviations. This in particular applies to the prevention and detection of crimes, as well as to the area of national security, where practically there are no objective criteria that will be able to prevent any arbitrary incursion into

privacy. The terminological confusion, the large number of understated issues, the wide range of deviations, the low threshold for approval of the incursion into the privacy and the low probability of efficient control - all these point to the conclusion that the arbitrary incursion into privacy in the Republic of Macedonia will not be reduced, but only legalized.

In this area, another matter of concern is the legal confusion concerning the authority of the Police to search individuals and vehicles. In essence, there is no appropriate protection from self-willed incursion into the privacy of vehicles (but also private firms and other premises that are not a home in the narrow sense of this word). The problem is reinforced with the amendments to the Law on Criminal Proceedings according to which the Police has the authority to carry out a search in the pre-investigative police procedure.

- Cases of prolonged detention (above the legally determined 24 hours) in a police station, in a certain number of cases "incommunicado" (without any possibility of contacting a lawyer or a family member), in inappropriate conditions (no food, water, medical aid), and of moving the person under arrest from one to another police station without any notes taken about the keeping of the person in the other police station (with a justification that the person has just "spent the night" there).

- Cases of use of excessive force on elderly, helpless people and juveniles, like the cases in Struga, Skopje, and Bitola.

- Specific form of acting contrary to the Convention on the Rights of the Child was when a body of the Ministry of the Interior "investigated" or punished a juvenile for deeds his parent was being prosecuted for (calling the juvenile to the police station for questioning, issuing him no passport).

The major problem in all these cases is the passiveness or the inappropriate reaction of the Unit for Professional Standards and Internal Control of the Ministry of the Interior. This Unit did not manage to establish itself as an independent body capable of undertaking the necessary investigations and bringing actions for sanctioning the violations of the Law. It proved to act in a particularly inappropriate manner in the cases of indicated torture. The most common situation is for the acts to be declared lapsed; only the reports obtained from the Police are accepted as relevant; obvious violations of laws and bylaws are negated; perpetrators are cautioned, chastened or reassigned to other positions, as opposed to the possibility of prosecuting them. The public prosecutor's office did not bring an action in the majority of cases, and when it did so, the courts were dragging out the procedure without scheduling a hearing.

The Sector for Internal Control of the MoI often mentioned technical mistakes. One of the Unit's concluding justifications of the possible overstepping of authorities, or, one of the forms of discrediting the victim, was the previous criminal record of the victim of inappropriate treatment. Only in two of the cases, which the Helsinki Committee reacted about, did the Police respond in writing that disciplinary actions would be taken against the policemen involved, whereas in all other cases the MoI, sometimes even very implausibly, assessed them as "justified use of force" or "regular procedure". This was done even in the cases of detaining people for questioning (for the purpose of extorting recognition) in a police station without a court order (which is a must according to the law), whereas the detainment was done as late as months after the incriminating event.

However, it should be noted that in 2004 efforts were made mainly in three areas: a) restructuring the Unit to a level where it can really do something; b) a serious number of cases were looked at; and c) procedure for lodging complaints by the citizens was introduced. It remains to be seen whether this will produce quality results in 2005.

