

Policy Dialogue Initiative
Human Rights Working Group
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Analyses of Human Rights and Justice
and Recommendations

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INTRODUCTION

Policy Dialogue Initiative is a project of European Centre for Minority Issues (ECMI), Regional Office in Skopje. Within this initiative four working groups have been established to discuss issues of concern in the areas of education, economy, health care and human rights. Members are a representative sample of influential stakeholders in each of the above policy areas. The primary aim of these working groups is to identify problems and make recommendations that will assist decision-makers to formulate and implement more just, inclusive policies that improve the quality of services, strengthen the rule of law, and provide better economic opportunities for persons of all backgrounds living in the Republic of Macedonia. The secondary aim is to strengthen communication and build working relationships among members from different segments of society.

Each working group has between 10- 15 experts who come from three professional backgrounds: politicians and persons in government; professionals and experts in the relevant fields; and NGO leaders and activists. Members of the working groups are from all ethnic and religious communities in Macedonia; and while the majority of members are based in Skopje, other members come from Tetovo, Gostivar, Bitola, Stip and Kumanovo.

Each working group meets once every three to four weeks as it works through a series of planned steps to identify, define and prioritise main areas of concern within their policy fields, gather additional information on priority problems, analyse the information, make recommendations and devise strategies for the presentation of our recommendations. Toward the end of the year, working groups will hold a press conference at which they will present their findings and targeted recommendations. In addition, bi-lateral meetings are being arranged between the members of the working groups on one-hand, and the relevant persons at the institutions and organizations referred to in the sets of recommendations. By setting aside time to work with the institutions and organizations that have mandates to implement changes and reforms, we will increase the probability that the recommendations will be understood and accepted.

The working group on human rights has analyzed four topics in the field of human rights and justice. Two topics focus on issues (citizenship, right to liberty) and two topics focus on the role of state institutions instrumental in the field of human rights protection (Ministry of Interior and Ministry of Justice).

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CITIZENSHIP

Introduction

The issue of citizenship became important after the breakdown of Yugoslavia (SFRJ) in 1991, which led to the formation of five new states. At that time, many residents, who possessed citizenship of the former joined state, were already residents in the former Socialist Republic of Macedonia on a different basis (marriage, employment or birth on the territory of the Republic of Macedonia). These former Yugoslav citizens belong to minority ethnic groups, especially Albanians, Roma and Serbs in some rural areas. The problem with the un-regulated citizenship has also affected children who were born on Macedonian territory and whose parents have not resolved their citizenship status, since citizenship is acquired according to the principle of *jus sanguinis*, and not according to *jus soli*. Persons with unregulated citizenship *de facto* exist, but *de jure* are persons without citizenship, and as a result of this, have limited access to civil, political and social rights.

If the issue of citizenship is analysed through a historical dimension, it can easily be concluded that before the breakdown of the former state SFRJ, all citizens held Yugoslav citizenship, as well as the internal citizenship of one of the six republics, which were recorded in the official Books of Citizens that were maintained on the municipal level. In real life, the republican citizenship did not have any special meaning or influence. But, after the succession of the former state, every successor state, in order to determine the basis for citizenship, followed the principle of the legal continuation of the former republican citizenship. Consequently, certain persons were not considered to be citizens in the country where they in fact lived, where they were born and where they had family or other effective relations, and instead, became citizens of another country, with which they do not have any effective relationship.

Positive Regulations in the Republic of Macedonia

In the Republic of Macedonia, the issue of citizenship essentially is regulated by:

- Law on Citizenship of the Republic of Macedonia, from 1992;
- European Convention on Citizenship, from 1997, ratified in January 2002;
- Amendments to the Law on Citizenship of the Republic of Macedonia, from February 2004.

The Law on Citizenship of Macedonia (1992), through its transitional provision in Article 26, provided a period of one year for the citizens of other former SFRJ republics to acquire citizenship of the Republic of Macedonia under preferential conditions. Due to a lack of knowledge, and a poor information campaign, the citizens of former Yugoslav republics, who had stayed in and built real and effective ties with the Republic of Macedonia, became foreigners. The provisions from the Law on Movement and Stay of Foreigners (1992) had to be implemented in order for these people to receive the legal right to stay in the country. They were therefore required to submit requests for temporary or permanent stay in the country, and to replace their old identification cards with identification cards for foreigners. Insufficient information, the low level of administrative culture, and weak financial opportunities for members of certain ethnic communities, especially Romani communities, led to the situation where a large number of people continued living in Macedonia, without having the legal right to stay.

Acquiring citizenship of Macedonia on the basis of naturalization, in accordance with Articles 7 and 9 from the Law on Citizenship, caused many obstacles and problems when implemented in practice. The main factors which rendered the procedures more difficult were: not possessing an identification card for foreigners, not possessing proof of their legal and continuous stay for at least 15 years, not possessing legal proof of housing or permanent source of incomes, unregistered marriages, difficulties with providing birth certificates from the birth certificate registries of the other former Yugoslav republics, and the high level of the administrative taxes.

The Amendments to the Law on Citizenship of Macedonia (adopted in February 2004), are considered a big step forward in the efforts to simplify the procedures for the acquisition of citizenship of Macedonia for permanent residents. According to Article 14, citizens of other republics of the former SFR Yugoslavia and citizens of the former SFR Yugoslavia, who by the 8th of September 1991, had reported a place of residence in the territory of the Republic of Macedonia and had established real and effective ties with the state, could acquire citizenship of the Republic of Macedonia if, within two years after this Law had entered into force, they submitted a request, and confirmed that no criminal proceedings had been initiated against them in the Republic of Macedonia for criminal acts which endanger the safety and security of the country, were over 18 years of age, and could speak Macedonian language to the extent where they could easily communicate in the local environment.

