

INFORMATION TO THE UNIVERSAL PERIODIC REVIEW

Prepared by: Helsinki Committee for Human Rights of the Republic of Macedonia

1. Introductory Summary:

- Protection of the rights of the child
- Protection of the freedom of movement – Use of pre-trial detention
- Right to protection from torture
- Protection from eventual abuse of special investigative means
- Situation in closed institutions

2. Human Rights Related Problems Established by the Helsinki Committee

2.1. Protection of the Rights of the Child

The Republic of Macedonia has the obligation of ensuring conditions required for the exercise and protection of the rights of the child also under other signed and ratified international documents in the area of human rights and freedoms, especially documents elaborating specific children's rights. This also covers the two Optional Protocols to the Convention on the Rights of the Child, the first on involvement of children in armed conflict and the second protocol relating to trafficking in children, child prostitution and child pornography, including Council of Europe conventions regulating specific segments or rights of the child, as well as relevant political declarations. In pursuance with Article 118 of the Constitution¹ of the Republic of Macedonia, all these and other similar documents the country has acceded to are part of the internal legal order. The United Nations (UN) Convention on the Rights of the Child (CRC) is one of the first international documents ratified by the Republic of Macedonia (1993). However, after the ratification there has not been an appropriate review of all laws and bylaws and this has not led to significant changes in the reality children are facing. In the 2000 - 2007 period, the country has undertaken but a few activities in response to the recommendations issued by the Committee on the Rights of the Child.

2.1.1. Cases of violation of children's rights registered by the Helsinki Committee

In a case of a child reporting domestic violence, the child was placed under an educational measure of enhanced supervision by the parents, under the control of the social work body, because the Social Work Center has concluded that”the family has potential to take care of the minor; the minor is at home, and there are regular activities undertaken with the family to overcome the conflict...“, while after the medical examination (done after a year since the reporting of the case) it was established that the child had been continually sexually abused by several persons (one of whom may be the father) and the child was prescribed a pill therapy – diazepam under the supervision of the parents. **After this measure, the child attempted suicide. In this case too, none of the responsible persons at the Center has been criminally charged.**

Furthermore, there are numerous cases in which the Social Work Center only formally adopts a decision on the contacts with one of the parents, while the child is under the custody of the other

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parent. In most cases reported with the Helsinki Committee there has been a violation of the right of the child to maintain contacts with the other parent.

In the practice, instead of the Social Work Center undertaking the necessary measures to protect the person, rights and interest of the child, the Center in such cases simply takes note of the violation and in response to requests by one of the parents, the Center only issues a written reply that the visit has not taken place. Some of the written replies are quoted here (which in certain cases reach larger number of contacts that have not taken place).

2.1.2. Conclusion and recommendations:

- *Despite the legislatively increased competences (Law on Social Protection and the Law on the Family) the role of Social Work Centers is still passive, i.e. the Social Work Center only notes that there is a violation, without raising any initiative to institute a procedure against the persons violating the rights. Furthermore, the lack of expertise or professionalism by the staff of the Social Work Centers becomes evident, as well as their lack of knowledge of the domestic or international regulations. Hence, instead of working in the best interest of the child or the victim of domestic violence (which has significantly increased in the last several years in the Republic of Macedonia), there are only general replies and explanations given as to why the Social Work Center has not fulfilled obligations for the protection of the rights of such persons.*
- *The lack of regular medical examinations in cases of indicated violence is especially concerning, the situation in respect of a relevant regular procedure under which doctors would report to the Centers any case in which there are suspicions of signs of violence against children, being equally concerning. The obligation to report indicated violence against children is not fulfilled by teachers and professors or by the other staff in schools and other educational institutions.*
- *Furthermore, it must be underlined that in accordance with the Law on Social Protection, the Ministry of Labor and Social Policy supervises the work of Social Work Centers. Regretfully, despite the legal norms on activities that the Ministry may undertake in case of unlawful actions by the Centers, in none of the cases reported with the Helsinki Committee, in which there have been violations of children's rights established, the Ministry has reacted by undertaking specific activities to protect the rights of the concerned persons.*
- *It is necessary to raise the capacities of the Social Work Centers and of the competent departments of the Ministry of Labor and Social Policy by undertaking a substantive personnel and organizational reform and thorough and continuous education of the staff, The reform must be accompanied by development of precisely defined control mechanism and procedures that would ensure identification and sanctioning of the violations of the rights of the child. The starting basis in this respect must be the state's obligation to guarantee and create at least the minimum conditions and standards for children's subsistence, which is an obligation deriving upon the signing of the Convention on the Rights of the Child.*

