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DEFENDING HUMAN RIGHTS PROJECT

Macedonian Young Lawyers Association

ANNUAL REPORT 2016

ON THE EFFICIENCY OF THE LEGAL PROTECTION OF

HUMAN RIGHTS

IN THE REPUBLIC OF MACEDONIA

Skopje, February 2017

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LIST OF ABBREVIATIONS:

USAID	**United States Agency for International Development**
MYLA	**Macedonian Young Lawyers Association**
RM	**The Republic of Macedonia**
SPPO	**Special Public Prosecutor's Office**
SEC	**State Election Committee**
PI	**Penitentiary Insitition**
CC	**Criminal Code**
RIU	**Rapid Interventions Unit**
MLSP	**Ministry of Labor and Social Policy of the Republic of Macedonia**
NPM	**National Preventive Mechanism**
RTC	**Reception-Transit Center**
CSO	**Civil Society Organizations**

EXECUTIVE SUMMARY

Protecting and defending human rights in the Republic of Macedonia (RM) during 2016 was largely dependent on the social and political context in the state. 2016 saw the escalation of the political crisis that began with the disclosure of the mass wiretapping scandal and publication of phone conversations between the leading politicians, which pointed to indications of perpetrated crimes. The Przino agreement of 2015 was not implemented fully, nor within the foreseen timeframe, which brought about the events of 2016. In April 2016, several weeks after the Constitutional Court of the RM abolished the provisions of the Law on Pardon and allowed pardoning for all and any crime foreseen in the Criminal Code, the president of the RM pardoned the politicians and other public personae that were subjects of interest of the Special Public Prosecutor's Office (SPPO). This decision encountered serious resistance from a section of society and it gave rise to several months of daily protests that were later named 'The Colorful Revolution'. The protests ended with the so-called '20th July Agreement', when representatives of leading political parties reached agreement on early parliamentary elections as an instrument to leave the political crisis behind. The elections took place on 11th December 2016; however, two months later the Republic of Macedonia has not constituted the Parliament, nor has it elected a Government, which has exceeded the timeframe stipulated in the Constitution of the Republic of Macedonia. The failure to resolve the political crisis has caused a serious vacuum in the operation of institutions that have the duty to safeguard human rights. This, in turn, has had a negative impact on the overall respect for those rights.

The beginning of 2016 was marked by continuation of the 'refugee crisis' that started the year before, and the flow of a huge number of refugees from Syria, Iraq and Afghanistan, as well as other countries from the Middle East and North Africa. In February 2016, after negotiations carried out between the EU member-states and countries along the so-called 'Balkan Route', a decision was made to interrupt it by closing the border crossing points where the refugees crossed the border between the Hellenic Republic and the RM. Closing down the 'Balkan Route' resulted in a substantial number of refugees who were on the territory of the RM at that moment being stuck there, as well as forming an enormous refugee camp in Idomeni, Hellenic Republic, with more than 40,000 refugees. Additional implications of this decision on the respect for human rights were the more frequent so-called

pushbacks (forcible returns to the territory from which the individuals had entered the country), as well as reactivation of the illegal channels for the smuggling of migrants.

Concern is raised by the cases of femicides perpetrated during family violence incidents, by individuals who had previously already been reported as perpetrators of family violence; however, the responsible services failed in their duty and did not take all steps that they were able to, pursuant to the applicable law. Such cases are frequent and point to the inability of the state to protect the lives of women in cases of family violence. During 2016, continued petitions and complaints regarding inadequate healthcare in the pre-trial detention and penitentiary institutions, particularly for chronically ill inmates, as well as regarding several deaths of people deprived of their liberty. From the same area were the complaints on inhuman living conditions for these individuals, including those treated in mental health institutions.

In 2016 there was a substantial number of cases of discrimination based on the ethnic background, sex[1] , political (non)affiliation, and towards representatives of the lesbian, gay, bisexual, and transgender (LGBT) community. Discrimination on the basis of ethnic background was also, in some cases, experienced at the border crossing points, where the practice of profiling and preventing individuals of Roma ethnic background to travel abroad. Additionally, citizens from this ethnic group who live in destitution had impeded access to healthcare rights, compared to other citizens. Discrimination on the basis of sex was observed primarily in the area of labor relations. The failure to extend the temporary employment contract to female workers who are pregnant is a negative phenomenon that continued into 2016. The Labor Law foresaw different ages for the opportunity to extend the employment contract after the pensionable age is reached. Thus, men had the opportunity to work until the age of 67, while women could work until 65. Such inequality was found by the Constitutional Court as discriminatory and the provision stipulating it was abolished. The discrimination based on political (non) affiliation, significantly widespread in relation to employment and work in the bodies of civil service, is a serious problem which unfortunately, and despite several procedures initiated, still has not reached judicial resolution due to the difficulties in proving such cases.

Of particular concern in relation to human rights protection is the failure to solve the wiretapping scandal. Even two years after its publication there has been neither legal, nor criminal responsibility. 2016 saw a continuation of the practice of stigmatizing civil activists and journalists, because they publicly expressed their political positions and convictions. The stigmatization was done through public disclosure of data about their salaries and fees that enjoy the status of tax secret. In 2016 there were also clandestine and sometimes not-so-clandestine

1 Clarification: The Macedonian Consitution does not constitute gender as grounds for discrimination. Instead, it used the term 'sex' that covers both discrimination based upon sex and gender.

pressures towards certain individuals or groups because they went to a protest or they published their political position.

In the aforementioned context, there is no progress regarding protection of human rights compared to 2016. The usual policies, practices and cases of violation of human rights, which have existed in society for a number of years, continue occurring. Of particular concern is the observed failure of constitutional guarantees for human rights protection, primarily the judicial protection; if they were functioning efficiently and if they had been accessible to citizens, it would significantly improve the human rights situation in RM.

INTRODUCTORY NOTES

About the report

The annual report on the efficiency of legal protection of human rights in the Republic of Macedonia[2] is an activity of the USAID Project on Human Rights Protection (The project), implemented by the Macedonian Young Lawyers (MYLA). The report has the aim of presenting the violations of human rights identified during the Project in the course of 2016. In addition to documenting the violations, the Report also analyzes the efficiency of the constitutionally established mechanisms for human rights protection. The constitutionally established mechanism[3] subject of analysis in this report are: the regular courts, the Constitutional Court of RM, the Ombudsman of RM and the standing inquiry committee of the Parliament of the RM.

This Report is the second annual report produced within the USAID Defending Human Rights Project. The Report has the aim of contributing towards creating a panorama of human rights situation in the RM. It follows up on the other national and international reports, with a special focus on legal human rights protection; i.e., how and to what extent are the legal safeguards for human rights efficient when someone is trying to utilize them.

The first part of the Report contains a description of the human rights violations that were identified and documented by the Project. Violations were grouped into nine areas, depending on the type of human rights concerned:

1. Life, body and person.
2. Equality and protection from discrimination.
3. Liberty and fair trial.
4. Freedom of speech, religion and movement.
5. Freedom of association and expressing peaceful protest.
6. Privacy and confidentiality of communication.
7. Social insurance and social protection.
8. Healthcare.
9. Refugee crisis and protection of human rights.

2 Further in the text: The report
3 Шкарић С. Уставно право, Skopje 2006. Page 331. – Skaric S. Constitutional Law, Skopje 2006, p. 331

The second part of The Report analyzes if and to what extent were the constitutional guarantees for human rights protection efficient in practice, through case studies and monitoring the processing by competent bodies. The last part of the report presents and analyzes the decisions of the European Court of Human Rights adopted in 2016, and pertaining to the Republic of Macedonia.

About the USAID Defending Human Rights Project

The USAID Defending Human Rights project is a three-year programme that has the aim of advancing the protection and promotion of human rights and democratic values in the Republic of Macedonia, through legal education, strategic advocacy and strengthening the capacities of legal professionals and civil organizations. The project is implemented by the Macedonian Young Lawyers Association.

The project activities are grouped into the following components:

• **Strengthening the capacities of attorneys and young lawyers in the area of human rights.**

Organizing basic and advanced training sessions in the area of human rights, as well as an apprenticeship programme for young law professionals, with the purpose of contributing to their improved knowledge in promotion and safeguarding of human rights. The project has the aim of creating a team of legal professionals who will be able to put the legal system to the test and to contribute towards building jurisprudence in defending human rights and fundamental democratic values guaranteed by the Constitution of the RM.

• **Strategic advocacy and legal advice in the area of violations of human rights.**

For the victims of violations of fundamental human freedoms and rights, the project provides free legal advice by attorneys, and strategic representation before the national courts and international institutions. The results of strategic representation will be published in separate annual reports.

• **Strengthening the role of civil society organizations in the legal protection of human rights**

The project also works with civil society organizations in order to strengthen their capacities in promoting human rights protection. The project supports establishing cooperation between civil society organizations and attorneys experienced in protection of human rights, so that they would jointly implement education campaigns and activities to raise public awareness in this area.

About the methodology used

When producing this Report, the team used a combined analytical-synthetic approach regarding the collection of data, their documenting and analysis. The Report has the goal of attaining the following research objectives:

- To describe the human freedoms and rights violations that were documented within the project.
- To analyze whether the existing legal instruments and mechanisms, primarily legal remedies are efficient in providing protection to citizens when their freedoms and rights are violated.

The data pertaining to the identified violations of human rights were collected from the following sources of data:

- Documented complaints and information from citizens, received through the free-phone hotline: 0800 77 800.
- Documented legal advice provided by attorneys.
- Access to the documents in cases initiated with the assistance from the project.
- Monitoring and accessing media articles related to cases of violations of human rights.
- Following relevant international and national reports pertaining to the protection of human rights in the RM, the legislative activity; and
- Requests for free access to public information.

Human rights violations were documented in this Report using a descriptive method with a detailed description of actual situations, where personal data of the sources indicated were adequately protected. A violation means any action, omission, act or policy that tackles the fundamental human freedoms and rights defined in the Constitution of the RM.

The efficiency of legal instruments was analyzed using statistical data on the work of institutions that have jurisdiction in the area of human rights protection, legal analysis of their decisions, as well as using the case study method. This method makes it possible to study a specific case regarding which legal aid was provided within the project, and through this to establish how effective the legal instruments were in practice. When selecting cases to be analyzed, the following criteria were used: that a significant number of citizens is affected by this problem and that the

problem was already identified, that there are facts and evidence indicating a violation of a human rights took place. This method places the focus on the following elements of the cases:

- The context, i.e., the environment where the event took place.
- The state of facts in each of the cases.
- The relevant and applicable legal norms regulating the issue.
- The legal remedies available in particular situations, i.e., their status of legal regulation and experiences from the procedures initiated.
- Legal points raised by the cases, and court practice.

The report period spans from January 1st 2016 through 31st December 2016.

On legal protection of human rights in the Republic of Macedonia

Fundamental rights and freedoms of humans are recognized in the international law and stipulated in the Constitution, as well as the rule of law, and are core values of the constitutional order of the Republic of Macedonia. As the highest legal act, the Constitution establishes a list of freedoms and rights the protection of which is guaranteed in Macedonia[4] ; and with the ratified international agreements as a part of the internal legal order, there is a possibility to include additional freedoms and rights that are not foreseen in the Constitution. The protection of the freedoms and rights under the Constitution is exercised through the so-called **guarantees of fundamental freedoms and rights[5] . The basic guarantee foreseen by the Constitution is the possibility for protection before the courts and the Constitutional Court of the RM, in a procedure based on the principles of priority and urgency.**

Other guarantees that the Constitution foresees as safeguards for human rights protection include judicial protection of the legality of individual acts, as well as active introduction of citizens to the human rights and fundamental freedoms. In addition to these guarantees, the protection of human rights is exercised by respect of the principle of the rule of law (constitutionality, legality, public access to published laws, period vacatio

4 Chapter 2 of the Constitution of the RM.
5 Regulated in articles 50 -54 of the Constitution of the RM.

legis, prohibition of retroactive application of regulations, as well as through independent and autonomous attorney's profession). Restrictions of freedoms and rights are permitted only in cases established by the Constitution, or during state of war or state of emergency, but even in this case only in ways established by the Constitution.

In addition to the protection before the courts, the Constitution also establishes the Ombudsman of the RM as a separate body protecting the constitutional and legal rights of citizens, when they are violated by bodies of state administration and by other bodies and organizations exercising public powers. In addition to this, the Constitution also establishes a Standing Inquiry Committee within the Parliament of the RM, which has the purpose of protecting freedoms and the rights of citizens.

Chapter 1: DOCUMENTED VIOLATIONS OF HUMAN RIGHTS

Section 1: Rights related to life, body and person

Excerpts from the Constitution of the RM:

Article10
The human right to life is irrevocable. The death penalty shall not be imposed on any grounds whatsoever in the Republic of Macedonia.

Article 11
The human right to physical and moral dignity is irrevocable. Any form of torture, or inhuman or humiliating conduct or punishment, is prohibited. Forced labor is prohibited.

- **More frequent occurrence of femicides[6] (murder of women) as a consequence of failure of services that have the duty to protect victims of family violence.**

Statistics regarding individuals who are victims of family violence are on the rise, and this includes femicides, i.e., the murder of women as a consequence of family violence. In April 2016 in a quarrel with the husband who she was divorcing, a woman was kidnapped, beaten up by her husband, and saved by a passer-by. The woman filed criminal charges for attempted murder during a crime of family violence[7] . In another case in August 2016, a woman's body was found in the waters of Lake Kalimanci. According to the media, this was preceded by a family fight with her husband. The case was reported by her mother who heard the screams and feared for the safety of

6 Definition of the notion of femicide and its significance according to the World Health Organization http://apps.who.int/iris/bitstream/10665/77421/1/WHO_RHR_12.38_eng.pdf
7 Source: http://zase.mk/ja-tepal-do-bessoznanie-skopjanka-se-bori-za-zhivot-otkako-bila-pretepana-od-soprugot/

her daughter, who drove away in a car with her husband. According to the media, there were traces of violence on the body, and the death occurred due to drowning in the lake[8] .

These cases are, unfortunately, not isolated, but are part of a trend. One of the most brutal cases of murder in recent years took place in 2014 in Kavadarci, when the former husband of a woman murdered the father, the mother and the sister of the woman, who herself had previously been a victim of family violence[9]. The murderer had weapons and permits for them, and these were not seized by the competent institutions, although he had been reported as a perpetrator of family violence prior to the murders. In 2015, 252 reports were filed, citing females as the injured parties, for bodily injury during a crime of family violence[10].

In the period between October 2015 and the same month in 2016, 27 judgments were brought, out of which in 11 prison sentences were given for the perpetrators of family violence. On the crime of murder, there were four judgments with prison sentences given. For the crime **'Grevious bodily harm'"** there were six judgments, out of which four were given suspended sentences, one acquittal and one was given a prison sentence[11]. According to unofficial data from NGOs for a period of less than two years, from the beginning of 2015 to November 2016, 15 femicides were registered[12].

- **Inhuman and degrading treatment when depriving of their liberty individuals suspected of perpetrating crimes.**

In 2016 the Special Public Prosecutor's Office (SJO) opened an investigative procedure on inhuman treatment during the deprival of liberty of Lj.B., as the police officers used force and coercion and exceeded their legal powers on using means of force. The SJO indicated that the police had used excessive force by making him lie on the ground by hitting him and holding him by his hands. According to the SJO, the injured party suffered from psychological damage as a result of the treatment, and his human dignity and person were directly humiliated, and he was discriminated against on political grounds[13] . In 2016 the attorney to the accused in the "Divo Naselje" case revealed information, through the media, about the alleged violent treatment at the hands of police, during the transport of one of the accused, who was ill-treated by the police for one hour, having been grabbed by the hair and having his head banged against that of another accused, as well as

8 Source: http://kanal5.com.mk/vesti_detail.asp?ID=103102
9 Source: http://vesti.mk/read/news/3687561/1328144/trojno-ubistvo-vo-kavadarci
10 Page14 of Access of Women to Justice, Analysis of the Association for Equal Opportunities "Equal Approach", available at http://myla.org.mk/wp-content/uploads/2016/09/Pristap-do-pravda-za-zeni-Analiza-1.pdf
11 Source: http://www.akademik.mk/pregled-na-nabljuduvani-sudski-postapki-za-nasilstvo-vrz-zheni-zagrizhuva-podatokot-deka-bile-izrecheni-duri-4-uslovni-osudi/
12 Source: http://novatv.mk/helsinshki-70-protsenti-od-zhenite-vo-makedonija-bile-zhrtvi-na-nasilstvo/
13 Source: http://slobodna.mk/2016/06/06/tortura-2/

being subject to verbal abuse[14] . In 2015, the ECHR brought five judgments[15] against the Republic of Macedonia, pertaining to violations of Article 3 (Prohibition of torture) of the ECHR. The cases involve torture at the hands of civil servants. In those cases, the prosecutor's office either failed to open an investigation (although the acts were reported) or the investigation was ineffective, due to which the injured parties did not receive an adequate and just judicial outcome[16].

- **Inadequate healthcare for persons deprived of their liberty or serving a prison sentence.**

In its 2015 report[17] the MYLA brought up the problem regarding the issue of access to adequate healthcare faced by individuals serving prison sentences in penitentiaries in the Republic of Macedonia. The Ombudsman of the RM reported for several consecutive years the problem faced by inmates, particularly taking into account the fact that in PI Idrizovo there is one doctor for 2,000 prison inmates, and that he finishes work at 4.00 pm [18]. In 2016, the media revealed information on deaths among the KPD Idrizovo inmates. In January 2016, there were two deaths: one of a 52-year old asthma patient who had contracted bronchopneumonia; the other being an inmate who had been beaten up by prison guards. According to the statement made to the media: *'About the other person, I have information that he was beaten to death by the guards, and they are angry because the information about their security situation is not communicated to the public, while over the past year there were around ten deaths due to the violent conduct of the guards, and because of the inadequate healthcare'*[19].

An inmate in a prison in Kumanovo stayed in a cell for several days with a broken bone, without having been examined by a doctor. He was forced to wait, in great pain, for the doctor, because the doctor did not come to the prison every day. When the doctor examined him, he referred him to the hospital, but the guards told him to wait for a few more days, since all prison cars were in use. The individual serving the prison sentence was forced to report the case to the Ombudsman of the RM and after the Ombudsman's intervention, the person was finally taken to a hospital where he finally received adequate healthcare, i.e., his leg was set and put into a cast.

14 Source: http://alsat.mk/News/284375/advokati-na-obvineti-vo-diva-naselba-alarmiraat-za-maltretirawe-obvineto-lice
15 Aslani vs. RM (Application number 24058/13), Andonovski vs. RM (Application number 24312/10), Hajrulahu vs. RM (Application number 37537/07), Ilievska vs. RM (Application number 20136/11) and Kitanovski vs. RM (Application number 15191/12)
16 Page 28 and 29 of the Shadow Report, Chapter 23 available at http://www.epi.org.mk/docs/Izvestaj_mk.pdf
17 Page 13 of the Annual Report on the efficiency of the legal protection of human rights, available at https://goo.gl/Erw1t5
18 Source: http://telma.com.mk/vesti/pochina-29-godishen-zatvorenik-vo-idrizovo
19 Source: http://daily.mk/hronika/dva-smrtni-sluchai-zatvorot-idrizovo

Towards the end of 2016, the media reported the death of two individuals who had died while serving a prison sentence. A 46 year old individual died on the way to the clinic, and a few days later another prison inmate, a 29-year old individual, died in the Clinical Center in Skopje[20]. In the statements made to the media by the other inmates it was indicated that the individual went several times to see the doctor in the prison, but the doctor told him that he could not help him. It is more than obvious that the access to adequate healthcare of individuals deprived of their liberty is a serious problem. The inmates in the prisons in Kumanovo, Kriva Palanka, Struga, Strumica, Gevgelija, Prilep and Ohrid[21] are left without healthcare. According to Article 124 of the Law on Execution of Sanctions, the inmates and the remand prisoners shall be provided adequate healthcare and hospital treatment according to the regulations in the area of healthcare and health insurance.