Implementation of the Law – Conclusions

- During the six months, in which the Law on Citizenship has been implemented, it is evident that different units of the Ministry of Interior have interpreted Article 14 differently, especially in regard to the issue of what documents are necessary to support the request for acquiring citizenship of the Republic of Macedonia. In some manner, this has been made easier by the internal instructive telegram (guidelines) of the Ministry of Interior, which was sent to all regional units. However, the guidelines provided in the telegram regarding the implementation of Article 14 of the Law also have been interpreted differently in different regional units.

For example, a person acquiring citizenship is required to provide proof that she or he was living in Macedonia (on 8th September 1991), although, the telegram indicates that the Ministry of Interior will verify this fact according to internal evidence, *ex officio*.

Thereafter, the MoI determines, by looking at the individual's valid ID from the Socialist Republic of Macedonia or from the Socialist Federal Republic of Yugoslavia on this critical date (8th of Sep.), whether the person had reported a permanent address on 8th September 1991. But, what would happen if the expiration date on the ID is before 8 September 1991? Does that mean the person did not have a place of residence on this date?

Regarding the condition for the continuous presence in the territory of the Republic of Macedonia and the effective tie to the Republic, it is enough to present only one valid ID (for example, health booklet, working booklet or employment certificate, etc.) Once this is provided, there is no need for authorities to request other forms of identification such as: property list, personal ID for foreigners, etc.

- In some regional units of the Ministry of Interior, there is still a lack of clarity regarding the issue of exemptions for the obligation to pay an administrative tax in the amount of 20 euros when submitting a request for citizenship, and 80 euros for accepting citizenship of the Republic of Macedonia. This issue is regulated in the Law on Administrative Taxes (1993), Article 15, Paragraph 19;
- The Minister of Interior has not yet passed bylaws, although the deadline of six months (according to the Article 27 of this Law) has passed;
- In Article 15 of the Law, the Legislative committee is authorized to determine to determine purified text of the Law on the Citizenship of the Republic of Macedonia. The purified text of the Law on citizenship of Macedonia was published in the Official Gazette of RM no. 45 from 7 July 2004. The chapter on transitional provisions is completely wrong and needs to be redacted. It is unclear whether this error was made by the Parliament of the Republic of Macedonia during the procedure of adoption, or if it was a printing error, or if it was a mistake of the Legislative Committee.

- Although the Law was adopted nine months ago, there has been no information campaign regarding this issue, so, there is a possibility that many people will miss the opportunity to acquire Macedonian citizenship under preferential conditions (the same situation as in 1992).

Recommendations

1. The Ministry of Interior should adopt bylaws (guidelines) to facilitate the implementation of provisions in the Law. Publishing bylaws in the Official Gazette of RM will ensure equal access to information for employees at the MoI as well as for other interested parties.
2. The Ministry of Interior, and its local units should respect strictly Article 15, paragraph 19 of the Law on Administrative Taxes (Official Gazette of RM No. 17 from 26 March 1993). People who receive Social assistance and other benefits should be exempt from the payment of administrative taxes when filing request for rulings on citizenship.
3. The Legislative Committee within the Parliament of RM should make corrections in the text of the Law on Citizenship and should publish a new version of that law with those changes. (Official Gazette of RM no. 45 from 7 July 2004).
4. The Ministry of Interior should have a more flexible approach toward long standing permanent residents (Article 14 of the Law) who have filed requests to have their citizenship regulated.

As for the requirement by the special commission in the government of RM regarding the knowledge of the Macedonian language on a level sufficient to be easily understood in the environment, we recommend to the commission that they

should be more flexible in their consideration of requests made by people older than 60 years.

5. The Ministry of Interior should shorten the duration of procedures for acquiring citizenship of RM; especially the part of the procedure that is under the jurisdiction of the State Security Service.
6. A well-organized information campaign should be implemented through:
 - a. Printed and electronic media,
 - b. Organizing round tables and conferences with state representatives, members of Parliament, representatives of international organizations, journalists, human rights activists, NGOs etc.

The campaign should be implemented by the Ministry of Interior, Missions of international organizations in RM, the organs of local-self government, and the non-governmental sector.

The NGOs, through their own projects should participate actively in the informative campaign. The complete mobilization of experts and participants is necessary in the effort to transfer information to every citizen in urban as well as in rural areas (distribution of brochures, pamphlets, door to door visits, etc.).

The lack of this kind of well-organized campaign would mean that a large number of people, as in 1992/93, would miss the opportunity to acquire Macedonian citizenship under preferential conditions. Article 14 gave a historic opportunity for long-term permanent residents finally to resolve their status in RM, where they de facto live and exist, but de jure are not citizens of RM.

PERSONAL RIGHT TO LIBERTY

The Constitution of Macedonia guarantees the right to personal liberty (Article 12 and Article 13(2)), as well as the Article 5 from the European Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights or ECHR).

The courts, the Ministry of Interior and the Ministry of Justice are considered to be the major contributors in the process of the enjoyment, but also in the process of the violation of this basic human right.