2.2 Protection of the freedom of movement – the use of pre-trial detention

Pre-trial detention, as the most severe measure for ensuring the presence of the indicted person at the criminal proceedings, is regulated by the Law on Criminal Procedure. The Helsinki Committee has continually underlined that the judicial authorities must respect standards on the use of pre-trial detention as a measure to ensure the presence of the indicted person, which is the

measure of last resort, applied if the presence cannot be ensured by another more lenient measure. Regretfully, the judiciary continues to abuse pre-trial detention by applying pre-trial detention as the necessary or regular measure to ensure the presence of the indicted persons at the criminal proceedings.

The Helsinki Committee for Human Rights has on several occasions criticized the attitude of abuse of pre-trial detention and in its monthly Reports the Committee has appealed to the judicial bodies to take into equal consideration alternative measures, and not only pre-trial detention, considering the fact that this measure is to be applied in order to ensure the presence of the indicted person and is not designed to serve as a punishment, the Committee appealing also that the presumption of innocence as a constitutional principle must be taken into due consideration. The Helsinki Committee is of the opinion that the decision on the limitation of the freedom of movement of the person, i.e. the decision prescribing or continuing pre-trial detention must be adopted with due and careful consideration and that relevant legally substantiated reasons must be given in this respect, in light of the fact that these are decisions concerning one of the fundamental human rights.

Investigative judges persistently prescribe pre-trial detention and then continue pre-trial detention by formally issuing decisions on the continuation of this measure with the bare explanation that the conditions envisaged under Article 199 of the Law on Criminal Procedure are fulfilled, without going into a more detailed and formal explanation of the decisions.

Recommendation:

The Helsinki Committee appeals for relevant, equal and lawful application and use of the pre-trial detention measure and encourages and calls upon the judiciary to use other appropriate measures to ensure the presence of the indicted persons in order not to violate the humane conditions and the dignity of the person.

2.3 Right to Protection from Torture

Torture is subject to absolute prohibition in accordance with international documents and standards ratified by the Republic of Macedonia and are relevantly treated in the national legislation, such as the Law on the Police, the Criminal Code, the Code of Police Ethics, etc.

In pursuance with the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, it is envisaged to establish a mechanism for prevention and elimination of torture and other inhuman and degrading treatment or punishment, which offers a more active international and national mechanism for monitoring and prevention of torture. The Helsinki Committee is actively lobbying in order that this mechanism also includes an NGO in order to enhance the impartiality and independence of the mechanism.

In respect of torture, the Committee would like to elaborate upon a specific case: The “Mountain Storm” police action. The morning of 7 November 2007, the Ministry of the Interior conducted an action called “Mountain Storm.” There were 5 persons killed in this action, while 13 persons were apprehended/deprived of freedom after the action. According to the information given by the relatives, the persons were deprived of freedom at about 15.00 hrs, while according to the official information of the Ministry of the Interior after their apprehension the persons were taken the Gazi Baba Police Station, at about 18.00 hrs. At 18:30 hrs. an ambulance was called in order that a medical examination is conducted, after which five persons were taken to the Emergency Center in order the persons receive proper medical care, since their injuries were of such character that they could not be treated on out-patient basis. All persons that were treated on

out-patient basis at the Emergency Center have proof of the acquired physical injuries. This is confirmed also by the shown recordings of a detained person at which it could be established with certainty that the person had suffered head injuries that even prevented establishing his identity. Regretfully, instead of undertaking specific measures and raise criminal charges against the perpetrators of the crime of torture against the detained person, the Ministry of Interior focused the activities on the person taking the video clip, which in fact proved that there had been after all excessive use of force in this action.

Although a longer period has passed after the police action “Mountain Storm”, in the village of Brodec, it must be underlined that in respect of the excessive use of force and ill-treatment by the officers of the Ministry of the Interior against the now already convicted person, none of the state bodies (neither the Public Prosecutor’s Office, nor an investigative judge) have made any efforts in terms of respecting Article 142 of the Law on Criminal Procedure and thus formally file charges against the perpetrators of the crime.

