

Human Rights Committee

Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*

1. The Human Rights Committee considered the third periodic report submitted by the former Yugoslav Republic of Macedonia (CCPR/C/MKD/3) at its 3170th and 3171th meetings (CCPR/C/SR.3170 and 3171), held on 2 and 3 July 2015. At its 3191th meeting (CCPR/C/SR.3191), held on 20 July 2015, the Committee adopted the following concluding observations.

Introduction

2. The Committee welcomes the submission of the third periodic report of the former Yugoslav Republic of Macedonia. It expresses appreciation for the information contained therein and for the opportunity to renew its constructive dialogue with the State party's high-level inter-ministerial delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee appreciates the State party's written replies (CCPR/C/MKD/Q/3/Add.1) to the list of issues (CCPR/C/MKD/Q/3), which were supplemented by the oral and written responses provided by the delegation.

Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

- (a) The Law on Equal Opportunities for Women and Men, in 2012; and
- (b) The Law on the Prevention of and Protection against Domestic Violence, in 2014.

* Adopted by the Committee at its 114th session (29 June–24 July 2015).

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2009; and

(b) The Convention on the Rights of Persons with Disabilities and its Optional Protocol in 2011.

Principal subjects of concern and recommendations

Office of the Ombudsman

5. The Committee is concerned that the draft amendments to the Law on the Ombudsman do not fully comply with the Paris Principles and that the Ombudsman lacks the necessary human and financial resources to carry out its mandate. The Committee is further concerned about the limited follow-up to and implementation of the Ombudsman's recommendations by the State party. (art. 2)

The State party should ensure that the draft amendments to the Law on the Ombudsman are in line with the Paris Principles (General Assembly resolution 48/134, annex). It should also provide the Office of the Ombudsman with the necessary human and financial resources to ensure that it can effectively and independently implement its mandate. The State party should intensify its efforts in responding diligently and promptly to the Ombudsman's recommendations.

Absence of complaints under the Optional Protocol to ICCPR

6. While noting that the State party ratified the Optional Protocol to the ICCPR in 1994, the Committee is concerned that the absence so far of any complaints registered under this procedure may indicate a lack of awareness of this procedure. (art. 2)

The State party should take the necessary measures to raise awareness of the complaints procedure under the Optional Protocol. It should also establish mechanisms to facilitate the implementation of the Committee's future Views, so as to guarantee the right to an effective remedy, as established in article 2, paragraph 3, of the Covenant.

Sexual Orientation and Gender Identity

7. The Committee is concerned that the Law on the Prevention of and Protection against Discrimination does not explicitly prohibit discrimination on the basis of sexual orientation and gender identity. The Committee is further concerned about the prevalence of stereotypes and prejudices

against Lesbian, Gay, Bisexual, Transgender and Intersex persons (LGBTI). In this regard, it is particularly concerned about reports of acts of violence against LGBTI persons and at reports of a lack of effective investigations and prosecutions. (arts. 2 and 26)

The State party should amend its Law on the Prevention of and Protection against Discrimination with a view to explicitly prohibiting discrimination on the basis of sexual orientation and gender identity. The State party should intensify its efforts to combat stereotypes and prejudice against LGBTI persons, including by:

- (a) Organizing sensitization campaigns aimed at the general public;**
- (b) Providing appropriate training to public officials so as to put an end to the social stigmatization of LGBTI persons;**
- (c) Ensuring that all reports of violence against LGBTI persons are effectively investigated and that perpetrators of violence based on sexual orientation grounds are prosecuted and sanctioned.**

Discrimination against the Roma

8. While welcoming the efforts made by the State party to eliminate discrimination against the Roma, including the adoption of a revised Strategy for the Roma for the period 2014 – 2020, the Committee remains concerned about the low participation of Roma individuals in public life and decision-making processes. (arts. 2 and 27)

The State party should allocate additional resources to put into effect all plans designed to remove obstacles to the practical exercise by the Roma of their rights under the Covenant. The State party should also take measures to increase participation of the Roma in public life and in decision-making processes.

