

ХЕЛСИНШКИ КОМИТЕТ ЗА ЧОВЕКОВИ ПРАВА НА РЕПУБЛИКА МАКЕДОНИЈА

КОМИТЕТИ И HELSINKIT PER TE DREJTET E NERITUR I REPUBLIKES SE MAKEDONISEE

MAKEDONYA CUMHURİYETİ'NİN HELSINKI İNSAN HAKLARI KOMİTESİ

COMITET DI HELSINKI TI- NDREPTULI-A OMLUIDIREPUBLICA MACEDONIA

HELSINŠKO KOMITETI BAŠO E MANUŠENGERE NEJAMIJA, KI REPUBLIKA MAKEDONIJE

ХЕЛСИНШКИ КОМИТЕТ ЗА ЉУДСКА ПРАВА РЕПУБЛИКЕ МАКЕДОНИЈЕ

This submission was prepared by the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC) to present our observations on the situation with regard to prevention and protection of torture and inhuman or degrading treatment or punishment. Our views are presented through the prism of the Concluding observation on the third periodic report of the Republic of Macedonia (CAT/C/MKD/CO/3), its Addendum – Information received from the Republic of Macedonia (CAT/C/MKD/CO/3/Add.1), and information that MHC considers important with regard to the actual situation in the country.

LIST OF ISSUES

Wiretapping Affair and State Institutions

After the Law on Public Prosecutor's Office for prosecution offences related and arising from the content of the illegal interception of communications (Special Public Prosecutor, SPP) was adopted in September 2015, the SPP became partially functional in December 2015. According to the last independent survey, 63% of the citizens support the work of the SPP, while 30% oppose it.¹ However, the SPP does not enjoy the support of the state institutions who either obstruct or publicly attack its work. Unfortunately, the leading institution that obstructs the work of the SPP is the Basic Criminal Court in Skopje. As the only court to deal with cases of organized crime, all of the publicly announced cases so far are supposed to be processed in front of this court.

So far, the SPP opened nine investigations and submitted two indictments. The partiality of the Criminal Court in Skopje may be observed when its decisions with regard to the proposals of the SPP are compared to the decisions made following proposals by the Public Prosecution for Organized Crime and Corruption.² The SPP has proposed pre-trial detention in a total of 21 cases. Only one proposal was accepted. Another proposal was also accepted, but the decision was overturned by the second instance criminal chamber within the Criminal Court in Skopje. SPP also proposed more than 20 precautionary measures against the suspects, but none of those were accepted by the Court.

In comparison, according to the available reports of the State Public Prosecution of Macedonia, for the period between 2012-2014, the Public Prosecution for Organized Crime and Corruption has proposed pre-trial detention against 717 suspects.³ The Basic Criminal Court in Skopje accepted 707 of them and imposed house arrest for the 10 proposals it denied. Most of the cases that reach the Criminal Court are postponed, evidence proposed by the SPP is not accepted, and the public is regularly excluded from the court room.

Beside these obstructions by the Criminal Court in Skopje, the SPP has complained that the dead-line for submitting criminal complaints is too short. The SPP has only 18 months to submit an indictment. According to the Law on SPP (Article 22), this dead-line expires in June 2017, after which it will not be possible to lodge indictments. Additionally, the SPP cannot propose protected witnesses, which seriously hinders its work. The SPP is regularly attacked by pro-governmental media, politicians (including those who are suspects in its investigations), and even by the presidents of the Public Prosecutor's Council and the Judicial Council.

Questions:

- 1. Please provide data with regard to all proposals (pre-trial detention measures and other precautionary measures) sent by the SPP to the Criminal Court in Skopje as well as information of the final decisions made by the Court.**

¹ http://www.iri.org/sites/default/files/wysiwyg/iri_macedonia_survey_april_2016_0.pdf

² The SPP was established due to the lack of trust in the Public Prosecution for Organized Crime and Corruption.