In 2016, it was forbidden in KPD Idrizovo for female inmates to distribute the daily therapy of tablets and methadone, and this was done after the intervention of the Ombudsman of the RM. In KPD Idrizovo there are 1,950 people serving prison sentences, and there is only one doctor, with no second shift or night shift, and no doctor on call-duty[22].

- **Inhumane conditions in some of the prisons, educational-correctional institutions in the RM and psychiatric hospitals and establishments.**

In 2016 in the Republic of Macedonia, the prisons are overcrowded and exceed the accommodation capacities they have available. The total number of people in prisons in the RM is 3,446, while the prison capacity is 2,026. In the Strumica prison there are 150 individuals, yet is has a capacity for just 62 inmates[23]. In a separate report from the Ombudsman of the RM, after the visit to the Educational and Correctional Institution 'Tetovo', it was concluded that the hygiene in the toilets and bathrooms is of an unsatisfactory level: They have no doors on the cubicles, no curtains in the showers and thus no privacy. During the winter, inmates can only take a shower once a week. The Ombudsman observed that children cannot go to the toilet after 10.00 pm if the duty guard does not respond to the call, and they are forced to urinate in their room[24]. The regular education process is also absent from the institution.

20 Source:http://sitel.com.mk/pochina-ushte-eden-zatvorenik-od-idrizovo
21 Source: https://goo.gl/gMqOnD
22 Source:http://sdk.mk/index.php/neraskazhani-prikazni/zatvorot-idrizovo-zabrani-osudenichki-da-davaat-lekovi-i-metadon-po-reaktsijata-na-ombudsmanot/
23 Source: http://www.telegraf.mk/aktuelno/makedonija/ns-newsarticle-helsinski-komitet-zatvorite-vo-makedonija-se-prenatrupani-situacijata-e-alarmantna.nspx
24 Page 17 from Посебен извештај на Народен правобранител на РМ за условите за извршување на воспитно-поправната мерка упатување во Воспитно-поправен дом and степенот на остварувањето на правата на децата – Special Report of the Ombudsman of the RM about the conditions on implementing the measures of placement in an educational-correctional institution and the degree of exercise of the rights of a child.

The Ombudsman also found that the institution does not have a medical professional on staff, i.e., a doctor, a nurse or a dentist. The fact that the medical center does not have basic medical equipment must not be disregarded, and that some of the children were prescribed diazepam (Medication for treating anxiety disorders). The law prescribes that these children must have health insurance, but that is not the case here. The children complained that the officers from the security sector, as well literacy teachers, often use physical force, and the use of the so-called 'Bulgarian Batons', insults and degrading treatment are an everyday occurrence[25]. The Ombudsman alerted the media about the need to establish a regular education system and a healthcare system in the institution[26].

The situation is also bad in the Special Institution in Demir Kapija, where the Helsinki Committee for Human Rights observed that the individuals in this institution live in substandard conditions, and that although there are 277 residents placed in this institution, there is not a single doctor on the instutions staff. The individuals are exposed to a constant draft and most of them suffer from pulmonary diseases. The report states that between 1993 and February 5th, 2016, 375 individuals died in the Special Institution, many dying as a result of pulmonary diseases[27].

25 Page 34 од Посебен извештај на Народен правобранител на РМ за условите за извршување на воспитно-поправната мерка упатување во Воспитно-поправен дом and степенот на остварувањето на правата на децата - – Special Report of the Ombudsman of the RM about the conditions on implementing the measures of placement in an educational-correctional institution and the degree of exercise of the rights of a child.
26 Source: http://24vesti.mk/popravnite-domovi-kako-vo-horor-filmovi
27 Report from the visit of the Helsinki Committee on Human Rights of the Republic of Macedonia to the Special Institution Demir Kapija.

Section 2: Right to equality and protection from discrimination

Excerpts from the Constitution of the RM:

Article 9

Citizens of the Republic of Macedonia are equal in their freedoms and rights, regardless of sex, race, color of skin, national and social origin, political and religious beliefs, property and social status. All citizens are equal before the Constitution and law.

- **The discrimination of members of Roma ethnic community at the border crossing points in the RM continued.**

The discrimination of the Roma ethnic community at the border crossing points in the Republic of Macedonia continued in 2016, too. The MYLA still receives reports about such conduct, and within the association there are 27 active court procedures, and thus far there are four final judgments establishing a violation of the right to freedom of movement and discrimination. The courts issue non-harmonized and sometimes completely contradicting judgments. In some of the court decisions the aforementioned treatment was found to be unlawful and discriminatory, while no violations were found, or procedural barriers for further processing were found in others[28]. In November 2016, the Minister of the Interior, Oliver Spasovski, stated for the media that any discrimination cannot be tolerated and that there will be steps taken to overcome this problem, observed in the past few years. *"The problem has been ongoing for quite some time now, but it culminated recently because we are facing litigations, i.e., complaints filed on the grounds of discrimination before the competent courts in the Republic of Macedonia"*, said,the minister. He went on to say: *"The institutions must not harm the dignity and honor of those they exist for, the citizens. I will instruct [them, the Courts] to respect the Constitution and the laws."*[29].

28 Legal opinion on the right to leave the country, USAID Project on Defending Human Rights, Macedonian Young Lawyers Association: https://goo.gl/EZ39Fs

29 Спасовски: Недозволива е дискриминација на Роми на граничните премини http://faktor.mk/spasovski-nedozvoliva-e-diskriminacija-na-romi-na-granichnite-premini - Spasovski: Discrimination of Roma on the border crossing points cannot be tolerated

- **Dismissal notice and failure to extend a fixed-duration employment contract for pregnant workers.**

Pregnant women are victims of discriminatory treatment in labor relations. The phenomenon of not extending a fixed-term employment contract after the woman announces that she is or intends to become pregnant is widespread. Additionally, women are placed in an ultimately embarrassing position when, during a job interview, they are asked if they have children, how many, or whether they plan to start a family. The Basic Court in Skopje, Court II, brought a judgment on March 3rd 2016, establishing discrimination and unequal treatment on the grounds of personal status, family and marital situation and pregnancy, in a case of terminating the employment. Namely, after the woman informed colleagues that she was pregnant, the employer did not extend her contract and issued a decision terminating her employment[30]. A textile factory, in July 2016, laid off ten women due to their decision to become mothers[31]. One more judgment was brought, establishing discrimination against a single parent, indicating that: *"The Court believes that, had the applicant not been pregnant, the defendant would have signed an employment contract, or would have extended her employment contract*[32] *"* . The job position of the single mother was filled by a man who lacked the same competences as the single mother – the applicant[33].

- **Discrimination on the grounds of sexual orientation and gender identity.**

In the last-year's report, we revealed that working materials, i.e., reading material foreseen in the curricula of the Faculty of Philosophy in Skopje, contained degrading, humiliating and offensive speeches towards homosexuals, and that the text abounds in insults and inciting hatred against such individuals. The Commission for Protection from Discrimination (KZD), one year after a complaint was filed, issued an opinion in July 2016, exceeding the legal deadline (90 days) four times. According to the KZD, in this specific case no discrimination was found, as the contentious text "*does not contain insulting or inflammatory words*" and presumed that *"the author used adequate research results"* and referred to *"adequate science authorities"* when producing the text.

The reading material author does not present any relevant scientific researches on the basis of which he arrived at his position, nor does he refer to adequate relevant literature. In no case has he elaborated upon the

30 First judgment in the RM establishing discrimination on the basis of personal status - pregnancy: https://goo.gl/tBzQJ2 Judgment of the Basic Court in Skopje, Court II. I-PO-618/15 from 03.03.2016
31 Source: https://goo.gl/AJ7vXM
32 Source: http://www.press24.mk/samohrana-majka-od-skopje-koja-poradi-bremenosta-bila-diskriminirana-na-rabotnoto-mesto-ja-dobi
33 Source: http://www.akademik.mk/samohrana-majka-koja-poradi-bremenosta-bila-diskriminirana-na-rabotnoto-mesto-ja-dobi-pravdata-na-sud/

heavy words he used, nor did he present elaborated positions, supported by any method utilized. The reading material indicates that *"Homosexuality is a threat to the survival of the human species, of humanity, culture and civilization"*. Namely, if people become homosexuals – then humankind will cease to exist, it will die out, and culture and civilization will be destroyed. He believes that homosexuals *"need help", inter alia to be freed of* "*unhealthy beliefs and attachments"*. The author qualifies them as "deviant" and that homosexuals, i.e. deviants will further ask for *"legalization of child prostitution and legalization of marriages to androids, virtual creatures, artworks, cooking pots, etc"*. The professor, on the basis of his personal outlook, indicates, and in a way also forecasts examples of what homosexuality could lead to, not taking into account any researches, nor analyses[34].

- **Unequal access when providing healthcare to members of the Roma community who live in destitution.**

A nine-year old girl of Roma ethnic background, who lived in the utmost destitution was injured by a car driving in reverse. After the initial examination, the girl was sent to a specialist, where the diagnosis *"fractured pelvis"* was made and she was hospitalized. In order to establish criminal and/or misdemeanor responsibility of the driver, as well as the right to compensation of damages, the girl was instructed to obtain a medical certificate. The certificate, when qualifying the injury, indicated that it was *"bodily injury", contrary to the medical report of the specialist, which indicated it was a "serious bodily injury"*. This classification substantially changes the responsibility of the perpetrator of the traffic accident and endangers the right to ask for compensation of damage. The unequal treatment is seen in the fact that this same injury is classified as *"serious bodily injury"* in all other medical certificates.

- **Discriminating content towards single-parent families, contained in a textbook of Social Studies for the fourth grade.**

The fourth-grade textbook in Social Studies subject contains an activity asking the children to paste a photograph from their parents' wedding and to indicate whether the parents were married in the church or in a registrar's office. The activity is part of the curricula and is intended for all children. Civil society organizations reacted to such treatment they considered to be upsetting and stigmatizing towards all children and parents

34 Analysis of the opinion of the Commission for Prevention of Discrimination in the case of using insulting and degrading speech in a reading material (textbook) used at the Faculty of Philosophy in Skopje, USAID Defending Human Rights Project; Available at: https://goo.gl/DfFWSZ

living in non-traditional families, single-parent families, extramarital union, or where parents entered into civil marriage, but did not have a wedding celebration[35].

- **Discrimination on the basis of (non) political affiliation is generally wide-spread and accepted as normal in society.**

Political (non) affiliation was a very common reason for discrimination in 2016, too, but it is unfortunately reported very rarely. We encounter it in labor relations in state institutions and public enterprises and it is frequently manifested as the inability to find employment, promotion and valuing the work, and not receiving job tasks.

A typical example of this is the case of a civil servant employed way back in 1993. From 2006, the individual was demoted by the superiors to a job with a reduced salary, with transfers to other cities and inability to advance in their career. There was a disciplinary procedure initiated against the individual, and he was sanctioned with a 15% decrease of the amount of the last paid monthly salary, for the duration of six months, for alleged violation of working discipline by abusing his sick-leave. The abuse consisted of his presence at a rally of a political party.

Another example is an individual employed for ten years in the same job. In 2015, due to a new systematization, the individual was placed in a job he was not satisfied with. The individual met the criteria for a higher level (advancement) in-line with the systematization, because he had more than ten years' work experience, higher education and had been evaluated as "outstanding" and "satisfactory". In the institution where he works, there are 13 employees with a different political affiliation than his, and they have immediately acquired a rank higher than his. Also, in comparison with the new employees who obtain high job positions, the individual was not allowed into a job position corresponding to his qualifications; instead, he was seconded to perform duties in another city.

- **Discrimination when exercising the right to old-age pension on the basis of gender.**

A sixty-five year old woman worked in a state institution and requested to continue her employment for two more years, in-line with the possibility given by the Labor Law. The request was denied, because according to the legal provisions, the age limit to which women can work to

35 http://reporter.mk/2016/10/20/%D1%83%D1%87%D0%B5%D0%B1%D0%BD%D0%B8%D0%BA%D0%BE%D1%82-%D0%BE%D0%BF%D1%88%D1%82%D0%B5%D1%81%D1%82%D0%B2%D0%BE-%D0%B7%D0%B0-4%D1%82%D0%BE-%D0%BE%D0%B4%D0%B4-%D0%B5-%D0%B4%D0%B8%D1%81/

is 65 years of age, while this limit for the men is 67 years of age. According to the woman, such provision is restricting her right to work and provides unequal treatment compared to her male colleagues. The contested provision of the Labor Law was challenged before the Constitutional Court of the RM which, on June 29 2016, brought a decision[36] abolishing the contested Article 104 of the Labor Law dealing with pensionable age. The court believes that the right of the woman to acquire an old-age pension sooner than men, if she so chooses, is another matter. This is justified by the principle of affirmative action, i.e., positive discrimination. Still, that same right cannot automatically apply to other areas, if it leads to restrictions on the basis of gender. The Constitutional Court believes that the continuation of the employment status and the right to work differ from the right to an old-age pension.

36 Decision U.No. 114/2014-0-1 of 29.06.2016

Section 3: Right to freedom and fair trial

Excerpts from the Constitution of the RM:

Article 12
The human right to freedom is irrevocable.
No person's freedom can be restricted except by a 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 of their rights. They shall not be forced to make a statement. A person has a right to an attorney in police and court procedure.
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.
Detention may last, by court decision, for a maximum period of 90 days from the day of detention.
Persons detained may, under the conditions determined by law, be released from custody to conduct their defense.

Article 13
A person indicted for an offense shall be considered innocent until his/her guilt is established by a legally valid court verdict.
A person unlawfully detained, apprehended or convicted has a right to legal redress and other rights determined by law.

Article 14
No person may be punished for an offense which had not been declared an offense punishable by law, or by other acts, prior to its being committed, and for which no punishment had been prescribed.
No person may be tried in a court of law for an offense for which he/she has already been tried and for which a legally valid court verdict has already been brought.

Article 15
The right to appeal against individual legal acts issued in a first instance proceedings by a court, administrative body, organization or other institution carrying out public mandates is guaranteed.

- **Deciding on pre-trial detention for participation in a protest.**

During the April and May protests of 2016[37] the police detained several participants in the protests, against whom the measure of house arrest was ordered and criminal or misdemeanor charges were filed for the crime

37 The protests taking place in Skopje and in several other cities in the period between April and June 2016 were caused by the abolition decision of the President of the Republic, and resulted in the destruction his office and paint being thrown onto buildings. The protests later continued under the name of 'Colorful Revolution'.

of *Participating in a crowd that commits a crime*, (Article 385 of the Criminal Code). The court, during this period, decided that it was justified to extend the detention for additional 30 days, without taking into account the fact that the protests continued peacefully and non-violently, and they were not held at all during some periods. Furthermore, the decisions were not influenced by the fact that fines or prison sentences of up to three years can be given for such crimes, which makes it a less severe crime and, by analogy, a less strict security measure can be ordered[38]. One of the grounds to terminate the detention was to make a statement admitting guilt, or to admit guilt after evidence of the crime was gathered[39] . Related to these events is the information about the inability to make a statement admitting the guilt within a court procedure, which in turn influenced the possibility for termination of detention[40]. Also, regarding the duration of pre-trial detentions, it was noticed that even after they were formally terminated by a court decision, their *de facto* duration continued, due to the time it took to deliver this decision to the indictees[41].

- **Excessive use of force when preventing protests.**

Restrictions of liberty were observed in the course of: 1) violent detentions and arrests by the police, without warning, as well as; 2) detaining without explaining the reason, coupled with the seizure of a car as part of the protest.

Regarding the first point, violent detention was noticed when a civic organization activist was posting banners[42] during a gathering of the ruling political party, whereby the alleged basis for detention was the content of the banners which this political party deemed to be insulting[43] . The detention resulted in the filing of misdemeanor charges on various grounds[44]. Detentions without indicating the reasons for the detention also happened, with additional seizure of the car used for the protests. According to the competent bodies, the seizure was justified, because there was the possibility to file an indictment[45] for the crime of damaging goods under temporary protection, or cultural heritage[46].

38 Source: http://www.mhc.org.mk/reports/413#.WD8im4WcG8A
39 Article 173 para 1 line 7 in conjunction with Article 165 para 1 line 2 of the Law on Criminal Procedure.
40 Source: http://www.mkd.mk/makedonija/politika/prodolzhen-pritvorot-za-demonstrant-od-sharenata-revolucija
41 Source: http://faktor.mk/demonstrantite-saveski-i-kunovski-ushte-ne-izleguvaat-od-doma/
42 Source: http://novatv.mk/priveden-aktivistot-pavle-bogoevski/
43 Source: http://novatv.mk/mvr-pavle-bogoevski-bil-priveden-zoshto-transparentite-bile-navredlivi/
44 Source: http://a1on.mk/wordpress/archives/625140,
Source: http://standard.mk/mehmeti-za-pavle-ima-prekrshochna-prijava-simona-ja-uapsile-zashto-nemala-lichna-karta/
45 Source: http://fokus.mk/video-politsijata-go-otvori-shareniot-pikap-za-vodenite-pishtoli-vozachot-krivichno-ke-odgovara/
46 For more about the justification of such threat of potential crime, see the section 'Freedom of association and expressing peaceful protests'.

Some of the people who participated in the protests, and who were held under police custody, spent more than 12 hours in the station[47] , contrary to the provisions of the Law on Police, which specifies that police detention of an apprehended individual must not be longer than 12 hours.

- **Unlawful vs. unjust detention (deprival of liberty).**

One individual[48] received several judgments, amounting to a total prison sentence of 15 years. With three other judgments, he received other sanctions, too. After he was informed of his rights, in-line with the provisions of the Criminal Code of the RM, the individual filed an application to have a decision on a single sentence, but the application was refused. As a result of this situation, the individual spent more than 17 years in prison, contrary to the duration of the maximum sentence provided in the Criminal Code, which is 15 years or life imprisonment. Pronouncing and serving a prison sentence longer than 15 year, and shorter than life imprisonment, is not allowed according to the Criminal Code. Although the individual served the prison sentence contrary to the aforementioned provision, in addition to this there was also an absolute expiry of the statute of limitations regarding the execution of the sanction. The individual initiated a civil procedure to establish unlawful detention or deprival of liberty, during which procedure he will also claim the right to compensation of damage because of unlawful detention, and the awarding of compensation.

An individual suspected of growing marihuana was kept in **pre-trial detention** for twelve days, and then released pending trial in a criminal procedure. The procedure lasted for two years, and ended in the acquittal of the individual[49] . In this specific case, the individual initiated a procedure against the state because he was held in detention while he was not guilty, i.e., because an unlawful pre-trial detention was ordered.