Participation of women

9. While welcoming the measures taken by the State party to enhance the participation of women in the labour market and public life, the Committee remains concerned about the low representation of women in the political and public sectors, particularly in decision-making positions. It is also concerned about the persistent wage gap between women and men and the prevalence of gender biases and stereotypes in the State party. (art. 3)

The State party should further strengthen its efforts to increase the participation of women in the political and public sectors, particularly in decision-making positions, and if necessary, through appropriate

temporary special measures to give full effect to the provisions of the Covenant. The State party should also take concrete measures to close the wage gap between men and women and eliminate gender biases and stereotypes on the role and responsibilities of men and women in the family and society.

Domestic Violence against women and children

10. While noting the measures taken by the State party to prevent violence against women and children, the Committee remains concerned about the lack of information on sanctions imposed on perpetrators, as well as on remedies provided to victims. The Committee is particularly concerned that unmarried mothers, aged between sixteen and eighteen, who are victims of domestic violence, have no right to stay in shelters due to their status as unaccompanied minors. (arts. 7, 23 and 24)

The State party should:

(a) Ensure that cases of domestic violence are thoroughly investigated, perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies and means of protection, including an adequate number of shelters available in all parts of the country.

(b) Eliminate violence against women and children, and consider recognising violence against women and children as a specific criminal act in the Penal Code.

(c) Take concrete measures to ensure access to specialized assistance to all victims of domestic violence, particularly to unmarried mothers aged between sixteen and eighteen.

(d) Continue carrying out awareness-raising campaigns to sensitize the population on prevention of and protection against domestic violence.

(e) Organize trainings for local authorities and law-enforcement officials, as well as social workers and medical personnel on how to detect and adequately advise victims of domestic violence.

Voluntary termination of pregnancy

11. The Committee is concerned about reports that the State party conducted anti-abortion campaigns over a number of years which has had the effect of stigmatizing those who avail of abortion and may prompt women to seek unsafe clandestine abortions that put their lives and health at risk. In this context, the Committee is further concerned that the conditions introduced in the Law on Termination of Pregnancy of 2013 may cumulatively limit access to legal abortion. (arts. 3, 6, 7, 17)

The State party should avoid pursuing any further campaigns used to stigmatize those who avail of abortion. It should take concrete measures, including amending the Law on Termination of Pregnancy, to eliminate all procedural barriers that would lead women to resort to illegal abortions that could put their lives and health at risk.

Torture and excessive use of force by law enforcement officials

12. The Committee is concerned about reports of police brutality and excessive use of force by law enforcement officials, particularly against the Roma and other minorities. It is also concerned about reports of ill-treatment and torture by prison staff in detention facilities. The Committee is further concerned about the lack of investigation and prosecution of crimes committed by law enforcement personnel. (arts. 2, 7 and 9)

The State party should strengthen its efforts to eliminate police brutality and the excessive use of force by law enforcement officials and ensure that the police force receive quality professional training which includes full respect for human rights. The State party should also ensure that cases of torture and excessive use of force by law enforcement officials are systematically investigated, that the perpetrators are prosecuted and punished, and that appropriate compensation is awarded to the victims.

Conditions of detention

13. The Committee is concerned about reports of poor living conditions in detention facilities, including a high rate of overcrowding, security concerns, and poor sanitary and health conditions. (art. 10)

The State party should strengthen its efforts to improve the living conditions in detention facilities on a sustainable basis with regard to access to adequate health care services and sanitary conditions, with a view to achieving full compliance with the requirements of article 10. It should also take measures to reduce overcrowding, including by using alternatives to detention.