This is one of the many cases of abuse and overstepping of official authorities by police officers, considering the fact that the Helsinki Committee notes an increase in the number of applications by citizens against torture.

Recommendations:

The relevant bodies must implement genuine investigations on the manner in which detainees are treated and submit criminal charges against all perpetrators of crimes without selective application of the law.

2.4 Protection from eventual abuse of special investigative means

The special investigative means were introduced under the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia No. 15/2005) and were expanded under the Law Amending and Supplementing the Law on Criminal Procedure (Official Gazette of the Republic of Macedonia No. 83, dated 10 July 2008), as well as under the Law on Communication Surveillance and the Law Amending and Supplementing the Law on Communication Surveillance (Official Gazette of the Republic of Macedonia No. 110, dated 2 September 2008), and the cases in which these measures are to be applied, as well as the procedure to be followed were precisely defined.

The amendments to the Law on Criminal Procedure and the Law on Communication Surveillance increased the number of crimes in respect of which it is allowed to apply special investigative means. The latest amendments to the relevant laws opened the doors wide open for the use of special investigative means even in cases of suspicions that a person WILL commit a crime. The amendments changed the condition stating that it has to be a matter of a crime for which a prison sentence of 5 years has been prescribed and has been committed by an organized group or gang or other criminal association. An important change in the Law on Communication Surveillance is the change of the obligation of relevant bodies to **immediately** destroy data gathered by the use of special investigative means if no charges are brought against the person concerned. Article 22 of the Law envisages that in case the competent Public Prosecutor does not submit a request for institution of an investigation, the materials gathered upon communication interception are stored at the Public Prosecutor’s Office until the fulfillment of the statutory limitation on the criminal prosecution against the crime, which most often involves periods of several years.

Furthermore, according to the amendments, the investigative judge may issue an oral order to intercept communications, upon a previous oral request by the Public Prosecutor, which must be

confirmed by a written request submitted within 24 hours, following which the investigative judge is to issue the written order on surveillance. However, the procedure regulated in this manner is embedded with an unexplainable contradictoriness since the law envisages that **in case the investigative judge does not agree with the written request, the request will be decided upon** by the criminal council of the relevant court in accordance with the Law on Criminal Procedure. A question that would logically be raised is the following: "How can a judge immediately agree and grant an oral approval upon the oral request of the Public Prosecutor, and than later, only within 24 hours of the same request, when it is submitted in writing, assume a different opinion?"

2.5. Situation in Closed Institutions

As of 2004 onwards, on several occasions the Helsinki Committee for Human Rights of the Republic of Macedonia has visited closed institutions, either upon individual cases or after acquiring the necessary approvals. After the visits, the Helsinki Committee has underlined the following:

- overcrowded conditions in prisons;
- bad material conditions for life in the old building of the Idrizovo prison;
- bad material conditions for life in the Skopje Prison, Skopje
- the necessity of urgently improving the life conditions for the patients, especially in the V and VI ward at the Demir Hisar Psychiatric Hospital;
- the need to urgently refurbish the sanitary facilities at the wards;
- The need to improve the conditions for life for patients with severe mental impediments at the Negorci Psychiatric Hospital.

In August 2008, the Helsinki visited the closed institutions: the Psychiatric Hospital in Demir Hisar, the Institution for Protection and Rehabilitation- Banja BANSKO, Strumica, the Special Institute for Persons with Special Needs – Demir Kapija and the Neuropsychiatric Hospital in Negorci. The fact finding missions have shown that the material conditions for life at the Demir Hisar Hospital, at the Demir Kapija Institute and at the Neuropsychiatric Hospital in Negorci are in general very bad and very concerning in terms of the personal dignity of each patient. The Helsinki Committee published reports on all visits to closed institutions that are available at the website: www.mhc.org.mk.

It is with concern that the Helsinki Committee concludes that the Republic of Macedonia is not working in the direction of improving the material conditions of life in the above referred to institutions, although this situation has been established and underscored on several occasions in the past by relevant domestic and foreign bodies and organizations. (07.11.2008)