³ http://jorm.gov.mk/?page_id=31

2. **Please provide an answer with regard to the preclusive dead-line for the SPP making it not possible for it to lodge indictments after June 2017.**
3. **Please explain why is the SPP not in a position to propose witnesses to become protected witnesses.**

Data on Investigations, Prosecution, and Sanctions

During 2015, the European Court of Human Rights made an unprecedented number of 5 (five) judgments pertaining to Article 3 of the European Convention on Human Rights – Prohibition of Torture.⁴ In all of these rulings there has been torture by state officials. Due to ineffective investigation of the Prosecutor's Office and the passive role of courts, there have been grievous offences to the rights of the plaintiffs, and the Republic of Macedonia was fined with approximately EUR 50,000, funds that are to be paid to the victims.

During March 2016, the Helsinki Committee filed 49 requests for information regarding registered cases processed by Basic Public Prosecutions and Courts related to Article 142 (Torture and other cruel, inhumane or degrading treatment or punishment) and Article 143 (Harassment while performing official duty) within a 6-year period (2009-2015). Feedback was received from 21 (out of 26) Courts and 20 (out of 23) Basic Public Prosecutor's Offices.

According to the Courts, within these 6 years, they acted upon 22 cases of Article 142 and 56 cases of Article 143. Among the Article 142 cases, there were no judgments where the defendant was sentenced to a prison sentence on account of torture. There were only 8 suspended sentences, imposed as an alternative measure. As for the Article 143 cases, there was only one prison sentence (6 months for a collector at the Agency for State Roads) and 16 suspended sentences.

The Basic Public Prosecutors processed 32 cases of torture. Only in 7 of them investigation and charges were pressed. With regard to Article 143 cases (Harassment while performing official duty), the prosecutors dealt with 138 cases, 30 were investigated, and charges were pressed in 22.

Questions:

1. **Please provide detailed data with respect to persons tried and convicted, including the punishments received, for the crime of torture.**
2. **Please explain existing legislation on the punishment of torture and ill-treatment and the array of resulting sentences including when there exist mitigating circumstances.**
3. **Please explain the legal possibility for a suspended sentence to be imposed for torture, taking into account this criminal offence is punishable by a minimum of 3 years' imprisonment.**

⁴Aslani vs. Macedonia (Complaint no. 24058/13), Hajrulahu vs. Macedonia (Complaint no. 37537/07), Andonovski vs. Macedonia (Complaint no.24312/10), Kitanovski vs. Macedonia (Complaint no. 15191/12) and Ilievska vs. Macedonia (Complaint no.20136/11).

Prison Overcrowding

During November 2016, MHC requested access to publicly available information from the Directorate for Execution of Sanctions (DES) on the capacities of prisons and pre-trial detention centers, as well as the numbers of prisoners and detainees. According to the reply, as of 4 January 2017, there are 3,223 persons in total in all of the 13 prison institutions. Of those, 2,974 are serving a prison sentence, while 249 are pre-trial detainees. The total capacity for housing prisoners is 2,026, which amounts to 147% overcrowding rate on national level. As for the capacities of pre-trial detention centers, they can house 450 persons, although they are currently housing 249, which is less than their full capacity. According to information from the DES, the most alarming conditions are found at the Idrizovo Prison, with an overcrowding rate of 174%.

Penitentiary institution	Capacity in the prison wing	Capacity in the pre-trial detention wing	Number of prisoners	Number of pre-trial detainees
Idrizovo	1094 ⁵	0	1904	0
Shtip	210	0	352	0
Struga	60	0	52	0
Skopje	128	310	129	182
Tetovo	48	24	73	13
Bitola	60	22	83	12
Prilep	85	16	71	13
Strumica	62	0	91	0
Gevgelija	43	12	45	0
Kumanovo	178	48	144	20
Kriva Palanka	23	0	20	0
Ohrid	35	18	30	9
TOTAL	2026	450	2974	249

According to the available annual reports of the DES⁶ and the last available statistics obtained by the Helsinki Committee, the total number of prisoners has risen from 2,101 in 2008 to 3,159 in 2017 – an increase of 42% in 9 years.

Questions:

1. Please provide information with regard to all penitentiary institutions currently under (re)construction or planned for (re)construction.
2. Please provide information as to when construction work is expected to be completed.

⁵ According to the Committee for Prevention of Torture (CPT), the capacity is 900: <http://www.cpt.coe.int/documents/mkd/2016-08-inf-eng.pdf>, pg. 27. If the capacity is actually 900, the overcrowding rate amounts to 211%.