Administration of justice

14. The Committee is concerned about shortcomings in the independence of the judiciary, including in the procedure of appointment and promotion

and discipline of judges and allegations of political interference over certain court proceedings. It is also concerned about the undue delay in trial procedures, in particular, in first instance and administrative courts, which has resulted in a substantial backlog of court cases. (art. 14)

The State party should:

(a) Reinforce measures to guarantee and protect the full independence and impartiality of the judiciary by ensuring that judiciaries operate without pressure and interference from the executive power or other outside influences;

(b) Ensure that the appointment and promotion of judges is made in accordance with objective criteria of competence and merit and that dismissal of judges takes place with full respect for due process and on the basis of pre-determination of causes for dismissal;

(c) Ensure the right to a fair trial without undue delay in line with article 14 of the Covenant; and

(d) Improve the functioning of the judicial system, including through increasing the number of qualified and professionally trained judicial personnel.

Trafficking in human beings

15.The Committee regrets the lack of information on measures taken to combat trafficking in human beings for the purposes of forced labour and sexual exploitation. The Committee is also concerned about the low number of identified victims of trafficking and at the fact that the majority of those identified were children. It is also concerned at the lack of information on the number of reported cases, investigations and prosecutions initiated and actual convictions. (art. 8)

The State party should take measures to combat trafficking in persons, systematically and vigorously investigate and prosecute perpetrators, and ensure that, when convicted, they are adequately sanctioned. The State party should intensify its effort to guarantee adequate protection, reparation and compensation to victims, including rehabilitation.

Freedom of movement

16.The Committee is concerned about the fact that between 2011 and the end of 2014, thousands of State party nationals were denied exit from the territory of the State party and about allegations of ethnic profiling, particularly Roma, limiting their freedom of movement across the State party's borders. (art. 12)

The State Party should take measures to ensure that the right to freedom of movement in the State party is fully respected and in compliance with article 12 of the Covenant.

Non-discrimination and rights of refugees and asylum-seekers

17. The Committee is concerned that conditions of detention for migrants and asylum seekers, including in the Reception Centre for Foreigners (Gazi Baba), are inhuman and degrading, and include overcrowding, inadequate sanitary conditions and health-care services. It is also concerned that, despite the Law on Foreigners (Articles 112-113) which stipulates that unaccompanied minors should be separated from adults and that guardians should be assigned to them, this law is not always implemented. The Committee is further concerned about the reported practice of denying or revoking the authorization of refugees and asylum seekers on grounds of a threat to national security which reportedly result in expulsions to a country where the concerned individual might be exposed to the death penalty and/or violations of articles 7 and 9 of the Covenant. (arts. 2, 7, 10 and 24)

The State party should:

(a) Ensure that detention of asylum seekers, irregular migrants and refugees is only applied as a last resort and where necessary, for the shortest duration of time, and that alternatives to detention are available in law and implemented in practice;

(b) End as a matter of urgency the detention of unaccompanied minors except as a measure of last resort and for the shortest duration of time. The State party should, without delay, find alternative accommodation for unaccompanied minors so that they are not detained in the same facilities as adults and ensure that guardians are appointed without delay for minors in order to carry out their role by providing legal, social, medical and psychosocial assistance;

(c) Strengthen its efforts to improve the living conditions in detention centres for migrants and asylum seekers, including in the Reception Centre for Foreigners (Gazi Baba) by providing adequate health care services and sanitary conditions. It should also take concrete measures to reduce overcrowding, including by using alternatives to detention; and

(d) Respect the principle of non-refoulement by ensuring asylum seekers are neither extradited, deported nor expelled to a country where there are substantial grounds for believing that there is a real risk of

irreparable harm, such as that contemplated under article 6 and 7 of the Covenant.

