



Human rights situation in
Macedonia

Human rights situation in Macedonia: Implementation of the UN Convention against Torture

Shadow Report to the UN Committee against Torture

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World Organization against Torture - OMCT

Created in 1986, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With almost 300 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents in every country, OMCT is the most important network of non-governmental organisations working for the protection and the promotion of human rights in the world.

Based in Geneva, Switzerland, OMCT's International Secretariat provides personalised medical, legal and/or social assistance to hundreds of torture victims and ensures the daily dissemination of urgent appeals across the world, in order to protect individuals and to fight against impunity. Specific programmes allow it to provide support to specific categories of vulnerable people, such as women, children and human rights defenders. In the framework of its activities, OMCT also submits individual communications and alternative reports to the special mechanisms of the United Nations, and actively collaborates in the development of international norms for the protection of human rights.

OMCT enjoys a consultative status with the following institutions: ECOSOC (United Nations), the International Labour Organization, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

More particularly, OMCT's "United Nations Treaty Bodies" programme aims to facilitate the access of victims and national NGOs to the various Treaty Bodies by providing them with legal and practical assistance. This programme also often contributes to the implementation, by State Parties, of the rights recognised in the Treaties, and participates, through lobbying activities alongside NGOs, in States' implementation of the Treaty Bodies' recommendations.

The Civil Society Research Center - CSRC

The Civil Society Research Center¹ (CSRC) was founded, and is working, with the aim of ensuring growth and promotion of a society based on a solid civil premise, respect for human rights and the principle of the rule of law. To achieve these goals the CSRC is: providing free legal assistance to victims of human rights violations, Macedonian citizens and refugees; preparing legal analyses and reports on the country situation concerning human rights and civil society; undertaking initiatives aimed at improving national legislation and human rights practices and disseminating information on human rights issues through seminars, conferences and campaigns; issuing human rights publications, etc.

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

- 1999-2008: Free legal aid to refugees (implementing agency of UNHCR);*
 - 2001-2005: Technical cooperation program on human rights (implementing party of OHCHR);*
 - 2004: Human Rights Support Project - free legal aid to victims of police abuse (OSCE);*
 - 2001: Improving human rights protection and human rights standards in the Republic of Macedonia (European Commission);*
 - 1999-2000: Human Rights Caravan (Open Society Institute - Macedonia, Open Society Institute - Hungary, Canadian Government, Dutch Government. and Council of Europe);*
 - 1998-1999: Free legal advice to citizens of Macedonia (Open Society Institute -Macedonia and COLPI).*
- The list of publications of CSRC includes, inter alia, the following books and analyses:*
- 2007: Cases v. Macedonia before the European Court of Human Rights 2002-06*
 - 2003: Human Rights Standards for Law Enforcement Officials;*
 - 2002: Cases v Macedonia before the European Court of Human Rights 1998-2001 and influence of the ECHR on National Laws and Practices;*
 - 2001: Report of CSRC on Human Rights Practices.*

The Association for Emancipation, Solidarity and Equality of Women - ESE

Since 1994, the Association for Emancipation, Solidarity and Equality of Women - ESE - has been continuously active in the field of promotion of women's rights and gender equality. The ESE Association has proved to be a high profile organization, whose expertise has been sought in developing and preparing important strategic policy documents, plans of action, studies and laws at the national level. The ESE Association has dedicated its professional expertise to the improvement of the position of women in society, particularly women who face discrimination on one or several grounds. Working with women from different ethnical, religious, economic or social backgrounds and assessing the obstacles to the fulfillment of their human rights gives ESE a sound base for further exploring the root causes of discrimination, gender-based violence, risk factors and constraints in accessing women's human rights in different fields of society.

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

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PART 1

GENERAL PART OF THE REPORT

1. GENERAL BACKGROUND

1.1. Historical and political background

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

The Committee against Torture (the CAT) in its Concluding Observations on the first report of Macedonia noted some positive aspects but also recommended the following: “The State party is urged to investigate complaints of maltreatment by government officials particularly those that relate to ethnic minorities. The investigations should be prompt and impartial and those officials that may be responsible for such maltreatment should be prosecuted.”²

The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) concluded in the report on its first visit to the Republic of Macedonia (1998) issued in 2001, that “physical ill-treatment of persons deprived of their liberty by the police in Macedonia is relatively common” and recommended to the authorities to make it clear to police officers that the ill-treatment of persons in their custody is not acceptable and will be dealt with severely.³ During its October 2001 visit to Macedonia, the CPT gathered allegations of various types of beating and recommended that the authorities record allegations of ill-treatment, obtain forensic evidence and process such cases.⁴ Following its July 2002 visit, the CPT was concerned by the persistence of ill-treatment of persons deprived of their liberty by law enforcement officials and the inadequate response by the authorities.⁵ In the report on its November 2002 visit, the CPT delegation gathered information concerning ill-treatment or torture, allegedly inflicted on persons deprived of liberty by security forces and found evidence of recent ill-treatment by law enforcement officials.⁶ Two years later the CPT welcomed the positive developments that had occurred since the November 2002 visit (police training; and adoption both of a Code of Police Ethics and of amendments to the Law on Criminal procedure). Documented allegations were gathered of excessive force being exercised at the time of apprehension, or severe beatings with batons or wooden sticks in order to extract a confession or obtain information.⁷ In its report on the 2006 visit, the CPT concluded that “the authorities should invest greater efforts to tackle the systemic deficiencies, for example in relation to the prison service, and to combating impunity within the law enforcement agencies.”⁸

The Helsinki Committee for Human Rights in the Republic of Macedonia (the Helsinki Committee) in 2004 noted that in many cases of physical violence against citizens, victims are not taken to an investigative judge, nor are criminal charges brought against the perpetrators.⁹ A year later, the Helsinki Committee stated that prosecutors and judges continue to tolerate impunity, by failing to duly investigate allegations relating to the extraction of confessions and by failing to seek assistance from the Forensic Bureau.¹⁰

In its 2004 report, the Ombudsman warned of the continuing use of various methods on persons in police custody with the aim of obtaining information on a criminal offence or a criminal perpetrator and expressed concerns regarding the lack of cooperation of the authorities. The 2005 report indicated an increase in allegations of police abuse.

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

3 CPT report on the 1998 visit to Macedonia, 11 October 2001, CPT/Inf (2001) 20, § 17.

4 CPT report on the 2001 visit to Macedonia, 16 January 2003, CPT/Inf (2003) 3, § 20.

5 CPT report on the July 2002 visit to Macedonia, 16 January 2003, CPT/Inf (2003) 5, § 8.

6 CPT report on the November 2002 visit to Macedonia, 9 September 2004, CPT/Inf (2004) 29, § 19.

7 CPT report on the 2004 visit to Macedonia, 15 November 2006, CPT/Inf (2006) 36, § 11.

8 CPT report on the 2006 visit to Macedonia, 13 February 2008, CPT/Inf (2008) 5, § 7.

9 Helsinki Committee, Annual report 2004 (<http://www.mhc.org.mk>).

10 Helsinki Committee, Annual report 2005.

The 2006 report noted the practice by the police to use disproportionate coercion methods and the unprofessional work of the internal control and professional standards unit.¹¹

The 2006 EU report noted that ill-treatment continued to occur, particularly during arrest and detention, and highlighted the need to strengthen investigation mechanisms and improve co-operation between the Ombudsman and the Ministry of Interior (Mol).¹²

1.1.2. Minority issues and armed conflicts

In addition to “concerns at the apparent lack of will by the authorities to thoroughly and impartially investigate allegations of police ill-treatment and torture and to bring suspected perpetrators to justice”,¹³ some reports indicated excessive use of force against persons belonging to ethnic minorities, notably the Albanian and Roma ethnic communities.¹⁴

The Ohrid Framework Agreement, which brought an end to the 2001 armed conflict, anticipated constitutional changes that would enable increased inclusion of ethnic Albanians in State bodies. Four years later, the European Commission stated that inter-ethnic “trust on the part of all communities has improved, notably thanks to the first results achieved in the police reform and, in particular, the establishment of mixed police patrols.”¹⁵ However, some recent police actions in former crisis regions provoked concerns, regardless of the legitimacy of such actions.¹⁶

1.2. Situation of human rights defenders

The Constitution entitles citizens to submit petitions to State and other public bodies, and to be informed on human rights and basic freedoms as well as to actively contribute, individually or jointly with others, to their promotion and protection. Citizens can establish associations for protection of human rights or for other purposes.

Human rights NGOs have established cooperation with the Ombudsman’s office,¹⁷ and some have advocated human rights issues by means of involving authorities in discussions on human rights issues,¹⁸ and through the publication and dissemination of human rights brochures etc.¹⁹ Obstacles to effective and sustainable work of the human rights defenders’ community include the lack of free legal aid legislation, the lack of efficient and transparent mechanisms for the prevention and protection of human rights, and gaps between legal provisions and practice, etc.²⁰

The Special Representative of the Secretary General on the situation of human rights defenders (SRHRD) recently observed a lack of capacity of HR defenders to work on HR monitoring and protection, which is exacerbated by insufficient information-providing and complaint mechanisms. She recommended that the established co-operation between various bodies (the Mol and the Ombudsman) be further improved.²¹

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

12 European Commission, Macedonia 2006 Progress Report, Brussels, 8 November 2006.

13 Amnesty International, Continuing failure by the Macedonian authorities to confront police ill-treatment and torture, 2003.

14 Helsinki Committee, Annual Report 2002, § 4i; the U.S. Department of State reports, etc.

15 Commission of the European Communities, Analytical report for the Opinion on the Application from Macedonia for EU membership, Brussels, 9 November 2005.

16 "Amnesty International calls for investigation into police killings", 11 September 2007; Helsinki Committee, Fact Finding Mission concerning the police action in Brodec, 7 November 2007.

17 10 years ago CSRC contributed to the promotion of the newly established Ombudsman’s office by including the Ombudsman in the CSRC’s ‘valet’ card “Citizens, do you know your rights?”, and by providing 50,000 copies of the card for the Ombudsman’s needs.

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

19 In 2003 CSRC published a pocket guide for police entitled “Human Rights Standards for Law Enforcement Officials” and delivered more than 10,000 copies to Mol officials.

20 Zoran Gavriloski & Suad Missini, Analysis of CSRC in response to the Questionnaire of SRHRD Hina Jilani, CSRC 2005, p. 5.

21 Report of the SRHRD Hina Jilani, Addendum, Mission to Macedonia, 3 March 2008.

1.3. Competence and practice of some domestic bodies

1.3.1. Legal options available to victims to seek redress

The Constitution stipulates that every citizen is entitled to judicial protection of his rights and freedoms. The Law on Criminal Procedure (LCP) entitles those who allege that they have been victims of ill-treatment, or have been seriously injured, to bring criminal charges against the relevant law enforcement official. The Public Prosecutor can request the investigating judge to carry out an investigation, file an indictment, or reject the charges and then inform the victim of the possibility of taking over the prosecution as a subsidiary plaintiff. If criminal proceedings result in conviction, the victim is referred to the possibility of pursuing a claim under the civil procedure for damages.²² If not anticipated by a conviction, a civil lawsuit has low prospects of success and is not an effective remedy,²³ a view that is shared by the Strasbourg case law.²⁴

1.3.2. Competence and practice of the Public Prosecution Office (PPO) and courts

The PPO is competent to prosecute perpetrators of criminal offences, as well as to take measures to protect human rights and freedoms. Courts protect human rights and freedoms, unless the Constitutional court is expressly given jurisdiction.

Both the PPO and judiciary have been criticized over the previous years for failing to bring alleged perpetrators of crimes to justice. The statement from 2001 that the "judiciary is generally weak and subjected to political influence and corruption ..."²⁵; was validated four years later when the President of the Republic Judicial Council expressed concern that "judicial independence is threatened by the manner of election and dismissal of judges".²⁶ Moreover, the former Public Prosecutor of the Republic of Macedonia (PPRM) stated: "I am the last fool to take the function of Public Prosecutor [PPRM]. There will not be another one!"²⁷ The President of the Supreme Court in 2005 stated the following: "We should put end to the politics in the judiciary."²⁸ In order to provide safeguards against supremacy of politics over the judiciary, the Judicial Council of the Republic of Macedonia was given authority to elect and dismiss judges.²⁹

1.3.3. Competence and practice of the Ombudsman

The Ombudsman is responsible for protecting rights violated by State bodies, or by other bodies and organizations with public authorizations. The Ombudsman may seek explanations for particular actions, enter official premises and carry out inspections, interview an official in order to obtain certain information, seek expert opinions etc. State bodies are obliged to co-operate. The Ombudsman may visit and inspect prisons without any announcement or approval and talk to persons deprived of their liberty without supervision by officials of the detention facility. The Ombudsman is entitled to issue recommendations, proposals, opinions and indications as to how to provide redress for the established violations; to suggest the reopening of legal proceedings and to propose the instigation of disciplinary or criminal proceedings.

The Ombudsman has acted upon various complaints by citizens. However, performance could have been better if the above legal instruments had been fully utilised during

22 LCP, Official gazette of the Republic of Macedonia (Official gazette of RM), no. 15/0 (consolidated text).

23 Zoran Gavriloski, CSRC, Effectiveness of domestic civil remedies for protection of the right under Article 3 of ECHR, considered by the European Court of Human Rights on the admissibility hearing in the *Jasar* case (19.01.2006).

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

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

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

27 "Vest", 14 September 2005, "The last fool has no intention to resign" (www.vest.com.mk).

28 "Dnevnik", 26 December 2005 (www.dnevnik.com.mk).

29 Law on Courts, Official gazette of RM, no. 58/06.

the whole reporting period, notably the right to make unannounced visits to detention facilities.

1.3.4. Competence and practice of the Sector for Internal Control and Professional Standards

The competences of the Mol's Sector for Internal Control and Professional Standards (SICPS) include the examination of claims of human rights violations by the police and the eventual proposal for dismissal or fining of the responsible police officers. Citizens or NGOs have a right to receive information regarding the outcome of their complaint within 30 days, or an explanation for the reasons for delay after expiration of this time limit.