⁶ Available at: <http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv> (in Macedonian only).

3. Please provide details with regard to the expected capacity of all penitentiary institutions after the (re)construction has been completed.

Prison Conditions

The biggest prison in the country – the Idrizovo prison – has the worst material conditions by far. The conditions in the admission unit are appalling: there are decaying walls and ceilings, most of the windows are broken, there is significant overcrowding and insufficient number of beds so the inmates have to sleep on shifts, in the same bed or on the floor. The rooms, as the CPT states “are devoid of any equipment” and are infested with cockroaches. An equally appalling state is noted in the toilets and showers, where the hygiene is below any standards, they are damaged and barely functional. Given the overcrowding in this unit, the number of toilets and showers is clearly insufficient. The heating is either non-existent or not functional. These material conditions are more or less prevailing throughout the facility. Undoubtedly, they amount to degrading and inhuman treatment, even torture.

Similar conditions are mostly present at Skopje prison. The remand section at Skopje prison has damaged floors and walls, limited access to natural light and ventilation. There are no lockers for inmates’ personal belongings, the beds are filthy and the mattresses are damaged. Besides the crumbling walls, mold is present in the showers and in-cell toilets, which are not fully partitioned. Inmates often complain of lack of (hot) water and lack of heating. Additionally, inmates do not have access to proper eating utensil, so they have to either share or improvise. Although inmates are assigned to clean their own cells, they are often not provided with the necessary cleaning products.

The serious overcrowding problem and poor living conditions were to be addressed by the Prisons Reconstruction Project. With a credit of 52 million euros, provided in 2009 by the Bank for Reconstruction and Development at the Council of Europe, the IPA funds of the EU, and the Government of Norway, the Ministry for Justice was supposed to start the project for reconstruction and renovation of penitentiary-correctional institutions all over the country in 2011. It was determined that complete renovation, demolition of existing facilities and construction of new ones with greater capacity would be done by 2015. This project promised the prisons in Idrizovo and Skopje to get a new look and an increased capacity. As of today, except for the newly built prison in Kumanovo (which has not been built according to the standards for this type of institution) planned reconstructions for all facilities remain unfinished.

Questions:

- 1. Please provide updated information on the steps taken to improve the situation in prisons, especially the steps taken in order to address overcrowding, and poor living conditions.**
- 2. Please provide information with regard to the implementation of the Law on Probation adopted in 2015.**

Training for Prison Staff

The Directorate for Execution of Sanctions has a legal obligation to provide training to prison staff. In 2015, a research (involving a survey for all employees) conducted by the State University in Bitola⁷ showed the following results regarding the efficiency of such trainings:

	Regularly	Sometimes	Never
I follow the trainings	5,4%	33,5%	61,1%
I attend the trainings	15,3%	29%	55,7%

Answers with regard to the evaluation of the knowledge of the employees are the following:

	Regularly	Sometimes	Never
Evaluation is conducted	19,6%	62%	18,5%

Prison staff are one of the least paid public servants with the majority of salaries below the national average of 360 EUR per month.

Questions:

- 1. Please provide information on the number of trainings held and number of prison staff that participated.**
- 2. Please provide a summary of any internal evaluation with regard to the usefulness and efficiency of the trainings provided so far.**

Treatment of Juveniles in Prison

As of September 2015, juveniles from Educational- Correctional Institution (ECI) in Tetovo, are placed in Ohrid Prison for juveniles, due to the bad conditions and immediate closing of the building. Following this, the juvenile prison in Ohrid was physically adjusted (yard separated by fence) in order to prevent contact between juveniles serving a prison sentence and juveniles against whom educational-correctional measure are imposed. This included setting a specific regime for daily activities (for, example time for meals and free time) and termination of all informal educational activities. While the number of juveniles placed in the institution is significantly increased (from 8 to about 35), the number of staff remains the same, with only two psychologists for the re-socialization treatment and 24 security officers, in total.