According to the Committee for Protection of Rights, *"... pre-trial detention is still used as a sanction, and not as a measure ensuring unobstructed court procedure."*[50] In addition to the unlawful detention and unlawful imprisonment, they also indicate **unjust detention**, i.e., unjust holding in detention, for several months or several years, of individuals who are charged with perpetrating smaller crimes. They believe that the detention of these individuals can be replaced by one of a number of guarantees to secure their presence in the procedure, that are alternatives provided in the legislation[51]. They base their position on the court practice to replace the detention measure with one of the guarantees to secure the presence in

47 Source: http://lokalno.mk/se-drzhat-vekje12-chasa-13-gragjani-na-raspit-vo-policiski-stanici/
48 A case within the Project.
49 Source: http://www.libertas.mk/farmerot-dushko-ja-tuzhi-drzhavata/
50 Source: http://revolucionermk.com/ajde-da-spasime-sudbini-graganska-aktsija-na-kzp-za-zloupotrebata-na-pritvorot-kako-kazna/
51 Source: http://www.akademik.mk/komitetot-za-zashtita-na-pravata-bara-zamena-na-pritvorot-za-desetina-obvineti-litsa-so-domashen-pritvor/

some of the cases that the SJO initiates against high state officials[52]. Still, although those cases have been specifically and particularly elaborated and documented by the Committee, the court did not accept such proposals[53].

- **Judicial and administrative procedures still last an 'eternity' for the clients.**

  - **Judicial procedures**

The applicant[54] held tenancy rights on an apartment she was renting. After she met the legal requirements to purchase this apartment, in 1999 she signed a notary contract for the purchase of the apartment with the company managing apartments of this kind. The contract stipulated that the purchase price would be paid in installments over a period of 40 years. Before signing the notary contract, the applicant paid the rent due, which was a prerequisite to enter into this real estate purchase contract. After signing the purchase contract, the applicant paid the obligations under the contract, and she completed paying for the apartment before the 40 years expiration date. But the applicant was still formally considered a renter of the apartment, because she was not informed, nor aware that she needed to send a written request to dissolve the rent contract. Because of this, the company managing such social housing properties filed a collection complaint in the year 2000. Processing this complaint, the court scheduled the first hearing in 2015, while the first-instance judgment was brought in 2016. The applicant is alleging violation of the right to trial within reasonable time[55] guaranteed by the Constitution of the RM, guided by the rules in the European Convention on Human Rights[56].

In another case, based on reasonable grounds that a crime under Article 131 para 1 of the Criminal Code, against the applicant[57] an indictment was filed in 2007 to the basic criminal court. Processing the indictment, the competent court brought a judgment in the middle of 2015. This judgment was annulled by a judgment of the second-instance court in the beginning of 2016, and the case was sent back for retrial. When the procedure was reopened, the first instance court had seven new main hearings, and after them it was concluded that there was absolute expiry of statute of limitations for criminal prosecution of the accused.

52 Source: http://sdk.mk/index.php/makedonija/trojtsa-umrele-zaboraveni-vo-pritvor-obvinuva-poraneshniot-pritvorenik-vane-tsvetanov/
53 Source: http://www.libertas.mk/komitetot-za-zashtita-na-pravata-zgrozeni-sme-od-selektivniot-pristap-na-sudiite-vo-krivichniot-sudot-skopje-1-skopje/
54 A case processed within the USAID Defending Human Rights Project.
55 Article 36 and 36-a of the Law on Courts ("Official Gazette of the Republic of Macedonia" No. 58/2006, 62/2006, 35/2008 and 150/2010).
56 Article 6 para 1 of the Convention.
57 A case within the project.

With this conclusion, the criminal procedure was terminated by the court. Until the moment the procedure against this individual was terminated, the entire proceedings had lasted for nine years, without bringing a final and enforceable judgment against him or in his favor.

- **Administrative procedure**

N.N. was an individual granted the right to asylum on the grounds of humanitarian protection, a right that was extended several times, on an annual basis[58]. After re-examining the facts, the Asylum Department within the Minsitry of Interior (MoI) brought a decision, in 2008, to terminate the right to asylum. The individual filed a timely appeal to the second-instance Commission of the Government of the RM, deciding on administrative matters in the second instance[59]. After the appeal was refused by the second-instance committee this individual appealed to the Administrative Court, challenging the legality of the act. After several years and a number of circumstances, in 2013 the right to asylum on the grounds of humanitarian protection of this individual was terminated again, by a decision of the first-instance Asylum department, with the elaboration that the individual was a threat to the security of the RM. There was an appeal against this decision that the Administrative Court processed and decided in favor of the applicant and sent the case for processing anew. In the same way, the first-instance body decided again with three further first-instance decisions that were annulled by three further judgments of the Administrative Court. When the case was sent to be reopened for the fourth time and when the application of the applicant was refused again, and then appealed before the Administrative Court, this court brought a completely different judgment, refusing the appeal, and confirming the decision for refusal of the right to asylum as lawful. At the moment, and after four years have passed in this administrative labyrinth, the applicant is still awaiting the decision of the Higher Administrative Court.

58 Data taken from the project "Legal assistance and representing persons of interest" run by MYLA, supported by the UNHCR.
59 Commission of the Government of the RM to decide on administrative matters in the second instance, in the area of internal affairs, judiciary, civil service, local self-government and matters of religious nature.

Table of decisions of the SUPREME COURT brought in 2016 following applications filed to establish a violation of the right to trial within reasonable time

ADMINISTRATIVE PROCEDURE	**TOTAL OF 13 DECISIONS**	
	FIRST-INSTANCE PROCEEDING OF THE SUPREME COURT	**SECOND-INSTANCE PROCEEDING OF THE SUPREME COURT**
	Applications dismissed as unfounded. 2	Applications admitted and violation of the right was found. 2
	Applications admitted. 6	Applications dismissed as unfounded. 2
		Applications rejected as unfounded. 1
CRIMINAL PROCEDURE	**TOTAL 14 DECISIONS**	
	FIRST-INSTANCE PROCEEDING OF SUPREME COURT	**SECOND-INSTANCE PROCEEDING OF THE SUPREME COURT**
	Rejected because the application was withdrawn. 2	Admitted appeals and reversals of first-instance decisions only regarding the compensation awarded for the violation of the right experienced. 1
	Applications dismissed as unfounded. 3	
	Applications rejected as untimely. 1	Refused application to find a violation, first-instance decision confirmed. 1
	Admitted applications. 6	
CIVIL PROCEDURE	**TOTAL 41 DECISIONS**	
	FIRST-INSTANCE PROCEEDING OF SUPREME COURT	**SECOND-INSTANCE PROCEEDING OF THE SUPREME COURT**
	Admitted applications. 8	Admitted applications and applications with a reversal of the first-instance decision of the Supreme Court. 3
	Dismissed as unfounded. 10	
	Applications rejected as::	Applications dismissed as unfounded and confirmed first-instance judgments of the Supreme Court. 11
	Untimely. 3 Incomplete. 3 Withdrawn. 2 Inadmissible. 1	

Section 4: Freedom of speech and freedom of religion

Excerpts from the Constitution of the RM:

Article 16
The freedom of personal conviction, conscience, thought and public expression of thought is guaranteed.
The freedom of speech, public address, public information and the establishment of institutions for public information is guaranteed.
Free access to information and the freedom of reception and transmission of information are guaranteed.
The right of reply via the mass media is guaranteed.
The right to a correction in the mass media is guaranteed.
The right to protect a source of information in the mass media is guaranteed.
Censorship is prohibited.

Article 19
The freedom of religious confession is guaranteed.
The right to express one's religious belief freely and publicly, individually or with others is guaranteed.
The Macedonian Orthodox Church and other religious communities and groups are separate from the state and equal before the law.
The Macedonian Orthodox Church and other religious communities and groups are free to establish schools and other social and charitable institutions, by way of a procedure regulated by law.

- **Organized protest against the alleged Islamisation of Kriva Palanka.**

Just before the end of 2015 there was an organized 'Protest against Islamization of Kriva Palanka', which was initially a citizens' initiative that started on the social network Facebook by sharing a specially designed banner[60]. The reason for this protest was the construction of a mosque in Kriva Palanka, which the protest organizers alleged was illegal, without a permit and the necessary documentation[61].

60 Source: http://www.mkd.mk/files/styles/statija/public/article/2015/11/07/mkd-225762.jpg?itok=N60X1UED
61 Source: http://daily.mk/makedonija/mvr-sobira-informacii-incidentot-kriva-palanka

Specifically in this case, the municipality mayor stated for several portals that *"... a mosque will not be built because the majority of population in Kriva Palanka is [Christian] Orthodox..."*, and that for as long as he held the office of mayor *"... only Orthodox religious facilities will be built"* [62]. After the end of the protest, late in the night, the building adapted for prayers of the members of the Muslim community was demolished by a group of unknown perpetrators. The Platform Against Hate Speech[63], vigorously condemned the speech used in the banner, and finds that it represents hate speech that incited to hatred and intolerance on religious grounds. After this event, just a few days later, there was a report of damage to a religious ceremonies facility in the same municipality[64].

- **(Mis)use of students in the state primary school by sending a message aimed at favoring one religion.**

The march was organized within the project 'Children for the Good and Light – Day of Little Angels' in which there were around a hundred children participants from several primary schools in Bitola, wearing angel costumes. The children sent the message "for the good [Christian] Orthodox holidays, against the bad and wrong ones". The march was initiated by the teachers of the curriculum subject "Ethics in Religions", on the occasion of the St. Archangel Michael Holiday and the celebration of holidays non-traditional for the Republic of Macedonia[65]. A multitude of civil organizations and activists believe that this event led to a misuse and manipulation of children in the earliest age, to achieve religious goals, which is also contrary to the constitutional freedom to express religious feelings[66]. The negative critique to the march indicates that the march promoted the dominant religion in the RM, which is in opposition to the aim of the school curriculum subject Ethics in Religion, which teaches children about the ethical dimension of all religion and calls for tolerance and understanding between members of different religions[67].

- **Problematic clauses in employment contracts of journalists that interfere with the constitutionally guaranteed right to public expression of opinion.**

The publisher of several daily and weekly newspapers introduced a clause to the employment contracts which suggests/recommends the employed journalists refrain from presenting their personal political opinions on social networks.

62 Source: http://24vesti.com.mk/incident-vo-kriva-palanka-izgradbata-na-dzamija-ja-razgore-verskata-netrpelivost
63 Source: http://www.govornaomraza.mk/reports/view/451
64 Source: http://meta.mk/tag/kriva-palanka/
65 Source: http://www.radiomof.mk/den-na-angelchinjata-vo-bitola-edukativen-shkolski-nastan-ili-verska-propaganda/
66 Source: http://www.globusmagazin.com.mk/?ItemID=C60BD6E29B7C014B9653BF4EF65BC009
67 Ibid.

According to the Independent Trade Union of Journalists and Media Workers (SSNM), such clause is degrading, blackmailing and discriminatory, and could not be understood in any other way but as one more way to "silence the journalists. Restrict freedom of speech and violate fundamental human rights and freedoms"[68]. According to the SSNM, these clauses violate Article 6 of the Labor Law which prohibits discrimination, violate several articles of the Labor Law that prohibit discrimination, but also violate the constitutional rights and freedoms guaranteed in articles 8, 9, 16 and 17 of the Constitution of the RM[69].

- **Existence of a direct link between the leading media and high government officials.**

The Priebe Report[70] contains a finding testifying to the existence of a link between the leading media and high government officials (the finding is based on the wiretapping crisis), which is seen in receiving direct orders on what news to publish. This contributes to the violation of the right of the public to receive accurate and verified information[71]. In order to overcome this situation, the Report makes recommendations, such as: the media should be free of any political pressure and should not serve political parties.

- **Activists and associations are publicly stigmatized and slandered as foreign mercenaries and traitors.**

An activist organization formally registered in the RM, and its founders, members and followers were publicly labeled in a column in one of the daily newspapers as foreign mercenaries whose goal is to destroy the constitutional order in the country and cause capitulation in the name dispute with Greece[72]. The contentious article is full of unsubstantiated assertions and is written in a degrading tone, publishing personal data (names, addresses, telephone numbers, etc). Such unprofessional and unethical journalism that targets prominent intellectuals and activists and labels them as traitors violates their right of association and of public expression of opinion.

68 Source: http://meta.mk/ssnm-na-novinarite-ne-smee-da-im-se-zabrani-da-kazhuvaat-lichen-stav-na-sotsijalnite-mrezhi/
69 Source: https://goo.gl/VkltiL
70 The former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts' Group on systemic Rule of Law issues relating to the communications interception revealed in Spring 2015. The Report is available at http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf
71 Ibid
72 Source: http://www.dnevnik.mk/default.asp?ItemID=A7D208E4FB86764992CC7D6B8B8633D0

Section 5: Freedom of association and expressing a peaceful protest.

Excerpts from the Constitution of the RM:

Article 21
Citizens have the right to assemble peacefully and to express public protest without prior announcement or a special license. The exercise of this right may be restricted only during a state of emergency or war.

- **Pronouncing disproportionate and unlawful sanctions, as well as stating arbitrary value of the damage caused by the protests – way to put pressure on activists.**

In the spring of 2016 a larger group of citizens protested daily, expressing their dissatisfaction and stating a list of demands to the government. The protests were carried out under the name of *'Colorful Revolution'*[73]. Some of the ways in which the citizens expressed their dissatisfaction was by throwing paint on buildings housing certain state institutions, those against which policies and decisions were directed the demands of the protest participants. In addition to the buildings, targets of paintballing were also some of the monuments constructed as part of the so-called Skopje 2014 Project (For instance, Porta Makedonija – the Macedonia Gate).

Initially, some of the citizens protesting and activists throwing paint onto the buildings in protest against the decisions of institutions were sentenced to misdemeanor fines of 50 euros in denars equivalent, pursuant to the Law on Public Hygiene. Later, the fines went up even to 430 euros in denars equivalent, pursuant to Article 27 of the Law on Misdemeanors against Public Order[74].

There were situations where activists were called for questioning to a police station, because they had been recognized in recordings[75] from the protests, alleging that they had committed several criminal offences, but without any criminal charges filed against them. The Ministry of Interior (MoI) announced that such video recordings will be used to identify the individuals that caused damage to the buildings[76] and that sanctions will be imposed on the basis of that[77]. The defense of the activists invited for questioning invoked provisions of the Law on Public Hygiene, according to which the perpetrators

73 Source: https://www.facebook.com/pg/ColorfulMacedonia/about/?ref=page_internal
74 Source: http://kanal77.mk/по-430-евра-казна-за-тројцата-учесници-во/
75 Source: http://standard.mk/nema-prekrshochni-za-krkulj-shterijovska-za-uchestvo-vo-sharenata-revolucija/
76 Source: http://fokus.mk/mvr-sochinivme-tsd-so-snimki-od-protestot-na-sharenata-revolutsija/
77 Source: http://fokus.mk/mvr-sochinivme-tsd-so-snimki-od-protestot-na-sharenata-revolutsija/

of the misdemeanors must be caught in the act by uniformed police officers[78], but this was not the case, as evidenced by the fact that the police did not issue payment orders in the specific cases.

- **Dismissal notice due to participation in protests.**

The individual N.N. was employed at the Ministry of Defense in Skopje as a logistics clerk. This individual actively participated in the protests named the 'Colorful Revolution', thus expressing their revolt for more than six months. After N.N started participating in the protests, in tandem, the pressure against them started to mount, by redeployment to the position of a food storage unit commander in the Kicevo military barracks, financial obligations, preventing them to balance the accounts of the previous job before the transfer, restricting the right to use vacation days and to use the unpaid leave of absence. The pressures escalated at the point when the individual was orally given their notice of dismissal, without a formal written notice having been sent to the home address, with the one-sided termination of the transfer of monthly salary and cancellation of both the social and health insurance. Before they officially received the dismissal notice, the individual challenged the order on transfer to another job and filed a complaint alleging discrimination, before the court of local and subject-matter jurisdiction. After such action, the dismissal notice was properly served to the individual and it was appealed in a timely manner to the body competent to decide on such an appeal.

- **Declaring the Skopje 2014 monument cultural heritage, but without proper labeling – an instrument to pressure and intimidate citizens who protest.**

The Center for Cultural Heritage issued a public statement[79], presenting its position about the criminal reports filed in relation to activities that caused damage to objects declared as being worthy of being cultural heritage sites. The statement indicates that such actions were in breech of the Law on Protection of Cultural Heritage, since the building of the Ministry of Culture did not bear signs of cultural heritage (despite the fact that it was so declared)[80], and therefore it should not be expected from the participants in the protests, nor anyone else (not even employees of the Ministry) to be aware of this fact. They hold the same position regarding the Porta Makedonija (Macedonia Gate) building, as well as regarding other individual monuments and memorials. According to the Center for Cultural Heritage, the fine was wrongfully imposed on the participants in the protest, because in this specific case it should be a liability of the scientific institution Conservation Center and the Minister of

78 Source: http://www.libertas.mk/video-davidovik-chavkov-ke-zaraboti-krivichna-ako-prodolzhi-od-fotografii-da-deli-kazni-toa-se-nevalidni-dokazi/
79 https://goo.gl/WCzBFt
80 Article 48 and 174 from the Law on Protection of Cultural Heritage.

Culture, because in the period between 2012 and the present time, after the new structures of the 'Skopje 2014' project were declared cultural heritage, they were not marked as such, despite the fact that it is expressly required by law to do so. Additional argument supporting the suspicion that the provisions on protection of cultural heritage were misused is the fact that no charges were filed against the individuals who attempted to clean the aforementioned structures, despite their lack of professional qualifications[81].

- **Physical obstruction of the right to peaceful protest.**

The protests took place in front of specific institutions. In March 2016 the announced peaceful protest in from of the Constitutional Court of the RM in relation to the potential annulment of the legal amendments to the Law on Pardon restricting the right of the President to give pardon in cases of election fraud, was obstructed by another group of counter-protesters[82]. Because of the counter-protests, the police prevented the protest participants from accessing the Constitutional Court and redirected their movement. In April 2016, when the protests took the route from the SJO to the EU Info Center, several times the movement of protest participants was obstructed by metal barricades and police presence[83], while on the other side armored vehicles and water cannons blocked access to the Government[84]. In May 2016, the protests were obstructed in several locations, as follows: to the villa of the President of the RM[85], the building where the former prime-minister lives[86], the Parliament of the RM[87] and Beko police station [88]. In June 2016, police security, Special Forces of the Rapid-Deployment Unit (EBR), water cannons, and metal barriers were placed in front of the headquarters of the ruling VMRO-DPMNE political party[89], the Government of the Republic of Macedonia[90], the Goce Delcev Bridge[91] in order to prevent the protest participants from accessing these structures. The barriers on Goce Delcev Bridge continued also at the beginning of July[92], when access to the Ministry of Finance was blocked as well[93]. In addition to blocking and redirecting the route of the protest participants, there were cases of violent treatment of members of the protest group[94].