Essential Difficulties

1. The meaning of the term “deprivation of liberty” is unclear, and this is further complicated by the introduction of several other terms (such as *summons*, *apprehension*, *detention*, *arrest*).
2. Although the right to personal liberty is positively formulated within the Constitution, the same right is not positively confirmed by the laws, which only strengthens the prejudice that the police “is authorized” – without a decision by the court - to summon, to apprehend or deprive of liberty persons and to detain them in a period of 24 hours without bringing them to the competent judicial authority.
3. The identification of the police, and not the court, as the authorized institution to decide on deprivation of liberty, seems to be a prejudice that only serves as the basis for a wrong practice. In spite of Article 12, Paragraph 2 of the Constitution: “No person's liberty can be restricted **except by decision by the court** or in cases and procedures determined by law”, Article 188 of the Law on Criminal

Procedure enables the authorized professional bodies without court decision to deprive the liberty of the person suspected of a crime prosecuted ex officio if there is a danger of delaying the process, and some of the probable reasons for detention are fulfilled (Article 184 Paragraph 1 of the Law on Criminal Procedure), - but, with obligation to bring the apprehended person before the investigative judge immediately.

4. Article 188 Paragraph 3 from the Law on Criminal Procedure, even enables the authorized professional bodies – as exception – to "hold" the person deprived of liberty. The detention should last maximum 24 hours. After 24 hours, the authorized person from the Ministry of Interior is obliged to release the person under detention or to bring him/her before the investigation judge (according to Article 188 Paragraph 6 from the Law on criminal procedure). In other words, there is a legal framework that allows the authorized bodies to deprive of liberty certain person, to hold him/her 24 hours maximum, **without bringing the person deprived of liberty before the court.** This opportunity collides with the Constitutional provision where “The person deprived of liberty, must be immediately, or in 24 hours from the moment of deprivation of liberty maximum, **brought before the court,** which, with no delays will decide on the lawfulness of the deprivation of liberty.”
5. Even in the cases when the persons deprived of liberty would be brought up before the court, the court might very easily disappoint as an institution which guaranteed the right to personal liberty and unfulfilled the obligation to examine the lawfulness of the deprivation. In many cases, the court does not require clear reasons to be indicated and than verified, which only contributes in supporting the arbitrary behaviour of the police. The courts usually only confirm the governmental decisions, and do not adopt independent critical judgment.
6. Courts implement the wrong practice of judging by rule maximal detention in duration of 30 days, and prolongation of this detention without re-examination of

- the reasons that led to this decision. In the decisions for prolongation of the detention reasons for detention are usually not justified and are often word by word identical with the first decision, which indicates that the prolongation has been automatically implemented, without re-examination of reasons.
7. Inefficiency of the procedures for confirmation of the lawfulness of the detention is only one of the factors which do not permit the accomplishment of the right for compensation constitutionally guaranteed in Article 13 Paragraph 2.
 8. The deprivation of liberty, where the rights of the person deprived of liberty are ignored, is often supplemented by inhuman or degrading treatment and in some cases with attempts to extort confession.
 9. The lack of detailed documentation about the place, time and location of the detention, the name of the person under detention as well as the reasons for the detention, which is not in compliance with Article 5 from the ECHR.
 10. The failure of the internal control of the police in the cases where there are indications of unlawful deprivation of liberty and inhuman treatment towards the persons deprived of liberty.
 11. Passive behaviour by the prosecution in cases when there are complaints (even less when there are no complaints) on injuries during the arrests, police detentions or during the maintenance of the sanction in prison institution, when, usually appropriate investigation acts are not being undertaken.
 12. The judges are silent with regard to claims of torture and inhuman treatment by the police, when the person deprived of liberty will be brought before the court, and usually they are not undertaking appropriate measures, even in the cases when the persons have visible external injuries.

13. Disrespect to the right for choosing the doctor by the free will of the person deprived of liberty; absence of medical data for the health situation of the persons deprived of liberty (where eventual claims for the police maltreatment should be included, as doctors' opinion on the consistency between the claims of the person deprived of liberty and the objective medical statements); inappropriate medical care towards the persons deprived of liberty, which in few cases resulted by death.

Recommendations to the Ministry of Justice:

1) Preparation of amendments to the existing laws and bylaws that would:

- 1 legally affirm the concept of the presumption in favour of liberty;
- 2 provide a clear definition of the aim of the lawful deprivation of liberty – that is, the bringing of the person before the competent court authorities;
- 3 clear up the confusion in terminology and harmonize domestic legislative with the ECHR in which the terms *arrest* and *detention* are used as synonyms;
- 4 enlarge the domain of existing domestic concepts of the deprivation of liberty (which, even after the new changes of the Law of criminal procedure, do not embrace "bringing by force" to the police station) to comprise all forms of deprivation of liberty that are comprised with the European convention for human rights and freedoms, and to consider the non possibility to depart by free will as one of key factors of the concept of personal liberty;
- 5 change the legal regulations which are the basis for the legitimisation of the police practice of arbitrary deprivation of liberty without a court decision (based on "summons" and "detention" up to 24 hours) without bringing the detained person before the competent court;

- 6 include additional protective measures to ensure introduction and continuous enjoyment of human rights of the person deprived of liberty, and especially regarding the right to a lawyer (including free communication in one's mother tongue) as well as the right to choose a doctor by free will and other appropriate health protection;
- 7 provide measures to ensure detailed evidence on the time of deprivation of liberty, on the time transported to prison as well as the place in and location of the prison, name of arrested person, detailed medical information on the health of the individual, as well as other relevant data.