In 2007, the NGOs working in the Human Rights Support Project (HRSP) were concerned by the inefficient work of the SICPS,³⁰ while the US State Department concluded the following: "The Unit's officials were slow to complete investigations and bring charges in outstanding human rights cases from previous years. Nevertheless, international observers noted continued improvements in the Interior Ministry's response to new cases of individual police misconduct and more frequent and consistent disciplining of officers found guilty."³¹

2. RELEVANT LEGAL BACKGROUND

2.1. International legal background

The Republic of Macedonia is bound by the following UN treaties: the Covenant on Civil and Political Rights and its Protocols; the Covenant on Economic, Social and Cultural Rights; the Convention against Torture (CAT); the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child and its Protocols; the Convention relating to the Status of Refugees, etc.,³² as well as by the Council of Europe's Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 1, 4, 6, 7, 11, 12, 13, 14; etc.

The Constitution stipulates that fundamental values of the constitutional order include "rights and freedoms of a citizen recognized by international law and determined by the Constitution".³³ The Law on Courts stipulates that "courts adjudicate and base their decisions upon the Constitution, the laws and the international treaties ratified in accordance with the Constitution",³⁴ the latter forming an "integral part of the domestic legal order" (Article 118 of the Constitution). Yet, the Constitutional court has never examined whether a law or by-law is compatible with a ratified international treaty due to its limited competence in this respect!

2.2. Domestic provisions guaranteeing human rights of detained persons

In general, rights of detained persons meet international standards. The Constitution guarantees inviolability of a person's liberty, which can be restricted by a court decision (except in extraordinary circumstances), for a duration and through a procedure determined by law. The legal provisions stipulating the reasons for detaining a suspected or accused person on remand are clear, but criticism has been made of prolonged

³⁰ HRSP, Police and Human Rights, Annual report 1.11.2006-1.11.2007.

³¹ U.S. State Department, Country report on human rights practices in Macedonia for 2001 (issued 2002).

³² Official gazette of RM, no. 57/93.

³³ Official gazette of RM, no. 52/91.

³⁴ Official gazette of RM, no. 58/06.

detention on remand or its use as a measure of retribution rather than as a measure of securing the person's presence in the proceedings. Detention measures must not harm the dignity of the accused, and only restrictions necessary for preventing escape or a deal that could harm successful conduct of the proceedings may be applied. Detainees have the right to 8 hours of uninterrupted rest in any 24-hour period, to be outdoors for at least 2 hours a day, to buy food or other items at their own expense, to be visited by their close relatives, physicians and others, to send applications, pleas and appeals etc.

The Law on Execution of Sanctions prescribes that the persons against whom sanctions are being applied are treated in a human manner, by respecting their dignity. Any form of torture, inhuman or degrading treatment or punishment is prohibited, and penal or disciplinary proceedings can be instigated in cases of the unlawful use of any means of coercion or firearms. Convicts are entitled to submit applications for legal remedies, petitions etc. and to receive responses.

2.3. Domestic provisions restricting human rights

2.3.1. Law on Police

The Law on Police³⁵ (Part I), stipulates *inter alia* that the police has a duty to respect and protect the rights and freedoms of citizens guaranteed by the Constitution and by ratified international treaties. Part II describes the particular competences of the police. Article 8 of the Law provides for the submission of a complaint by an alleged victim and the obligation on the police to respond to the complainant within 30 days. However, the Law neither explains the internal procedure, nor provides for any judicial control of such decisions.³⁶ Articles 9 and 10 respectively regulate the obligation on the Mol to submit reports to the Government and the Parliament, and to provide information upon request to citizens or others.³⁷ CSRC considers that inclusion of civil society representatives in an independent monitoring body is crucial. Whilst relevant standards for law enforcement officials provide that a person convicted of a serious crime cannot be a police officer,³⁸ the Law stipulates that an employment candidate must not be prohibited by a court order from performing a profession, activity or duty.³⁹

'Informative talks', which have been subjected to many criticisms over the past years because of their abuse by the police,⁴⁰ are included in the Law on Police. This means that citizens can be summoned in writing for the purpose of gathering information necessary for conducting police affairs. The summoned person can be forcefully apprehended only by court order and only when he/she has clearly failed to respond to properly delivered summons in which he/she was warned of the consequences for failure to respond [i.e. forceful apprehension] and when he/she is not able to justify his/her failure to attend. The person summoned or forcefully apprehended must be advised of his/her rights, including the right to leave the Mol premises after providing or refusing to provide information.

2.3.2. Law on the Public Prosecution Office

The 2004 Law on the Public Prosecution Office (LPPO) lacked safeguards against the failure of the PPO to process criminal charges submitted to the PPO in a timely manner,

.....
35 Official gazette of RM, no. 114/06.

36 Helsinki Committee, Analysis of the Law on Police, 2006.

37 In its 2005 Annual report (p. 27) the Ombudsman complained of lack of proper information from Mol.

38 Helsinki Committee, Analysis of the Law on Police, 2005.

39 The above is due to the fact that the Constitutional Court has abolished a number of provisions that prevented an *ex lege* ban on employment of [former] convicts in Mol and other State bodies.

40 US State Department, 8 March 2008, Country report on human rights practices in Macedonia for 2007: "There were reports that police continued to call suspects and witnesses to police stations for 'informative talks' without informing them of their rights."

which affected a number of alleged victims who were not able to lodge subsidiary criminal lawsuits before criminal charges by the PPO had been rejected, resulting in the criminal charges of some of the complainants becoming time-barred. On 6 July 2007, the European Roma Rights Centre (ERRC) and the CSRC requested the highest Macedonian authorities to amend the Draft LPPO to provide alleged victims with an effective legal remedy in the case of inactivity of the PPO, so as remedy this legislative shortcoming.⁴¹ This viewpoint was reiterated by the case law of the European Court of Human Rights, which found a “procedural” violation of Article 3 of ECHR on account of the failure of the Macedonian authorities to undertake effective investigation into claims of torture.⁴²

On 3 December 2007 the Macedonian Parliament enacted the New Law on the Public Prosecution Office.⁴³ The new LPPO retains the provision requiring the PPO to consider criminal charges (complaints) within 30 days from the date of submission, but a superior PPO is still not obliged to respond to an alleged victim who complains of a delay caused by an inferior PPO.

3. DEFINITION OF TORTURE AND CRIMINAL LEGISLATION (ARTICLES 1 AND 4 CAT)

3.1. Definition of torture

3.1.1. Prohibition of torture

Article 11 of the Constitution guarantees irrevocability of the right to physical and moral dignity and prohibits any form of torture, or inhuman or humiliating conduct or punishment. The Law on Criminal Procedure prohibits the extraction of a confession or a statement from an accused person or another person who participates in the criminal proceedings.

3.1.2. Definition of torture in the Criminal Code

Following the 1999 recommendations by CAT, in 2004 amendments to Article 142 of the Criminal Code (CC) were passed, adding the phrase “and Other Cruel, Inhuman or Degrading Treatment and Punishment” to the title “Torture”; criminalizing the incitement of torture, or the infliction of severe suffering; and increasing the minimum sentences.⁴⁴ The words “some other” in the phrase “some other unlawful instrument or manner” could be replaced by the word “all”, because the legal definition of some instrument or manner incompatible with human rights standards could be misinterpreted as justification for acts of torture. The phrase “with the intention [to force]” could be wrongly interpreted if a domestic court fails to establish an official’s intention to cause the consequences referred to in the CC. Criminalization of ill-treatment on discriminatory grounds is welcome, but Macedonia still does not have general anti-discrimination law (apart from the Law on Equal Opportunities of Men and Women).

⁴¹ “The Draft Law on the Public Prosecution Office Calls for Amendments”, sent by mail and fax on 6 July 2007, summarized in the ERRC/CSRC press release (<http://www.errc.org/cikk.php?cikk=2845>).

⁴² www.echr.coe.int (*Jasar v. Macedonia*, 69908/01, §§ 55-60, judgement of 15 February 2007; *Dzeladinov v. Macedonia*, no. 13252/02, judgement of 10 April 2008; §§ 69-74, in particular § 73: “The inactivity of the public prosecutor prevented the applicants from taking over the investigation as subsidiary complainants and denied them access to subsequent challenges in the context of the criminal proceedings. The applicants are still barred from taking over the investigation as the public prosecutor has not yet taken a decision to dismiss the complaint (see the *Jasar* judgment, cited above, § 59).”

⁴³ Official gazette of RM, no. 150/2007.

⁴⁴ Official gazette of RM, no. 19/04.

3.2. Other legal provisions

The Criminal Code sanctions an attempt to commit a torture, complicity in committing torture, and excludes an order of a superior officer as possible justification for committing serious crimes or war crimes. The Codex of Police Ethics of 4 June 2007 prescribes that police officers must not cause, incite or tolerate any act of ill-treatment.

The Law on Amnesty stipulates that amnesty shall not apply to persons who have committed crimes relating to the 2001 conflict which constitute grave breaches of international humanitarian law.⁴⁵ Witnesses in proceedings could be protected by the Law on protection of witnesses.⁴⁶

4. MEASURES TO PREVENTS ACTS OF TORTURE (ARTICLE 2 CAT)

4.1. Measures to combat torture and ill-treatment: general overview of and actions taken by the highest authorities

In the reporting period, excessive force was often used against suspected and accused persons,⁴⁷ and appropriate action by the authorities was lacking. A recent statement of the Minister of Interior that “every accusation, if not substantiated by evidence, is much closer to a false reporting”,⁴⁸ was strongly criticized by the HRSP for putting pressure on victims, who might be charged by the police with false reporting of a crime.⁴⁹

The situation in prisons and psychiatric facilities has been constantly assessed as unsatisfactory, particularly as regards the conditions of detention.⁵⁰ Following its 2006 visit to the Republic of Macedonia, the CPT welcomed the adoption of certain limited measures but noted that the fundamental measures required to improve the situation in, for example, the prisons and the psychiatric hospitals visited, were lacking.⁵¹

4.2. Information on cases of torture and ill-treatment (including statistical data)

4.2.1. Places of ill-treatment and perpetrators

Ill-treatment has most often occurred in police stations. Several victims (suspected of terrorism) claimed that they were subjected to torture during *incommunicado* detention in unofficial premises. Degrading treatment usually took place in the course of police procedures or as a side-effect of detention or imprisonment, associated with poor conditions of detention (overcrowded cells and lack of sanitary and related facilities).

Most of the perpetrators were police officers, but special police units (“Lions”, “Tigers” and “Alphas”/“Alfi”) were also involved in human rights abuses. In 2005, the HRSP registered 95 Mol officials as alleged perpetrators (of which 49.5% were uniformed, 11.5% special units members etc.). Similar statistics were registered in the following years.⁵²

45 Law on Amnesty, Article 1 § 4; Official gazette of RM, no. 18/02.

46 Official gazette of RM, no 38/05.

47 U.S. State Department, 2007, Country report on human rights practices in Macedonia for 2006, etc.

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

49 HRSP, “Police and Human Rights”, Annual report 1.11.2006-31.10.2007, p. 5.

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

51 CPT report on the 2006 visit to Macedonia, 13 February 2008, § 7.

52 HRSP, reports 2005-2007.

4.2.2. *Victims*

Many victims felt that they were not provided with sufficient protection from ill-treatment by the police and some raised their allegations of ill-treatment only at court hearings. Others changed their initial statements after intimidation by the perpetrators.

In 2005, the Ombudsman registered 412 persons who had complained of abuses by Ministry of Interior officials, of whom 77 were ethnic Macedonians, 171 ethnic Albanians, etc. In 2006 there were 224 persons who had complained of various police abuses, of whom 47 were ethnic Macedonians, 34 ethnic Albanians, etc.; and in 2007 - 201 persons who had complained of various police abuses, of whom 40 were ethnic Macedonians, 49 ethnic Albanians, etc.⁵³ The HRSP's 2005 report registered 122 alleged victims, of whom 52 were ethnic Macedonians (42.62%), 47 ethnic Albanians (38.52%), 18 ethnic Roma (14.75%) and 5 others (4.11%). 75 alleged victims counselled by the HRSP from 30 October 2005 to 1 November 2006 belonged to the following ethnic groups: 48 Macedonians (64%), 11 Roma (14.67%), 9 Albanians (12%), 2 Turks (2.67%), 2 Serbs (2.67%) and 3 other (4%). The 2007 report provided information on the following ethnic structure of the 57 alleged victims: 37 Macedonians (64.91%), 11 Albanians (19.29%), 7 Roma (12.28%) and 2 Boshniaks (3.52%). Most of the alleged victims assisted by the HRSP were men (95.08% registered in the 2005 report, 92.00% in 2006) and adults (97.54% in the 2005 report, 98.67% in 2006).⁵⁴

4.2.3. *Types of ill-treatment*

The CPT recorded allegations of the following types and methods of ill-treatment: beatings, some of them severe or sustained enough to induce repeated loss of consciousness and/or lasting sequelae, caused by punches and kicks on various parts of the body; beating with buttons, metal rods, wooden sticks and baseball bats, repeatedly hitting on the palms of a person's hands, threats to inflict bodily harm or subjecting persons to mock execution (following October 2001 visit); essentially the same types as above: inflicting repeated blows on the gluteal region the soles of the feet and or the palms of the hands, plus deprivation of sleep (following July 2002 visit); essentially the same types of ill-treatment and injuries (following the November 2002 visit); excessive force at the time of apprehension, severe beatings with batons or wooden sticks in order to extract a confession or obtain information (following the 2004 visit); kicks, pinches and blows with batons or various other objects, often inflicted prior to and during questioning, in some cases with a view to extracting a confession or obtaining information, excessive use of force (following the 2006 visit).⁵⁵

In 2004, the Helsinki Committee registered 18 new cases (35 individuals) of alleged ill-treatment, of which 15 cases occurred in the course of police procedures and 3 in the Idrizovo prison.⁵⁶ The 2006 HRSP's report registered the following types of violations committed by law enforcement officials: bodily injuries - 47%, rude and improper behaviour - 33%, etc. The HRSP's caseload at the end of 2007 involved allegations of: bodily injuries - 53%, rude and improper behaviour - 26%, etc.⁵⁷ In 2006, the Ombudsman office received 215 complaints of various police abuses of which 25.6% related to police violence or excessive use of force, whilst the next year, 27.5% of the complaints of various police abuses related to police violence or excessive use of force.⁵⁸