81 http://24vesti.mk/chistenje-na-spomenicite
82 Source: http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1602/Monitoring-izveshtaj-za-sledenjeto-na-Poglavjeto-23-vo-mesec-mart-2016_Mreza-23-.pdf
83 Source: http://alsat.mk/News/248993/demonstrantite-blokirani-od-policijata-pred-eu-centarot
84 Source: slobodnaevropa.mk/a/27677573.html
85 Source: http://www.brif.mk/politsiski-barikadi-zabranet-pristap-kon-vilata-na-ivanov-za-sharenata-revolutsija/
86 Source: http://novatv.mk/sharena-revolutsija-blokirana-ulitsata-pred-zgradata-na-gruevski/
87 Source: http://a1on.mk/wordpress/archives/617844
88 Source: http://24vesti.mk/policijata-gi-sprechi-demonstrantite-da-stignat-na-„informativen-razgovor"
89 Source: http://a1on.mk/wordpress/archives/621058
90 Source: http://novatv.mk/so-hermelini-i-barikadi-politsijata-zabrani-pristap-do-vladata/
91 Source: http://www.exclusive.mk/News.aspx?IdNews=15748
92 Source: http://novatv.mk/demonstrantite-presretnati-od-spetsijaltsi-na-mostot-gotse-delchev/
93 Source: http://fokus.mk/politsiski-blokadi-i-vodeni-topovi-na-patot-kon-ministerstvoto-za-finansii/
94 Source: http://standard.mk/bogoevski-pripadnici-na-ebr-vlechea-tepaa/, http://novatv.mk/hronologija-protestite-protiv-politichkite-pomiluvana-se-radikaliziraat/

Section 6: Right to privacy and confidentiality of communications.

Excerpts from the Constitution of the RM:

Article 17
The freedom and confidentiality of correspondence and other forms of communication is guaranteed. Only a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence and other forms of communication, in cases where it is indispensable to a criminal investigation or required in the interests of the defense of the Republic.

Article 18
The security and confidentiality of personal information are guaranteed. Citizens are guaranteed protection from any violation of their personal integrity deriving from the registration of personal information through data processing.

- **Violation of the right to privacy of personal data of civic activists.**

In May 2016 some electronic portals, and later media, published personal data of civic activists and representatives of civic organizations. Personal data published contained names and last names of citizens and their monthly income, on the basis of employment contracts or service contracts[95]. The purpose and the context in which such publications were made were to present these (more than 60) individuals as foreign mercenaries in support of the 'Colorful Revolution'. It is interesting to note the fact that state taxes on the basis of such income was regularl and with no exception paid to the only institution responsible for receiving and processing tax statements. Pursuant to the Law on Tax Procedure and the Guidelines on Public Relations and Media Communication, the data obtained in a tax procedure are information that are private and must not be communicated, nor disclosed to the public and published in the media. The unauthorized acquisition and publishing of this information and data creates a degrading impression about the integrity and professionalism of the persons concerned; guided by the articles 13 and 14 of the Law on Civil Responsibility for Defamation and Insult, those who had had their personal date made public asked the editors to apologize, to publish official

95 Source: http://netpress.com.mk/aferata-platenicka-revolucija-na-sdsm-dobiva-siroki-razmeri-stotici-novi-plateni-revolucioneri/

denials in the same amount of space in which this 'slanderous affair' was published[96].

Of particular concern is the issue about the source of personal data. The only institution that has the right under the Law to receive and process the information published is the Public Revenue Office.

- **Publishing personal data through the electronic electoral roll.**

The Directorate for Protection of Personal Data, in the course of ad-hoc inspection supervision in the State Election Committee on the occasion of publishing the electoral roll on the web-site of the Commission - https://izbirackispisok.gov.mk, and prohibited[97] the Commission to: 1) provide electronic access to personal data from the Electoral Roll since it is not in-line with the regulations on protection of personal data, and; 2) to publish on its web-site personal data on persons contained in the list of inconsistent entries that is subject to field-checks, since the SEC has no legal basis to process, by publication, personal data of natural persons that will be found to be inconsistent entries and will be subject to field-checks. The State Election Commission, on the basis of prior methodological processing of data received from the official records of the Ministry of Interior (MoI), of the Directorate for Registers and of the basic courts, published the Electoral Roll with generated data about individuals who enjoy voting rights. The Electoral Roll published contained the options to search by street address, which returned a search result of the names of all individuals living at that address, including access to their unique ID number (EMBG). In addition to this, the search could be run by municipality, which displayed personal data of all voters in the municipality, and the option of searching by first and last name, which displayed the personal data on all individuals who had that name. This solution, to make available the entire electoral roll and the search solutions in it are completely in breach of the obligations for protection of personal data, as well as the obligations that the SEC has as a personal data processor. The Directorate for Protection of Personal Data (which was established as a body to supervise the legality of the process of processing personal data of citizens and their protection) prohibited the SEC from providing electronic access to personal data in the Electoral Roll and from publishing such data on its web-site data from the list that is subject to field checks.

96 Source: http://www.mhc.org.mk/system/uploads/redactor_assets/documents/1606/Monitoring-brief_Poglavje-23_maj-2016_MK.pdf
97 Source: http://www.dzlp.mk/sites/default/files/u4/Soopstenie_za_mediumi_izbiracki_spisok_1.pdf

- **Violation of personal data of sexual workers.**

The Council for Ethics in the Media in Macedonia, through the Complaints Committee within this Council, adopted a decision[98] by which the petition of the Coalition 'Sexual and Health Rights of Marginalized Communities', HOPS – Healthy Options and the Association in support of marginalized workers Star-Star, was found to be justified, and it found violation of the provisions 7, 10, 11 and 13 of the [Ethics] Code of Journalists[99] by the show "Vo Centar" with Vasko Eftov: Prostitution in Macedonia", broadcast on 07.12.2015 at 10.00 pm on Kanal 5 Television. The decision establishes that the author of the program did not respect the confidentiality of the personal data of sexual workers, filmed them without their knowledge and consent and broadcast the videos in his show without the appropriate anonymization. In the show, the author reported on sexual work with utmost stigmatization and one-sidedness, not respecting the dignity, personal life and personal data of sexual workers. In addition to this, the author falsely represented himself in order to coerce those he spoke to into revealing personal data that he then published without authorization, thus endangering the safety of the sexual workers[100]. "The biggest violation of rights was made in the parts of the program where without the knowledge and consent of the sexual workers, their personal data (photographs obtained via Skype conversations, contents of a private Skype conversation, phone conversations recorded without the knowledge and consent of the interlocutors). The author falsely represents himself to them as a potential client, in order to coerce them into revealing their personal data that he misused through unauthorized publication. In one part of the show, even the dwelling of transgender sexual workers was shown and it was filmed inside their apartment, without their knowledge and consent[101]. The Complaints Committee, on the basis of the provisions of its Rules of Procedure, obliged Kanal 5 Television to publish this decision.

- **Even in 2016 citizens did not receive the answer as to who is responsible for the wiretapped conversations scandal that came to light in spring 2015.**

In 2016 the citizens of the RM received neither a judicial nor parliamentary outcome and attributed the responsibility for the wiretapping scandal, which stemmed from the opposition's broadcasting of the so-called 'bombs', i.e., wiretapped conversations.

98 Source: http://semm.mk/attachments/odluka1.pdf
99 Source: http://znm.org.mk/drupal-7.7/mk/node/440
100 Source: http://hops.org.mk/mk/content/govor-na-omraza-senzacionalizam-i-povreda-na-pravoto-na-zashtita-na-lichni-podatoci-na
101 Source: http://www.libertas.mk/prodolzhuva-praksata-na-diskriminatsi/

The published conversations contained indications of serious crimes and caused the country to enter a serious political crisis, which is still unresolved two years on. Of particular concern is the fact that, in addition to the opposition, many journalists and individuals from the CSO sector had been wiretapped. One of the first steps taken to resolve the wiretapping scandal was the visit of a group of independent and experienced experts in the area of the rule of law of the European Commission, led by Reinhardt Priebe, which produced a report (the so-called Priebe Report). This report precisely identifies the key gaps and problems in the area of the rule of law, which contributed to the widespread wiretapping.

The Parliament of the RM established[102] an Inquiry Committee on the wiretapping scandal, which was supposed to establish a chronology of events and circumstances and to define the political responsibility for the wiretapping. Still, after nine sessions and after having questioned several witnesses, the inquiry committee cease to meet and did not adopt the required report.

In conjunction to this, the Special Public Prosecutor's Office (SJO) was established, with a mandate to initiate procedures to establish criminal responsibility of the perpetrators of the unauthorized wiretapping and for the crimes stemming from the wiretapped conversations[103]. In 2016, the SJO was listening to and processing the materials surrendered in electronic and paper format and initiated 38 pre-investigative procedures, took over the cases known to the public as 'Spy' and 'Coup' from the Public Prosecutor's Office of the RM, filed two indictments and opened additional investigative procedures in four cases against 40 individuals[104]. In summary, the SJO, since it was established in 2015 and over the course of 2016, opened two indictments and nine investigations, listed dozens of individuals as suspects, and twenty-one as indictees[105]. The essence of the establishing of this prosecutor's office is to clarify who perpetrated the crimes related to and stemming from the contents of the unlawfully intercepted communications in the period between 2008 and 2015 and how, and to establish who carried out the wiretapping in the RM over that period[106], in what way, with what instruments and with what motivation[107]. There is still no judicial outcome of the aforementioned cases, but "... there is reasonable suspicion that the indictees, using their official position and powers, at the expense of the state assets, by misusing systems for surveillance of communications, made grave violations of the fundamental human rights of the unlawfully wiretapped citizens"[108].

102 Decision establishing a standing committee on the wiretapping scandal – Official Gazette of RM No. 196/2015.
103 http://www.jonsk.mk/wp-content/uploads/2016/03/izvestaj-konecen-zaklucen.docx
104 https://goo.gl/GE7367
105 http://www.slobodnaevropa.mk/a/28139388.html
106 http://www.jonsk.mk/2016/09/15/15-09-2016-3/
107 https://goo.gl/jpEf4d
108 Ibid., and http://www.libertas.mk/fatime-fetai-napadot-vrz-osnovnite-chovekovi-prava-e-najsilniot-udar-vrz-demokratskoto-opshtestvo-sega-e-na-red-takvoto-opshtestvo-da-vozvrati/

Phone communications of some citizens of the Republic of Macedonia were unlawfully monitored, which means that this was done without court orders, and also, after court orders had been given, intercepting communications continued. According to the SJO, the evidence they have leads to reasonable suspicion that "... the individual in the managing position in the Directorate for Security and Counterintelligence, although he did not have the legal right to do it, was monitoring telephone conversations regarding which no special investigative measures were ordered, and also was making orders to enter into the communication surveillance system telephone numbers belonging to individuals who had close private relations with the primesuspect, individuals belonging to the political, business and journalism circles in the Republic of Macedonia and other individuals"[109].

109 Ibid.

Section 7: Right to social insurance and social protection

Excerpts from the Constitution of the RM:

Article 35
The Republic provides for the social protection and social security of citizens in accordance with the principle of social justice. The Republic guarantees the right of assistance to citizens who are infirm or unfit for work. The Republic provides particular protection for invalid persons, as well as conditions for their involvement in the life of the society.

- **The homeless cannot use the financial rights of social welfare.**

A 2016 case that made a strong impression is that of an individual[110] who has not had a roof above his head for a long time, is unemployed, has no means by which to support himself and the institutions in the country are refusing his applications for any assistance. This is not an isolated case, but the statistics[111] are difficult to find having in mind the growing numbers of those becoming homeless[112] and the fact that many of the homeless are individuals who are not registered in the system for official registration run by the center for social welfare. From the aspect of rights available to individuals under social risk through the state system of social welfare, the homeless are prevented from using financial assistance, since they have no permanent dwelling, and as a result of this they do not have a registered address. The dwelling, i.e., address, as established in the Law on Social Protection, is of key importance, since the obligatory visit to the home of the applicant is an activity that must be carried out by the center for social work when evaluating the material status and evaluating if there is an exposure to social risk. The question arising is whether the institutions, through such activity, truly influence the enforcement of the principle of social justice, and through this the enforcement of the core constitutional value of economic well-being and progress in the life of the community.

110 Source: https://goo.gl/7iQzNv
111 In this sense, the State Statistics Office published on its web-site https://goo.gl/mkJiwK statistical data, overview of social protection for children, adolescents and adults for 2015, which includes a table on registered homeless at the beginning and at the end of 2015.
112 Source: http://republika.mk/572117

- **Roma dislocated from the settlement beneath Kale without being provided alternative accommodation.**

For more than ten years, 29 families, or a total of 121 people, out of whom 64 were children, lived in an improvised settlement beneath Kale in Skopje, in buildings made of whatever materials were available: cardboard, paper, wood and plastic bags. In August 2016 their homes were demolished, following an order of the Inspectorate of the City of Skopje, in order to clear the area on the basis of provisions of the Law on Public Hygiene. Not all of them were informed about the demolition, nor were they requested to remove their possessions from the land within a specified timeframe. All facts in that case are indicated in the application[113] filed to the European Court of Human Rights, where the individuals represented by the European Center for Roma Rights are alleging violations of Article 3, 8 and 13 of the ECHR. Also, the applicants are alleging a violation of the National Strategy on Roma Rights and of the Roma Decade, in which our country took the obligation to consider priorities such as education, housing and employment of the Roma[114]. Before lodging the application, the relevant institutions declared themselves out of jurisdiction, and the only alternative solution offered to these people was accommodation in the homeless shelter in Cicino Selo[115], where only three rooms were available and free[116]. The Ombudsman issued recommendations to the competent institutions, in order to find a solution[117] for these individuals. However, their situation remains unchanged, and they are still without a roof above their heads and are not exercising any right to social protection and healthcare, because many of them do not have personal identification documents[118] , and their past efforts to obtain social housing have proven to be fruitless.

- **Money transfers for assistance and care by a third person were paid to deceased individuals.**

In the period from the beginning of October 2016 to November 2016, the Ministry of Labor and Social Policy (MLSP) through a specially established committee, carried out periodic and ad-hoc controls over the centers for social work on the territory of the Republic of Macedonia. Such supervision was also carried out in the Center for Social Work in Tetovo, for a period of six days, whereby "...234 cases were examined, out of which 194 cases of beneficiaries of the right to money transfers for care and assistance

113 Source: http://hudoc.echr.coe.int/eng#{"itemid":["001-167970"]}
114 Source: http://www.pravdiko.mk/protsesuirana-tuzhbata-protiv-makedonija-za-unishtenite-objekti-pod-kaleto/
115 Source: http://www.radiomof.mk/nema-trajno-reshenie-za-romite-chii-baraki-bea-srusheni-baraat-od-mtsp-da-im-najde-dom/
116 Source: http://sdk.mk/index.php/neraskazhani-prikazni/kotse-zaraboti-na-makedonija-evropska-tuzhba-ostavi-6-trudni-zheni-i-78-detsa-bez-domovi/
117 Source: http://faktor.mk/krpen-zivot-romite-pod-kale-zaboraveni-od-drzavata
118 Source: http://www.epi.org.mk/docs/Monitoring%20brif_Poglavje%2023_Mreza%2023_septemvri%202016%20godina.pdf

by a third person…"[119]. On the basis of access into the cases, the Ministry established that for "…134 deceased from Tetovo and the region the money transfers for assistance and care by a third person continued to be paid even after their death", while the competent center "… did not act ex officio…to establish the changes occurring in the prerequisites to use the right…which means that the center did not issue a decision on the termination of the right, although it had information that the prerequisites to use the right to a third-person care ceased to exist – a death occurred "[120]. Through such payments, the Budget of MLSP suffered a financial loss of more than 1,818,996 denars, or nearly 30-thousand euro. As opposed to such findings of the ministry through the supervision activities carried out, the citizens of the Republic of Macedonia who need such assistance the most are completely neglected and their rights are often terminated unfoundedly. Such is the case with a beneficiary of that right, who received such transfers for more than a year, for assistance and care to an elderly person who had suffered several strokes and was bed-ridden as a consequence[121]. When informed about the need to renew the documents, the competent center for social work carried out a visit to another individual with the same name as that of the beneficiary, establishing that no prerequisites to use the right exist, and on that basis they brought a decision to terminate that right.

- **Establishing the need of assistance and care from a third person, by a family doctor and after consiliary opinion of three specialists is not sufficient to establish this need by the expert commission and to approve financial assistance.**

For a client with a diagnosis under the code C50 - malignant neoplasm of the breast, the family doctor and the consiliary opinion of three specialists established the need for assistance and care by another person. The health situation of the client is marked by permanent changes of a larger scale and deteriorated so much that she is unable to care daily about her toilet needs, she needs constant supervision and control when receiving therapy and she is unable to move on her own around her home. When submitting all necessary documents to the competent center for social work, to exercise the right to compensation for assistance and care from another person, this body refused the application, without a more detailed explanation about the reasons for refusal. The decision refusing the application indicates that the person had no need of assistance and care by another person, referencing the findings of an Expert Committee without actually sending anybody to see the client.

119 Source: http://www.mtsp.gov.mk/pocetna-ns_article-tashevska-remenski-134-pocinati-lica-od-tetovo-i-tetovsko-i-po-nivnata-smrt-primale-paricen-nadomest.nspx
120 Ibid.
121 Source: https://goo.gl/MtgXNN

The expert committee that made that finding and their position are completely different from the opinion of the family doctor and the consiliary opinion of the three specialists.

In another case, the individual N.N., experienced a significant worsening of his health after he was in a traffic accident and in a legal procedure he was awarded the right to use the right to monetary compensation for assistance and care from another person for the duration of three months. After the expiry of these three months, the individual received a decision from the competent center for social work establishing termination of the right, since a prior finding of an Expert Committee established significant change to the factual situation and non-existence of the need for assistance and care by another person. The expert committee established this fact only by examining old medical records, on the basis of which the right was awarded for the first three months. Such a finding and opinion was produced, but the individual who is directly affected by the right was not sent a copy, nor was he given the chance to be informed about the report's content. He learned about the existence of the finding from the decision terminating the right.

A seventy year old beneficiary with the right to financial compensation for assistance and care from another person, after previously identified need by the family doctor, and with a consiliary opinion of three specialists, used this right for the duration of six months within projects implemented by the Ministry of Labor and Social Policy. The beneficiary is an old, ill and exhausted person with failing health who cannot care for herself and perform the daily physiological and toilette needs autonomously. She was diagnosed with Alzheimer's disease and other auxiliary illnesses that are worsening her health. After the end of this time period, the beneficiary sent a new and completely filled-out application to enjoy this right again, and the competent center for social work requested her to attend a control exam with an Expert Committee established by the MLSP. After this Committee found that the applicant needed assistance and care from another person, her application to use this right was refused by a judgment of the Administrative Court of the Republic of Macedonia.

- **Serious complaints about the process of allocation of social housing.**

Just before the end of 2015, an ad was published for the allocation of 101 social housing units for socially vulnerable categories of citizens[122] in Prilep and Demir Hisar. Already in February 2016, there was a preliminary public allocation, regarding which the Minister of Transport and Communications indicated that "...it is not final...and it doesn't follow that everyone whom

122 http://netpress.com.mk/oglas-za-raspredelba-na-socijalni-stanovi-vo-prilep-i-demir-hisar/

the system selects as a winner of a social housing unit will be on the final list of recipients"[123]. Already in the middle of the year, when the distribution was finally made[124], the initial reactions about unjust and improper distribution of apartments on many grounds started to appear. A single mother of two children from Prilep, with no property, who grew up as an orphan and applied on that basis, believes that the allocation of social houses was not regular[125]. She was deleted from the final list of beneficiaries, although during electronic selection her name appeared on the preliminary list. A fifty-eight year-old Prilep resident from the category of disabled citizens, applied for a social housing unit[126], but was not selected on the final list of recipients of apartments. His family believes that the allocation of such houses was improper, and they also requested a revision of the allocation procedure, while until November 2016 there were no concrete results[127]. Regarding the allocation of social houses in Prilep there is a case open within the MLSP. Although they work to establish the irregularities, they still believe that the competence lies with another ministry, i.e., the Ministry of Transport and Communications.