Findings of the Helsinki Committee and the Ombudsman show that the treatment of juveniles from ECI Tetovo is significantly different from the treatment of juvenile prisoners. The juveniles from ECI Tetovo are in a generally bad physical appearance and health condition. Minor physical injuries can be easily noted on several children (for instance, bloody eyes), without a clear explanation by the staff for their cause. The medical documentation shows that 26 out of 28 juveniles are treated with medicine, due to conditions such as inflammation, cold or fever. The

⁷ <http://www.fb.uklo.edu.mk/fs;jsessionid=0f0518b86a0e4118b53c5d32ce34?file=papers/zatvorite.pdf> (in Macedonian).

most concerning therapy provided to almost all juveniles is anti-depressants, such as diazepam in high dosage (starting from 5ml and higher) on an everyday basis. The staff has no explanation for this condition, stating that they only distribute the medicine to the juveniles and the doctor is the one prescribing it.⁸ Very few children refuse to take the anti-depressants, stating that they do not feel depressed or in need of such pills.

Apart from the medical treatment, juveniles also complain about the treatment by individual security officers, who allegedly beat them without any reason. This creates an atmosphere of fear among the children, who are then afraid to claim their basic rights.

In the anticipation for the new building, juveniles from ECI Tetovo have spent 1 year and 4 months within juvenile prison. They claim they feel as if they were punished for something they did and sentenced to a prison sentence. The Helsinki Committee considers that fact itself that these juveniles are placed in prison instead of an educational-correctional institution, in conjunction with the above-described conditions, amount to inhuman and degrading treatment of juveniles by the State.

Questions:

- 1. What is the general treatment of juveniles against whom an educational-correctional measure is imposed?**
- 2. When is the new building for Educational-correctional Institution going to be ready for juveniles to be placed there?**
- 3. Has the State examined allegations by the Ombudsman for the miss-treatment of juveniles in Ohrid prison?**

Violence against Members of the LGBT Community

The LGBT community still remains subjected to systematic discrimination, due to the failure of the Public Prosecution to act even after the multiple attacks on the LGBTI Center, as well as due to the fact that the issues of sexual orientation and gender identity are not included in great number of laws that are supposed to provide efficient protection against discrimination and inclusion of the vulnerable groups in the society. Due to the fact that offenders regularly escape punishment, the LGBTI persons have no confidence in the institutions, and thus do not report various violations of their rights, especially so when it comes to instances of discrimination.

Questions:

- 1. Please explain the reasons for not providing protection against discrimination and violence based on sexual orientation and gender identity.**
- 2. Please provide information on the number of investigations, trials, and number of identified suspects with regard to the multiple attacks on the LGBT Center between 2012 and 2014.**

⁸ The juvenile prison does not have a regularly, full-time employed medical staff or doctor. A doctor from the local hospital conducts a weekly visit or the children are taken to the hospital upon emergency.

Violence against Roma

Roma remain the most marginalized minority in Macedonia. In August 2016, 121 members of the Roma community were forcefully evicted from their improvised homes under Kale, Skopje. They used to live in improvised houses for over 10 years. The eviction, with the assistance of the police, took place without respect of the legal-eviction procedures. 64 children (including 10 infants), and 3 pregnant women were among the evicted. Some of these persons do not possess IDs which makes it impossible for them to obtain social rights and receive health protection. Torture victims continue to report violence against them by agents of the State. MHC has received three such complaints in 2016, two of which involve violence by the police and one incident in a prison.

Questions:

- 1. Please provide information on the activities of the State to find suitable accommodation for the persons evicted from their improvised houses under Kale, Skopje.**
- 2. Please provide information on investigations and trials in which Roma are victims of torture and ill-treatment.**
- 3. Please provide information on trainings organized for the police and prison guards and providers of health and psycho-social services for Roma.**

Violence against Women and Girls

During the period from January 2015 until May 2016, there are 1,363 reported perpetrators for cases of domestic violence and 1,726 victims of domestic violence, including men, women and children. The Helsinki Committee considers this a critical situation, given that the number of perpetrators and victims has significantly increased since previous years. Even though a new Law on Prevention and Protection from Domestic Violence was adopted in 2014, relevant institutions have failed to provide for the full implementation of the Law. For instance, there is a significant lack of coordination and cooperation between national protection mechanisms, such as social care centers, the police and the judiciary. This is most evident in cases when victims seek temporary measures for protection, which are untimely and therefore ineffective. The principle of urgency when requesting a measure for protection is not fully respected and victims often suffer consequences while waiting for institutional protection.