b) Inefficiency of courts

The degradation of the mechanisms available for the citizens for protection of their rights continued in 2004. The courts did not manage to establish themselves as bodies for protection of human rights and freedoms. They did not manage to overcome their dependency on the political parties in power and the open influence of the latter in individual cases (which is very much conditioned, inter alia, by the manner in which judges are elected); to cope with the corruption in the court system; they attributed the inefficiency primarily to the problems of the court administration; they showed significant ignorance of the international human rights legislation; and in many cases gave legitimacy to the unlawful acts of the state authorities, in particular of the Ministry of the Interior. It seems very difficult to change the old patterns of behavior during the court proceedings (according to which the judge, instead of being an independent enforcer of the law, is a part of the finding out of the "truth"). The new improvements, even those that are of technical nature, get deformed in the bud (like the idea of the random choice of the judge that will be trying the case, which is definitely devaluated with the period of 10 days between the delivery of the case and the receipt of a notification on who the judge responsible for that case is). During the trials, it is not rare that the provisions on the number and the composition of the court council are violated, and the jury judges have no role at all. Other serious problems include the violation of the principle of contradictory of the procedure, and the principal of "equal arms" of the defense and the prosecution (in cases of involvement of the public prosecutor's office), as well as the possibility of the judge adopting a prior stand and influencing the course of the procedure (as a result of previous detailed familiarization of the judge with the case, his/her decision on calling witnesses based on this previous knowledge, as well as by personally questioning the witnesses and the parties, whilst the prosecutor and the lawyer have only subsidiary roles in the questioning). The act of questioning of the defendant in the beginning of the hearing violates to a large extent the principle of presumption of innocence and puts him/her in an inferior position, i.e. the defendant is put in a position to prove his/her innocence rather than to defend himself/herself.

The most common shortcomings in the work of the courts in the Republic of Macedonia, from the aspect of the protection of the human rights and freedoms, include:

- Pronouncing of the measure "detention pending trial". Notwithstanding the clear intention of the lawmaker that the detention

pending trial be pronounced in extremely rare cases (which is in line with the observance of the presumption of innocence), this measure is over too easily pronounced in the Republic of Macedonia even in cases when it is enough to lay down a guarantee or to apply another milder measure for securing the presence of the defendant. In the case when this measure was pronounced, the reasons for this were very little explained, and the explanation was replaced by rephrasing the legal stipulations, i.e. the general possibility provided by the law. The complaints of the prisoners awaiting trial were denied with the same easiness the measure was pronounced with.

The authorities involved (the Police - public prosecutor's offices - courts), in the name of "protection of the investigation", would isolate the prisoners awaiting trial in such a way that it was an extremely inhuman treatment. Prisoners awaiting trial were put in more difficult conditions than those of the prisoners: detention pending trial is not rarely served in premises that are also used as individual cells for punishing of prisoners, but in any case: without any possibility of communication with other prisoners (the rest of the prison population), or with a possibility of communicating only with the prisoners awaiting trial in the same cell. This means staying in extremely small and unhygienic place far below the international standards, without a collective room for daily stay; no working or sports/leisure activities are allowed; no possibilities for watching TV or listening to radio (access to printed media is very limited); reduced or hindered communication with relatives (without any physical contact); without direct daily light or appropriate artificial light for reading and with ten to twenty minute walk a day within a very confined space. In summary - these people spend at least 23,5 hours a day in a same room, with the main "possibility": looking into nothingness. If those conditions could perhaps be understandable or at least out of necessity acceptable for very short periods (let's say up to 15 days, which is actually the legal period for solitary confinement of the prisoners), in the context of the length of the pronounced measure detention pending trial, which very often exceeds four months (3,5 years in the most drastic case that is still on-going in the Republic of Macedonia), a conclusion emerges that this measure is pronounced, on the one hand, with view of extortion of recognition or information on a specific case, and on the other hand as a "substitute" for a regular punishment - in conditions of lack of enough evidence to finish the court process.

Even though the Law on Execution of Sanctions (Article 79) specifically provides for a State Committee for Observation of the Prison Institutions, which should consist of judges, penologists, sociologists, educational professionals etc. - such a Committee was never established. On the other hand, the international conventions on prevention of torture, which Macedonia has ratified, provide for the existence of an independent Committee for investigating cases of torture. The Macedonian competent authorities refuse to even discuss about such a Committee. In this way, and taking into account that prosecutors and judges consciously tolerate cases with an abundance of indications about extortion of confession - it is certain that there is no room for hope that certain things will change considerably.

- Unequal treatment of the Court parties that particularly comes to the fore when one of the parties is the public prosecutor. The inequality is manifested in terms of the behavior of the judge, the availability of documents, the possibility of calling and examining witnesses and the possibility of presenting other evidence to the court.

- Avoidance of procedures for examining the legality of cases of arrest and avoidance of instituting or trying proceedings in cases when the defendant is the Republic of Macedonia (in particular the Ministry of the Interior).