2) We support the training components within the Ministry of Justice's strategy on reform, and especially support efforts to train judges on issues related to the deprivation of liberty. Such training should emphasize:

- 1 The right of liberty and personal security according to ECHR;
- 2 the responsibility of the judges in the process of verification of the lawfulness of the deprivation of liberty; in the process of verification the reasons for detention; in the process of verification if the same reasons continue to exist in case of request for prolongation of the detention;
- 3 The need for prompt court intervention to prevent inhumane treatment by the police, or to confirm any illegal acts committed during the deprivation of liberty, if there have certain indications;
- 4 The responsibility of judges to enforce court decisions, which means appropriate and regular court monitoring over the persons deprived of liberty as well;

- 5 The responsibility of judges to enforce the protection of the presumption of innocence, as well as the protection of the right to privacy of persons deprived of liberty;

Recommendations to Other Institutions

1) Training for the prosecutors with regard to the right of liberty and security of people according to ECHR, as well as for the other guaranteed rights of persons deprived of liberty (with special review of the protection of the right to ban torture, inhumane and degrading treatment);

2) Seminars for medias, in which the concept of presumption in favour of liberty will be promoted as well as the right of presumption of innocence, and the right to privacy of persons deprived of liberty;

3) We believe the domestic mechanisms for monitoring conditions of people in prison need to be strengthened in order to ensure the reporting of any violations that do occur.

4) The Ministry of Interior should inform people that they are not obliged to accept the invitations to come to the police unless informed by a court decision. The Ministry could organise an information campaign, publication of brochures, etc.

MINISTRY OF INTERIOR AND HUMAN RIGHTS

Human rights derive from the dignity of the personality of human beings, of the human being itself. In the course of supporting, respecting and improving human rights, the International Community always "seeks" new, up-dated universal standards, which will be integrated into national legislation in all democratic societies.

No other social institution influences the state of affairs with regards to disrespect to human rights and freedoms, as the police does, given that it acts through different forms, i.e. through the legal use of force. Therefore, in societies where human rights are most commonly violated by the police force, these violations are identified as violations by the state, or the states' use of force. The police's actions and behaviour directly affects and influences the physical and mental integrity of human beings. Therefore, the attitude of the police towards human rights and citizens, in general, is always observed and monitored by different institutions and organizations for the protection of human rights.

After the collapse of the communist regime in the states of Southeast Europe, as well in the Republic of Macedonia, human rights gained new meaning, spirit and conception. The Republic of Macedonia has ratified all international declarations and conventions that deal with issues related to human rights and freedoms, among which the **Convention for the Protection of Human Rights and Fundamental Freedoms** (well known as European Convention of Human Rights) and the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**. These Conventions are already incorporated in the legal system of the Republic of Macedonia.

Legal Basis

International standards have been and continue to be incorporated in the domestic legislation of the Republic of Macedonia.

According to the Constitution of RM from 1991, **the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution become fundamental values of the constitutional order** (Article 8, Paragraph 1 from the Constitution/1991). **According to Article 11 of the Constitution, the human right to physical and moral dignity is irrevocable. Any form of torture, inhumane or humiliating behaviour or punishment, is prohibited.** According to Article 12,

“the human right to freedom is irrevocable. No person's freedom can be restricted except by court decision or in cases and procedures determined by law. Persons summoned, apprehended or detained shall immediately be informed of the reasons for the summons, apprehension or detention and on their rights. They shall not be forced to make a statement. A person has a right to an attorney in police and court procedures. Persons detained shall be brought before a court as soon as possible, within a maximum period of 24 hours from the moment of detention, and the legality of their detention shall there be decided upon without delay.”

The authorizations and competences of the police, determined by the Constitution, are also determined by the **Law on Criminal Procedure, Law on Internal Affairs** and bylaws adopted by the Ministry of Interior, such as the **Bylaw on Activities of the Ministry of Interior, the Bylaw on the Activities of the Internal Auditing Department and Professional Standards of the Ministry of Interior, the Bylaw on the Usage of the Means of Force and Armed Weapons**, and one very important act, the **Codex on the Police Ethics**, as well as other bylaws.

The content of **Article 12 of the Constitution** has been incorporated into **Article 3 of the Law on Criminal Procedure** and in **Articles 53, 54, 55 and 56 of the Codex on Police Ethics** as well.

Article 4 of the **Bylaw on Activities of the Ministry of Interior** indicates that **when acting on behalf of the Ministry of Interior, authorized professionals protect and secure the life and the property of the citizens, respect rights and freedoms of the individuals and implement means and measures in the manner regulated by the Law or other act adopted on the base of the Law. Article 6 of the same Bylaw**

indicates that authorized professionals, during contacts with citizens, address them decently and professionally, and in a clear and understandable manner explain the reason for addressing or for undertaking certain measures, inform the citizens of their rights and obligations, identify themselves when they are in civilian clothes, and also when in uniform, act on the request of the citizens. The identification is performed by showing the official identification card, in the manner for the citizen to be able to read the text and to see the picture. The authorized professional, on the request of the citizen, indicates personal name and organizational unit orally.

The **Codex on Police Ethics** contains articles with the same contents. **Article 2, Paragraph 1** of this Codex states that one of the basic aims of the police is the **protection and respect of fundamental human rights and freedoms guaranteed by the Constitution, as well as the rights indicated in the European Convention of Human Rights.** **Article 46** states that **the representatives of the police, when on duty always identify themselves, to prove their professional identity and status in the police.**

Discrepancy between Regulations and their Implementation

Given all the above-mentioned regulations, and in general all regulations that regulate the work of the police, the impression is that the police have been established firmly on the principles of respect for human rights and freedoms.