- **Problems with the interpretations of the term households and families thact are affecting the realization of the the rights from social welfare**

In 2016, the centers for social work abolish the usie of certain social protection rights using identical elaborations that the applicants have family members who have the duty to support them. Such is the case with N.N. whose application to exercise the right to social welfare was refused, because after examining the documents sent by the applicant, the first-instance body concluded that he had five brothers who had the duty to support him. At that, the body did not take into account the fact that the applicant does not live in the same household with any of the brothers, i.e., that all of his brothers live abroad, have their own families to support, and that the applicant is not in communication with them. A seventy-eight year-old woman from Skopje, who lives with her sixty year-old son who is unfit to work, applied to exercise the right to social welfare as an old and unfit person, but she was refused since she had a daughter who was employed and was a potential supporter. In the specific case, the body did not evaluate the income of the daughter and her family situation, despite the fact that the applicant informed the body about the fact that her daughter had a four-member family, supported only by her monthly earnings, while they live in two separate addresses and are not in a shared household.

123 http://mtc.gov.mk/preliminarna-raspredelba-na-76-socijalni-stanovi-vo-prilep
124 http://www.mtc.gov.mk/sredba-so-dobitnicite-na-socijalni-stanovi-vo-prilep
125 http://www.libertas.mk/prilep-samohrana-majka-obvinuva-za-neregularnosti-pri-raspredelba-na-sotsijalnite-stanovi/
126 http://civil.org.mk/2016/06/08/ministrot-spasov-lazh/?lang=mk
127 https://www.youtube.com/watch?v=58VHpRXVDu, specifically from time marker 8:24 minute.

A sixty-four year-old Skopje resident exercised the right to social welfare for more than ten years. During the ex officio examination of the family and material situation, the organ found that in the previous year the son of the applicant had an income which they considered had improved his financial situation and his possibility to support his parent. It was concluded that the payments to the applicant had been unlawful from the moment they found son's income to the month when the inspection was made, in a period longer than a year, and the applicant was requested to return the money. The body did not assess whether the money received by the son were considered income, whether the son lived in a shared household with the applicant, and, most importantly, whether the income of the son was sufficient to provide sustenance for himself and for his own family.

Pursuant to the Law on Social Protection[128], a family can be a single person or a union of a man and a woman, of parents and children and other relatives who live with them and have the duty to support each other according to the Law on Family. The Law on Family defines the family as a union of parents and children and other relatives if they live in a shared household. Specifically, to use the right to social welfare, the Law on Social Protection additionally regulates the notion of a household[129], stipulating that it is a union of family members and other relatives between whom there is no legal obligation of mutual support, who jointly earn, manage and spend. In all aforementioned cases, a common point is that the centers for social work bring their decisions **without establishing two important facts:** 1) whether the applicant lives in a shared household with the family member they have the duty to support, and; 2) whether the individual who has the duty to support another pursuant to the Law on Family would remain without the minimum funds for their own subsistence[130]. It happens very often in practice that if the centers in charge establish that the applicants or beneficiaries of rights have relatives abroad, they do not approve the requested social protection rights or abolish the existing ones, referencing to these provisions, additionally interpreting the facts provided by the applicants as true or untrue, which in itself results in other, more severe consequences, such as prohibition to use the right in the next 12 months[131]. Such interpretation of the notions in the practice of centers for social work is improper and completely unlawful. This in turn has a direct impact on the violation of the constitutional right to social protection that is without any doubt an obligation of the state, in-line with the principle of social fairness.

128 Article 13.
129 In article 45 para 2 of the Law on Social Protection.
130 Article 52 para 1 line 2 of the Law on Social Protection, regulates that an individual who did not seek support from the individual who has the duty to support them in line with the Law on Family is not eligible for the right to social welfare, except if the Center for Social Work establishes that the individual who has the duty to support them according to the Law would be left with less than a minimum funds for survival, i.e., less than 5,000 denars.
131 Article 53 of the LSP.

- **Unlawful conduct and manipulating with legally ignorant and uninformed clients/beneficiaries/applicants for social protection rights.**

In many cases, subjectivism in decision-making can be seen in the conduct of the competent centers for social work. This is contrary to the need of individual, professional and lawful processing of each individual case, on the basis of which, and using the principles of substantive and procedural laws, a just and fair decision would be brought. Often, unsatisfied beneficiaries of rights state that as legally ignorant parties to the procedure that are deceived and steered to lose their rights. A sixty-three year-old woman from Skopje, with impaired mobility and with permanent invalidity, has been a user of the right financial compensation for assistance and care from another person. Since she failed to send the documents for annual renewal of the rights within the deadline specified by the competent center for social work, it was decided to terminate the right. The beneficiary was informed by a clerk in the center that the deadline to file an appeal begins from the date the decision was produced, which is contrary to the legal provision that the deadline starts to run from the date the decision was received. A fifty-seven year-old beneficiary with the right to social welfare, because of an omission of the competent organ in relation to the income received by her husband (who is actually using financial assistance in case of unemployment through the Employment Agency) has lost this right, with an official decision served. Three days after the expiry of the legal deadline to receive the complaint, the competent center for social work told her to come again two days later, during the open day for clients. When the beneficiary came two days later to lodge her complaint, she was told that she had missed the deadline to lodge a complaint and she was handed a conclusion rejecting her complaint as untimely. This beneficiary was, also, orally informed that she did not meet the requirements to use any other social protection right. She is a person with 99% sight damage (complete blindness) and is a diabetic whose movement is difficult because of her condition. The beneficiary was not advised about it, nor was this right automatically converted into the right to financial assistance for blindness.

- **Failure to respect the Administrative Court decisions to reopen the cases for new decision and processing.**

In the 2015 Report, the MYLA already informed about the problem of exercising social protection rights, when with retroactive application of a regulation, more than 1,000 individuals saw their social assistance or social welfare terminated[132]. The MYLA, through the project, carried out

132 Annual report on the efficiency of the legal protection of human rights in the Republic of Macedonia for 2015, MYLA, USAID Defending Human Rights Project, available at http://e-learning.myla.org.mk/media/files/135949-godishen-izveshtaj-za-efikasnosta-na-pravnata-zashtita-na-chovekovite-prava-vo-republika-makedonija-sep-2014-dek-2015.pdf, page 27 of the Report.

strategic advocacy in 50 individual cases, disputing some of the decisions of the competent centers for social work. Some of them were accepted by the Ministry of Labor and Social Policy, and some were rejected as unfounded, after which complaints were filed to challenge their legality. The Administrative Court accepted the claims in the complaints, and returned the cases to be processed anew before the competent bodies. As of the time of writing, the competent centers for social work have failed to act upon the guidelines of the Administrative Court - for more than a year.

There are similar cases when many beneficiaries of social protection rights file complaints to the competent ministry in relation to the termination of the rights they used, and then they initiate administrative procedures to test the legality of the administrative acts. Although the administrative court usually accepts the complaint and returns the case for reexamination in a procedure before the competent ministry, there have been cases where competent ministry reverses its decision in favor of the complaining client and through such decision instructs the first instance body what it should establish in the repeated procedure. In such situations, although the applicant has already spent almost a year to get to this stage, it happens that the first instance center for social work brings again a decision identical to the one appealed by the applicant, and which the Ministry abolished. The right available again to the applicant is the right to appeal, and the ministry usually issues a negative decision and the applicant petitions the Administrative court again. The applicant is stucked in this administrative labyrinth, so it is not probable that the court will redner a decision on the merits soon. The applicant continues with the status of the unprotected party.

Section 8: Right to healthcare

Excerpts from the Constitution of the RM:

Article 39
Every citizen is guaranteed the right to health care. Citizens have the right and duty to protect and promote their own health and the health of others.

- **Failure to carry out all diagnostic procedures when providing healthcare services in a public healthcare organization.**

While doing housework, the individual X.X. injured his right hand. He was referred to the nearest general hospital where the lacerations were adequately treated. Still, the pain wouldn't stop and he felt that he could not fully move the fingers of his left hand. He went to the nearest medical center where he had an X-ray that found several fractures to the hand, an injury that was not diagnosed, nor treated by immobilization in the general hospital. The individual went to a private clinic where he was subjected to surgical interventions to treat the injury. Because of the inadequate diagnosis and failure to perform immobilization, the mobility of two fingers of the left hand is 95% damaged.

- **Untimely payment of health insurance contributions by the employer caused a serious bodily injury and serious consequences to the health of the worker.**

The individual X.X. worked in a job with increased health risk, which involved exposure to lacquer, paint, thinners and radioactive radiation. He was not obliged to wear adequate protection equipment. He felt some health problems and went to see his family doctor. He was informed that his health insurance was inactive, due to unpaid contributions. He was examined and was referred to additional examination by a specialist. However, because of his poor financial condition he was unable to bear the costs for that type of healthcare service. Over a period of six months, the health problems of the

individual continued and he went to see the family doctor, but due to the health insurance being inactive, he did not continue with specialist examinations. After several months, when his employer paid the social insurance contributions and when his health insurance was reactivated, he was sent with a priority referral notice to have more detailed analyses, where an advanced stage of cancer was diagnosed. The only solution for his problem was a surgical intervention and amputation of the diseased tissue. After the amputation, the individual faced a serious and lasting physical handicap which could have been avoided, had the contributions been paid in time.

Section 9: Refugee crisis and human rights protection

- **The 'Balkan Refugee Route' was terminated.**

The refugee crisis in the Republic of Macedonia reached its on 9th November 2015, when 11,072[133] persons entered in the Republic of Macedonia in one day. As of 19th November 2015, the authorities in the country decided to allow entry into the country only to individuals from Syria, Iraq and Afghanistan[134]. This practice continued in 2016, as well, but only until March 7th, when **the borders along the so-called 'Balkan Refugee Route' were closed for the refugees** after the EU – Turkey summit on the migration crisis. After this "... approximately 478 refugees (most of them from Syria and Iraq) were stuck in the no-man's land between the Republic of Serbia and the Republic of Macedonia, ...without water, food, shelter and other basic necessities, sitting in the cold rain and sliding in the mud"[135]. Three weeks later, an agreement was reached to place them in the *Tabanovce* Transit Center. On the southern border, on March 14th, between 2,000 and 3,000 refugees attempted to enter Macedonian territory near the village of Moin, but were intercepted by the Macedonian police and they were all returned to Greece. This attempt ended tragically for three persons who lost their lives in the attempt to cross the river to come Macedonia[136]. There have been other, intermittent tensions at the borders. As a result of the border closing, the number of refugees who arrive irregularly and transit through the country, mostly with assistance from smugglers has risen. Of note were attacks against the refugees by the smugglers themselves, or third parties, taking their money, mobile phones, etc. The attackes were reported to the police, but there is no feedback regarding any case that was potentially solved.

- **Access to the asylum procedure for the refugees.**

One of the biggest problems with the refugees in the Republic of Macedonia is the **lack of access to the asylum procedure**. Although many refugees clearly state their wish to file an asylum application, this is not provided by the police in the reception-transit centers Vinojug and *Tabanovce*, and many of the refugees were returned to Greece, but also to Serbia. The total number of forcible returns (the so-called push-backs) at the southern border of the RM in 2016 is **8,524**[137].

133 According to data from MYLA and UNHCR.
134 The need to separate the economic migrants from the refugees from the war zones , deputy-minister of the Interior, Mitko Cavkov, for the MTV, http://vesti.mk/read/news/7116606/2649005/potreba-od-odvojuvanje-na-ekonomskite-migranti-od-begalcite-od-voenite-zharishta
135 Field report of MYLA for January, February and March 2016.
136 Ibid.
137 According to the MYLA field reports for the year in question.

This is also the context of the National Preventive Mechanism (NPM) report on the first unannounced visit, in May 2016[138] to the Reception-Transit Center Vinojug – Gevgelija. It notes that outside of the boundaries of the reception center there is another facility – a tent, which is used for temporary accommodation of individuals who entered the territory of the Republic of Macedonia irregularly. During the stay, the individuals are photographed and only the most basic personal data are taken by the members of the Ministry of the Interior, and after that, **without any official procedures** and without keeping any official records, the people are immediately deported to the territory from which they entered the Republic of Macedonia irregularly[139]". The final comment of the NPM is that "preventing access to the procedure for recognition of the right to asylum...directly indicates flagrant violation and failure to respect the rights of this category of people, guaranteed by national laws and international acts "[140].

- **Deprival of liberty for the individuals who entered the territory of the RM illegally.**

In 2016 the practice of deprival of liberty of individuals who entered the country illegally continued, and then they were placed in the Reception Center for Foreigners in Gazi Baba, and locked there, usually in order to testify in the procedure on smuggling migrants. More than 90% of them are men, between the ages of 18 and 59 years old, but there were several cases of minors who were held. The detained individuals are not allowed to get out to the fresh air, many of them complain of the food they receive only once a day, as well as a lack of basic hygiene means and products. They were not informed about the reason for their detention, or about the right to attorney and the right to appeal.

- **Undecided status of the individuals found on the territory of the RM at the moment the refugee route closed.**

A new problem is the undecided status of the refugees found on the territory of Macedonia at the moment that the Balkan route closed, and who stayed here, but who do not want to apply for asylum in the Republic of Macedonia. As opposed to the individuals who have applied for asylum and who have the status of asylum-seekers before the Asylum Sector of the MoI, these individuals do not have such status formally, although in reality they are refugees.

138 http://ombudsman.mk/upload/NPM-dokumenti/2016/Redovna%20nenajavena%20Vinojug-16.05.2016.pdf
139 Ibid.
140 Ibid.

The problem occurs on the one hand because these individuals do not want to apply for asylum in the Republic of Macedonia, i.e., they want to apply for asylum in other European countries; however, they cannot do it because the 'Balkan Route' closed. On the other hand, although the Republic of Macedonia is sheltering these people in transit-reception centers, it is not issuing them any official document that would regulate their stay in the Republic of Macedonia. The competent bodies, primarily MoI, are responsible for them and have the duty to arrange for their stay in the country under the respective legal norms (Law on Asylum, Law on Aliens...) so that they would be certain their rights will be respected.

- **Restrictions of the freedom of movement of refugees.**

The people placed in the reception-transit centers *Vinojug* and *Tabanovce* have their **right to freedom of movement restricted**. Namely, they are not allowed to go out of the centers. This prohibition applies to the individuals who have not applied for asylum, but also those who have. This established an unequal treatment of the asylum seekers housed in the reception-transit centers and of the asylum-seekers housed in the reception center for asylum seekers - *Vizbegovo*, Skopje where they can freely leave the center during the day. Still, towards the end of the year a solution was found and all asylum-seekers were transferred to the Reception Center for Asylum Seekers - *Vizbegovo*. Still, the question about the people who have not applied for asylum in the Republic of Macedonia remains open, and it is closely connected to the determination of their status, as elaborated above.

Chapter 2: EFFICIENCY OF THE CONSTITUTIONAL GUARANTEES FOR PROTECTION OF HUMAN RIGHTS

1. Protection of human rights before the courts in the RM

The courts as human rights defenders in RM.

The courts in the RM protect human rights directly by allowing every citizen to invoke the protection of freedoms and rights before the courts (regular courts) as well as indirectly, through the assessment of the legality of individual acts of bodies of state administration (the administrative courts). Violations of some of the more significant freedoms and rights are in some cases seen even as separate crimes that the courts decide on in a criminal procedure.

Protection of human rights is a matter for deciding by the courts alongside the disputes between citizens, crimes and misdemeanors, as well as other matters provided by the law as competence of courts. What is specific about the protection of human rights in comparison with the other relations and situations that are under the competence of the courts is that there is **no special procedure in which the courts decide on human rights protection.** As opposed to this, disputes between citizens are decided with a litigation procedure, crimes and misdemeanors are decided within a criminal or a misdemeanor procedure, the assessment of legality of individual acts is decided by the courts in an administrative dispute, while the other matters are decided by the courts in a non-litigation procedure. Due to this, every citizen who believes that any of their human rights were violated can seek redress only through one of the aforementioned procedures. This means that the application for protection will need to meet certain formal and substantive criteria in order to be considered.

The courts have the duty to protect all freedoms and rights established by the Constitution (Art. 50 para 1 of the Constitution of the RM). Still, the Law on Courts restricts this general principle, by stating that the subject-matter

competence of the courts involves "freedoms and rights of the human and the citizen and rights of other legal entities, **unless they are a competence of the Constitutional Court of the Republic of Macedonia, pursuant to the Constitution"** (Article 5 para 1). According to this provision: a. freedom of belief, conscience, opinion and public expression of the opinion; b. Political association and action, and; c. prohibition of discrimination of citizens on the basis of sex, race, religious, national, social and political affiliation are rights outside of the jurisdiction of regular courts. This provision is in direct contradiction with the possibility to seek protection from discrimination before the regular courts, regulated in the Law on prevention and protection from discrimination and Labor Law, on which the courts have already acted in many cases.

Protection of human rights before the courts in 2016.

a. Protection of human rights before the regular courts.

The efficiency in protection of human rights provided by the regular courts will be evaluated through case studies of three individual cases that the regular courts processed in 2016, and which deal with the protection of fundamental human freedoms and rights of citizens. Statistical data about the number of court procedures related to protection of human rights in litigation cannot be provided, since there is no special registry where the regular courts would register such cases.

Case study 1: S.I. vs. MoI

Violation of the right to freedom of movement and discrimination on the basis of ethnic background.

How did the Appellate Court confirm the first-instance judgment in which the decisive fact noted is that the Republic of Macedonia is a country – signatory to the Schengen Agreement?

Facts of the case:

X.X.[141] is an individual of Roma ethnic background, a national of the Republic of Macedonia who lives in Veles. X.X. has worked in the local communal enterprise for more than 27 years. In October 2014, X.X. started traveling to Vranje, the Republic of Serbia, to visit the family of his deceased

141 To protect the identity of the individual and their personal data, the study will use the initials X.X.

brother. He travelled to pay his respects at the grave of his brother who had died, and X.X was unable to attend the funeral. X.X., together with his son, daughter-in-law and two grandchildren purchased return tickets to Vranje, the Republic of Serbia and started to Vranje on a bus full of passengers, where they were the only ones of Roma ethnic background.

Upon the arrival at the border crossing point, the border officer climbed onto the bus. When he came to X.X. he examined his and the travel documents of his family and called them off the bus to go to the offices for additional checks. In there X.X. was questioned about the purpose of his travel, and he stated where he was travelling to, for what purpose and that he planned to stay no longer than three or four days. He enclosed the travel documents and the certificate of employment and said that he had about 100 euro. X.X. emphasized that this is a short visit to see very close relatives and that they will not have any costs for accommodation and food. X.X. was verbaly informed that he will not be allowed to leave the country, because he would be seeking asylum abroad - but he did not receive any written notice about the prevention, nor did he receive a stamp in his passport. Immediately afterwards, accompanied by the police and in front of all the other passengers, X.X. and his family were taken off bus, thus having their journey interrupted.

Judicial procedure:

a. Complaint.

X.X. filed a complaint against the MoI to the competent basic court and demanded that the court establish violation of right to *free movement and right to equality* and to order the defendant to pay compensation for the material and nonmaterial damage. The violation of the right to free movement was substantiated by invoking article 27 paragraph 3 of the Constitution of the RM[142]. This Article clearly regulates when and how the freedom of movement can be restricted, which was not the case in this specific event.