Freedom of expression and association

18. The Committee is concerned about the selective allocation of public funds to media outlets and at the lack of independence of the State broadcasting council (Council of the Agency for Audio and Audiovisual Media Services), reportedly as a result of the introduction of Government-appointed members in this body. The Committee is further concerned about reports that journalists have been repeatedly subjected to surveillance, threatened, attacked and detained. Lastly, it is particularly concerned at information received about the spread of impunity for harassment and acts of violence against journalists. (arts. 19 and 22)

The State party should take the necessary steps to ensure that any restrictions to the freedom of expression fully comply with the strict requirements of article 19, paragraph 3, of the Covenant, as further developed in general comment No. 34. The State party should ensure the full enjoyment by all of the freedom of expression and association, and protect journalists and others who exercise these rights from harassment, intimidation and violence. It should also investigate without further delay such cases and prosecute those responsible.

Freedom of assembly

19. The Committee is concerned about reports that the demonstration which took place in Skopje on 5 May 2015 was dispersed by the police while resorting to excessive violence against demonstrators and journalists, and that dozens of demonstrators were arrested, and in some cases held in pre-trial detention notwithstanding their lack of criminal record and the relatively light nature of the charges against them. (art. 21)

The State party should effectively investigate all allegations of police violence against journalists and demonstrators in connection with the events of 5 May 2015. The State party should always attempt to resort to alternatives to detention in cases involving individuals who do not present a risk to public safety, and should consider the impact of the exercise of its criminal laws against demonstrators on its duty to facilitate the right of peaceful assembly.

Birth registration and identity documents

20. The Committee is concerned at the slow progress made in retroactively identifying cases of children who have not been registered and do not have identity documents and in issuing birth registration upon birth. It is also concerned about the lack of information on how failure to register and obtain birth certificates affects the ability to access to health, education and other public services. (art. 24)

The State party should accelerate its efforts to identify children lacking birth registration and/or identity documents and to ensure retroactive birth registration and issuance of documents for these children. It should also ensure that children lacking identity documents are not refused access to health, education and other public services. The State party should strengthen its efforts to ensure birth registration and the provision of birth certificates for all children, particularly in the rural areas, through interventions such as awareness-raising programmes and by simplifying registration procedures.

Rights of the child

21. The Committee is concerned that institutional and de facto discrimination against children still persists in the State party, particularly for those that are members of minority communities and for those held in correctional institutions. The Committee is particularly concerned about reports of increasing drug use by children and the lack of relevant programs for treatment and re-socialization organized for those children. (arts. 2, 24 and 27)

The State party should take measures to eliminate all forms of institutional and de facto discrimination against children, particularly against children who are members of minority communities, and those held in correctional institutions. It should ensure that drug-prevention and rehabilitation programs are available to all children.

Political rights

22. While noting the measures taken by the State party to complete the Electoral list, including updating the voters list four times a year, the Committee remains concerned about reports that persons with disabilities and those held in detention facilities have been unable to exercise their voting rights due to administrative obstacles. (art. 25)

The State Party should ensure that voting rights are made accessible to all citizens, including persons with disabilities and those deprived of their liberty. The State party should also take measures to rectify all administrative obstacles to ensure the equal and full voting rights of all citizens.

Mass surveillance of communications

23.The Committee is concerned about reports that thousands of State party nationals, including opposition politicians and journalists, have been allegedly subjected to wiretapping by the Security Services, potentially impacting their rights to freedom of expression and privacy. The Committee is also concerned that individuals who have been subjected to unlawful surveillance are not systematically informed thereof, and therefore are not in a position to access to adequate legal remedies. (arts. 2, 17 and 19)

The State party should take all necessary measures to ensure that its surveillance activities conform to its obligations under the Covenant, including article 17; in particular, measures should be taken to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity. It should also ensure that the persons who were unlawfully monitored are systematically informed thereof and have access to adequate remedies.

Dissemination of information relating to the Covenant

24.The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of its third periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, as well as the general public.

25.In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 15 (trafficking in human beings), 16 (freedom of movement) and 23 (mass surveillance of communications) above.

26.The Committee requests the State party to submit its next periodic report on 24 July 2020 and to include specific up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee requests the State party in the preparation of the report to broadly consult civil society and non-governmental organizations

operating in the country. According to General Assembly resolution 68/268 the word limit for the report is 21,200 words.