Contrary to these acknowledged and accepted standards, reports by institutions for the protection of human rights, field data and complaints from citizens show that in the Republic of Macedonia, human rights and freedoms are most seriously and most flagrantly violated by the police, i.e. by representatives of the Ministry of Interior. **The police, when acting in relation to citizens, most frequently and most commonly violate Articles 11 and 12 of the Constitution and other regulations.** (The content of these regulations has already stated at the end of page 1 and the beginning of the page 2).

Violations of Articles 11 and 12 of the Constitution could be seen and during the implementation of larger police operations, as well as during its normal operations. In bigger police operations, undertaken in **Arachinovo** (January 2000), **Tearce** (February 2001), **Sopot** (May 2003), **the Public Attorney of RM, after conducting investigations in the field, confirmed serious human rights violations against citizens in the villages that were the subject of police operations, i.e. the Public Attorney confirmed serious cases of overstepping the police's authority.**

During these events, above all, the principles of respect for personal property, of the irrevocable nature of the human integrity, of humane behaviour, and of the presumption of innocence etc. were most commonly subjected to violation. While performing these activities, the police did not show court warrants for investigation, physically and mentally maltreated citizens, exercised inappropriate use of force, failed to acquaint citizens with the rights specified in Article 12 of the Constitution, and, especially, failed to respect the provides a limit of 24 hours of police detention. Black bags were put on the heads of detained persons, during their transportation in police vehicles, so that they would not be able to see where they were going. Also, with black bags on their heads, some persons were tied up to radiators, beaten with rubber sticks and other means, verbally abused on the basis of their ethnic and religious affiliation, left without water and food, without medical assistance and were questioned by masked members of the police (so the identity of the police officers would not be revealed).

International experts on human rights assessed that the following practices were the “speciality” only of the Macedonian police: blindfolding detainees and covering their heads with black bags, as well as driving them around on unknown roads. The Public Attorney sent a special detailed report on these cases to the Ministry of Interior, which contained a list of recommended measures. This report requested, as others did, appropriate responsibility for the police persons who overstepped their authority, but the Public Attorney received a negative response. International institutions for human rights strongly supported the Public Attorneys’ report and the recommended measures. In certain isolated cases, the Public Attorney stated that, during the police operations, some

members of the police committed criminal acts, namely the torture of some citizens. The Public Attorney initiated procedures to determine who was criminally responsible. In **May 2004, in Zerovjane, the police killed two citizens from Tetovo and seriously wounded one through the use of armed weapons by the police.** This case's investigation did not determine any criminal responsibility; but only led to some general recommendations to improve the work of the police. Serious concerns have been directed to police in the field, who are in direct contact with the citizens.

Responsibility and Control of the Police

In the Republic of Macedonia, the Criminal Code generally punishes violations of human rights, and this includes violations by representatives of the police. The Criminal Code of RM in Chapter 15 contains acts that are defined as criminal acts against rights and freedoms of the human individuals and citizens, as follows:

Article 137 - violation of equality of the citizens;

Article 138 - violation of the right to usage of language and the alphabet;

Article 139 - Force;

Article 140 - illegal deprivation of freedom;

Article 142 - torture and other cruel, in human or humiliating behaviour;

Article 143 - maltreatment during performance of professional activities;

Article 144 - endangering safety;

Article 145 - violation of the principle of the protection of private property;

Article 146 – illegal investigation etc.

Article 65 of the Law on Internal Affairs defines the violation of working discipline as:

1. Acting contrary to the rules and regulations of the Ministry of Interior;
2. Not disseminating data or the dissemination of incorrect data, which, based on the regulations, are distributed to the authorized organs, organizations or citizens;
3. Inappropriate behaviour towards citizens;

4. The failure to provide legal or other types of assistance as dictated by the authorizations and responsibilities of their work, to the parties in order to protect the legal rights and legal interests of the parties;
5. Failure to appear for medical exams (to confirm one's ability to work);
6. Failure to undertake obligatory professional training and upgrading;
7. Illegal gaining of personal profit related to the performance of activities and assignments;
8. Using or enabling other persons to use money or other items of value that have been designated for official duties and assignments;
9. Performing activities not in compliance with the duties of the employee;
10. Rulings, expressions and representation of political standpoints and beliefs in performing duties and assignments;
11. Performing activities characterized as criminal acts, which according to the Law on internal affairs is prohibited for persons working in the Ministry, or the performance of an act that would be characterized as a serious violation of public peace and safety.

In addition, this Article also indicates that: employees may be temporarily suspended from their positions in the Ministry after committing serious violations of the working discipline.

Article 9 of the Bylaw on the use of force and use of armed weapons states that an authorized person, who by the use of force or means of armed weapons oversteps legal authorizations, bears responsibility according to the legal regulations.

Article 60 of the Codex of police ethics states that the police is responsible before the Government, citizens and all representatives, through the external review and control of their activities.

Article 62 indicates that the state control over the police is divided among the legislative, executive and judicial branches.

Article 62, which defines the responsibility of the police in more detail, remains unclear. It states,

“Aiming at the development of the relations between the police and the public, there is a need to promote certain mechanisms for responsibility, based on communication and mutual understanding among members of the police and the public. The members of the police are responsible for their acts before the citizens of the Republic of Macedonia. If members of the police violate the Constitutional and legal rights of citizens, then citizens are authorized to request the protection of these rights through the Public Attorney.”