Violation of *right to equality*, substantiated by the fact that on the bus only the applicant's family was of Roma ethnic background and they were the only ones prevented from leaving the country. This practice has already been identified by relevant institutions as a discriminatory one (Ombudsman of the R. Macedonia[143] and the Human Rights Commissioner

142 Freedom of movement can be restricted by law, only in cases when it is necessary for the security of the Republic, to run a criminal procedure or for protection of the health of people.
143 Annual report on the work of the Ombudsman of RM for 2014, Skopje, March, 2015 p. 83.

of the Council of Europe[144]). The clearly disproportional percentage of Roma affected by this practice (more than 95 %) compared to the total number of Roma in the Republic of Macedonia (2,67%) indisputably indicates that there is discriminatory treatment towards this ethnic group.

b. Response to the Complaint.

In response, the MoI indicates that *"when intending to leave the territory of the RM it is necessary to respect the constitutions and laws of other EU member states about the conditions of entry and the right to freedom of movement within the territory of the Republic of Macedonia into an EU member-state in line with art. 5 of the Schengen Border Code, where it is necessary to meet additional conditions confirmed by Annex 1 of this Regulation, to justify or prove the motives and purpose of travel and stay in an EU member-state". Further on, the response reads "Actually, in the complaint the plaintiff doesn't prove at all if he had all documents necessary to leave the Republic of Macedonia"* **without specifying which regulation that has legal force in the RM regulates documents that one has to have on them to leave the country, other than a valid travel document.**

c. First-instance judgment.

The basic court brought a judgment refusing the complaint as unfounded. According to the court, the reason X.X. was not allowed to cross the border is that he did not have a guarantee letter and did not have enough money.

When presenting the regulations, the court did not indicate a single legal provision dealing with the substantive issue of the case, whether the border officers have authorization to prevent exit from the territory of the RM because the person does not have a guarantee letter or a specific amount of money. The court, relying only on the statement of the witness – employee of the defendant (who carried out the challenged action) and on the official note written by the defendant, accepted the argument that X.X. was not allowed exit from the territory of the RM because he did not have a guarantee letter and sufficient funds, so in the view of the officers there were indications that they would misuse the visa liberalization, which is a threat to the international relations of the Republic of Macedonia with EU member-states[145].

144 Report by Niels Muznieks, Commissioner for Human Rights of the Council of Europe, after his visit to "the former Yugoslav Republic of Macedonia", 26 to 29 November 2012, p. 29, т.106, April 2013.
145 Judgment P1.12/15, of Basic Court. Page 5.

According to the court, all individuals were treated equally and the actions taken were in-line with the applicable regulations in the Republic of Macedonia **without specifying the regulations.** Further on, the court indicates that although the Republic of Serbia is not an EU member-state, it is a membership candidate, and as well as the Republic of Macedonia, **it has a duty to respect the Constitution, laws and regulations of the EU member-states**[146]. The court finds that all actions taken by the authorized officers of the defendant were in-line with the Constitution and the laws and notes that **the Republic of Macedonia is a signatory of the Schengen agreement**[147]. The court continues to elaborate that the fact that the Republic of Macedonia is a signatory of the Schengen Agreement requires that we assume obligations to carry out strengthened checks upon the intention to leave the territory of the Republic of Macedonia, within operational cooperation and mutual assistance in the fight against illegal migration.

d. Appeal.

X.X. lodged a timely appeal to this judgment, to the competent appellate court. In the appeal, he highlighted the following key findings:

• **Substantial violations of the provisions of litigation procedure.**

The decision does not indicate the regulation it is based on, despite the fact that it is mandatory (art. 327 para 4 of the LLP). The court did not indicate the regulation authorizing the MoI to prevent the exit from the territory of the Republic of Macedonia to someone who does not have a guarantee letter or a certain amount of cash on them.

• **Incorrectly and incompletely established state of facts.**

The court established that the RM was a signatory to the Schengen Agreement which is flagrantly incorrect and it is a generally known fact. The RM is not a signatory to this agreement, nor has it acceded to it. The court is basing the decision on the established fact that the Republic of Macedonia is a signatory to the Schengen Agreement.

• **Erroneous application of substantive law.**

Due to the fact that no regulation is indicated in the judgment, it would be more correct to say that this is a failure to apply the law, rather

146 Judgment P1.12/15, of Basic Court. Page 5.
147 Judgment P1.12/15, of Basic Court. Page 5.

than an erroneous application of the law. Referencing and basing the decision on Article 5 of the Schengen Border Code is completely unfounded, because the code, as EU regulation has no legal force in the Republic of Macedonia. On the other hand, the Republic of Macedonia has not assumed the obligation of direct application of the Schengen Border Code with any international agreement signed with the EU or EU member-states, and ratified in-line with the Constitution.

e. Second-instance judgment.

The Appellate Court refused the appeal as unfounded and confirmed the first instance judgment. The elaboration contains formal and standard verbiage about refusing the appeals claims, without going into substantial argumentation about the case. The Appellate Court **did not respond to the key appeals assertion that the first instance judgment does not invoke a regulation stipulating that Macedonian citizens need a guarantee letter and a certain amount of cash in order to leave the territory of the Republic of Macedonia.**

Furthermore, the Appellate Court, copying the elaboration of the first-instance judgment invokes again Article 5 and Annex 1 immediately after mentioning the Schengen Agreement which implies that the court believes that the provisions are from that agreement. The Appellate Court, identical to the basic court, again creates confusion between the Schengen Agreement and the Schengen border code, although the difference between these two was elaborated in detail in the appeal writ. For the Appellate Court there is no issue with the fact that the key regulation on the basis of which the judgment was brought is not the Constitution, nor a law, and neither an international agreement ratified by the Republic of Macedonia. On the contrary, without providing arguments against the assertions in the appeal, the court confirmed the first instance judgment[148].

f. Conclusions.

This case points to the deficiencies in the judicial protection of human rights in the Republic of Macedonia. A national of the Republic of Macedonia, of Roma ethnic background, having the intention to visit the family of his deceased brother in the Republic of Serbia was prevented in his attempt to leave the country. It was only him and his family, out of the entire bus, that were a subject to additional controls, and it was only them out of all passengers that were prevented from traveling to the Republic of Serbia.

148 Judgment of the Court of Appeal GZ--5879/15 p.3 and p.4

The citizen did not receive any written act about having been prevented. This is not an isolated case, but conduct that has occurred for more than four years and which was noted by the Council of Europe and the Ombudsman of the RM.

The citizen, having in mind the article 50, para 1 of the Constitution of the Republic of Macedonia seeks protection before the competent courts in the country. In the complaint he elaborated that, first of all, the conduct had no basis in any law and that it violates his right to free movement and the right to equality. The second-instance court passed a judgment refusing the complaint. It elaborates that all action taken by the border staff were in-line with the regulations, without quoting any regulation that authorizes preventing someone from leaving the country because of: "failure to explain reasons for the trip", "not having enough money" or "not having a guarantee letter". Instead, the court mentions Article 5 and Annex 1 without specifying the regulation they are from.

What causes most concern in the first instance judgment is that it contains the erroneous fact that "The Republic of Macedonia is a signatory to the Schengen Agreement which demands that our country assumes the obligations for enhanced border checks".

The citizen utilized the regular legal remedy and filed an appeal. He highlighted all weaknesses and contradictions in the first instance judgment. In the appeal he indicates that there is no regulation in the Macedonian legal system which would authorize the border services to prevent exit from the country because of the aforementioned reasons and indicates that foreign regulations could not be applied on the territory of the Republic of Macedonia. Unfortunately, despite the points of appeal, the Appellate Court confirmed the first-instance judgment using identical language and phrases. Because of this, the citizen in this case remained without protection of his human rights in this specific case.

Case study 2: K.I. vs. MoI

Discrimination on the basis of political affiliation.

According to the court, there is no room for a procedure for protection from discrimination when the victim initiated a procedure for protection of employment rights that were violated as a consequence of discrimination.

Facts of the case.

X.X.[149] is a national of the Republic of Macedonia. X.X. was first employed in the MoI already on 15.06.1993. Due to the demonstrated results in his work, he advanced in his career and in March 2006 he was appointed a head of the Inspectorate for General Crime and Inspectorate for Homicide and Sexual Offences. Still, despite the further success in his work, in November 2006 he received a transfer decision, demoting him to a lower ranking job – that of inspector. In 2008 he was transferred to a new job by being moved to another city. Since 2011 he has held the post of independent inspector for illegal trafficking in drugs and weapons in PS Kavadarci within MoI-SVR Veles.

While having properly enclosed medical documents testifying to his temporary inability to work, he was on a sick leave for the period 04.11.2014 - 05.12.2014. On 24.11.2014 he participated in a public meeting of a political party different than the ruling one. Immediately afterwards there was a procedure open before the Committee establishing disciplinary responsibility, whereby he was sanctioned to 15% less of the last monthly salary paid to him, for the duration of six months, for alleged violation of working discipline, because he misused sick leave. The reason indicated is his presence at a public meeting of an opposition political party on 24.11.2014.

Judicial procedure.

a. Complaint.

X.X. filed a complaint against the MoI to the competent basic court, asking the court to find *discrimination on the basis of political affiliation and conviction*, to prohibit the defendant to continue taking action of discrimination against the plaintiff – one which violates or might violate the right of the defendant to equal treatment and to order the defendant to compensate the material and nonmaterial damage. The discrimination was substantiated by invoking Article 1 para 1 of the Law on Prevention and Protection from Discrimination, as well as Article 3, Article 4 para 1 line 1, Article 6 para 1, Article 7 para 1 and Article 5 para 1 lines 3 and 4 of the same law. These revisions regulate the prohibition of direct and indirect discrimination, inter alia, on the basis of political affiliation, application of the law by the state bodies in the workplace and to the labor relations, as well as to define the notions of direct discrimination, discriminatory treatment and conduct.

149 To protect the identity of the individual and his personal data, the study will use the initials X.X.

As a result of such discrimination of a more serious form (repeated and continued discrimination), according to the psychiatric expert testimony, the plaintiff suffered from depressive-anxiety syndrome, increased fear, high blood pressure, tachycardia, and increasingly intensive pain in the lumbar area of the spine.

Violation of prohibition from discrimination in the area of workplace and labor relations and Violation of rights to equal treatment with the other employees was substantiated by the fact that the plaintiff was deprivileged without justification, at the expense of having other individuals enjoy privileged treatment. The basis for career demotion was not mistakes in work, or inadequate education, or a lack of results. Quite the contrary, the plaintiff had adequate education and was achieving substantial, visible and measurable results in his work. The basis for the discrimination that culminated in disciplinary procedure with a number of procedural deficiencies and the financial sanction is the political affiliation of the plaintiff. Or, more precisely, the basis is the absence of political affiliation with the ruling party, i.e. political affiliation, conviction and interest towards the opposition party. That is visible from the tendentious stressing by the MoI that he was present at a "political rally" rather than at a "public gathering".

b. Response to the Complaint.

In response, the MoI objects to the expiry of the statute of limitation of the allegation of repeated discrimination that begun in 2006, and continued thereafter. Furthermore, it indicates that "the plaintiff was not unequal to the other employees with respect of his rights". Additionally, the MoI stresses that *"The plaintiff has not indicated what the unequal treatment consisted of, i.e., he did not submit evidence that would show probable cause of discrimination based on the alleged ground in this particular case", despite the fact that the burden of proof that there had been no discrimination*, pursuant to Article 38 of the Law on prevention and protection from discrimination is on the defendant. In addition to this, the MoI indicates that *"the fact that there was a disciplinary procedure against the plaintiff because he misused the sick-leave could not be considered discrimination on the grounds of his political conviction."*

c.First-instance judgment[150].

The basic court brought a judgment refusing the complaint claims as unfounded[151]. According to the court, *the plaintiff was never deployed to a job that is lower than his educational degree or work experience.*

150 At the moment of publication of this report, this procedure is in the appeal stage, and therefore the conclusions and comments pertain only to the first instance ones.
151 Judgment РО.бр.38/16 of 01.12.2016, Basic Court X.X.

The court, inter alia, establishes that the plaintiff was often absent from work because of a previously established diagnosis of post-traumatic stress disorder, diagnosed by a specialist psychiatrist, and the diagnosis of lumbar radiculopathy.

The court also found that the decision of imposing a fine in a disciplinary procedure because of an alleged misuse of the sick leave was abolished as unlawful in a judgment confirmed by the Appellate Court in Skopje. This, according to the court, confirms that in this case there is no discrimination, but an unlawfully brought decision in a disciplinary procedure, a matter already decided in a judicial procedure, which had a legal outcome.

The other claims of discrimination were dismissed by the court as unfounded because the plaintiff did not submit any evidence that would confirm them.

According to the court, the notion of discrimination established in the Labor Law and Law on prevention and protection from discrimination *"does not mean that any inequality and not providing equal opportunities also means existence of discrimination for the one who is deprived of the right or treated unequally with another, because discrimination does not pertain to a broad moral or philosophical value of the unequal treatment, but it pertains and applies only to the injury stemming from the unequal treatment, and to the individuals sharing some common protected characteristic in these who laws; the law can provide rules according to which the alleged unfair, unjust or unequal treatment is justified, and in that case that treatment can appear morally unjust or unfair, but still without it being a discriminatory treatment."*

Case study 3: "No passaran" against BEG (Balkan Energy Group)

Violation to the right of property and imposing financial obligation for a service that is not used.

Can the regular courts protect human rights when they are violated by a regulation that the Constitutional Court found to be constitutional and lawful?

Facts of the case.

In 1998 the Council of the City of Skopje adopted the conditions for the distribution of thermal energy across the territory of the city of Skopje, that established an obligation for the users who disconnect from the system of thermal energy to pay a certain fee, according to the tariff

list[152]. The provision was disputed before the Constitutional Court. The court abolished[153] the challenged provision, elaborating that the Energy Law (EL) of 1997[154] does not provide an obligation for the individuals who do not have the status of users to pay a fee. In line with this, if the Law that is the basis for the conditions containing the challenged provision does not provide such obligation to pay a fee, the obligation cannot be established by a by-law.

A new Law on Energy[155] was adopted in 2011 and again it did not establish an obligation for the disconnected users of the system for distribution of thermal energy to pay a fee. The law delegated any further regulation of the issues related to the distribution of thermal energy to the Regulatory Commission on Energy (RKE). RKE issued Rules for distribution of thermal energy and re-established the obligation for the disconnected users to pay a fee[156]. This provision was contested before the Constitutional Court again; however, this time the court decided not to initiate a procedure to test the constitutionality and legality of this provision, contrary to the decision that was made four years earlier. In the rationale, the court references specifics of the collective apartment buildings where the disconnected consumers objectively used some of the thermal energy delivered to their neighbors, and therefore it would be justified if they were obliged to pay a certain fee. The court does not provide any legal arguments as to why it changed its position regarding this issue.

In consequence to this provision, more than 2,000 households in Skopje are sent monthly invoices. A large number of court cases were opened against the families who were either unable to pay or believed they were charged unlawfully and are not paying the invoices. The court cases expose the citizens to the risk of paying both the amount invoiced and also the notary, court and enforcement expenses. In this way, those citizens suffer harmful consequences. In order to protect their rights, a group of citizens concerned with this practice established an association that has the aim of protecting the rights and interests of consumers disconnected from the system of thermal energy

Legal matter.

Whether an individual can seek protection for the personal and property rights injured by the actions of a private person on the basis of an unconstutional regulation?

152 Article 52 para 3, Conditions for supply of thermal energy on the territory of the City of Skopje, Official Gazette of the City of Skopje No.15/1998 and 9/2002.
153 Decision U.No. 148/2008 of 4.2.2009.
154 Official Gazette of the Republic of Macedonia" No.47/1997, 40/1999, 98/2000, 94/2002, 38/2003 and 40/2005.
155 Official Gazette of the Republic of Macedonia" No. 16/2011 and 136/2011.
156 In Article. 53 para 2 of the Rules.

Judicial procedure.

a. Complaint.

The association lodged a complaint in a litigation procedure against the Regulatory Committee for Energy (RKE) and the Company for supply of thermal energy (TDSTE) before the Basic Court Skopje 2, and on behalf of its members it requested that the court protects their constitutionally guaranteed right to property, as an inviolable personal right. According to the association, the rules adopted by the RKE are excessive and contrary to the Energy Law and the actions of TDSTE, from the formal law viewpoint and applied in practice are a direct violation of the personal rights of members of the plaintiff, guaranteed in the Constitution and international agreements.

The complaint is based on two key arguments. First, the RKE, by adopting the challenged provisions of the rules exceeded its powers provided in the Energy Law, which meets **the element of unlawfulness** of the action. The RKE has only the power to elaborate in further detail the provisions of the Energy Law, and not to establish new rights and obligations that tackle the right to property. The property can be restricted only regarding the matters of public interest established by law, which is not the case here. The rules provide the TDSTE to impose financial liability to the citizens, which meets the element of existence of a harmful consequence. The second argument refers to the inexistence of a legal relationship on the basis of which TDSTE can impose financial liability of citizens.

With the complaint the association is asking the court: a) To establish that the Regulatory Committee, by the adoption of Rules outside of its competences under the Energy Law allowed actions that violate the right to property; b) To establish that the fact that a company is issuing invoices without having legal grounds and is collecting them forcibly violates the right to property, and; c) To order the defendants to refrain from actions that might in the future constitute violation of the right to property.

b. Response to the Complaint.

The first defendant, i.e. the Regulatory Committee for Energy, based its response to the complaint on the argument that the constitutionality of the rules is a competence of the Constitutional Court and has already been tested once, so following from that there is no jurisdiction of a regular court. The second defendant also requested that the complaint be rejected or refused, since as a business entity they had the duty to respect the regulations, including the challenged Rules.

c. First-instance judgment.

The court issued a decision[157] rejecting the complaint filed as 'inadmissible', with the elaboration that the complaint is asking 'to establish facts, and not existence or non-existence of a right or a legal relationship' that have a basis in the Energy Law and the Rules. According to the court, the complaint can seek to establish whether there is a legal relation or not, and not to establish a fact. According to the court, in this case the request to establish whether the rights of citizens are violated or not is a factual question, and as such it is not allowed as a point in a declaratory lawsuit.

d. Appeal.

In the appeal, the Association stresses that the court cannot decide that the complaint pertaining to protection of the constitutionally guaranteed freedoms and rights is inadmissible and that it is fully in contravention to art. 4 line 1 of the Law on Courts which regulates the competence of the courts and where it is clearly indicated that the courts decide in a procedure regulated by law, among other matters also on the *human and civic rights and the legally based interests.*

Conclusions

An essential problem when evaluating the efficiency of the judicial protection of human rights is the inexistence of a clear procedure through which someone whose right was injured could seek protection. The citizens are forced to use the litigation or criminal procedure, whereby they must meet the formal and substantive prerequisites to be able to initiate those procedures. With the litigation, there must be a clearly specified plaintiff and defendant and the conditions for active and passive capacity [standing to sue and to be sued] must be met, which is not always easy in such cases, for instance – violation of the secrecy of communication. Who is the defendant in such case, and who is the injured party? With the litigation there is always burden of proof, and with the exception of discrimination, it is always with the plaintiff, who has no access to evidence, which are usually in possession of the state bodies. With the exception of the provision from 9a of the Law on Obligations, there is no other material provision that allows the citizens to seek with the regular courts protection of a human right violated. When a certain violation of human right is incriminated as a criminal offence, there is a possibility of a criminal procedure. But, even in this case there are certain obstacles regarding providing evidence when the procedure is following a private complaint, or in a case when the procedure is opened ex officio, while the public prosecutor's office decides that there is no room to open a criminal procedure.