- Stalling court proceedings for more than 10 years, thus making the protective role of the court meaningless (special form of dragging out is the "ping-pong" effect of the multiple returns of verdicts by higher instance courts for retrial at first instance court level, and the avoidance to pass their own meritorious judgments) and directly violating the Article 6 of the European Convention on Human Rights (the right to a trial within a reasonable period). Particularly worrying is the unjustified protraction of proceedings in which juveniles are involved (in the capacity of either a party or a witness), which is contrary to the Law on Criminal Proceedings and to the Convention on the Rights of the Child.

The Supreme Court of the Republic of Macedonia is one element of the problem of unjustified stalling of lawsuits. Of particular concern are the cases related to the following:

- Lawsuits for obtaining a court decision on pension and disability insurance lasting for more than two years (the most drastic case presented to the Helsinki Committee is the lawsuit upon a complaint with regard to a retirement achieved in 1994). Bearing in mind that these are for the most part people in unfavorable social position, every protraction of the lawsuit transforms into a violation of the citizen basic rights and freedoms.
- Lawsuits in any area lasting for more than one year, which have been filed by elderly people. In a situation of protraction of such lawsuit, these people will definitely not be in a position to enjoy the fruits of the achieved right (which is very much contrary to the Article 6 of the European Convention on Human Rights in which the reasonable duration of a lawsuit is directly linked to the objective situation of the person).
- Lawsuits lasting for more than a year associated with the achievement of the right to social security or those dealing with labor legislation issues (when the decision has directly endangered the survival of the person and of his/her family). The most drastic example in the area of labor disputes presented to the Helsinki Committee dates from 1993.
- Lawsuits lasting long enough to result in irreparable consequences (such as the case of disputes about denationalized property that has in the mean time been a subject of transactions and has entered a procedure of sale or construction, or the lawsuit on the allocation of the "social" apartments (where the allocation was meant to last four years).

The Supreme Court, instead of accepting a meritorious decision for a certain case, returns the case for a retrial to the competent authorities thus increasing the absolute duration of the lawsuits for the citizens, which results in a situation of the same cases coming over and over again to the Supreme Court. Bearing in mind the standard response that: "there are no conditions for a prioritized resolution of the case", we think that the Supreme Court should redefine the list of priorities by taking into consideration the previous comments.

- Special form of inefficiency of courts is their lack of concern about the enforcement of their own decisions. This situation is particularly worrying in the range of cases when decisions are to be enforced by state administration bodies and institutions. However, neither the latter nor the courts feel an obligation to enforce the court decisions. Failure to enforce court decisions (no matter if these are final decisions or decisions of the higher instance courts that need to be enforced by the lower instance courts) means a several year protraction of the protection of a certain right i.e. of the enforcement of a certain sanction. This problem becomes absurd when occurring at the level of a failure to enforce the decisions of the Supreme Court of the Republic of Macedonia. According to the Law on Courts: "Every state authority is obliged to refrain from committing or letting through an act that hinders the passing or the enforcement of the court decision; "Every state authority is obliged, when it is under its responsibility, to provide for the enforcement of the court decision"; "An effective and executive court decision shall be enforced in the fastest and most efficient possible way, and may not be hindered by a decision of any other state authority". The biggest degradation of the court system is when the Supreme Court renounces the enforcement of its own decisions in conditions of such precise legislation. Based on the cases presented to the Helsinki Committee, in most of the cases it was the state authorities against which a procedure in contentious was instituted that failed to enforce i.e. comply with the decisions of the Supreme Court. The practice of failing to enforce the decisions of the Supreme Court means absolute violation of the basic human rights to legal protection and to efficient legal remedy. One of the most absurd responses of the Supreme Court concerning the reason why its decision in a specific case has not been enforced, is that no Committee within the Government of the Republic of Macedonia to enforce that decision was established. The Supreme Court "has notified the Government of the Republic of Macedonia" of this problem.