In 2003, the Internal Control and Professional Standards Department was established within the Ministry of Interior, as an internal mechanism for auditing the activities of the police. The Bylaw on the activities of the internal control and professional standards of the Ministry of Interior regulates the activities of this Department. This Department conducts investigations based on data, information or knowledge distributed or presented by representatives from the Ministry based upon their own beliefs or upon request, or based on suppositions by the citizens regarding the illegal and unprofessional behaviour by employees within the Ministry, as well as by order from the Minister.

All of the above only confirms that the Republic of Macedonia possesses enough regulations to regulate the responsibility in the activities of the police (although the regulations derived from the acts of the Ministry are not clear and precise enough).

In addition to the conducted analyses regarding the responsibilities of the police, the logical conclusion is that the mechanisms for the responsibility of the police in the Republic of Macedonia function minimally or do not function at all, which is one of the major reasons why there are so many cases of human rights violations by the police in the Republic of Macedonia.

Data indicate that the authorized institutions rarely initiate internal procedures to determine the responsibility of the police in cases where human rights have been violated. There is also an absence of initiating procedures even by the organs of the Public Attorney, or by authorized persons in detention facilities, which also include the doctors. Some citizens are not brave enough or informed enough to report police violations. Court procedures always end in the benefit of the police.

The external control, i.e. control from the Public Attorney and from the civilian and non-governmental sector, lacks cooperation and disrespect. Internal control does not produce any kind of results. The impression is that, even in a period of pluralism, nobody can confront the police successfully.

Recommendations

1. Adequate education of citizens on their human rights, and encouraging them to report all violations of human rights by the police. The Ministry of Interior should prepare, in cooperation with NGOs, brochures on the rights of citizens that would be available at every police station (and in other public places in the community) – and the codex on police behaviour should be placed on visible locations as well. This should be done in an affirmative manner – so that the citizens have trust in the police. Citizens do not know that the basic role of the police is to protect the rights of the citizens. Citizens need to know that they have the right to ask for the name and ID of police officers.
2. We support the involvement of the international community (OSCE, Proxima, International Criminal Investigative Training Assistance Program / U.S Dept. of Justice, and others), in their activities for training police at the Ministry of Interior on international standards for human rights and freedoms. In order to achieve this, it is very important for these trainings to be offered over a long period and especially for police officers who are in daily contact with the citizens.
3. The media should cover cases of violations, abuse and transgressions by the police. We need to encourage the media that they can play a positive role in the protection of rights by publicizing such incidents. This would serve to increase public awareness about police violations, and thereby enable state institutions and NGOs to better support the rights of citizens.

4. The activation and improving the efficiency of mechanisms for confirming responsibility of police officers (internal control throughout bodies of MoI and especially external control by state institutions, citizens associations (NGOs), courts, public prosecutor, ombudsman, committees and bodies of parliament, and those institutions where the freedom of movement is limited). As an example, the work of the Standing Inquiry Committee for Human Rights can be supported by more frequent use of communication and information channels to inform them about the status of any cases, and to assist in their preparation and undertaking of any procedures.
5. More transparency and cooperation by the police with institutions for the protection of rights on the central and local level. Along these lines, we support, as a positive development and example, the work of MINOP, which is a working group in Skopje started by the Ministry of Interior in cooperation with NGOs, the Office of the Ombudsman, and under the auspices of the United Nations High Commissioner on Human Rights. This group has shown a lot of dedication in its work. Similar cooperative efforts should be initiated at other branches of the Ministry of Interior on the local level.
6. There should be efforts to start preparations on a law (as opposed to a bylaw, which is how it is regulated currently) to incorporate the European standards regarding the use of weapons and the use of other means of force, an act that will be a subject to wide public debate.

JUDICIARY AND HUMAN RIGHTS

The protection of human rights in the Republic of Macedonia depends on two factors, which may be considered as the most influential:

- ❖ The quality of the legislation that outlines the types of human rights and freedoms and the mechanisms for their protection;
- ❖ The organization and functioning of institutions in the judicial system, where citizens can exercise the protection of their rights and freedoms.

Therefore, the functioning of the judicial system and the quality of the legal regulations which regulate these issues and their implementation are key factors which determine if, and to what extent, human rights are protected in RM. Given the reasons above, reform in the judicial system must correspond with amendments in the legislation, as well as with the creation of organizational, material and personnel mechanisms for the successful execution of human rights and freedoms of the individuals and citizens in the Republic of Macedonia.

Weaknesses of the Judiciary System

There are many reasons for the inefficiency of the judiciary system, including the protection of citizen rights in RM determined by the Constitution. Some of the reasons are as follows:

- Inefficiency of the courts, caused by the duration and slowness of the procedures;
- The current legislation of the laws on procedures (Law on Criminal Procedure, Law on Litigation Procedure and Law on Executive Procedure) are impediments to the execution of human rights and freedoms;

- Claims of corruption within the judiciary (which still have not been proven either because procedures are not initiated or, in the cases when procedures are initiated, they have not been completed for a variety of reasons);
- Political influence on the work of the courts;
- Dependency of the courts and subjectivity in the work of the courts;
- Lack of material mechanisms (*equipment and money*) to ensure the necessary working conditions for the functioning of the court;
- Problems in the organizational structure and relationships between the different levels of courts, and in the distribution of work (caseloads) among the courts. For instance, it is common in the Appeals Courts to return cases to the basic courts for retrial;
- The non-implementation of International Conventions which the Republic of Macedonia signed, especially with regard to the non-implementation of standards from the European Convention on Human Rights;
- Lack of communication and the closed nature of the courts towards the public (refers especially to resistance to the dissemination of information for professional and scientific purposes);
- High level of administrative taxes, which presents an obstacle for citizens to exercise their rights of equal access to justice etc.