National shelter centers are hardly functional and have limited capacity. The State has still not established a uniformed and comprehensive database for cases of domestic violence. The Helsinki Committee has noted lack of available information to victims of domestic violence concerning protection mechanisms. At the same time, police officials lack proper training to deal with victims of domestic violence, which often results with discrimination against women victims of violence.

Even though the National strategy for prevention and protection from domestic violence is outdated (2012-2015), relevant authorities have not established a new one, in spite of the

adoption of the new law and its implications in practice. In fact, not even a single analysis assessing the implementation and effectiveness of the new Law has been produced.

Questions:

1. **When will a national strategy for prevention and protection from domestic violence be developed?**
2. **When will the State ratify the Council of Europe Convention against Violence against women and domestic violence (Istanbul Convention)?**

Detention of Migrants, Refugees and Asylum Seekers

The UN Committee against Torture, in its Concluding observations on the third periodic report of the Republic of Macedonia⁹ raised concerns with the State in regards to the detention of migrants, refugees and asylum seekers, emphasizing the detention of irregular migrants and refugees at the Reception for Foreigners (Gazi Baba) and the appalling conditions in which they are held. During June 2015 upon severe pressure by international community and domestic non-governmental organizations, the Reception Center in Gazi Baba was emptied. During September 2015, given the continuing influx of refugees, the State established two transit centers on the south border with Greece (Gevgelija) and the north border with Serbia (Kumanovo). The transit centers (or “camps” as they are referred to) were initially meant as point-places where refugees are able to receive humanitarian or medical assistance while crossing through the Balkan route. During the period of transiting, the refugees were subjected to cruel, inhuman and degrading treatment by police officers on border crossings who used disproportional and illegitimate force, including beating of crowds with batons where children and other vulnerable categories were present, the use of tear-gas and shock-bombs. The Helsinki Committee submitted several complaints to the Sector for Internal Control and Professional Standards (SICPS), demanding accountability for cases of police misconduct. However, the SICPS did not find any of the complaints to be grounded.

Since the closing of the borders (following the EU-Turkey deal on the refugee crises), in March 2016 about 130 refugees remained in the transit camp in Gevgelija and 1,500 refugees in the transit camp in Kumanovo. The main difference between the two camps is the restriction of movement of the refugees residing there. The transit camp in Gevgelija is one of closed character i.e. the refugees do not have the opportunity to freely leave the camp at any time, while the transit center in Kumanovo can leave and come back to the camp at any time.

The refugees in transit camp Gevgelija are “detained” for more than 10 months without having their legal status in the country regulated, without any judicial decision for their detention and in rather difficult conditions. They reside in small “houses” of 12 to 14 m², even families counting six or seven members. They have access to joint toilets where the hygiene is poor and is not regularly maintained. They often make complaints of lack or low quality food, as well as adequate clothes according to the season. During difficult weather conditions, their “normal residence” in the camp is hampered. The issue of heating in winter and cooling in summer are

⁹ CAT/C/MKD/CO/3*, paragraph 19

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/114/89/PDF/G1511489.pdf?OpenElement>

often problematic. During summer, given the high temperatures, their houses are extremely hot and they face the invasion of snakes and mice. During very low winter temperatures, the heating is rather weak and the electricity installation is unstable. Their private life and opportunity to practice their religion is deeply impaired, given that the camp is overcrowded and there are no prayer rooms. The Helsinki Committee considers that the unlawful detention in conditions such as these amounts to inhuman and degrading treatment of the refugees by the State. Additionally, their lack of access to a lawyer and court disables them to seek effective remedy for their situation.

During this period, in an effort to tackle smuggling and prevent refugees from staying on Macedonian territory, the police has illegally “deported” more than 18.000 refugees on Greek territory. The “deportation” process is the following: once a group of refugees is caught with a smuggler, the refugees are (in some cases, not all) registered and questioned, after which they are loaded on trucks and pushed-back under the wired fence on the border with Greece. This process is conducted without an official procedure or any contact with Greek authorities. The refugees are usually not informed of their rights, including their right to seek asylum. This established practice is a systematic violation of Article 3 of the Convention.