- A specific problem indicated in several cases presented to the Helsinki Committee is the problem of declaring incompetence as a form of denial of the right to protection of the human rights and freedoms. One of the most characteristic examples is the case of annulment of the former procedure and the passing of a decision by the Government for announcement of a new competition for allocation of the social apartments. On this decision of the Government, the Supreme Court declared itself incompetent because this was not an administrative act, and the Constitutional Court declared itself incompetent because this decision was not a regulation eligible for assessment by the Constitutional Court. The regular courts did not dare to re-examine the decision of the Government and decided negatively for the citizens, taking for granted the decision of the Government. The result is: existence of a decision passed by the Government that is beyond the court's jurisdiction and that is not subject to any control, i.e. the citizens can not challenge it, i.e. exercise their basic right to an efficient legal remedy.

- A second example of avoidance of the obligations (related to the Supreme Court) is the decision making in case of collision of laws. In spite of its competence "to establish basic attitudes and basic legal opinions on issues that are important for the provision of uniformity in the implementation of the laws by the courts", the Supreme Court has failed to react to cases of obvious collision of the laws, which results in a violation of the basic human rights and freedoms (such as the example of the collision between the Family Law and the Law on Pension and Disability Insurance regarding the concubine and the possibility of enjoying a family pension). The result is: women in a difficult material situation (vulnerable group in two aspects) left without means for living.

c) Non-functioning of the institution of Ombudsman

At no time since its establishment up to now has the office of the Ombudsman, as the most powerful institution in the protection of the constitutional and legal rights of the citizens that have been violated by the state administration bodies and other bodies with public authorizations, managed to function properly. This institution is totally destroyed by the lack of awareness about its importance for the development of democracy in the country, by the establishment of a way of electing the Ombudsman that provides for a total control by the leading political cadres (simple majority in the Parliament, without a previously elaborated procedure for standing for Ombudsman and criteria for selection of the candidates), and by breach of the few precisely formulated legal provisions about the profile of the Ombudsman.

The Ombudsman actually demonstrated his incapability of carrying out this duty by the fact that at no time and concerning no issue did he come into "conflict" with the ruling structures; he failed to engage into the resolution of any sensitive problem that could face disapproval of the ruling political parties; at no time did he use the media for putting on the agenda real or large scale problems. The reward for such behavior was the election for a judge of the Constitutional Court.

The authorities have clearly manifested their stand toward this institution by failing to comply with the decisions and recommendations of the Ombudsman; by totally ignoring his requests; and by hindering him to actually do his job (entry to institutions, availability of documents etc.).

The election of the new Ombudsman was a direct violation of the Constitution and the law (Articles 6 and 8 of the Law on Ombudsman), and a total negation of the mandate of this institution. Contrary to the Law on Ombudsman, according to which the candidate should: have knowledge in the area of law and in particular the national and international legislation on human rights and freedoms; have experience in the fight for protection of the human rights and freedoms; and be fully independent in his/her work from any political party (by not being member of any political party), the following type of person was elected: member of one of the ruling parties (moreover, all his life he has been a member of a political party and that is how he was building his political career); at no time has this person dealt with the issue of human rights and freedoms and he has no knowledge whatsoever in this area; he spent most of his working life as a state servant or an appointed official; for whom the only explanation provided by the Committee for issues related to elections and nominations as to why this particular individual should be elected Ombudsman was: "he was proposed by the parliamentarian group of DUI (Democratic Union for Integration)". In this way, the last possibility for the citizens to oppose the violation of the rights and freedoms by the State is closed.

Conclusion

The Helsinki Committee for Human Rights of the Republic of Macedonia believes that the continuation of the practice of abuse of the law, of breach of the laws and of destruction of the bodies of the democratic state represents an unhidden manifestation of self-will of a scale that hinders the elementary exercising of the citizen basic rights and freedoms. It is high time that all those who are currently in power as well as those who intend to come to power refreshed their memory about the warning of John Locke: "Where law ends, tyranny begins", as well as about the one in the Preamble to the Universal Declaration of Human Rights, according to which "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".