All the above weaknesses emphasize the need for reforms in the judicial system, which should encompass reforms in the legislation regarding procedures and structural-organizational reform.

Reforms in Legislation Regarding Procedures

Reform of legislation on procedures would contain all the fundamental tools for the execution of functions of the judicial organs and would aim to ensure prompt access to justice and the expeditious and simple protection of the rights and interests of citizens, efficient protection from crime, and procedural guarantees for the protection of human rights and freedom through the mechanisms of the judicial system.

Through the amendments in the laws on procedures the main aim is to ensure greater efficiency in the work of the judicial organs and a reduction in the number of the cases in the courts. This would have a direct influence on the efficient protection of rights; which would also indirectly strengthen the trust of citizens in the courts and increase the authority of the courts.

The courts' inefficiency and prolonged procedures are considered the most important problems that still need to be resolved, since these directly influence the rights of the citizens.

Recommendations on Legislative Reform

The resolution of this problem needs to address omissions in the laws on procedure, especially with regard to the procedural rights which give more favorable conditions to the debtor (defendant) than the creditor (plaintiff); then with regard to the delivery of summons, this should be done through an independent and more efficient service.

More efficient delivery of court summons and documents would satisfy the interests of both sides, the courts would receive prompt and efficient delivery, which will shorten the duration of the procedures on one hand, and the delivery service would receive payment for prompt delivery.

In addition, there is a need to simplify provisions that refer to procedures to deliver information (especially during the proceedings) in which the parties may have a legal interest.

Furthermore, there is a need to adopt amendments to the Law on Executive Procedures, which should allow for a faster and more efficient implementation of the courts' verdicts, which is the main purpose for these procedures. The debtor (defendant) in the current procedure is in a privileged position since the debtor has the right to conduct another procedure after receiving the final court verdict in the frames of the executive procedure, which in large extent contributes to long duration of the procedures.

Implementation of the European Convention on Human Rights in the Activities of Domestic Courts – an Overview

The Republic of Macedonia has ratified the European Convention on Human Rights. Accordingly, Article 98 Paragraph 2 of the Constitution states that international agreements are to be given the status of legal source for domestic legislative. This obliges courts to respect and follow the proposed standards.

One of these standards is the “*principle of trials in a reasonable time-frame*” (stated in Article 6 Paragraph 1 of the ECHR), which obliges our country, as a signatory of the Convention, to guarantee this right to its citizens. This principle obliges the domestic courts to conduct procedures in a reasonable period of time, in other words, every unjustified prolongation of the procedures is to be considered a violation according to Article 6 of the Convention.

In the past the following excuses have been offered: the unsuitable structure of the judicial system, inappropriate or old legislative solutions, insufficient number of judges in the courts, lack of material means etc. Since RM ratified the convention the authorities

have to ensure the creation of conditions in order to enable citizens to exercise their rights guaranteed with the convention and the courts has obligation to implement it.

The “*principle of fair trials*”, stated in Article 6 of the ECHR, obliges the courts in RM to respect this principle during the court proceedings.

Recommendations on Implementation of ECHR

This principle still has not been incorporated into our domestic legislative, which can be seen as an omission that should be resolved immediately by first adding it to the Constitution and then to the laws on procedures.

This way, not only the ECHR but also the domestic legislation will clearly and directly oblige the courts to respect this principle. This will contribute to more prompt and more efficient protection of the rights of the citizens who applied for court protection.

The Constitution of RM introduced three mechanisms for human rights protection through the regular courts, the Constitutional Court of RM and the Public Attorney.

Article 50 of the Constitution states that every citizen may invoke the protection of freedoms and rights determined by the Constitution before the regular courts, as well as those rights and freedoms stated in Article 110 Line 3 before the Constitutional Court of Macedonia¹. This clearly confirms that the Constitutional Court only has limited authority in the protection of fundamental freedoms and rights, namely only those which are clearly indicated in this provision, and not in all freedoms and rights guaranteed by the Constitution. The “exclusive authorization” is provided also in the Law on Courts, where Article 6 states that the courts will provide court protection of all freedoms and rights (regular courts do not specialize in the protection of human rights, although the

¹ The following rights are listed in Article 110 of the Constitution of RM, of which the Constitutional Court is granted a “exclusive authority”: freedoms and rights of the individual and citizen relating to the freedom of communication, conscience, thought and activity as well as to the prohibition of discrimination among citizens on the grounds of sex, race, religion or national, social or political affiliation.

courts implement legal provisions for HR protection in different legal areas except those which are under court protection of the Constitutional Court).

The Constitution should not make this distinction, i.e. it should not protect only certain rights and freedoms, on the contrary, it should provide protection for all rights under the authority of the regular courts.

With respect to Amendments to the Constitution, citizens should be entitled to request protection of all their rights prescribed in the Constitution by submitting a lawsuit before the Constitutional Court. For instance, the Croatian Constitution (in its article 128) establishes that citizens are entitled to submit a lawsuit against decisions of state bodies if citizens consider that their rights were violated by those decisions.