53 Ombudsman, Annual reports 2005-2007.

54 HRSP, reports 2005-2007.

55 CPT, reports on the 2001-2006 visits.

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

57 HRSP, reports 2006-2007.

58 Ombudsman, Annual reports 2006-07 (<http://www.ombudsman.mk/default.aspx?cid=104&Lan=MK>).

4.3. Information on processed cases

4.3.1. Information on cases processed by the SICPS

The shortcomings observed in the work of the Sector for Internal Control and Professional Standards (SICPS) range from occasional failure to fully and timely investigate allegations of ill-treatment and a weak sanctioning policy in some cases, to lack of co-operation with other institutions, such as the occasional refusal to provide information to the Ombudsman and failure to refer serious cases to the prosecuting and judicial authorities. Responding to the CPT, the Government reported that, from 1998 to 2000, 10 disciplinary proceedings against 13 authorized officials of the Ministry were instigated on grounds of excessive use of physical force by police officers. Three officials were dismissed from their work, and 10 were exposed to financial sanctions.⁵⁹

In 2007, the SICPS examined 61 cases relating to use of physical force on citizens. 33 of these complaints were found to be groundless, in 19 cases there was no evidence to substantiate the allegations, and in the remaining 9 cases, the use of force was considered groundless and unjustified (special reports were submitted to the PPO and dismissal of police officers was proposed in 3 cases, criminal charges were filed in 2 cases and disciplinary measures were proposed in the remaining cases). The SICPS received 50 submissions from the Ombudsman (responding to 44 of them), and 60 complaints from non-governmental organizations (some of which were repeatedly submitted).⁶⁰

4.3.2. Information on cases processed by the Ombudsman

The statistics of cases considered by the Ombudsman relating to various police abuses is as follows: 2004 - 66 violations established (of which interventions were accepted in 51 cases); 2005 - 133 violations (83 successful interventions); 2006 - 192 violations (159 successful interventions), 2007 - 158 violations (133 successful interventions).⁶¹

4.3.3. Information on cases processed by the PPO

The CPT has repeatedly noted in its reports that public prosecutors (and judges as well) show little interest in allegations of torture, even if there is solid evidence to substantiate claims that there has been ill-treatment. In addition to the failure to (timely) process cases, there is no practice of informing complainants of the procedure before the PPO. For example, after the PPO dropped its investigation into claims that police beat them in a police station in 2005, three Romanis filed a civil suit which was pending at the year's end. No developments were reported in the ERRC's criminal complaint over a 2004 police beating of two Romani men, Trajan Ibrahimov and Bergiun Ibrahimovic, in Skopje.⁶²

On 1 November 2005, the HRSP reported that 22 criminal charges were filed on behalf of their clients, of which 6 were rejected and in respect of which the PPO filed 2 indictments. In 2006, criminal charges were filed in 11 cases, while the PPO submitted 1 indictment and rejected 10 criminal charges, including some of those filed before 2006. In 2007, 11 criminal charges were filed and 5 indictments were submitted by the PPO, while 6 criminal charges filed from 2004 to 2007 were rejected by the PPO.⁶³

59 Response of the Government on the 1998 CPT visit to Macedonia, 11 October 2001, p. 23.

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

61 Ombudsman, Annual reports 2004-2007.

62 US State Department, 2008, Country report on human rights practices in Macedonia for 2007.

63 HRSP, reports 2005-2007.

4.3.4. Information on cases processed by the courts

Courts often disregard allegations by accused persons that a confession was extracted from them during detention, especially if complainants do not have visible injuries on their bodies. Courts have sometimes been reluctant to refer some cases to the State Forensic institute (SFA), due to lack of funds,⁶⁴ or have misused the inadequacies of medical certificates to conclude that the cause or time of ill-treatment could not be determined.

In some other cases courts failed to timely schedule hearings, or postponed them because of the absence of police officers, without making proper efforts to secure their presence.⁶⁵ The HRSP noted that civil proceedings for compensation were instigated in 15 out of the 100 cases observed in 2005 and one (pending since 1994!) was completed, awarding around 2.000 Euros to the victim.⁶⁶

4.3.5. Information on cases processed by the European Court of Human Rights

The European Court of Human Rights⁶⁷ established violations of Article 3 on the ground of lack of any investigation by the authorities regarding claims under Article 3 (*Jasar*,⁶⁸ *Dzeladinov*,⁶⁹ *Sulejmanov*,⁷⁰ *Trajkoski and Others*.⁷¹). Several interim measures were indicated in cases of refugees represented by CSRC lawyers (*Berisha and Others*, *Eshmanov*, *Sijaku, K. and Others*) and the Government complied with the interim measure by refraining to deport the refugees to countries where they might have been subjected to ill-treatment.

5. CASES

5.1. Types of ill-treatment

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

Incident: **M.S.** was detained in 2001 after a search of his house on suspicion of hiding weapons and then ill-treated in police detention. He sustained "severe physical injuries" - drastic deterioration of the function of his kidneys, bruises on the back of the neck, back, buttocks, both arms and legs, excoriations on the right knee, swollen palms and swollen feet. He was placed on dialysis and respiratory aid equipment because of breathing difficulties.⁷²

Follow-up: Police officers were fined (15% reduction in salary for 6 months, 3 months in the case of the superior) and criminal charges have been filed.⁷³

Incident: **A.N.**, apprehended in police facility in the capacity of witness, was beaten by a baseball bat to make him give a statement. There were photographs and medical reports.

Follow-up: The Ombudsman filed criminal charges, but the Basic PPO rejected the charges, advising the person to pursue the prosecution as a private plaintiff.⁷⁴

64 Helsinki Committee, Annual report, 2004.

65 Helsinki Committee, Annual Report 2005.

66 HRSP report, 2005.

67 www.echr.coe.int

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

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

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

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

72 CPT report on the October 2001 visit to Macedonia, 16 January 2003, § 22, p. 16.

73 Response of the Government to the CPT report on the October 2001 visit, 16 January 2003, p. 10.

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

5.1.2. *Ill-treatment on discriminatory grounds*

Incident: In 2004, three police officers in search of a fugitive beat **T. Ibrahimov** and **B. Ibrahimov**, both Romani men, despite Ibrahimov's response that he was not the fugitive.

Follow up: The ERRC filed a criminal complaint of maltreatment and a private criminal lawsuit on the ground of sustaining bodily injuries. Two Romani men who filed civil charges reached an undisclosed financial settlement out of court.⁷⁵

5.1.3. *Use of excessive force by special police units*

Incident: In 2007, members of the "Alphas" special police unit beat the "Alsat" TV cameraman **Igor Ljubovcevski** who had been filming a police action, causing him bodily injuries.⁷⁶

Follow-up: The SICPS (PSU) of the MoI determined that the police officers at this location abused their authority and initiated disciplinary procedures.

5.1.4. *Ill-treatment in a psychiatric hospital*

Incident: **D.C.** claimed that her husband was beaten by psychiatric hospital staff. The Ombudsman visited the hospital and found visible signs of beating on the patient's body.

Follow-up: The nurse was suspended and the Department's chief was downgraded.⁷⁷

5.2. (In)activity of State bodies

5.2.1. *(In)activity of the Sector for Internal Control and Professional Standards*

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

Follow-up: The MoI's Dismissal Commission fined the 14 members of the "Tigers" by a 15% salary deduction for a 6-month period. The court pronounced 6-month prison terms against six "Tigers" directly involved in the fight and 3-month prison terms against three who participated briefly in the fight. The others were released without convictions.⁷⁸

5.2.2. *(In)activity of the Public Prosecution Office*

Incident: **Pejrusan Jasar** complained that he was ill-treated by the police in 1998.⁷⁹

Follow-up: He brought criminal charges, but the PPO failed to take effective measures and to make a decision. Due to the lack of any investigation of the person's allegations that he was subjected to IDT, the European Court of Human Rights declared 'procedural' violation of Article 3.⁸⁰

Incident: On 13 August 2001, four persons were beaten continuously for several hours in front of the State hospital with heavy metal cables, baseball bats, police truncheons, and gun butts, amidst jeering from the civilian crowd that had gathered. In the police station they were subjected to more beatings, had urine and

75 U.S. State Department, 2005, Country report on human rights practices in Macedonia for 2004.

76 U.S. State Department, 2008, Country report on human rights practices in Macedonia for 2007.

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

78 US State Department, 2004, Country report on human rights practices in Macedonia for 2003.

79 Mr Jasar alleged that he was again beaten by the police in 2007 ("Dnevnik", 6 November 2007: <http://www.dnevnik.com.mk/?ItemID=8C12E0D2AED75348828657F81422AF6E>).

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

burning cigarettes thrown at them, and were threatened with execution. One of them died that day at the hospital from the injuries.⁸¹

Follow-up: Criminal charges were filed, but the PPO has not taken any action.

Incident: On 25 February 2002 **Ismail Jaoski** was beaten by the police, during a routine traffic control and in the Prilep police station, where he was repeatedly punched, kicked, and beaten with truncheons until he lost consciousness. He was diagnosed with a cracked skull, bleeding from the left ear, concussion, partial amnesia, and bruising and swelling in the region of his kidneys and abdomen.⁸²

Follow-up: The authorities concluded that the police officer concerned acted in accordance with relevant domestic rules and regulations on the use of force. On 17 September 2002, the PPO rejected the criminal charges concerning ill-treatment by a public official because a medical examination had detected only light injuries sustained by Ismail Jaoski. The subsidiary criminal proceedings have been pending since September 2002 without any hearing.⁸³

5.2.3. (In)activity of the courts

Incident: In June 2003 **Avni Ajeti**, suspected of planting explosive devices, was [allegedly] ill-treated by security and counter-intelligence officers,⁸⁴ who extracted a confession by beating him with metallic objects, burning him etc. The prison's health log of Mr Ajeti as of 13 June 2003 stated the following: "Hematomas (heavy bruises) on the back, bottom, legs."

Follow-up: The Mol has established that the allegations of ill-treatment are not grounded.⁸⁵ The allegations of A.A. that he was ill-treated and abused while in police custody (presented at the main hearing held on 30 October 2003) were not considered credible.⁸⁶

Incident: A police officer ill-treated a person labelled as SK005 in the HRSP's report.

Follow-up: The judgement P. br. 4082/03 of 28 June 2006 was confirmed upon appeal on 17 January 2007. The State (not the perpetrator) was obliged to pay the compensation.⁸⁷

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

82 Report of Theo van Boven, Special Rapporteur on the question of torture - Summary of information, including individual cases, transmitted to Governments and replies received, 30 March 2005.

83 Report of Manfred Novak, Special Rapporteur on the question of torture - Summary of information, including individual cases, transmitted to Governments and replies received, 21 March 2006.

84 U.S. Department of State, 2005, Country report on human rights practices in Macedonia for 2004.

85 Response of the Government to the CPT report on the November 2002 visit, 9 September 2004, pp. 17-18.

86 Response of the Government to the CPT report on the 2004 visit, 15 November 2006, p. 7.

87 HRSP, "Police and Human Rights", Annual report 1.11.2006-31.10.2007, p. 35.

PART 2

VIOLENCE AGAINST WOMEN

1. OVERVIEW OF THE WOMEN HUMAN RIGHTS SITUATION

The persistence of traditional roles of men and women: If there have been some changes in urban areas in this respect, rural areas and some ethnic communities (Albanian, Roma) continue to have patriarchal models of relationships, especially within the family context. For example, even if both parents are equally entitled to parental rights and responsibilities according to the law, in practice women are those responsible for raising the children.

The lack of female participation in the political sphere: Women are not sufficiently involved in political life and do not obtain high decision-making positions. Their participation in the political arena is still looked upon negatively by some communities. Women engaged in politics suffer from negative attitudes; they are, for example, disadvantaged in terms of media presentation during the election process. The new Electoral code⁸⁸ explicitly prescribes that each 3rd place must be guaranteed for the less represented gender. Failure to fulfil this clause could prevent the political party running for election; in practice, the State Election Committee would return the lists to the political parties for revision, until they fulfil this criterion. Thus, at the last Parliamentary elections, women's representation reached 30.7 %.

The difficulties in accessing education: Legislation provides equal access to education for both the male and female population. However, it is not always the case in practice, and girls tend to complete only fourth or eighth grade and are kept at home once they finish school to work in agriculture or to take care of the household. The phenomenon of drop-out from the educational process is also a particular problem. The inaccessibility of schools in certain regions and economic barriers are additional obstacles which prevent girls from attending school.

Employment: From a formal aspect, men and women have the right to equal employment opportunities including the use of equal criteria. However, there are deviations in practice, especially in the private sector. The persistence of stereotypes results in women being well-represented in some specific sectors whilst they remain excluded from others. Finally, women remain more at risk of falling into precarity.

2. LEGAL FRAMEWORK FOR THE PROTECTION OF WOMEN'S RIGHTS

The existing legislative provisions are, to a great extent, in compliance with the principle of gender equality and the international instruments on the protection of women's human rights. Macedonia ratified the CEDAW Convention on 18 January 1994, and the Optional Protocol to the same Convention on 17 January 1994 and made no reservations. The **Constitution** proclaims equality of all citizens in their freedoms and rights, regardless of their gender, race, colour, national and social origins, political and religious beliefs, property and social status.⁸⁹ This principle applies to the Constitution and the other legislation.⁹⁰ As mentioned by the Committee on the Elimination of Racial Discrimination in its Concluding Observations⁹¹, the principle of non-discrimination as it is stated in the Constitution applied only to citizens and not to all persons under the State's jurisdiction, thus excluding, in particular, female foreigners. However, there is no specific and comprehensive anti-discrimination law and this lack is even more problematic given that the majority of the laws have no provisions prohibiting discrimination (except those concerning labor relations, education and

88 Electoral code, article 64§5, Official gazette no.20/06.

89 Article 9 of the Constitution of the Republic of Macedonia states that: "Citizens of the Republic of Macedonia shall be equal in their freedoms and rights, regardless of their gender, race, colour, national and social origins, political and religious beliefs, property and social status. Citizens shall be equal in the eyes of the Constitution and the laws".