157 6TC – 581/15 of 9.11.2016.

The restrictive approach in the protection of human rights in 2016 by the courts in the Republic of Macedonia is particularly visible in previously analyzed cases. The right to appeal and the processing by appellate courts does not mean that there will be an adequate and proper assessment of the legality of the first instance decision. It is a fact that the appellate court confirmed a first-instance judgment which establishes as a decisive fact that, "The Republic of Macedonia is a signatory to the Schengen Agreement" which is far from the truth. Of particular concern is the interpretation that there is no room for protection from discrimination in cases then the individual initiated a procedure for protection of employment rights which were violated exclusively due to unequal treatment, the protection of which is clearly regulated in separate procedures. With such interpretation, the courts persistently refuse to make a finding about the widespread discrimination on the basis of political affiliation in the RM.

2. The Constitutional Court of the Republic of Macedonia

The Constitutional Court of the Republic of Macedonia as a human rights defender.

The Constitutional Court of the Republic of Macedonia protects human rights in two ways. First, by evaluating the constitutionality and legality of the laws and other general legal acts, the Constitutional Court has the powers to annul or abolish a piece of legislation if it assesses that it affects or violates the constitutionally guaranteed freedoms and rights of citizens. In addition to this possibility, the Constitution of the Republic of Macedonia has foreseen another instrument through which the Constitutional Court is directly involved as a defender of rights and freedoms, and that is the possibility for every citizen to seek direct protection from the Constitutional Court in case one of the rights, that of enjoying the protection of the constitutional court, is violated[158].

Protection of human rights by the Constitutional Court of the Republic of Macedonia in 2016.

a. Assessment of the constitutionality and legality of legislative and general acts.

In 2016 the Constitutional Court adopted a total of 187 decisions and conclusions, upon initiatives filed by citizens to assess the constitutionality and legality of legislation. Out of it, decisions to reject the initiative are prevalent, in as many as 82 cases, and then decisions to not initiate a

158 Freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or national, social or political affiliation.

procedure for assessment of constitutionality and legality, in 62 cases. In 14 cases the Constitutional Court initiated a procedure for assessment of the constitutionality and legality, and in 15 cases it passed decisions that annulled or abolished provisions, finding them unconstitutional or unlawful. With regards to the types of legislation and the areas that are subject of regulation, prevailing were the initiatives pertaining to the legislation regulating employment rights in the civil and the public sector (Law on Civil Servants – 10 initiatives, Law on Judicial Service – 4 initiatives), as well as detailed urban plans (8 initiatives). This indicates that the citizens are increasingly addressing the Constitutional Court when a legislative item directly interferes in some specific rights (e.g., employment rights, or amendments to some detailed urban plan) than with regards to the need to respect certain general principles, such as the rule of law and legal certainty.

In 2016 the Constitutional Court, in several cases, decided directly upon initiatives dealing with fundamental human freedoms and rights. Of particular interest and worth noting is the issue of discrimination against women regarding the possibility to continue working after exceeding the legal threshold for old-age retirement, which is 65 years for women, and 67 for the men, as well as regarding the discrimination of employees in the public sector, vs., those employed in the private sector. The court established that the provision of the Labor Law establishing this possibility is contentious and discriminatory, and therefore it abolished it[159]. On the other hand, in the decisions relating to special laws regulating employment rights, which do not allow a possibility to extend the employment above the pensionable age, the court took a stance that the legislator has the right to regulate the pensionable ages differently, and therefore the manifestly different treatment has a legal basis and is not discriminatory[160].

The court also discussed the problem with service of documents in litigation and enforcement, which creates significant problems regarding the right to property in cases when bank accounts of citizens are blocked without any information. Of interest for the public were also procedures related to the issue of compulsory vaccination. Controversies were also caused by the decision of the Constitutional Court pertaining to the Law on Pardon, which paved the way for the decision on pardoning by the President of the Republic of Macedonia, which in turn led to the deterioration of the political crisis in the country.

b. Application for protection of freedoms and rights.

In 2016[161] just seven (7) citizens applied for protection of freedoms and rights to the Constitutional Court of the Republic of Macedonia, which, compared to the year before, is almost half. The trend of decreasing numbers of applications filed and insufficient use of this constitutional instrument

159 U.No. 114/2014 of 29.6.2016
160 U.No. 7/2016 of 25.5.2016.
161 Ending with 21.10.2016.

for protection of freedoms and rights continued this year as well. The Constitutional Court of the Republic of Macedonia decided in nine (9) cases, upon applications filed in 2016 and in 2015. In eight (8) of them, the court dismissed the applications because of lack of jurisdiction or other procedural obstacles, while in one (1) case it refused the application as unfounded. The court did not find any violation of a right in 2016. The last and the only decision in which the court established a violation of a right was brought in 2010[162]. A statistical overview of the applications filed to the Constitutional Court of the Republic of Macedonia is contained in the table below.

Applications filed for protection of freedoms and rights in the period 2012 – 2016[163]

	2012	2013	2014	2015	2016[164]
Applications filed	25	22	13	13	7
Resolved cases	27	13	16	14	8
Rejected applications	21	13	14	12	7
Refused applications	6	/	2	2	1
Findings of violation of rights	0	/	/	/	/

The citizens addressed the Constitutional Court for protection of several various human rights. A significant portion of the applications deals with acts of discrimination on the grounds of political or social affiliation. On the other hand, some of the applications sought protection of rights regarding which the Constitution does not provide any competence of the Constitutional Court, such as the property rights or labor rights. There were also, and not infrequent, cases of applications asking the Constitutional Court to act as an instance court and to annul or abolish a decision of judicial or administrative bodies, without it originally entailing a violation of any human right regarding which the competence of the court is foreseen. As a consequence to this, most of the applications in 2016, too, were rejected, without elaborating on the merits of the case.

Although the Constitutional Court, pursuant to the Rules of Procedure, should decide on protection of freedoms and rights after a public hearing (Art. 55 page 1), in practice it avoided this procedural action. In 2016 it held just one public hearing in the case U.No.. 165/2014. This tendency of not having public hearings on the applications filed for protection of freedoms and rights began in the past (2011). The failure to hold public hearings can significantly encumber the establishing of facts in an individual case, which might be of key importance for a decision to be made.

162 Decision U.No. 84/2009 of 10.2.2010.
163 Source – Overview of the work of the Constitutional Court of the RM for 2012, 2013, 2014 and 2015. Available at http://www.ustavensud.mk/domino/WEBSUD.nsf.
164 Source – Response to a request for free access to public information, by the Constitutional Court of the RM no. 28/16/3 of 8. 11.2016.

Out of the decisions passed in 2016, three (3) are of special public interest. They involve cases in which citizens ask for protection from discrimination. In the other six (6) cases the decisions involved matters the Constitutional Court clearly had no jurisdiction over, and therefore they will not be processed in this report. In two (2) cases the court processed the applications of citizens who believed they were discriminated against because of their political affiliation, and in one because of their social background (profession). Because of the presence of this negative phenomenon in Macedonian society, especially in terms of hiring and work in bodies of civil and public service and in the institutions, it is important to analyze how the court sees the discrimination on such grounds.

The case U.no. 165/2014 refers to an application for protection from discrimination on the basis of political affiliation. The applicants worked in managerial positions in the local communal enterprise and were active members of a political party. In the local elections in 2013 the political party they were members of lost power. Immediately after the elections there were changes in the managerial structure of the enterprise and pressures started to mount on the employees who were not members or supporters of the ruling party. The applicants were demoted by transfers from managerial to lower jobs, as bill collectors/meter reading clerks. The applicants initiated court procedures to be restored to their former jobs. The procedures were not final when they sought protection from the Constitutional Court on the grounds of discrimination. The court rejected the application because it assessed that it lacked jurisdiction. According to the court, the application sought to abolish acts (transfer decisions) that were subject of other court procedures (judicial procedures for protection of employment rights) that do not have a final (effective) outcome. The court's interpretation was the application pertained to employment rights that are matters of jurisdiction of the regular courts and as such are not under the jurisdiction of this court.

In the case U.No. 23/2016 the applicant also sought protection because of discrimination on the grounds of political affiliation. M.A. was an employee of the MoI. In 2014 in a public event on the occasion of International Labor Day he made a statement on camera and it was broadcast on one of the national televisions channels. The statement contained the following messages: *"For those who don't share the views and are out of favor with the political party there will be disciplinary measures and dismissal notices. Primarily, political persecution people who are not party members of the current ruling majority, there are ways to discredit them and silence them and the boiling point will be reached soon, unless serious steps are taken"*. At the moment when he made that statement M.A. was not on duty, nor was he wearing a uniform, but he mentioned he was working in the MoI. After the statement was broadcast, there was a disciplinary procedure against M.A. because of his communication with the public, which was not authorized by the Minister. M.A. was demoted to a position two ranks lower. M.A. filed a complaint with the regular court but because of the failure to

pay the court fees in time, the court brought a decision stating that the complaint was withdrawn. M.A. filed an application to the Constitutional Court of the Republic of Macedonia for protection of freedoms and rights, elaborating that the decision was not legal, but political and that he was a victim of discrimination on the grounds of political affiliation. With the application M.A. sought to abolish the decisions of the regular courts. The Constitutional Court rejected the application. According to the court the application *"was filed by the applicant in order to cause an outcome different to the one contained in the decision of the first instance court, which found that the complaint was withdrawn, which was confirmed with a decision of the second instance court, and because of an omission of the plaintiff – now the applicant – of an action that he had the duty to make pursuant to the Law on Litigation, while he did not do it, which is not contested by the applicant".* The court is interpreting this as a request to act as a court of cassation and to abolish acts of regular courts in order to allow for reopening of the procedure upon the complaint before the competent court, which is not the jurisdiction of the Constitutional Court.

Discrimination on the basis of social background was the subject-matter in the case U.No. 125/2015. M.K. worked as a public notary. In 2013 she turned 62 and met the conditions for old-age retirement; however, the Minister of Justice did not issue a decision terminating her office, so she continued working. In 2015, before she turned 64, on the basis of Article 104 para 2 and 3 of the Labor Law (LL), she informed the Minister of Justice that she wished to continue working until the age of 65. The Minister informed her that the extension could not apply in her case, because the Law on Notaries applies differently the conditions for termination of service. Several days later, the Minister brought a decision terminating her service as a public notary. M.K. filed an administrative dispute against the decision, where she alleged violation of her constitutionally guaranteed right to work under equal conditions. The administrative court dismissed the complaint as unfounded, elaborating that the institution *"notary could not be understood as part of the notion worker"* and that was why LL was not applicable in this case. M.K. filed a complaint which the Higher Administrative Court rejected with the same elaboration. What is particular about this case is that no one gave an answer as to why was it that M.K.'s office was not terminated when she turned 62, as prescribed in the Law on Pension and Disability Insurance. M.K. filed an application for protection of freedoms and rights to the Constitutional Court of the Republic of Macedonia, alleging violation of her constitutionally guaranteed right to work and discriminatory treatment on the basis of her professional status (social background), as some of the employees in the state bodies that are in a similar situation. The Constitutional Court refused the application for protection of freedoms and rights, with the rationale that "Article 104 of the Labor Law cannot apply to all employees in all areas of social life, since it clearly stems from its contents that it has a subsidiary application in a case when the same issue is regulated differently in another law (as is the case with the Law on Notaries)". According to the court, it cannot

be inferred that the individuals performing public service delegated by the state or on behalf of the state need to have the same or equal position regarding all employment rights and aspects as the employees in the real economy.

Conclusions.

A very small number of citizens decide to seek protection by the Constitutional Court. The limited jurisdiction, although it contributes, is not the only factor that results in a small number of applications for protection of freedoms and rights. Just for comparison, the total number of petitions sent to the Ombudsman, and related to the right to nondiscrimination (just one of the three rights that fall under the jurisdiction of the Constitutional Court) is 53[165] and is several times higher than the number of applications filed for protection of rights.

The citizens, including attorneys, are insufficiently aware of the conditions under which protection of freedoms and rights can be sought, and of the legal nature of the decisions of the Constitutional Court, which results in many rejected applications. The Constitutional Court of the Republic of Macedonia, with some exceptions, does not have public hearings regarding the applications for protection of freedoms and rights, although the Rules of Procedure prescribe that obligation.

The interpretation of the Constitutional Court (in the case U.No. 165/2014) significantly impedes the protection from discrimination when it is taking place in the workplace. In such cases, the discrimination is taking place by denying certain employment-related rights (e.g., salary, holiday leave, promotion, etc.). In other words, due to their political affiliation, some employees are denied certain rights. If the individual wants to protect those rights they have to initiate a procedure for protection of employment rights before the civil courts, within relatively short deadlines. If the citizen also seeks the protection of the Constitutional Court, then the court will reject the application, elaborating that the citizen has already sought redress by the regular courts.

The Constitutional Court, when deciding upon the applications, is restrictively linked to allegations and legal qualifications in the applications. In the case U.No. 23/2016, although the facts presented unequivocally state that the right violated is the one of freedom of expression (one of those that are subject-matter of protection by the Constitutional Court), still the court remained bound to the application that pertained to violation of right to equality and it rejected the application.

165 Annual Report of the Ombudsman of the RM for 2015.

3. The standing inquiry committee for protection of human rights in the RM

The standing inquiry committee for protection of human rights as a human rights defender in the RM.

The standing inquiry committee for protection of freedoms and rights of citizens is a working body of the Parliament of the Republic of Macedonia, stipulated in the Constitution of the Republic of Macedonia (article 76 para. 2 of the Constitution). The mandate of the Commission[166], although it does not involve investigative and judicial functions, is particularly important for the system of protection of human rights, because it enables direct supervision and monitoring of the situation with the protection of human rights by the MPs, as representatives of citizens. The findings of the Committee are a basis to initiate a procedure to establish the responsibility of public office holders, if they have violated human freedoms and rights (art. 76 para 3 of the Constitution). In order to prevent the majorization in the work of the Committee by the parliamentary majority, the president and the deputy president of the Committee come from the ranks of the opposition (art. 108 para 2 of the Rules of Procedure of the Parliament of The Republic of Macedonia).

Activities of the standing inquiry committee for the protection of human rights in 2016.

The standing inquiry committee for protection of freedoms and rights of the citizen (the Committee) was completely non-functional during 2016, and did not have a single session. The passivity of this working body began in 2011, after the parliamentary elections took place and a new parliamentary composition was elected. Between 2011 and 2013 there were just five sessions of this working body, none of them on essential issues in the area of protection of human rights in the Republic of Macedonia[167] and not all of them were finished. Since 2013 to the current date, not a single session of the Committee was scheduled, nor held, which points to an obvious failure of one of the constitutional mechanisms for the protection of human rights in the Republic of Macedonia[168].

Reasons for the passivity of this working body might partially be attributed to the ongoing political crisis which has engulfed the state since December 2012. The political crisis shifted the priorities of MPs further away from the protection of human rights of the citizens they represent.

166 Defined in art. 2 line 8 of the Decision establishing permanent working bodies of the Parliament of RM, No. 85/2014.
167 Three sessions (2, 4 and 5) involved discussion on the findings in the EC Progress Report for the RM, one (3) on the Report of the Ombudsman and Directorate for Protection of Personal Data, while (1) discussed the Agreement on the work of the Standing Inquiry Committee.
168 Notification бр. 37-4549/3 of 18.11.2016 of the Parliament of the RM.

In addition to this, over the same period there was a trend of weakening of the supervisory function of the Parliament in general, such as the passivity of the working bodies for supervision over the UBK and over special investigative measures for interception of communications. Still, irrespectively of these two "objective" reasons, the passivity of this working body foreseen in the Constitution indicates what priority is attached to the protection of human rights by the people's representatives.

The non-operation of this working body also contributes to the ongoing deterioration of the state of protection of human rights in the Republic of Macedonia. An absence of parliamentary debate on human rights violations that has taken place over the recent past, such as the mass interception of communications, has prevented the identification of political and moral responsibility for the violations. The passivity of this body contributed to the creation of the generally accepted opinion that those violating human rights in the Republic of Macedonia do so with impunity, which in turn has had a negative impact on citizens' trust in the Parliament of the Republic of Macedonia.

Conclusions.

This parliamentary body established by the constitution has been non-functional for quite some time now, which has a devastating effect on the involvement of the Parliament in human rights protection. It is of particular concern that the non-operation of this body can be attributed to the very low, i.e., non-existent priority that the MPs attach to human rights protection. The outcome of the December 2016 parliamentary elections again does not give much hope that this body will start operating.

4. The Ombudsman of the RM

The Ombudsman as a human rights defender in the Republic of Macedonia.

The Ombudsman is a body established by the Constitution of the Republic of Macedonia, defending the constitutional and legal rights of citizens when they are violated by the bodies of public administration and other organs and organizations performing public competences (art. 77 of the Constitution of the Republic of Macedonia). The competence of this body is more precisely regulated in the Law on the Ombudsman where, in addition to the protection of rights of citizens, this institution also defends the

principles of non-discrimination and equitable representation of members of communities. The Ombudsman follows the situation with respect to human rights and calls for their protection, carries out relevant researches, organizes educational activities, informs the public timely and regularly, cooperates with the civic sector, the international organizations and the academic public, and also raises initiatives to harmonize the national legislation to the international and regional human rights standards.

The Ombudsman is in charge of prevention of torture and any kind of cruel, inhuman or degrading treatment or punishment, by carrying out unannounced visits to the places of deprival of liberty. Of special interest for the Ombudsman is the protection of rights of children and people with disabilities, prevention of torture and other inhuman treatment in the places where people are or can be deprived of their liberty, non-discrimination and equitable representation, as well as respect for the principle of a trial within a reasonable time and judicial misconduct.

The Ombudsman acts upon petitions received; however, if they find that it is necessary, they can also open procedures upon their own initiative. The Ombudsman has the duty and the right to obtain all facts and evidence of essence to decide upon the petition, and the state bodies have the obligation to provide them. When the Ombudsman makes a finding that the constitutional and legal rights of the petitioner have been violated by a state body, they may:

- give recommendations, findings and instructions about ways in which to remedy the violations found;
- propose to initiate a procedure provided by the law;
- raise an initiative for disciplinary or misdemeanor procedures against an official or responsible person, and;
- make a motion to the competent public prosecutor to initiate a procedure to establish criminal responsibility against an official or responsible person, and to actively participate in the procedure, with the right to give proposals and opinions.

Activities of the Ombudsman in 2016.

In February 2016 the Ombudsman voiced his concern about the possibility of the President to pardon individuals sentenced for crimes against sexual freedom and sexual morality, perpetrated against children and juveniles. He assessed that this decision of the Constitutional Court

destroys all reforms made to improve the protection of children and the best interest of a child, and therefore called upon the President to treat this issue with utmost care. An additional concern the Ombudsman voiced was about the possibility to pardon individuals sentenced for crimes against elections and voting, indicating that the right to vote must be exercised without pressure, blackmail and threats, and sanctioning of such crimes should aim towards strengthening, and not weakening the institutions and the rule of law[169].