The Croatian Constitution does not specify certain rights and freedoms for which the citizens are entitled to file complaints, rather this provision refers to all rights that are established in the Croatian Constitution. In the Macedonian Constitution only the rights listed in article 110 of the Constitution might be considered by the Constitutional Court. If citizens have the right to submit a lawsuit before the Constitutional Court it would be one more means for the examination of the violation of their rights and that might reduce the number of complaints before ECHR.

Furthermore, the procedure before the Constitutional Court has to be prescribed with Constitutional legal-comments (it is law not a bylaw as it is the case with the Rulebook of the Constitutional Court which currently regulates the procedure before the Constitutional Court).

The direct provision of Constitutional protection of only certain fundamental freedoms and rights, and leaving the rest aside, deprives citizens from the protection of their subjective rights.

Regarding the issue of “exclusive court protection”, the Constitutional Court does not determine:

- Stricter conditions and ways of executing its authority for the protection of the rights and freedoms of individuals and citizens;
- The types and character of individual acts upon which such authority can be determined;
- Conditions that should be met for requesting protection;
- The legal act of the adopted decisions which confirm the violation of human rights and freedoms.

The Constitution also does not foresee the adoption of Constitutional amendments or the promulgation of a law (as opposed to a bylaw) that would prescribe the procedures of the Constitutional Court. On the contrary, it silently allows these issues to be regulated, in the chapter of the rulebook where the procedures and the way of conducting activities are regulated and by bylaws (in the hierarchy of the legislative acts of the lower importance) of the Constitutional Court.

The Constitution does not define all elements that create the content of this protection, but rather enables this to be regulated by law, and therefore the final regulations are determined by bylaws (regardless of the fact that in concrete cases it is an act (document) of the Constitutional Court of RM).

In addition, the quality of the regulation of these issues, according to criteria related to the hierarchical legal structure of the force of law of general legal acts, is two levels below the standards in the European countries, where this authority belongs to and functions on the level of the Constitutional court.

The direct implementation of Article 6 of the ECHR is highly recommended, especially the implementation of the principle of fair trials.

The need of continuous training of the judges is highly recommended, aiming at more frequent consultation and implementation of the ECHR. A second recommendation is that we make use of the established and frequently updated database of the Court's decisions (verdicts) of the European Court in Strasbourg, which have been created over a longer period of time by following the real development and conditions within societies.

The function of the Ombudsperson still has not found its place in the field of human rights and freedoms protection in the Republic of Macedonia. Although the new Law on the Public Attorney has been adopted, its implementation and the strengthening of its role granted by the Constitution and the laws related to human rights and freedoms, the Ombudsperson offers a very low level of protection.

Recommendations on Structural and Organizational Reform

Structural and organizational reform refers to the institutions of the judicial system, aiming at establishing efficient, stable, depoliticized, independent and responsible judiciary institutions, while within these institutions certain efforts should be made towards the improving professionalism and competence, achieving ethnic representativeness of the personnel, and making staff more immune to abuse and corruption.

Here, we especially should emphasize that the redefinition of the status of judges would strengthen the independence of the judiciary and prosecution especially with regard to political influence by the other two state branches (executive and legislative). This may be done by amendments to the Constitution and the law that regulates these issues. i.e. the Law on Courts, regarding the procedure for selection and appointing of judges; as well as the responsibilities and procedures that govern dismissals and promotions of judges.

We should mention also the need for improving the system of appointing judges, the system of financing the courts, especially to ensure that enough funds are set aside in the

budget of RM, as very important preconditions for the efficient and independent function of the courts.

The judicial system should enable equal access for all citizens through a reduction in the administrative taxes; we recommend they should be paid once at the beginning of the procedure, and not several times during the same procedure. The high level of administrative court taxes makes it impossible for poor citizens to initiate procedures (or it discourages them) before the courts. In addition, we recommend, exemptions from administrative taxes, a so-called “poor legality”, to be implemented more frequently when there is a demonstrated need for this, and for those citizens whose social condition does not allow the protection of their rights before judicial organs.

Strengthening the role of the Ombudsman in the protection of human rights and freedoms through authorizations stated in the Laws. Selection of quality personnel who will perform these functions more successfully.

Additional Remarks

Regarding Corruption

We considered the question of increasing the salaries of court officials (especially judges), but it was decided that raising salaries would not, in itself, serve to deter corruption.

It was mentioned that some citizens might have shown reluctance to do anything on those occasions when they observe corruption in the judiciary. This could be in part due to the cost incurred by the citizens (for reporting the case & having it go before the court).

We need to also think of other ways to encourage citizens to report cases of corruption (and judges to report when offers of bribes are made).

Recommendations

- (1) Therefore, one remedy would be that the state would cover the costs for those cases of corruption brought forth by citizens.
- (2) We need to strengthen mechanisms for the investigation of allegations of corruption.
- (3) We need to offer training and education for court officials;

Regarding Judicial Independence

The question of how to limit the negative impact of politics on judicial appointments, dismissals and promotions was looked at.

One proposal was that judges would be selected by competitions by their peers. For example, if there is an opening at the court in Tetovo, the other judges on that court would interview and select a candidate to fill the post. It is unclear whether there would be a hiring committee convened to conduct interviews; it is also unclear who would be on that committee.

One possible negative consequence could be that it may lead to nepotism and a shift in the level of the negative impact of politics from the national to local level – i.e. there would be no balance of powers, no check on the authority of the court. This would enable a corrupt court to appoint judges who happen to be friends or judges who bribe those already working for the court.

This particular topic requires further elaboration.

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** One member left Macedonia in August and as a result discontinued his engagement with the working group. We would like to thank him, nevertheless, for his contributions.*