Questions:

- 1. Please provide information on the national legal grounds to detain refugees and migrants in reception centers or improvised camps for prolonged periods of time.**
- 2. Please provide information on the legal basis and procedure for deporting refugees and migrants to countries from which they have entered to Macedonia.**
- 3. Please provide information on the asylum and temporary protection system and whether it is freely available and accessible to refugees and other asylum seekers.**
- 4. Please provide information whether assessment of individual cases is conducted, especially with regard to the Non-refoulement principle.**
- 5. Please provide information with regard to activities by the State to address the poor living and sanitary conditions in the reception centers.**
- 6. Please provide statistics of the number of children in reception centers, disaggregated by sex, age and ethnicity. Please provide information on the duration of detention of undocumented migrants and asylum seekers.**

Ombudsman and the NPM

During October 2016, amendments to the Law on the Ombudsman were adopted, which are meant to fulfil the criteria for a status “A” according to the Paris principles. The amendments refer to giving the Ombudsman wider mandate in promotion of human rights, improvements in the financial independence, employment of the staff within the Ombudsman and improvement in the possibility to proposed stricter disciplinary and misdemeanor sanctions. The fulfilment of status “A” according to the Paris Principles will mostly depend on the implementation of the new amendments in practice. Although the amendments of the Law on the Ombudsman envisage full implementation of the OPCAT, the National Preventive Mechanism designated within the Ombudsman is currently functioning by funds provided by the UNHCR, within the frame of a project on the refugee crisis and the treatment of refugees in reception and transit centers.

Questions:

- 1. Please provide information on the implementation of the adopted amendments on the Law on Ombudsman.**
- 2. Please provide information whether sufficient financial means are provided for the continuous functioning of the NPM**

The El-Masri Case

In 2004, Mr. El Masri victim of a secret “rendition” operation during which he was arrested, held in isolation, questioned and subjected to inhuman and degrading treatment in a Skopje hotel for 23 days, then transferred to CIA agents at Skopje airport who brought him to a secret detention facility in Afghanistan, where he was further ill-treated for over four months. The European Court of Human Rights, found, *inter alia*, that there has been a lack of an effective investigation into Mr. El Masri’s allegations of ill-treatment by State agents and their active involvement in his subsequent rendition by CIA agents (procedural violation of Article 3) and that the applicant’s transfer into the custody of the US authorities exposed him to a real risk of further treatment (substantive violation of Article 3).¹⁰ In October 2008 the applicant lodged a criminal complaint with the Skopje public prosecutor’s office against unidentified law-enforcement officials based on his unlawful detention and abduction. In December 2008, the public prosecutor rejected the applicant’s criminal complaint as unsubstantiated.

In October 2014, the Skopje Court of First Instance dismissed Mr. El Masri’s claim in respect of non-pecuniary damages, which had been lodged before the European Court’s judgment, because the European Court had already established the key facts and awarded damages in respect of them. It is unclear whether this judgment is final. The authorities indicated that it was no longer possible to ensure the reopening of the impugned criminal investigation as criminal responsibility had become time-barred. For this reason, the authorities envisaged adopting a law to set up an ad hoc fact-finding commission. This commission would establish the relevant facts and the responsibility of the individuals involved. It would be able to compel witnesses and experts to appear to give evidence and to access the necessary documents, including classified documents. In a decision of December 2015, the Committee of Ministers of the Council of Europe invited the authorities to provide information on outstanding general measures.¹¹ No information has been provided by the State.

Questions:

- 1. Please provide information with regard to the envisaged law to set up an ad hoc fact-finding commission.**
- 2. Please provide information with regard to the criminal investigation in this case.**
- 3. Please provide information with regard to the outcome of the final judgment with regard to Mr. El Masri’s claim in respect of non-pecuniary damages**

¹⁰ Case of El-masri v. The Former Yugoslav Republic of Macedonia (Application no. 39630/09), 13 December 2012.

¹¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c22de