90 Law on Labour Relations, Law on Obligation, Family law, Law on Inheritance, Law on Associations of Citizens and Foundations, Law on Health Protection, Law on Ownership and other Material Rights.

91 UN Doc. CERD/C/MKD/CO/7, 13 June, 2007.

social protection). As such, there is neither a general definition of discrimination nor of gender discrimination in the national legislation.

As for the institutional framework, the only State institution for improvement of the status of women is the Sector for Equal Opportunities within the Ministry of Labour and Social Affairs. There is also the National Commission on Equal Opportunities for Women and Men, which was established in 2006 as a regular parliamentary commission.

3. PRACTICE OF TORTURE AND OTHER ILL-TREATMENT

As a general comment, it must be highlighted that there is a real lack of official data on the issue of violence against women. Apart from the ESE Survey, "Live in Shadow", which focused on the prevalence of domestic violence and the institutional response to it⁹², there is no other comprehensive survey or analysis on the prevalence of, and complaint and conviction rates of the different forms of gender-based violence.

Domestic violence: According to the ESE's survey, "Life in Shadow", in practice all types of domestic violence (sexual, physical, psychological and economic) are used against women. It should be noted that each type of violence does not occur with the same frequency nor at the same rate. The repartition of the reported violence is as follows, respectively for 2000 and 2006: psychological violence 61.5% and 56.4%, physical violence 23.8% and 17.7% and sexual violence 5% and 10.6%. It appears, in practice, that women are frequently exposed to several forms of violence at the same time.

CASE:

E.T., a 60 year-old woman, had continually been the victim of combined physical, sexual and psychological violence by her husband. This case was reported by the victim's daughter on 20 December 2005. The husband and wife lived in a village in the vicinity of Gostivar, had several adult sons and daughters and possessed several houses, shops and other property. The husband had already been convicted of domestic violence but their sons continually covered up the violent behaviour of their father. In one of the last incidents, E.T. was accommodated in a shelter with the help of her daughter and a citizens' organization after approval by the Centre for Social Aid. During her three-week stay in the shelter, she was continually pressured to return home. The interventions made by her sons through the local Centre for Social Aid resulted in the failure to adopt a decision, which is the legal basis for a stay in the shelter. She finally signed a consent statement to return home. On ESE's request, the local Centre ensured that they were monitoring her situation. According to the latest information, she returned to her home in the village and lives with her husband. Neither she nor her daughter has called us again.

Trafficking in women: In 2003, 132 foreign women were identified as victims of trafficking in human beings at the Transit Center for trafficking in human beings, which was a decrease in comparison with the 240 victims of the previous year. 19% of those were girls younger than 18, while 3-4% were even younger than 15. The international community is aware of the numerous cases in the regions of Gostivar, Bitola and Kicevo in 2003 and 2004, which included Roma children as victims of internal trafficking, and believes that the Roma children are especially vulnerable to this type of crime. The target groups also include individuals from dysfunctional families, the homeless, and children from orphanages.

Prostitution is an existing phenomenon in the country. It is mainly treated as an individual problem rather than a socially-preconditioned phenomenon, and is not

⁹² "Live in Shadow", 2007, Association for Emancipation, Solidarity and Equality of Women in the RM- ESE.

regarded nor treated as a social priority. Street prostitutes are predominantly local women and girls between the ages of 14 and 60. With the exception of the oldest women, all women work for pimps who are usually their husbands or boyfriends. Women working on streets come from the poorer regions of the country and from the poorest districts of Skopje⁹³. Statistics on this problem are lacking.

Sexual violence: The number of criminal acts against sexual freedom and morality registered during the period of 2005-2007 show that women are significantly affected by sexual violence. In 2005, 160 criminal acts were registered in total, of which 102 acts were perpetrated against women. Out of the total number of criminal acts, 28 cases of rape were registered. In 2006, there were 163 criminal deeds registered of this kind, of which 130 were against women. Out of the total number, 44 cases of rape were registered. In the first half of 2007, 86 acts were registered in total, of which 82 were against women. Out of the total number, 23 cases of rape were registered⁹⁴.

Sexual harassment: The issue of sexual harassment has been of considerable concern for the public in Macedonia for quite some time; the government has not commissioned any research on the subject. Only a few nongovernmental organizations and academics have seriously addressed the issue⁹⁵: "Women in the Republic of Macedonia do not have a clear understanding of what sexual harassment at work is really about. [...] According to the survey, 59.3 percent of the respondents had experienced some form of sexual harassment at work, 11.3 percent believed that although they were exposed to some form of sexual harassment, still – as they put it – it was nothing serious – just a normal thing that can happen at a workplace; and 40.7 percent stated that had not been exposed to any form of sexual harassment at work."

4. DEFINITION AND CRIMINALIZATION OF TORTURE AND OTHER ILL-TREATMENTS (ARTICLES 1 AND 4)

Torture is prohibited both by **Article 11 of the Constitution** of the Republic of Macedonia and by **article 142 of the Criminal Code**. The definition of torture as it is stated in the Criminal Code takes into account cases where such violence is inflicted on discriminatory grounds. In cases of violation of the legal provisions related to **torture**, the Criminal code envisages criminal liability at article 142.

Legal provisions regulating other forms of violence against women:

Domestic violence is regulated by the most recent amendments of the Criminal Code. Article 122 defines and sanctions the phenomenon of violence within the family as follows:

"(19) Family violence shall mean abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or fear towards a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as towards a former spouse or persons which have a common child or are have close personal relations"⁹⁶.

Thus, national legislation provides quite an extensive definition which takes into account a wide range of domestic violence acts. In addition, a specific paragraph explicitly mentioning the context of domestic violence has been added to certain provisions covering other criminal acts, such as murder, bodily injury, coercion, unlawful arrest, and endangering security. However, other provisions such as the one on sexual violence do not include the context of domestic violence.

Domestic violence is criminalized not as a separate criminal act but through a number of

93 Shadow report on the implementation of the Convention CEDAW, 2005, Association for Emancipation, Solidarity and Equality of Women- ESE.

94 Ministry of Interior, Information No. 152-54038/1 dated 24 August 2007.

95 See Master's degree thesis by Viktorija Gavritova entitled "Sexual Harassment at Work", University of Cyril and Methodius and the Institute for Sociology in Skopje, 2005.

96 Criminal Code of the Republic of Macedonia, Article 122, paragraph 19, Official Gazette No. 19/04.

criminal acts, excluding sexual violence. Since the amendment of 2004, acts of violence committed in the context of domestic violence are prosecuted ex-officio. In addition, these crimes are more severely punished if they are committed “while performing family violence”: Murder (article 123 (2) 2)); Bodily injury (article 130 (2)) and grave bodily injury (article 131 (2)); Coercion (article 139 (2)) ; Unlawful arrest (article 140 (2) ; Endangering security (article 144 (2)) and Mediation in conducting prostitution (article 191 (6)). However, article 40 of the Criminal Code enables exoneration of the offender or mitigation of criminal responsibility, mostly illustrated by the application of a more lenient punishment. In cases of domestic violence, this possibility of mitigation of the punishment is very frequently used.

Mediation in conducting prostitution includes recruitment, instigation, encouragement or enticement to prostitution or the participation in any other way in handing over another to someone for performing prostitution. However, no definition of prostitution is provided within the legislation. Prostitution is not legalized. Women engaged in prostitution are believed to be disturbing the public order⁹⁷ and are liable for committing an offence and punished accordingly. Mediation in and organizing prostitution are punishable, more severely than the crime of prostitution itself.

Trafficking in women: All forms of trafficking are criminalized and are punishable (article 418-a). The term “trafficking in human beings” means the use of force or serious threat to mislead, or the use of other forms of coercion, kidnapping, deceit, abuse of position or a condition of pregnancy, inability or physical or mental disability of others, or giving or receiving money or other benefits to obtain the consent of a person with control over another person, to recruit, transport, purchase, sell, shelter or accept a person for the purpose of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriage, forced fertilization, illegal adoption or any other similar relations or illegal transplantation of parts of the human body. Macedonia prohibits sex and labor trafficking through its 2004 criminal code in article 418 on trafficking in persons, article 418c on organizing a group for trafficking, and article 191 covering forced prostitution. Article 418b is included in the anti-trafficking legislation and includes criminal sanctions for smuggling. Penalties prescribed for trafficking for commercial sexual exploitation are commensurate with those for rape. The legislation provides for penalties that appear sufficiently stringent.

Sexual harassment: The prohibition of harassment and sexual harassment⁹⁸ and all related behaviours as acts of discrimination is incorporated into labour legislation. Harassment, is defined as any unwanted conduct initiated with the purpose or effect of violating the dignity of a person seeking employment, or of an employee, and which creates an intimidating, hostile, humiliating or offensive environment⁹⁹. Sexual harassment is defined as any verbal, non-verbal, or physical conduct of a sexual nature, occurring with the purpose or effect of violating the dignity of a person seeking employment, or of an employee, and which creates an intimidating, hostile, humiliating, or offensive environment

Sexual violence including rape: Rape as a form of sexual violence is committed by use of force or a threat to the life and body of the victim or a person close to her, forcing her thus to sexual intercourse or other sexual acts, which are not precisely and clearly defined. Rape, including, but only implicitly, **marital rape** is punishable and prosecuted ex officio.

We must note that all these forms of violence against women in the Republic of Macedonia **are not considered as acts of torture.**

.....
97 Article 19, Law on misdemeanours, Official Gazette nb. 66/07.

98 Labour Relations Act, article 7, Official Gazette no.62, July 28, 2005

99 Labour Relations Act, article 7, Official Gazette no.62, July 28, 2005.

5. MEASURES TO PREVENT ACTS OF TORTURE (ARTICLE 2 §1)

There are no specific programs that prevent women from being subjected to torture. Usually, this issue is addressed through the projects implemented by civil society organisations that address torture. The **National Strategy to fight against domestic violence**¹⁰⁰ and the **National program for combating trafficking in human beings** have been put in place. The **National Action Plan for equal opportunities of women and men** also envisions certain measures in the area of violence against women. In addition, local strategies for combating trafficking in human beings are being developed. The NGO sector also undertakes a series of educational and preventive activities, especially among the risk groups. **Unfortunately, other forms of violence are not addressed either within the National Action Plan for equal opportunities of women and men or within a special program.**

6. NON-REFOULEMENT (ARTICLE 3)

Article 81 of the **Law on Aliens** provides for “**Temporary residence for victims of trafficking in human beings**”. However, the **Law on Asylum and Temporary Protection** has no specific provision on human trafficking. The Ministry of Interior has so far not received or registered any application for **asylum** from trafficked human beings, despite significant fears of returning to their countries of origin. One of the real impediments is that the **gender-based approach in granting asylum is not transposed into national legislation**. In addition, despite the Law on Asylum that provides for personal interviewing of **asylum seekers**, women are regularly not interviewed separately.

7. EDUCATION AND INFORMATION (ARTICLE 10): GENDER-SENSITIVE TRAINING

Gender issues are not part of the basic education programme of the **police academy**, while domestic violence and trafficking in persons are incorporated as separate educational subjects.

The programme for basic and continuous education in the Academy for training of **judges and public prosecutors** contains some modules dedicated to non-discrimination. The modules incorporate issues, such as: international human rights documents, the system of the European Union, national system for combating discrimination, discrimination in court procedures and discrimination in employment. However, this programme, as envisaged, remains insufficient to provide a comprehensive understanding of violence against women and does not allow for in-depth elaboration on this issue.

The State fails to provide comprehensive and systematic training on these issues for all professionals dealing with different forms of gender-based violence.

8. ARREST, DETENTION OR IMPRISONMENT (ARTICLE 11)

On 23 November 2005, the number of detainees was 2,256. Of this number, 55 were females, including one juvenile¹⁰¹.

According to ESE, there are allegations of **ill-treatment** against women in prisons but they have never been documented. In general, this takes the form of official persons **bargaining with women inmates in return for meeting certain needs of the women.**

¹⁰⁰ Holders of this process in the country are the Ministry of Labor and Social Policy and the Association for Emancipation, Solidarity and Equality of Women – ESE, supported by the Institute for Sustainable Communities through USAID funds.

¹⁰¹ Report of the Council of Europe assessment visit to prisons in the FYRM, January 2006, Križnik/Walmsley, p. 9.

They are asking them to do things for them, even sexual favours. Although there are cases of ill-treatment, there is no formal procedure that has been initiated to address them.

There is no special institution or prison for female detainees, but there is a female ward in the prison of Idrizovo. All sentenced female prisoners are placed in this ward. The internal unit of the women's ward is guarded by women, and the outside unit is guarded by men. Women charged with misdemeanour offences can be placed in any of the seven prisons for adults¹⁰². The pre-trial female detainees are placed in special parts of the five "semi-open" prisons– Skopje, Bitola, Gevgelija, Stip and Tetovo. In some semi-open prisons, no woman was employed in the security department. Ensuring employment of women in the security department is essential in order to control the short-term detention places of women prisoners. Also, the employment of women in this section is relevant for the authorisation of women visitors¹⁰³. In these three contexts, we cannot be sure that the separation between men and women detainees is fully respected. We have particularly serious concerns about this requirement in the context of pre-trial detention where even a simple ward reserved for women has not been established.

Regarding medical care, "there is a serious shortage of medical staff in the Macedonian prison system. Idrizovo, with a full complement of 6 doctors and 10 nurses, has just one doctor on a short-term contract, another working half-time and two nurses¹⁰⁴". The health protection of women prisoners is provided for by one or two doctors. Within the women's unit in the Idrizovo prison, there is an infirmary that serves the needs of the women inmates in terms of medicine needed, when available. The Law on the Execution of Sanctions¹⁰⁵, prescribes that pregnant women have to be provided with professional medical health care and support. Women are able to have gynaecological checks only if the in-house doctors recommend it. If it is recommended, women are brought to the special department of arrest that is operating within the Clinical centre.

Additionally, there is no education or activity for the women inmates organized by the State, nor family therapy (with inmates and their families) that will ensure better re-socialization and reintegration after the penal detention.