In the annual report for 2015, presented in 2016, the Ombudsman found that the number of petitions for violations of human rights is growing, as well as the number of found violations of human rights, while the number of accepted interventions of the Ombudsman is decreasing. The following areas of particular concern were highlighted: unlawful interception of communications, police brutality, refugee crisis, poor penitentiary system, pressures on secondary school students, unlawful collection of broadcasting fees, and retroactive abolition of social protection rights[170].

The Ombudsman was following the conduct of the police forces when dealing with the protests, the so-called 'Colorful Revolution', and reacted to the violation of international standards for respect of freedom of information, as the journalists were obstructed in doing their job on the protests, and there had been pressure against them[171].

The Ombudsman reacted vigorously to the change of date to take the state graduation exam (from June 4 to May 28), a decision taken contrary to the Law on Secondary Education and the secondary legislation and urged the Minister to withdraw such a decision. According to the Ombudsman, this decision shortens the period the students have for preparation for the exam, considering that regular classes end on May 20, and the grades from the graduation exam are a decisive factor for enrollment to university and for the possibility for the student to make it into the quotas at universities. The Ombudsman believed that the dates to take the test must not depend on the date of the early parliamentary elections and that the Ministry of Education was acting in a non-transparent way in this case, and without consulting the Ombudsman[172].

169 Source: http://ombudsman.mk/mk/novosti_i_nastani/181314/reakcija_na_narodniot_pravobranitel_po_donesenata_odluka_na_ustavniot_sud_za_ukinuvanje_na_zakonot____.aspx
170 Source: http://ombudsman.mk/upload/Godisni%20izvestai/GI-2015/GI_2015-za_pecat.pdf
171 Source: http://ombudsman.mk/mk/novosti_i_nastani/181324/soopshtenie_vo_vrska_so_protestite_vo_skopje_i_priveduvanje_na_demonstrantite.aspx
172 http://ombudsman.mk/mk/novosti_i_nastani/181325/reakcija_na_narodniot_pravobranitel_po_povod_promenata_na_rokovite_za_polaganje_na_drzhavna_matura.aspx

The Ombudsman raised an initiative with a draft law to amend the Law on Asylum and Temporary Protection, since the existing law impeded the family reunification of people with the status of a recognized refugee and people under subsidiary protection, which is in contravention to the Directive on the Right to Family Unification of the EU. An additional proposal was to delete Article 10-a, which makes it impossible for an individual to prove that they have personal reasons why it is unsafe for them to return to the country from which they entered the Republic of Macedonia, although it belongs in the group of safe third countries[173].

The Ombudsman presented the Report of the National Preventive Mechanism for 2015 in which he found problems in police stations, regarding failure to respect international standards for detention; deterioration of the situation in penitentiary institutions, particularly in terms of poor healthcare system; and in respect of the obvious gaps in adequate reception, recording, legal assistance, nutrition and transport of migrant from the migrant/refugee crisis[174].

In 2016, the Ombudsman published five separate reports on situations related to human rights protection. In the information about the rights of the child and people with special needs (children and adults with cerebral palsy, Down syndrome, intellectual disability, blind or people with poor sight), the Ombudsman pointed to problems these people face in terms of access to education and health and social care[175]. Other reports dealt with the right to hospitalization of a child with an adult companion[176], respect for and enforcement of the right of the child to participate in decision making in secondary schools[177], conditions to serve the educational-correctional measure of stay in an educational-correctional institution[178], as well as the application of the right to equitable representation[179].

173 Source: http://ombudsman.mk/mk/novosti_i_nastani/211342/narodniot_pravobranitel_do_vladata_na_republika_makedonija___dostavi_inicijativa_so_predlog___zakon_za____.aspx
174 Source: http://ombudsman.mk/upload/NPM-dokumenti/Izvestai/NPM%20Godisen%20izvestaj-2015-mk.pdf
175 Source:http://ombudsman.mk/upload/Posebni%20izvestai/2016/Ucestvo%20na%20deca%20vo%20sredno-Mk.pdf
176 Source: http://ombudsman.mk/upload/Istrazuvanja/2016/Hospitalizacija%20na%20deca%20so%20pridruznik-2016.pdf
177 http://ombudsman.mk/upload/Posebni%20izvestai/2016/Ucestvo%20na%20deca%20vo%20sredno-Mk.pdf
178 http://ombudsman.mk/upload/Istrazuvanja/2016/Informacija%20VPD%20Tetovo-Ohrid-mk.pdf
179 http://ombudsman.mk/upload/Posebni%20izvestai/2016/Ucestvo%20na%20deca%20vo%20sredno-Mk.pdf

Conclusion.

The Ombudsman of the Republic of Macedonia in 2016 identified and voiced the key problems and challenges related to protection of human rights in the country. Regarding all serious challenges the Republic of Macedonia is facing in the area of protection of human rights, the Ombudsman, within his competences, initiated procedures and informed the public, using clear language, without necessary phraseology that would diminish the problem. The Ombudsman is recognized in the public, and particularly among citizens, which can be seen particularly from the number of citizens who address the institution daily, through the offices of the Ombudsman. In March 2017 the amendments to the Law on Ombudsman[180] entered into force, and they will establish a possibility for this institution to appear in the capacity of so-called amicus curiae which would strengthen the judicial protection of human rights in cases when the Ombudsman already found violation of some of the rights.

180 The Law Amending the Law on the Ombudsman („Official Gazette of the Republic of Macedonia“ No. 181/2016)

Chapter 3: Overview of the judgment of the European Court of Human Rights adopted in 2016 involving the Republic of Macedonia

In 2016, the European Court of Human Rights adopted ten judgments in the Republic of Macedonia. In three of them, involving four individuals, the court in Strasbourg did not find a violation. In others, involving nine individuals in total, the court ruled in favor of the applicants, finding violation of Article 6, para 1; Article 8 of the Convention and Article 1 of the Protocol 1 to the Convention.

The judgments adopted by the European Court of Human Rights vs. the Republic of Macedonia in 2016, rule that the state, from its budget, should pay to the applicants a total of 29,100 euro for non-material damage and 2,460 euro for the costs of procedure and 5,400 euro for material damage, if they do not return the car to one of the applicants. This means that in 2016, the Republic of Macedonia needed to pay **31,560** euro in total.

1. Justice for Judges / "Kadija te tuzi, kadija te sudi" (a proverb – the prosecutor will try the case as a sitting judge).

Gerovska-Popchevska vs. the Republic of Macedonia[181], Jakshovski and Trifunovski vs. the Republic of Macedonia[182], Poposki and Duma vs. the Republic of Macedonia [183]

These are three cases before Strasbourg in which five judges challenged their dismissals from office on the grounds of professional misconduct. The applicant in the first case, Ms. Snezana Gerovska Popchevska was dismissed by the Judicial Council after examining a civil case where she was a sitting judge in the first instance due to erroneous application of procedural and material law in the case In the second case,

181 Case Gerovska-Popchevska vs. the RM (Application No.48783/07).
182 Case Jakshovski and Trifunovski vs. the RM (Application number.56381/09 and 58738/09).
183 Case Poposki and Duma vs. the RM (Application number.69916/10 and 36531/11).

Mr. Goce Jakshovski was discharged because he was not acting responsibly in processing a civil case, while Mr. Miroslav Trifunovski was not acting responsibly in the investigation on an alleged suicide of a prisoner. In the third case, Mr. Ivo Poposki was discharged because of a violation of the rules on legal representation of parties in a civil case that he tried. Ms. Violeta Duma was discharged on two grounds: first, because she failed to establish the true identity of an individual sentenced in a criminal case that she tried, and secondly, because she did not withdraw from another criminal case where there was a potential conflict of interests. All five applicants appealed the dismissals in the second instance to the Council deciding on appeals in the Supreme Court. All appeals were refused. Ms. Gerovska–Popchevska and Ms. Duma also filed constitutional complaints to the Constitutional Court, which were rejected, with the elaboration that the Constitutional Court had no jurisdiction to re-examine the legality of the decision of the Judicial Council. Mr. Trifunovski also initiated an administrative dispute regarding his discharge, but his complaint was rejected as inadmissible.

On the basis of article 6, para 1 (right to a fair trial) of the Convention, all applicants essentially alleged that the bodies[184] that reviewed their cases were not independent, nor impartial. Ms. Gerovska-Popchevska, in particular, complained of the participation of the then President of the Supreme Court and the Minister of Justice in the decisions on her discharge, indicating that they had both made a decision on her case before: the former on the basis of his participation in the Civil Department and the general session of the Supreme Court in which they voted on legal opinions that were unfavorable for her; and the latter as a member of the Judicial Council voted on her discharge. The other four applicants alleged that members of the Judicial Council that initiated the procedures against them then participated when the Judicial Council made the decision on their discharge. Mr. Jakshovski and Mr. Trifunovski also complained that the Appeals Council, established within the Supreme Court, was composed of judges whose career depends completely on the Judicial Council.

The court in Strasbourg found violation of Article 6, para 1 in all three cases, i.e., on all five applicants.

In the case of Ms. Gerovska-Popchevska, the court in Strasbourg found that she had legitimate grounds to fear that the judge D.I. had prejudice that she should be discharged for judicial misconduct even before the case came to the Judicial Council. Namely, "the judge D.I., as a president of the Supreme Court, with participation in the approval of the judicial opinion of the general session of that court, voiced an opinion that did not go in favor of the applicant. For this reason, his further participation in the challenged procedure to establish judicial misconduct before the Judicial Council is not in-line with the requirement of impartiality according to Article 6 para 1 of the Convention"[185].

184 Judicial Council and the Council deciding on appeals, within the Supreme Court.
185 Case Gerovska-Popchevska vs. the RM (Application No.48783/07), Judgment of 7.01.2016, paragraph 52.

Also, "the court believes that the participation of the Minister of Justice, as a member of the executive, obstructed his independence in this specific case"[186]. Therefore, the court concludes that the Judicial Council that tried the case of the applicant was not "independent and impartial" in-line with article 6 para 1 of the Convention and found a violation of that article.

In the case of Mr. Jakshovski and Mr. Trifunovski, "the court believes that the system in which the applicants, as members of the Judicial Council, who carried out the preliminary investigations and who set in motion the challenged procedures, later participated in the decision making to discharge the applicants from their judicial office, casts objective doubts about the impartiality of those members when they decided on the cases of applicants"[187]. Therefore, the court established violation of article 6 para 1 of the Convention.

In the case of Mr. Poposki and Ms. Duma, "the court believes that the system in which members of the Judicial Council who carried out the preliminary investigations and who set in motion the challenged procedures, later participated in the decision making to discharge the applicants from their judicial office, casts objective doubt on the impartiality of those members when deciding on the merits of the cases of applicants."[188] According to this, in this case there is violation of article 6 para 1 of the Convention.

Awarded non-pecuniary damage: 4,000 euro to each of the applicants;

Procedure costs: 900 euro to Ms. Gerovska-Popchevska;

300 euro to Mr. Trifunovski;

150 euro to Ms. Duma;

186 Case Gerovska-Popchevska vs. the RM (Application No.48783/07), Judgment of 7.01.2016, paragraph 55.
187 Case Jakshovski and Trifunovski vs. the RM (Application number.56381/09 and 58738/09), Judgment of 7.01.2016, paragraph 44.
188 Case Poposki and Duma vs. the RM (Application number.69916/10 and 36531/11), Judgment of 7.01.2016, paragraph 48.

2. The right to an independent and impartial tribunal.

Mitrov vs. the Republic of Macedonia[189]

After a traffic accident in which a young woman lost her life, the applicant, Mr. Slobodan Mitrov was sentenced for "severe crimes against the safety of people and property in traffic". On account of the fact that the victim of the traffic accident was a daughter of M.A., who was a president of the Strumica Basic Court, the applicant asked that his case be transferred to another court. This application was refused, after the judges appointed to try this case stated that they would not be influenced by the fact that the victim was a daughter of their colleague. M.A. was not part of the trial panel, but had the status of a victim in the procedure, as the mother of the deceased. During this period, there had been only four judges in the criminal department of the Basic Court, including M.A. They all had full-time employment and similar duties. Therefore, it could not be precluded that they had personal relations among them. The president of the trial chamber (C.K.) trying this case was working with M.A. for at least two-and-a-half years and worked for her previously as a legal clerk. The applicant was tried and sentenced to four-and-a-half years of imprisonment. His appeal was refused. The applicant applied to the court in Strasbourg, arguing that there was a lack of impartiality on the basis of Article 6, para 1.

The court attached particular weight to the significance of the procedure for M.A., who had lost her eighteen-year old daughter, and who filed an application for compensation of damage to the applicant's insurance company, an issue decided by the same panel of judges who decided on the guilt of the applicant. Under such circumstances, the fact that C.K. was a president of the panel deciding on the guilt of the applicant raised objectively justified doubt about his impartiality. Similar conclusions are applicable to all other judges in that court. It is also important that the national legislation allows that a case be transferred to another competent court, and it is indisputable that such practice had been used in similar circumstances. With this in mind, the Strasbourg court unanimously established violation of Article 6, para 1.

Awarded non-pecuniary damage: 3,600 euro

Procedure costs: 660 euro.

189 Case Mitrov vs. the RM (Application No. 45959/09), Judgment of 2 June 2016.

3.Length of proceedings.

Petreska vs. the Republic of Macedonia[190]

Ms. Desanka Petreska was an employee of the Intelligence Agency, but was made redundant on 28 February 2001. She challenged her dismissal, but the first instance court dismissed her claim, finding that she had been dismissed on the basis of internal regulation adopted by the employer and approved by the Government on 27 February 2001. The regulation dealt with reducing the staff numbers in jobs as the one held by Ms. Petreska. The applicant argued that the regulation could not be applied in her case, since at the time of her dismissal they had not yet entered into force. The Appellate Court rejected the applicant's claim, and then the Supreme Court rejected the appeal on points of law.

Relying on Article 6, para 1[191], Ms. Petreska complained, inter alia, to the length of proceedings in her case. The Court determined that the procedure took six years and nine months, at three levels of court instances. Taking into account the complexity of the case, the conduct of the applicant and of the relevant bodies and the risk to the applicant in the case, the Strasbourg Court found violation of Article 6, para 1 of the Convention, regarding the length of proceedings.

Awarded non-pecuniary damage: 1,200 euro.

Procedure costs: 800 euro.

190 Case Petreska vs. the RM (Application No. 16912/08) Judgment of 21 July 2016.
191 Right to due process within reasonable time.

4.Unfair lustration procedure.[192]

Ivanovski vs. the Republic of Macedonia[193]

The applicant, Mr. Trendafil Ivanovski was the president of the Constitutional Court of the Republic of Macedonia and was dismissed from office as a result of a lustration procedure. On the basis of the Lustration Law[194], the applicant filed a written declaration of non-collaboration[195] . The Commission for Verification of Facts brought a conclusion that the applicant's statement was not in conformity with the evidence it possessed. The applicant contested them at a public session, but the Commission refused his appeal. Then, Mr. Ivanovski lodged an appeal against the decision of the Commission, which was rejected, as was the appeal that he lodged with the Supreme Court. Before and during the lustration procedure, there was a controversial public debate between members of the ruling party and the Constitutional Court.

Before the Strasbourg Court, the applicant complained that the overall lustration procedure was unfair, on the basis of Article 6, para 1 of the Convention. Furthermore, he complained of violation of Article 8[196], particularly due to the fact that the decisions in the lustration procedure had a complex influence on his reputation, dignity and moral integrity. Regarding the alleged complete unfairness of the procedure, the Strasbourg Court attached particular significance to the open letter[197] in which the Prime Minister used the initial findings of the Lustration Commission to declare Mr. Ivanovski a collaborator of the security services of the former regime. For the Court, it was sufficient that the procedure had a negative outcome for the applicant and that the contents of the prime minister's statement and the way in which it was made were incompatible with the concept of "independent and impartial tribunal".

The court also invoked the Progress Report for the Republic of Macedonia on European Convention, of November 2010, which states that the lustration procedure in the case of Mr. Trifunovski "raised concern about pressure on the independence of judiciary". This was, in total, sufficient for the Court to conclude that the procedure, taken as a whole, did not meet the fair trial standards and to establish a violation of Article 6, para 1 of the Convention, regarding the overall fairness of the procedure.

192 This was the first case of lustration in the country.
193 Ivanovski vs. the RM (Application No.29908/11), 21 January 2016.
194 Law establishing additional condition to perform a public office, adopted by the Parliament on 22.01.2008, entered into force eight days later, and applies for five years after the entry into force.
195 According to the aforementioned law, all holders of public offices and candidates had the duty to file a declaration that they did not cooperate with the state security bodies between 2 August 1944 and 30 January 2008.
196 Right to respect private and family life.
197 While the lustration procedure before the Committee was under way, on September 24, 2010, the media published an open letter addressed to the "opponents of lustration" from the Prime Minister of the country, signed in his capacity as the president of the party in power, where he, inter alia, stated that the Commission publicly disclosed that a member of the Constitutional Court was a collaborator of the state security bodies.

Regarding violation of Article 8, the court finds that the interference in the enforcement of the rights under that Article was disproportionate with the legitimate aim. Namely, the applicant was not only discharged from office in the Constitutional Court, but he was also ordered a prohibition of employment in public service or in the academic community for a period of five years, with which it became virtually impossible for him to practice his profession. Taking into consideration that the Law on Lustration was adopted 16 years after the adoption of the democratic Constitution of the Republic of Macedonia, as well as the fact that the applicant was recruited by the security services while he was still a juvenile, and the cooperation stopped in 1983, or 27 years before the lustration procedure was initiated against him, the court is not convinced that after the expiry of this period, the applicant posed any threat whatsoever to the democratic society, so that it would justify such broad restrictions of his professional activities, because it is considered that this threat decreases significantly with the passage of time. Therefore, the court also found violation of Article 8 in this case.

Awarded non-pecuniary damage: 4,500 euro.

Procedure costs: 850 euro.

5. Confiscation of private property.

Vasilevski vs. the Republic of Macedonia[198]

In 2004 Mr. Ljupcho Vasilevski purchased a truck from the company M. and registered it in his name. But in 2006 the truck was confiscated on the basis of a court order issued in 2003 in a criminal procedure for trafficking sugar, against the former owner of that truck. The objection against the execution of the confiscation order was rejected as inadmissible. The criminal court believed that it had no procedural basis. The appeal of the applicant was rejected due to the same reasons.

In parallel, Mr. Vasilevski initiated a civil procedure, demanding to establish the fact that he was the owner of the truck and asking the state to restore it to his ownership. The courts, although they established that Mr. Vasilevski was a dutiful owner of the truck and that at the moment of purchase he was not aware that it had been used in commission of a crime, decided that the confiscation of the truck was mandatory according to the relevant national law.

Mr. Vasilevski alleged that he was deprived of his property, in breach of article 1 of Protocol 1 to the Convention. The court in Strasbourg established that the right of the applicant to peaceful enjoyment of his property was violated, and that the decision for confiscation included permanent transfer of ownership "The court determined that the execution of the confiscation decision, that had as a result removed the ownership title of the truck from the applicant, imposed an excessive burden on him"[199] . The Strasbourg Court found that there was a violation of this provision, and that the Republic of Macedonia needs to return the confiscated truck in the state it was at the time of the confiscation, or if that is not possible, to pay the applicant 5,400 euro for material damage.

198 Vasilevski vs. the Republic of Macedonia (Application No. 22653/08).
199 Case Vasilevski vs. the Republic of Macedonia (Application No. 22653/08), Judgment of 28th April 2016, Paragraph 61.

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