9. INVESTIGATION (ARTICLE 12):

9.1. Deficiencies in term of victims and state agents' awareness and knowledge:

Violence against women, especially domestic violence, is relatively under-reported. According to ESE estimations and research, the level of reporting of domestic violence cases to the police is only 20.7%, which means that only one case of domestic violence in five is reported. In the context of domestic violence, the fact that these acts are **under-reported** and **under-investigated** is mainly due to the reluctance of the victim to press charges against the offender. In addition, there are still women who do not actually consider the violence committed against them as a crime. Additionally, victims generally have insufficient information on the existing legal possibilities and the police fail to use those mechanisms that are in place given their lack of training on cases of violence against women.

9.2. Deficiencies from a procedural view:

Firstly, there is a clear trend of registering acts of domestic violence which have constitutive elements of criminal offences as **misdemeanours** and not as **criminal offences**. Moreover, most of the time, the officers request the victim's consent even though the criminal procedure is initiated **ex-officio**¹⁰⁶, **reducing again the number of cases duly prosecuted**.

¹⁰² Ibid, p.41.

¹⁰³ Ibid, p.41.

¹⁰⁴ Ibid, p.17.

¹⁰⁵ Law on the Execution of Sanctions, article 134, Official Gazette no. 2/06.

¹⁰⁶ The legislation reads that criminal charges for sexual and domestic violence are initiated ex officio by the police, except for the act of bodily injury for which the procedure must be initiated by private suit, which requires the victim's consent.

10. RIGHT TO REMEDY (ARTICLE 13)

10.1. Right of complaint:

There is **no special mechanism regarding the reporting of violence by victims within the respective state institutions**. There is a National SOS line for victims of domestic violence where victims can report violence and ask for protection.

Several elements have influenced the registration of victims' complaints. Even if women do not face formal obstacles, they face the **lack of capacities** of the professionals and the **stereotypes** that can undermine the further advancement of the case and, as such, the protection that will be provided. For instance, there are cases of domestic violence where the professionals from the Center for Social Work (CSW) direct their efforts toward **conciliation** of the spouses, contradicting the main principles for work with victims of domestic violence. Therefore there is a clear need for **education** of those professionals working with women victims of violence and for **regulation of the procedures within the criminal and civil justice system**.

10.2. Right to protection:

The civil system of protection for domestic violence is based on two types of protection measures: protection measures and temporary protection measures (TPMs). The CSW and non-governmental organizations are jointly responsible for the provision of quite a comprehensive range of measures starting from sheltering to medical, psycho-social care, counselling and legal aid, etc. for victims of domestic violence. Regarding **TPMs**, it appears that the CSW are quicker to recommend TPMs that have a prohibitive nature than those which have an imperative character"¹⁰⁷. The weak points are the reluctance of the judges to issue TPMs, clearly shown by the low level of application of such measures, and the **complete or partial non-functionality of certain TPMs**.

As for the victims of human trafficking there is a **Transit Centre for victims of human trafficking**¹⁰⁸, that provides social and psychological assistance to the victims. Rehabilitation and re-socialization, however, require much longer periods than the time spent by the women at the Centre. Further, victims of trafficking often refuse the assistance available at the Transit Centre or do not seek help at all, fearing repatriation, deportation and public condemnation in their countries of origin. The shelter takes only those victims who want to take part in the IOM program, in other words, those who are willing to return in their country of origin. Internally trafficked women and children are not covered at all¹⁰⁹.

11. REDRESS AND COMPENSATION (ARTICLE 14)

There is no measure of redress and reintegration that is explicitly adjusted to women victims of torture or other ill-treatment. This issue is addressed in the context of the right to compensation, both for women and men. In practice, women initiate proceedings for compensation under the general articles of the Law on Obligations and do not face particular obstacles.

¹⁰⁷ "Life in a Shadow", 2007, Association for Emancipation, Solidarity and Equality of Women in the RM- ESE.

¹⁰⁸ Shadow report on the implementation of the Convention CEDAW, 2005, Association for Emancipation, Solidarity and Equality of Women in the RM- ESE.

¹⁰⁹ UNICEF, UNHCR, and OSCE/ODIHR (with the administrative support of UNDP for Bosnia and Herzegovina), Report: Trafficking in Human Beings in South Eastern Europe, 2003.

PART 3

VIOLENCE AGAINST CHILDREN

1. OVERVIEW OF THE CHILDREN'S HUMAN RIGHTS SITUATION

According to different non-governmental sources of information, the main issues of concern relating to the implementation of the CAT to children are 1) the treatment of children in conflict with the penal law (articles 2, 11 and 16 CAT), 2) child trafficking and exploitation (articles 2 and 16), and 3) violence against children in various situations (family, community, schools, care institutions) (articles 1, 2, 4 and 16). The implementation of articles 12, 13 and 14 with respect to child victims also remains largely incomplete.

In her 2006 report, the Ombudsman for the Rights of the Child denounced violence against children within the family and at school, as well as labour exploitation. She also indicated that in 2006, "the number of complaints regarding the children's rights increased, which is a sign that these rights are increasingly violated, but also that the public consciousness about them is increased too." The Ombudsman could not express satisfaction about the treatment of the children as subjects with special rights, interests, and obligations, saying that "the non-acceptance of this status is mostly noticeable at the parents and teachers, but also in the public institutions responsible for the children's rights."¹¹⁰

2. LEGISLATION PROTECTING CHILDREN FROM VIOLENCE, INCLUDING TORTURE OR OTHER ILL-TREATMENTS, AND STRUCTURE OF IMPLEMENTATION

2.1. Legal framework - General legislation on child protection from violence

2.1.1. Definition of the child

In Macedonia, a child is an individual who has not reached the age of 18 years old. However, like many other national systems, and in accordance with international standards, the Macedonian legal framework provides for several specific ages of the child from which s/he is allowed to act, or is responsible for acting, according to the specific circumstances.

In this regard, a child below **15** years old is not allowed to **work** (article 42(1) of the Macedonian Constitution); boys and girls below **18** cannot **marry** (as an exception, they can from 16 providing that some conditions are met – including a decision by a court based on particular criteria) (article 18, par.2 of the Family Act); from **14** years old a child (girl or boy) may legally have **sexual intercourse**; and from **14** years old a child can be held somehow **responsible on criminal grounds**.

2.1.2. Existing national legislation on violence against children: provisions of protection and gaps

Article 11 of the 1993 Constitution protects all individuals, including children, against "any form of torture, or inhuman or humiliating conduct or punishment".

As far as children are concerned in particular, article 42 of the Constitution provides for the general protection of children. The Constitution gives further protection in specific matters: care and education by the parents and by the State where the child is parentless (article 40) and protection at work (article 42(2) and (3)). In addition, article 9 of the Law on the Protection of Children protects children from different forms of violence, including torture and other cruel, inhuman or degrading treatment or punishment by

¹¹⁰ Information on the work of the Department for Protection of the Rights of Children within the National Office of the Ombudsman, 2006. Available at www.crin.org/docs/god.izvest.%20ENOK.pdf

stating that “every psychological and physical maltreatment, punishment and other inhuman treatment and abuse of the children is prohibited”.

The Criminal Code of the Republic of Macedonia (hereafter CC) also protects children through criminalization of violent behaviour against them.

The CC and the Criminal Procedure Code (hereafter CPC) on Execution of Criminal Sanctions also contain particular provisions on children in conflict with the law. In this regard, a new Law on Juvenile Justice which aimed to create a genuine juvenile justice system was adopted by the Parliament in July 2007 and is supposed to enter into force in January 2009.

2.2. Institutional structure implementing child-rights related legislation

2.2.1. Centre for Social Work¹¹¹

The main body that acts on behalf of children in protective proceedings is the Social Work Centre. The Social Work Centre is competent to report cases, and to seize and advise the Chamber for Minors of the relevant court in all matters related to child protective proceedings. The Social Work Centre may intervene in situations of alleged domestic violence either on its own initiative or by a request from a member of the family.

Despite its important mission, the Centre for Social Work suffers from several shortcomings. Financial difficulties limit its fieldwork. There is no common national approach to working with children. Obligatory training for staff is not organized on a regular and structured basis. The Centre remains too general in its approach when addressing particular delicate situations and does not adapt its work to the type of suffering and to the specific situation.

2.2.2. The Ombudsman for children’s rights

The Ombudsman for children’s rights belongs to the Department for the Protection of the Rights of Children of the National Office of the Ombudsman. The Ombudsman investigates violations of children’s rights and reports to the Parliament annually. S/he deals with cases either reported by stakeholders (parents, teachers, witnesses, etc.) or initiated *ex officio*. S/he can take measures against public authorities and raise public awareness. This is a useful mechanism but it comes up against the deficiencies of law enforcement agencies.

3. OCCURRENCE OF TORTURE OR OTHER ILL-TREATMENT AGAINST CHILDREN

3.1. Excessive use of force

There are allegations of excessive use of force during arrest and during police custody. In particular, the Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) revealed in 2006 that children suffer from ill-treatment by law enforcement officials and reported allegations of juveniles being denied the right of access to a lawyer (or to a guardian) while being interrogated by the police; this increases the risk that children will be ill-treated when interrogated by the police.

.....
¹¹¹ See Family Law of the Republic of Macedonia (2004)

3.2. Violence amounting to torture or other CIDTP at school and at home

At school, pupils are victims of physical, mental and sexual mistreatment¹¹². Recently, the UN Human Rights Committee expressed its concern about the harassment of Roma children in schools.¹¹³ Unfortunately, such violations are often not registered. Indeed, the victims and the other pupils and student witnesses are reticent to report the acts of violence and the teachers frequently refuse to report violations by their colleagues. Furthermore, no measures are taken for the full protection of children and for adequately sanctioning the perpetrators. Indeed, the competent bodies do not react quickly or appropriately and are not taking all the necessary measures to protect the children, especially in cases where a teacher should be sanctioned for physical or mental child mistreatment.¹¹⁴ In OMCT's view, the Republic of Macedonia has failed to comply with the CAT (art. 16) for its lack of due diligence by failing to adequately respond to ill-treatment against children at schools.

Violence suffered by children **within the family** is a very serious problem in Macedonia. It is often underreported and inadequately addressed by law enforcement bodies. There are also reports according to which children have been forced by their parents or other relatives to enter into exploitative activities such as begging, street trade and even prostitution (for further details, see paragraphs C and F below).

3.3. Other situations that increase the risk of being subjected to torture or other CIDTP

With regard to **children deprived of liberty**, the visit of the CPT in 2006 revealed the following problems that the Committee Against Torture has also regularly addressed:

- allegations of ill-treatment in Skopje prison, in particular the lack of adequate care provided to juveniles and children (this includes cruel, inhuman or degrading punishment and disciplinary measures –chaining for instance- to punish juveniles in Skopje Prison who had attempted to commit suicide and acts of self-harm);
- ill-treatment and harsh discipline, lack of adequate care and appropriate measures, conditions of detention of children in the educational-correctional institution - Skopje prison;
- children and young adults (up to 23 years old) are held together.

The difficult economic situation exposes children to **trafficking and exploitation**. Many street children (particularly in Skopje) are significantly at risk of being subjected to trafficking and exploitation. Further, the Macedonian authorities generally fail to provide adequate reparation to child victims.¹¹⁵

Roma children suffer from specific violations to a larger extent than other children.

There are reports of Roma children being particularly vulnerable to **commercial exploitation**. The low socio-economic situation of the Roma community in Macedonia forces many parents to ask their children either to beg or to sell products on the street. In the end, some others are eventually left to live on their own. In some cases, daily centres with educators and psychologists take care of those children providing health, education, food, etc.

Even though children who have not attained 18 years cannot enter into marriage, there are reports that hundreds of Roma children are married every year, especially in Skopje and the eastern part of the country.¹¹⁶ In an article in 2007, the Executive Director

112 Information on the work of the Department for Protection of the Rights of Children within the National Office of the Ombudsman, 2006. Available at www.crin.org/docs/god.izvest.%20ENOK.pdf

113 Human Rights Committee, Concluding Observations: FYR of Macedonia, CCPR/C/MKD/CO/2, § 19.

114 Information on the work of the Department for Protection of the Rights of Children in 2006, *Ibid.*, § 3

115 Human Rights Committee, Concluding Observations: FYR of Macedonia, CCPR/C/MKD/CO/2, § 13.

116 Natasha Dokovska June 26, 2007 Child Marriage Persists in Macedonia Among the Roma: Esma Is Sold for 1000 Euros, in http://www.thewip.net/c_ontributors/2007/06/child_marriage_persists_in_mac_1.html

of Journalists for Children and Women's Rights and Protection of the Environment in Macedonia explained that, as a result of **early and forced marriages**, many girls are exposed to sexual abuse and exploitation sometimes amounting to prostitution, by their husband.¹¹⁷ Since marriage under 18 is illegal under Macedonian law, the authorities consider the child marriage of Roma as inexistent. This attitude contributes to the tendency to ignore the problem of early and arranged marriage and hinders the implementation of solutions.

4. DEFINITION AND CRIMINALIZATION OF TORTURE (ARTICLES 1 AND 4)

4.1. Interpretation of the torture definition when the victim is a child (Article 1)

Article 142 of the CC does not provide for a particular child-oriented definition of torture when the victim is a child, taking into account his/her specific vulnerability. Similarly, it does not provide for more severe penalties when the victim is a child.

4.2. Criminal legislation and case-law (Article 4)

The Macedonian legislation provides for the criminalisation of certain acts and treatments that may amount to torture or other cruel, inhuman or degrading treatment or punishment. Some of those treatments particularly target the child as a victim. However, the proper enforcement of those provisions remains difficult in the absence of clear data.

4.2.1. Sexual violence

The significant risk of being exposed to sexual violence justifies provisions providing for special protection for children.

Article 188 of the CC covers sexual attacks on children and provides for penalties of between 6 months and 5 years' imprisonment. The inability of the child victim to resist the attack, the misuse of his/her position by the perpetrator and the cruelty of the manner and the grave consequences on the victim are aggravating circumstances (article 188(2) (3) (4) CC) justifying more severe penalties.

Article 188 has been interpreted as including as perpetrators all persons having a certain authority or position and abusing it to commit sexual violence against a child, and consequently covers law enforcement agents. However, OMCT is concerned that the misuse of position does not clearly and or with any certainty include the possible abusive behaviour of law enforcement agents like police officers and prison guards. The CC remains lacking on this question. In practice, only teachers and other school employees have been charged under article 188 CC.

4.2.2. Family violence

Article 93 of the 2004 Family Law states that **abuse and negligence by a parent** against his/her own child is punishable by a court. In this framework, the Family Law describes abuse and negligence as any physical or emotional mistreatment, sexual abuse, forcing into inadequate labour, allowing the use of alcohol and drugs, abandonment for more than 3 months. Similarly, article 201 of the CC forbids and punishes **child neglect and mistreatment by a care giver**.¹¹⁸

¹¹⁷ Please see: http://www.thewip.net/contributors/2007/06/child_marriage_persists_in_mac_1.html

¹¹⁸ Article 201 covers neglect and mistreatment of a child as well as forced labour. Consequences like serious bodily injury, severe damage to health or being forced into begging, prostitute or other asocial behaviours are aggravating circumstances.

In addition, article 122(19) of the CC defines and criminalises **family violence**¹¹⁹. Bodily injury and damage to health are aggravating circumstances providing for more severe penalties.

4.2.3. Corporal punishment¹²⁰

Corporal punishment is prohibited in schools.¹²¹ The prosecution of individual teachers for ill-treatment of pupils is possible under article 201 of the Criminal Code.

Corporal punishment as a sanction and as a disciplinary measure in penal institutions is prohibited under the Law on Execution of the Sanctions. This Law provides for the initiation of proceedings against an official person who has used or ordered unlawful means of coercion.

Article 9 of the Law on Protection of Children (2000) prohibits corporal maltreatment, punishment and other inhuman treatment and abuse. However, these terms have not been defined and the law has not been interpreted as clearly prohibiting parental corporal punishment. Article 130(2) and 201 CC could be used by the courts to punish corporal punishment of a child at home. However, there is little case-law on this issue. Therefore, OMCT is very concerned about the fact that there is neither a specific legal provision nor case-law that clearly prohibits corporal punishment in all settings, in particular as measure of education in the home.

5. PREVENTING TORTURE AND OTHER ILL-TREATMENT AGAINST CHILDREN (ARTICLE 2 §1): RESPECTING PARTICULAR JUDICIAL SAFEGUARDS FOR CHILDREN IN THE FRAMEWORK OF A JUVENILE JUSTICE SYSTEM

5.1. Minimum age of criminal responsibility

A child who has committed an offence when s/he was below 14 is not criminally punishable (article 70 CC). According to article 438 of the CPC, when a child under 14 commits an offence, the criminal system is not able to act but the institution for guardianship will be the referring body. From 14 to 16, the child who has committed an offence is named a *junior juvenile* and is subject only to educational measures (article 72(1) CC) which are disciplinary measures, measures of intensified supervision and institutional measures (article 74(1) CC)¹²². Between 16 and 18, s/he is called a *senior juvenile* and can be subjected to behavioural measures under the conditions determined by the Criminal Code, and as an exception can be sentenced to juvenile prison.

5.2. Criminal procedure in respect of juveniles

There is no piece of legislation dedicated to juvenile justice as a special criminal system. Chapter 27 of the Criminal Procedure Code on Procedure against Minors and chapter 6 of the Criminal Code on Educational Measures and Punishment of Juveniles provide for some rules applicable particularly to persons below 18 at the time the crime was committed.¹²³ However, there is a new law on juvenile justice which aims to create a comprehensive system, the goals of which are socialization, education and

¹¹⁹ The CC defines family violence as follows: "Family violence shall mean abuse, rude insults, threatening of the safety, inflicting physical injuries, sexual or other physical and psychological violence which causes a feeling of insecurity, being threatened, or fear towards a spouse, parents or children or other persons which live in a marital or other community or joint household, as well as towards a former spouse or persons which have a common child or are have close personal relations".

¹²⁰ Information mainly taken from www.endcorporalpunishment.org/pages/frame.html

¹²¹ The Law on Elementary Education (1995, amended 2006) and the Law on Secondary Education (1995, amended 2007) forbid corporal punishment and harassment of pupils, and hold the school, rather than the individual teacher, responsible for violation of the law.

¹²² On educational measures, see also articles 74 to 85 of the Criminal Code.

¹²³ This also applies to those under 21 at the time the trial is held.

rehabilitation, aid and care for the juveniles and protection of their rights in court procedures and other institutions.

The existing law already provides for legal safeguards aimed at protecting children in conflict with the law, particularly at preventing him/her from being subject to ill-treatment. The right to legal assistance, the possibility to have *investigations into the context*, time-limited proceedings, and the rights to challenge decisions and to alternatives to detention are several key safeguards contained in the CPC. The new law on juvenile justice should bring additional protection.

Despite these positive rules, the criminal procedure in respect of juveniles still lack provisions that take into consideration the status, the problems and the perspectives of young people. Certain educational measures are not applied because there are no conditions for their execution. It is hoped that the New Juvenile Justice Law and its implementation will resolve those and other shortcomings.¹²⁴

5.3. Punishing juvenile offenders: educating first

In compliance with the spirit of relevant international standards¹²⁵, article 73 of the Criminal Code states that “(1) The aim of the educational measures and of the punishment and the alternative measures is to provide for the education, correction and proper development of the juvenile offenders, by giving protection and help to them, by performing supervision over them, by their professional training and by developing their personal responsibility. (2) The aim of juvenile imprisonment is to perform an intensified influence upon juvenile offenders so that they would not commit crimes in the future, as well as upon other juveniles not to commit crimes.” Moreover, chapter 6.4 of the Criminal Code provides for the Application of the Alternatives Measures.

However, assessment of the effective implementation of those provisions by law enforcement professionals is difficult because of a lack of data on juveniles in conflict with the law and particularly those deprived of liberty. The new law on juvenile justice should strengthen the educational objective but all depends on its effective implementation by the courts and other law enforcement agents.

6. EDUCATION AND INFORMATION ON SAFEGUARDS FOR CHILD RIGHTS’ (ARTICLE 10)

As rightly said in the State party report, police officers are trained with respect to human rights (see § 153), but it is not specified whether any special training focused on child’s rights is provided. Some NGOs, at least, provide training of law enforcement agents on children’s rights. It is necessary to establish specialised departments for juvenile criminality in all police departments, with police officials specifically assigned to juvenile delinquency.

7. REVIEW OF ARREST AND DETENTION RULES AND FACILITIES (ARTICLE 11)

Part of the mission of the Ombudsman Office is to monitor the respect for and protection of the constitutional and legal rights of the persons arrested, detained, imprisoned, and of those who are serving a prison sentence, or a corrective and educational measure in the prisons and educational-correctional facilities.¹²⁶

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¹²⁴ Prof. Dr. Vlado Kambovski, Comparative Analysis of Juvenile Justice Legislation, 2002. Available on www.oijj.org.

¹²⁵ UN Convention on the Rights of the Child (particularly articles 37 and 40), Beijing Rules and Riyadh Guidelines.

¹²⁶ Article 31 Law on Ombudsman. See also § 54 of the State party report.

7.1. Arrest, investigation and trial phases, including pre- and pending-trial detention

There is no special rule for the arrest of a child. Contrary to international standards on juvenile justice, the same rules as for adults apply. Unfortunately the new law on juvenile justice remains silent on the conditions of arrest of children.

During the interrogation of a juvenile suspected of having infringed the penal law at the Police Station as well as in front of the Juvenile Judge, the presence of a parent, guardian or an adult family member is obligatory and, if the juvenile has a physical impairment, the presence of suitable experts, such as a special teacher, sign language interpreter, social worker or psychologist is also required. However, the legal procedure, notably the right to have his/her parents informed, is not always respected by law enforcement officials.

A Judge for minors may decide the temporary placement or supervision of the juvenile before and during the trial.¹²⁷ The Judge for minors may also decide the detention of a juvenile in cases determined by law¹²⁸, for no longer than 30 days and the Chamber for Minors may, “for justified reasons”, extend the detention to 60 days, but in no case may the detention exceed 90 days.¹²⁹ In practice, there are cases where juveniles have been kept for more than three months in pre-trial detention.

7.2. Detention of children

7.2.1. Child detention framework

As previously mentioned, children may be deprived of their liberty on criminal grounds.

Those juveniles who were between 16 and 18 at the time they committed the offence may be sentenced to imprisonment as an exception (article 72(2) CC) from one to ten years (article 87 CC). Article 86 of the CC justifies this possibility of imprisonment of a juvenile by the “serious consequences from the crime and the high degree of criminal responsibility”. In addition, younger adolescents (between 14 and 16 at the time the offence was committed) may also be subject to measures depriving them somehow of their liberty: indeed, educational measures cover sending children to an educational institution (from 6 months to 3 years) or to a house of education and correction (from 1 year to 5 years)¹³⁰ which can be semi-open or closed institutions. Life imprisonment against juveniles is prohibited under article 35(4) CC.

7.2.2. Places of detention and separation from adult detainees

A juvenile may be deprived of his/her liberty in an educational institution or in a house of education and correction. The law is unclear whether a juvenile may be detained in a prison as such when serving juvenile imprisonment as provided for in articles 86 and 87 of the CC. The correctional institution, Tetovo, is an institution that enforces educational measures on male juvenile offenders aged from 14 to 23 years old. The prisons of Ohrid and Idrizovo receive juveniles sentenced to juvenile imprisonment.

Separation in detention from adults is not set up as a key principle in the Macedonian legislation. This is a real gap in the protection of child detainees. Only article 460(1) CC provides for the separation from adults in pre-trial detention. However, article 460(2) establishes an exception: “if the detention of the minor is determined for a longer period, and there is a possibility for the minor to be in a cell with an adult who would not inflict any harm on the minor”. In OMCT’s view, this exception is too broad and

127 No clear time limit. Articles 458 and 468 of the Criminal Procedure Code.

128 Article 184(1) of the Criminal Procedure Code: If there is a grounded suspicion that a person has committed a crime, a pre-trial detention for the person may be determined: 1) if he hides, if his identity cannot be detected or if there are other circumstances emphasising danger of escape; 2) if there is justified fear that he will destroy the traces of the crime or if certain circumstances indicate that he will harm the investigation by influencing the witnesses collaborators or conceals; 3) if certain circumstances justify the fear that he will commit the crime again, or he will complete the attempted crime or will commit the crime which he threatens.

129 Article 459 of the Criminal Procedure Code, in conformity with article 12 of the Constitution.

130 Articles 72(1), 7, 82 and 83 of the CC.

does not conform to the international agreed rule according to which a child should be separated from adults “unless it is considered in the child’s best interest not to do so”.¹³¹

In practice, there are reports that the Central Prison in Skopje confines young adults of 22-23 years old together with juveniles under 18. In 2006, the CPT expressed its concern about children (under 18) and young adults (up to 23 years old) being detained together.

For practical reasons, because very few girls are detained, there is no specific detention facility for them.¹³² In practice, all female juveniles serve educational custodial measures in “Idrizovo” penitentiary. They are detained in the same ward as adult women detainees but kept in different cells.

8. CHILDREN’S RIGHT TO REMEDY (ARTICLE 13)

According to the Family Law, the Social Work Centre has a primary role in ensuring the right of the child to report any act of “abuse and negligence” that has occurred in the family or elsewhere.

Even though under article 101 of the Family Law, the Social Work Centre has the right to intervene “when [it] has information that there is violence against children in a family” to provide “legal support”, “notify the authorities” and “aid in prosecution”, the Law does not establish a general obligation on professionals to report cases of violations against children when they become aware of such violations. This article also stipulates that the Social Work Centre may intervene in situations of alleged domestic violence either “on its own or by a request from a member of the family”. It is not clear whether this also includes the child victim’s request to intervene.

The legislation does not provide for comparable institution acting on behalf of child victims when the violence occurs at school. This is more regrettable because such violations are often difficult to register since teachers often refuse to report violations committed by colleagues.¹³³ In this context, the government remains inactive when faced with such violence happening in school, demonstrating a grave lack of due diligence.

Specific measures should be taken to allow children to report their experience of abuse and facilitate the right to seek legal protection through procedures for complaints accessible to child victims.

¹³¹ Article 37(c) of the Convention on the Rights of the Child.

¹³² See UNICEF, “Survey On The Status Of Children And Youth In The System Of Juvenile Justice”, p.24-25

¹³³ See Information on the work of the Department for Protection of the Rights of Children in 2006, §3.

PART 4

**RECOMMENDATIONS
BY OMCT, CIVIL SOCIETY
RESEARCH CENTER
AND ASSOCIATION
FOR EMANCIPATION,
SOLIDARITY AND
EQUALITY OF WOMEN - ESE**

RECOMMENDATIONS ON THE GENERAL SITUATION

To the Parliament:

- To ratify the Optional protocol to the CAT and to create a National preventive mechanism;
- To amend the Law on Police by regulating the procedures for examining complaints of human rights violations and procedures governing MoI's cooperation with other State bodies;
- To amend the Law on the Public Prosecution Office so as to entitle alleged victims to receive decisions on complaints regarding prolonged inactivity of the PPO;
- To consider the possibility of changing the manner of appointment of the PPRM in order to secure its full independence from other authorities;
- To amend the Constitution in order to allow the Constitutional court to examine the compatibility of domestic legislation with ratified international treaties;
- To amend the legislation to absolve indigent victims of human rights abuses from the obligation to pay in advance the fees for the issuance of medical certificates;
- To utilise, through Parliament's bodies (including the human rights commission), all legal instruments to control the work of the police and the law enforcement agencies.

To all high-ranking executive authorities:

- To impart the message to all law enforcement officials that no ill-treatment will be tolerated;
- To promote severe sanctioning of responsible officials (dismissal, downgrading etc.).

To the Ministry of Interior:

- To train police officers on human rights, to encourage them to report human rights abuses;
- To establish transparent structure of the SICPS or to create an impartial body with involvement of civil society members (participating at least in a monitoring capacity);
- Until creation of a fully independent, impartial and transparent body, the SICPS should:
 - Fully collaborate with other authorities (its Rulebook must be amended accordingly);
 - Submit to the PPO each case of an established violation that amounts to a crime, and if no charges are pressed - to explain the reasons for failing to do so.

To the Ombudsman:

- To exercise announced and unannounced visits to police premises;
- To utilise all mechanisms in the case of failure of State bodies to provide information and assistance (by complaining to superior officers of those bodies, by informing media etc.).

To medical doctors:

- To issue proper medical certificates (indicating cause and time of infliction of injuries).

To the Public Prosecutors:

- To open cases on the basis of credible information other than criminal charges (e.g., in cases where the victim is afraid to file criminal charges, or has died owing to ill-treatment and no charges have been filed by the relatives, etc.);
- To inform the PP's superiors of any delay in processing cases relating to ill-treatment;
- To sanction those whose delayed work made prosecution in particular cases time-barred.

To the courts:

- To ensure by all means that accused law enforcement officials attend hearings;
- To avoid considering claims of ill-treatment as unfounded only because claims have not been raised before the trial and to investigate them at any stage in the criminal procedure;
- To consider all evidence extracted by force null and void and to exclude consideration of evidence not adduced at a main hearing;
- To consider the possibility of banning law enforcement officials convicted of torture or ill-treatment from performing their duty within a specified period after serving their sentence.

RECOMMENDATIONS ON WOMEN'S RIGHTS SITUATION

Violence against women: implementation of the Convention against Torture towards women:

- The State should undertake activities to determine parameters that will enable the collation of relevant data on all forms of violence against women; these data must be collected in order to apply statistical techniques and initiate problem analyses;

General situation of women:

- **A specific and comprehensive anti-discrimination law** must be adopted in order to define and prohibit discrimination, especially gender discrimination, in all contexts; Precise and adequate procedures and mechanisms must be included to ensure effective protection in gender-based discrimination cases;
- The State should undertake activities via the introduction of **educational and pedagogical measures**, as well as through the adjustment of teaching methods to help overcome the dominant traditional divisions of roles in the family, as well as overcome the bias and stereotypes that have a strong influence on the factual situation of men and women;
- **The national gender machinery** must have more visibility and power to make decisions as well as having financial and human resources; it should be deinstitutionalised through the formation of special independent sub-body, consisting of representatives from relevant NGOs and other respected institutions which would follow the implementation of the principle of equal treatment and would enable successful coordination of the national machinery as such;

Articles 1 and 4:

- Forms of violence against women that amount to torture or cruel, inhuman and degrading treatment or punishment should explicitly be considered as such in the **criminal legislation**;
- The State should clarify the definition of rape set forth in the law; Marital rape must also be explicitly criminalized and not simply deduced from the notion of rape;

Article 3:

- The national legislation should include a gender-based approach in asylum legislation and procedure in order to take into account the situation of violence specific to women, including trafficking, while granting asylum protection;

Article 10:

- It must include issues relating to violence against women in the training of the professionals dealing with women victims, training that remains for the moment quite insufficient. Public awareness-raising campaigns should be launched, the first of which should target women and their rights; Again, the State must make an effort to cover not only domestic violence and trafficking but all forms of violence;

Article 11:

- The State must investigate and address allegations of ill-treatment within the prisons which consists of asking for favors, including sexual favors, from women detainees in return for meeting certain of their needs; It must ensure the separation between men and women in any case, especially in the context of pre-trial and short-term detention; it must ensure access to medical care and medicines in accordance with the basic needs of women, including pregnant women;

Articles 12 and 13:

- The State must take measures to address the high prevalence of all forms of violence against women, including domestic violence and the fact that violence against women remains highly under-reported and under-investigated;
- The State should put in place special procedures regarding the reporting of violence suffered by women in order to take into account their fears and shame, especially in the case of sexual violence; This will contribute to better rates of reporting of cases of all forms of violence against women;
- The State must use in practice the possibility of ex-officio initiation in cases of violence against women, especially by avoiding requesting the victim's consent;
- The State must take measures to stop the trend of registering acts of domestic violence as misdemeanors and not as criminal offences and of directing efforts towards conciliation;

Article 13:

- Protection measures for women victims of domestic violence must be standardized and their implementation be operationalized; The state should undertake activities to modify the existing institutions for an efficient implementation of temporary protection measures, as well as for an evaluation of the capacities/resources for their implementation in cases of domestic violence; They must be issued more frequently in practice and extended to violence other than domestic violence;
- The State should undertake activities to enhance the existing legal/supplemental legal regulation with the aim of providing an appropriate criminal justice protection for the victims of domestic violence, and punishment and rehabilitation of the perpetrator;

Article 14:

- The State needs to enhance specific measures of compensation and reintegration for women victims of violence; these measures are cruelly lacking or are too short term;

RECOMMENDATIONS ON CHILD'S RIGHTS SITUATION

Violence against children: implementation of the Convention against Torture towards children:

Article 2 and 16:

- The government should address the issue of early and arranged marriage of Roma girls. In this regard, preventing such practices through awareness-raising campaigns and providing protection to girl victims are essential.
- When addressing violence against children within the family, the government should prioritise the prevention of such violence. In this regard, awareness-raising campaigns directed at parents, relatives and potential victims are of key importance. In addition, the government should not leave unpunished those responsible of ill-treatment and corporal punishment of children. Finally, social workers should provide child victims with comprehensive protection and care, particularly counselling, shelters, etc.

Article 11:

- The Ombudsman for Children should be able to visit places where children are deprived of liberty regularly and freely and report cases of torture and other cruel, inhuman or degrading treatment or punishment perpetrated against them by adult inmates, peers and guards and to lodge complaints with the consent of the victims.

Article 11 and 16:

- The relevant authorities of the justice system should ensure that no child is detained before trial for more than three months, as is the maximum provided for by law.
- Macedonia should ensure that children are not detained with adults, even young adults. As far as possible, the approach to juvenile delinquency should be personalized according to the age, the sex, the ground of the detention, etc.

Article 13:

- The authorities should create the relevant legal conditions and ensure the effectiveness of the system so that child victims of violence are able to complain freely, and are able to get full and specific protection as victims or witnesses.

Article 16:

- As a priority, Macedonia should address violence amounting to cruel, inhuman and degrading treatment against children within the family and the community, ill-treatments of children in detention and child trafficking and exploitation.
- The Government and the Parliament should amend the existing law so that corporal punishment against children, including as a means of educating at home, is prohibited in all settings.

Article 11, 12 and 16:

- The Government should prevent all ill-treatment of and excessive use of force against children by law enforcement agents. Prosecuting and punishing those responsible is also necessary to stop such treatment and practices.

PART 5



LIST OF ISSUES ADOPTED BY THE COMMITTEE AGAINST TORTURE

COMMITTEE AGAINST TORTURE

CAT/C/MKD/Q/2

Fortieth session
Geneva,
28 April – 16 May 2008

List of issues to be considered during the examination of the second periodic report of The former Yugoslav Republic of MACEDONIA

Article 2

1. Please provide further information on the rights of persons detained in police custody, in particular their right of notification of custody, access to a counsel and to a doctor of their choice, to be informed of their rights and to inform their family promptly about their detention.
2. Please comment on the steps taken to improve the effective and timely functioning of the Public Prosecution Office. In this respect, please provide an update on the implementation of the Strategy for Judicial System Reform.
3. Please elaborate on the main features of the new Law on Police and clarify whether it has been finally adopted.
4. Does the State party's domestic law specifically provide that no exceptional circumstances whatsoever, or an order from a superior officer or a public authority may not be invoked as a justification of torture? Please provide examples of the application of this provision by the State party's courts.
5. Please elaborate on the measures taken, if any, to prevent ill-treatment of women in places of deprivation of liberty. Does the State party monitor sexual violence in places of deprivation of liberty, and if so, with what results? Please provide statistical data on the number of complaints received and investigated in this respect during the reporting period, as well as the number of prosecutions and convictions thereof.
6. With reference to paragraph 30 of the State party's report (CAT/C/MKD/2), please elaborate on the disciplinary punishments that may be pronounced by the Chairman of the Chamber in case of disciplinary offences committed by detainees.

Article 3

7. Please indicate whether the State party seeks assurances, including diplomatic assurances, before extraditing or returning an individual to another State as a way of preventing the return to a country where he or she would be in danger of torture. If so, please also indicate whether there is any follow-up mechanism in place to assess if these assurances are honoured.
8. Please clarify whether under the Asylum Law an appeal against an order of expulsion has suspensive effect or not.

Article 4

9. In light of the fact that the crime of torture is punished with imprisonment of one to five years by article 142 of the Penal Code, please inform the Committee on the penalty applied in case of violation of article 143 of the Penal Code, i.e. "ill-treatment in the performance of duties". In this respect, please also clarify the criteria used by the investigative and judicial authorities to legally qualify and distinguish the two crimes in practice.
10. Please clarify whether the attempt to commit torture and the complicity or participation in torture are also punished under the State party's criminal law.

Article 5

11. Please provide information on whether domestic legislation may provide for the establishment of universal jurisdiction for the crime of torture. Please inform on any application of this jurisdiction by the State party's courts, if any.

Article 10

12. With reference to the pilot project mentioned in paragraph 165 and ff. of the State party's report (CAT/C/MKD/2), please clarify whether training is systematically provided for law enforcement officials, staff of the penitentiary system and other public officials with respect to human rights and specifically the treatment of detainees and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. In this respect, please provide more information on the establishment of the Centre for Training of Staff of penitentiary institutions within the framework of the new Law on the Execution of Sanctions.

13. Please indicate further whether there are programs to train medical personnel who are assigned to identify and document cases of torture and assist in the rehabilitation of victims. Is there any training to develop more gender sensitive treatment both in legal and medical institutions?

Article 11

14. Please provide up-dated information on the number of persons and the occupancy rate of all places of deprivation of liberty in the criminal justice system. In particular, please inform the Committee on the measures taken to address the severe overcrowding in Idrizovo, Tetovo and Skopje prisons.

15. Please comment on the information available to the Committee that police at times use excessive force during the apprehension of criminal suspects as well as in detention, and notably against members of the Roma community. In this respect, please provide disaggregated statistical data for the years 2000-2006 regarding reported ill-treatment during or after apprehension according to location of detention, sex, age and ethnicity of the victim. Please also make available detailed information on the results of any investigations undertaken in respect of those allegations.

16. Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death for the years 2000-2006. Please make available detailed information on the results of the investigations in respect of those deaths, and notably alleged suicides, and measures implemented to prevent the reoccurrence of similar violations.

17. Please also provide information on the delivery of timely and adequate health care (including mental health care) for detained persons; including persons with HIV.

18. Please inform the Committee on the facts surrounding the arrest, detention and rendition to a third country of Mr. Khaled-el-Masri, a German citizen of Lebanese origin under suspicion of terrorism. In this respect, please clarify whether the circumstances of his detention and rendition have been thoroughly investigated and what have been the results thereof. Please also inform the Committee on measures taken to prevent the occurrence of similar situations in future.

19. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably; women, persons suffering from mental illness and children.

Article 12

20. Please provide information on measures taken to combat impunity, and notably to ensure the integrity of the system of accountability for law enforcement officials in cases of alleged ill-treatment.

21. Please update the Committee on any development concerning the investigation and trial of suspects for the alleged cases of enforced disappearance occurred during the conflict in 2001.

22. With respect to paragraph 189 of the State party's report (CAT/C/MKD/2), please clarify whether there is a body with similar functions to SICPS (Sector for Internal and Professional Standards of the Ministry of Internal Affairs) to monitor and sanction abuse of authority or other misconduct by staff of the Ministry of Justice.

23. Please provide more information on the functioning and the impact of the SOS telephone line (0800 11333) establish to report alleged cases of police misconduct and ill-treatment.

24. Please describe measures taken to combat racism and discrimination, in particular racially motivated violence against ethnic minorities, including prompt and impartial investigations into allegations of offences pursuant to articles 1 and 16 of the Convention.

Article 13

25. Please provide data with respect to:

a) The number of reported cases, investigations carried out and persons tried and convicted since the last periodic review, including the type of sanctions imposed disaggregated by crime, for the crimes of torture (article 142 of the Penal Code) and ill-treatment in the performance of duties (article 143 of the Penal Code);

b) The number of complaints filed as to articles 163 to 167 of the Law on Execution of Sanctions concerning alleged ill-treatment by custodial staff in places of deprivation of liberty and the number of disciplinary and /or criminal proceedings initiated as a result of those complaints.

26. Please comment on the reasons why, according to the statistics provided to the Committee, there appears to be a significant increase in the cases processed by SICPS in the years 2004 and 2005, while there is a proportionally substantial decrease in the proposals for submission of criminal charges.

27. Please clarify the role and mandate of the Ombudsman, and notably its power to investigate alleged abuse of power or excessive use of force by law enforcement officials. In case of a finding of violation, how binding are the Ombudsman's decisions for the authorities and what kind of follow up is given to its recommendations? Also, what happens when a case is investigated by both the Ombudsman and SICPS?

Article 14

28. Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred in the State party for the period between 2000 and 2006. Please indicate how this breaks down according to sex, age and ethnicity.

29. Please indicate whether the right to compensation depends on the existence of a judgment in criminal proceedings ordering compensation. Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment the perpetrator of which has been subjected to a disciplinary, but not to a penal, sanction?

30. Please indicate in further detail what services exist for the treatment of trauma and other forms of rehabilitation of torture victims.

Article 15

31. Please specify the legislation and practice relating to the prohibition of derivative evidence and the use of information obtained under torture in proceedings.

Article 16

32. Please provide information, disaggregated by sex, age, ethnicity or origin of victims, on the number of investigations, convictions and sanctions applied in cases of human trafficking and commercial sexual exploitation in the years 2000-2006.

Other

33. Please indicate whether there is legislation in the State party aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

34. Please inform the Committee on whether there is any development about the State party's ratification of the Optional Protocol to the Convention, which the State party signed in September 2006. If so, has the State party adopted measures to set up or designate a national mechanism which would conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment?

35. Please update the Committee on measures taken to redress the situation of those internally displaced persons (IDP) who have been unable to return to their pre-conflict homes mostly due to security concerns. Please also comment on the information that IDPs would often be under pressure to leave the collective centres where they have been located.

36. Please inform the Committee on any concrete measure aimed at ensuring that children deprived of liberty are separated from adult.

37. Please provide information on the care, treatment and living conditions of institutionalized children.

38. Please clarify whether the use corporal punishment has been formally abolished in all settings.

PART 6



CONCLUDING OBSERVATIONS ADOPTED BY THE COMMITTEE AGAINST TORTURE

COMMITTEE AGAINST TORTURE

CAT/C/MKD/CO/2

Fortieth session
Geneva
28 April – 16 May 2008

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Concluding observations of the Committee against Torture The former Yugoslav Republic of Macedonia

1. The Committee against Torture considered the second periodic report of the former Yugoslav Republic of Macedonia (CAT/C/MKD/2) at its 822nd and 825th meetings (CAT/C/SR.822 and 825), held on 7 and 8 May 2008, and adopted, at its 832nd and 833rd meetings (CAT/C/SR.832 and 833), held on 15 May 2008, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the former Yugoslav Republic of Macedonia as well as the replies to the list of issues which provided additional information on the legislative, administrative, judicial and other measures taken by the State party for the implementation of the Convention.

The Committee also notes with satisfaction the constructive dialogue held with a high-level and multi-sectoral delegation.

B. Positive aspects

3. The Committee welcomes:

- The amendments in the Criminal Code in 2004, and notably the incorporation of the crime of torture in domestic legislation;
- The adoption of an action plan to implement the last recommendations of the European Committee on the Prevention of Torture, after its last visit in 2006;
- The implementation of a strategy to prevent and combat domestic violence;
- The introduction of a separate offence of trafficking in persons at the beginning of 2008;
- The wide-ranging reform aimed at improving the judicial system, such as the Law on the Judicial Council, the Law on the Academy for Training of Judges and Public Prosecutors and the Law on the Public Prosecutor's Office.

4. The Committee welcomes the State party's ratification of the Rome Statute of the International Criminal Court on 6 March 2002.

C. Main issues of concerns and recommendations

Article 2

5. The Committee is concerned that the inclusion in the scope of the Amnesty Law adopted in 2002 of "all criminal acts related to the 2001 conflict", may create the conditions for impunity for serious violations of international human rights and humanitarian law, including violations of the Convention against Torture.

The Committee, as recalled in its general comment No. 2, considers that amnesties or other impediments which preclude prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment may violate the principle of non-derogability. In this respect, the State party should ensure that serious violations of international human rights

and humanitarian law are not included in any amnesty and are thoroughly investigated and, if appropriate, prosecuted and sanctioned.

6. The Committee, while noting the current legislative efforts to strengthen the independence of the Public Prosecution Office, is concerned at its inadequate functioning, in particular when it comes to promptly investigate allegations of torture and other cruel, inhuman or degrading treatment. This concern has also been articulated in various decisions of the European Court of Human Rights.

The State party should ensure the independence and the effective functioning of the Public Prosecution Office as to ensure, inter alia, that allegations of torture and cruel, inhuman or degrading treatment are promptly and impartially investigated and, if appropriate, prosecuted and sanctioned. To this end, the State party should swiftly complete the reform process aimed at strengthening the Office's independence and effectiveness.

7. The Committee notes that the Sector for Internal Control and Professional Standards (SICPS) within the Ministry of Interior is the body mandated to monitor the conduct of the police, but is concerned that an independent and external oversight mechanism for acts committed by the police is lacking. In this respect, while welcoming the adoption of a law strengthening the Office of the Ombudsman in 2003, it is concerned that this Office has still limited functions, and that its decisions are not binding.

The State party should intensify its efforts to establish a system of independent and impartial monitoring to investigate and monitor alleged police misconduct. In this respect, the State party should consider strengthening and extending the mandate of the Ombudsman, including the capacity to investigate acts committed by police officers.

Furthermore, cooperation between the SICPS and the Ombudsman should be improved and adequate follow-up should be given to the Ombudsman's recommendations by all relevant authorities.

Article 3

8. The Committee is concerned at the inadequate functioning of the system for processing and determining asylum claims, especially with respect to those claims channeled through the so-called "accelerated procedure".

The State party should ensure that a thorough review of each individual case is provided for asylum claims. In this respect, the State party should ensure that effective remedies are available to challenge the decision not to grant asylum, especially when the claim is channeled through an accelerated procedure. Such remedies should have in any case the effect of suspending the execution of the above decision, i.e. the expulsion or deportation.

9. The Committee takes note of the State party's position that the SICPS has not found any wrongdoing of any officials of the Ministry of Interior or any other authority in the well-known case of Mr. Khaled El-Masri. However, - noting the concerns expressed by various international bodies, including the Council of Europe Committee on Legal Affairs and Human Rights on the matter, - the Committee is concerned that the events surrounding the arrest, detention and transfer to a third country of Mr. El-Masri have not been fully clarified.

The Committee recalls its position that responses to the threat of international

terrorism adopted by States parties to the Convention must be in conformity with the obligations undertaken by them in ratifying it. In this respect, the State party should ensure that a new thorough investigation is undertaken in order to assess whether the treatment of Mr. El Masri has been in compliance with the Convention and other international human rights standards.

Article 4

10. The Committee notes with concern the data showing that very low penalties have been imposed on persons convicted for the crimes of torture (art. 142 of the Criminal Code) and ill-treatment while carrying out official duty (art.143 of the Criminal Code) (arts. 4 and 16).

The State party should ensure that the acts of torture are punished by appropriate penalties which take into account their grave nature. The Committee, underlining that the conditions that give rise to cruel, inhuman or degrading treatment or punishment frequently facilitate torture and that, therefore, the measures required to prevent torture must be applied to prevent cruel, inhuman or degrading treatment or punishment, believes that appropriate penalties should likewise be applied to acts of cruel, inhuman or degrading treatment.

Article 5

11. The Committee is concerned that, in case of acts of torture committed abroad, the State party may only establish its jurisdiction thereto when the alleged offender is present in its territory if the punishment foreseen for the offences in the country where they have been committed is, at least, of five years of imprisonment. In this respect, the Committee is concerned that this may create situations of impunity, in cases where the country in which acts of torture are committed is not a party to the Convention, does not have a specific offence of torture in its legislation, or sanctions it with penalties less than five years of duration.

The State party should consider abolishing the double criminality requirement for the crime of torture and apply the *aut dedere aut judicare* principle when an alleged offender for acts of torture committed abroad is present in its territory, in accordance with article 5, paragraph 2, of the Convention.

Articles 6, 7, 8 and 9

12. The Committee, while welcoming the State party's ratification of the Rome Statute of the International Criminal Court (ICC), regrets the bilateral agreement concluded with another State party to the Convention aimed at exempting the latter's nationals present in the State party's territory from being extradited to the ICC for crimes within the jurisdiction of the Court, including torture.

The State party should, in accordance with article 6 and 8, consider reviewing the relevant terms of those agreements which prevent the nationals of certain States who are on the territory of the former Yugoslav Republic of Macedonia from being brought before the International Criminal Court.

13. The Committee takes note of the information received by the State party with respect to the developments on the investigations and prosecution of the cases of enforced disappearances occurred during the conflict in 2001.

The Committee recommends that the State party complete a thorough investigation of the above-mentioned cases of disappearances, including those related to the four cases referred back to the State party from the International Criminal Tribunal for the Former Yugoslavia, and prosecute and punish the perpetrators of this crime. The State party should make the results of these investigations public as well as provide information in this respect to the Committee (arts. 6, 7, 8, 9, 12 and 13).

Article 10

14. The Committee notes the State party's efforts with respect to education and information regarding the prohibition of torture, including the training organized in cooperation with the OSCE for 5,500 police officers on "Police, Human Rights and Freedoms" in 2004 and 2005 as well as the plan to establish by the end of 2008 a new permanent training centre for prison staff. However, the Committee is concerned that training programmes for medical personnel for the identification and documentation of cases of torture, as well as for the rehabilitation of victims, seem to be lacking.

Likewise, training to develop a more gender sensitive approach both in legal and medical institutions is inadequate.

The State party should:

(a) Ensure that education and training of all law enforcement personnel, are conducted on a regular basis;

(b) Include in training modules on interrogation rules, instructions and methods, and specific training for medical doctors on how to identify signs of torture, and cruel, inhuman or degrading treatment;

(c) Regularly evaluate the training provided to its law-enforcement officials, as well as, ensure regular and independent monitoring of their conduct;

(d) Strengthen its efforts to implement a gender sensitive approach for the training of those involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

Article 11

15. The Committee, while noting the extensive reform planned for the penitentiary system, including the construction of new facilities and the renovation of the existing ones, is concerned about the current material conditions of detention and the problems of overcrowding in the places of deprivation of liberty.

The State party should ensure the urgent implementation of the penitentiary system reform, including the duly establishment of a new network of penitentiary institutions as envisaged in the Law on Execution of Sanctions. The State party should also improve the material conditions of detention in places of deprivation of liberty, in particular with respect to hygienic conditions and medical care.

Articles 12, 13 and 14

16. The Committee is concerned about allegations of torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel and notes with concern a lack of prompt and effective investigations and prosecutions in this respect (see also paragraph 5 above). In particular, the Committee is concerned at allegations reporting that the most serious abuses would be committed by a special unit of the police named "Alfi", mandated to counter urban crimes and work in plain clothes. In this respect, the Committee takes note of the information received by the delegation that the "Alfi" unit is going to terminate its activities soon.

The State party should ensure that:

(a) All allegations of acts of torture or cruel, inhuman or degrading treatment or punishment committed by law enforcement officials,- including those committed by members of the "Alfi" unit,- are investigated promptly, those independently and impartially and, when appropriate, prosecuted and punished;

(b) Laws and the regulations relating to the use of force and weapons by law enforcement officials are consistent with internationally recognized standards;

(c) Victims of torture or ill-treatment have the right to obtain redress and fair and adequate compensation, as provided for in article 14 of the Convention.

17. The Committee notes with concern the State party's assertion that there are no services available in the State party to deal specifically with the treatment of trauma and other forms of rehabilitation for torture victims.

The State party should ensure that appropriate services are available for the rehabilitation of victims of torture.

Article 15

18. The Committee is concerned that the State party lacks clear legislation totally excluding admission of evidence obtained as a result of torture. Furthermore, the Committee is concerned over reports indicating that in practice evidence obtained under ill-treatment has been used in criminal proceedings.

The State party should prohibit, in the legislation as well as in practice, admissibility and use in criminal proceedings of any evidence obtained as a result of torture or ill-treatment, in compliance with article 15 of the Convention.

Article 16

19. The Committee, while noting various measures undertaken by the State party, including the implementation of a strategy to prevent domestic violence and the inclusion, in 2004, of a separate crime of domestic violence in the Criminal Code, expresses its concern about the persistence of violence against women and children, including domestic violence. While appreciating the State party's intention to amend the elements of crimes of rape by abolishing the requirements of both penetration and active resistance by the victim, it is concerned at the low numbers of investigations and prosecutions of cases of domestic violence.

The State party should increase its efforts to prevent, combat and punish violence against women and children, including domestic violence, and ensure adequate implementation of the national strategy to prevent domestic violence. The State party is encouraged to conduct broader awareness-raising campaigns and training on domestic violence for officials (law enforcement agencies, judges, lawyers and social workers) who are in direct contact with the victims as well as for the public at large.

20. The Committee notes with concern reports of intolerance and hatred towards ethnic minorities, especially Roma. In this respect, the Committee is concerned about information showing that instances of ill-treatment by law enforcement officials, especially the police, often involve persons belonging to ethnic minorities.

The Committee recalls that the protection of certain minorities or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. In this respect, the State party should strengthen its efforts to combat ill-treatment of and discrimination against persons belonging to ethnic minorities, in particular Roma, including by ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and information campaign constantly communicate the message that discrimination and violence will not be tolerated and will be sanctioned accordingly.

21. The Committee notes that corporal punishment of children is not explicitly prohibited in all settings and it is a common and accepted means of childrearing.

The State party, taking also into account the recommendation in the United Nations Secretary General's Study on Violence Against Children, should adopt and implement legislation prohibiting corporal punishment in all settings, supported

by the necessary awareness-raising and public education measures.

22. The Committee recognizes the efforts undertaken to combat human trafficking, including the recent introduction of a separate offence of trafficking, but it is still concerned that trafficking in women and girls, especially for the purpose of sexual exploitation, is a serious problem in the State party, and that recovery and reintegration services are insufficient.

The State party should continue to prosecute and punish trafficking in persons, especially women and children, and intensify its efforts to provide recovery and reintegration services to victims. The State party should also conduct nationwide awareness-raising campaigns and conduct training for law enforcement officials, migration officials and border police on the causes, consequences and incidence of trafficking and other forms of exploitation.

23. The Committee notes with appreciation the State party's statement that a draft Bill on ratification of the Optional Protocol to the Convention is currently under Governmental review. In this respect, it encourages the State party to ratify the Optional Protocol to the Convention in order to strengthen the prevention against torture.

24. The Committee invites the State party to become a party to the following human rights treaties, namely: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Convention on the Rights of Persons with Disabilities; and the International Convention for the Protection of All Persons from Enforced Disappearance.

25. The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials; on the related investigations, prosecutions, and penal or disciplinary sanctions; and on pre-trial detainees and convicted prisoners. Information is further requested on compensation and rehabilitation provided to the victims.

26. The Committee invites the State party to submit its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

27. The Committee requests the State party to provide, within one year, information on response to the Committee's recommendations contained in paragraphs 6, 8, 13 and 20 above.

28. The State party is encouraged to disseminate widely the reports submitted to the Committee and the concluding observations and summary records of the Committee through official websites, to the media and non-governmental organizations.

29. The State party is invited to submit its next periodic report, which will be considered as the third periodic report, by 30 June 2012 at the latest.

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Human rights situation in Macedonia Implementation of the UN Convention against Torture

World organisation Against Torture (OMCT) in collaboration with Civil Society Research Center, Skopje and Association for Emancipation, Solidarity and Equality of Women - ESE submitted an alternative report on human rights situation in Macedonia to the UN Committee against Torture during its 40th session (28 April - 16 May, 2008).

This report was aimed at identifying gaps in the implementation of the UN Convention Against Torture in Macedonia.

The present publication also includes the list of issues and the Concluding Observations adopted by the UN Committee against Torture.



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