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DEFENDING HUMAN RIGHTS PROJECT

Macedonian Young Lawyers Association

ANNUAL REPORT 2017

ON THE EFFICIENCY OF THE LEGAL PROTECTION OF

HUMAN RIGHTS

IN THE REPUBLIC OF MACEDONIA

Skopje, December 2017

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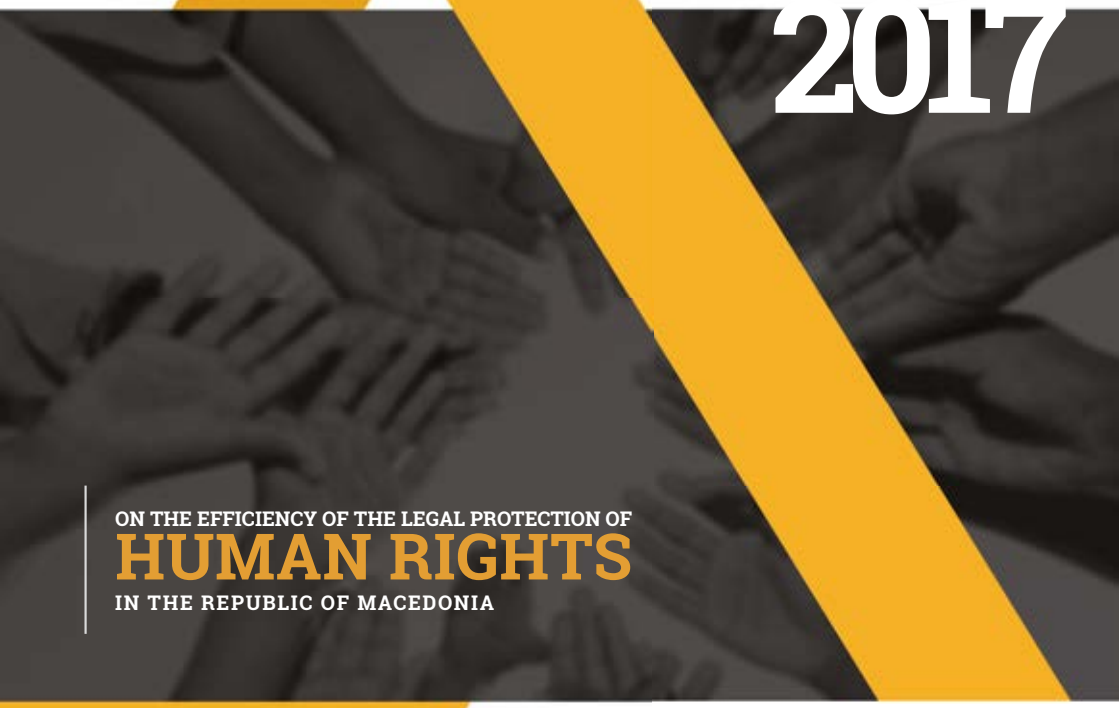

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ANNUAL REPORT ON THE EFFICIENCY OF THE LEGAL PROTECTION OF HUMAN RIGHTS IN THE REPUBLIC OF MACEDONIA

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LIST OF ABBREVIATIONS:

USAID	United States Agency for International Development
MYLA	Macedonian Young Lawyers Association
RM	Republic of Macedonia
SPPO	Special Public Prosecutor's Office
SEC	State Election Committee
PI	Penitentiary Institution
CC	Criminal Code
RIU	Rapid Interventions Unit
MLSP	Ministry of Labor and Social Policy
NPM	National Preventive Mechanism
RTC	Reception-Transit Center
CSOs	Civil Society Organizations
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
MPs	Members of Parliament
SRM	Socialist Republic of Macedonia
PPO	Public Prosecutor's Office
MoI	Ministry of Interior
CPD	Commission for Protection against Discrimination
MES	Ministry of Education and Science
CSW	Center for Social Work
LATP	Law on Asylum and Temporary Protection
LSP	Law on Social Protection
PRO	Public Revenue Office
LGAP	Law on General Administrative Procedure
FLA	Free Legal Aid

INTRODUCTORY REMARKS

About the report

The annual report on the efficiency of legal protection of human rights in the Republic of Macedonia (hereinafter referred to as the Report) is an activity of the USAID Defending Human Rights Project (hereinafter referred to as the Project), implemented by the Macedonian Young Lawyers Association (MYLA). The report, the third in a row[1], was written and produced with the aim of presenting the violations of human rights identified by the MYLA Project over the course of 2017. In addition to documenting the violations, the Report also analyzes the efficiency of the established mechanisms[2] for human rights protection. The Report also analyses the judgments of the European Court of Human Rights (ECtHR) concerning the Republic of Macedonia, where a violation of the rights protected by the ECHR has been found.

The Report has the aim of contributing towards creating a panorama of the 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 depending on the type of human right concerned. 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 ECtHR adopted in 2017, and pertaining to the Republic of Macedonia.

About the methodology used

When producing this Report, the team used a combined analytical-synthetic approach regarding the collection of data, documentation, and analysis. The Report has the goal of attaining the following research objectives: (1) to describe the human freedoms and rights violations that were documented by MYLA; and (2) to analyze whether the existing legal instruments and mechanisms, primarily legal remedies, are efficient in

1 2015 and 2016 Annual Reports are available at the MYLA's web page https://goo.gl/rf17Sn
2 Skaric S. Constitutional Law, Skopje 2006, p.331

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: 1. Documented complaints and information from citizens, received through the free-phone hotline: 0800 77 800; 2. Documented legal advice provided by attorneys; 3. Access to the documents in cases initiated with the assistance from the project; 4. Monitoring and accessing media articles related to cases of violations of human rights; 5. Insight into relevant international and national reports pertaining to the protection of human rights in the RM, the legislative activity; and 6. 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 used 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 that a violation of a human rights took place. This method places the focus on the following elements of the cases: 1. The context, i.e., the environment where the event took place; 2. The state of facts in each of the cases; 3. The relevant and applicable legal norms regulating the issue; 4. The legal remedies available in particular situations, i.e., their status of legal regulation and experiences from the procedures initiated; and 5. Legal points raised by the cases, and court practice.

The report period spans from January 1st 2017 through 30th October 2017.

On legal protection of human rights in the Republic of Macedonia

Fundamental rights and freedoms of humans are recognized in 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[3], 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[4]. 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 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 a state of war or a state of emergency, but even in such cases 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 Assembly of the RM, which has the purpose of protecting freedoms and the rights of citizens.

3 Chapter 2 of the Constitution of the RM

4 Regulated in articles 50-54 of the Constitution of the RM

Chapter 1: Documented violations of human rights in 2017

Rights related to life, body and person

1. The life, physical integrity, and the safety of Members of Parliament (MPs) and journalists present at the Assembly of the RM on the 27th of April 2017 were gravely endangered by a violent mob that entered the Assembly, being permitted to do so due to the total absence of any action by the Ministry of Interior (MOI) and the Security Service of the Assembly of the RM. The constitutive session of the Assembly on the 27th of April elected a president of the Assembly of the RM. An hour later, a certain number of citizens from the initiative "For Joint Macedonia" who had protested in front of the Assembly building body, violently entered the premises of the Assembly, unimpeded by anyone. The journalists present were recording live the movement and actions of the protesters through the premises, and their violent behavior. Some members of this mob were wearing masks, and headed directly towards the hall where the MPs from the parliamentary majority and media were, where they managed to enter and where they started throwing bars and other objects at hand.[5] Visible from published videos/footage that was filmed using mobile phones by the various persons present, it was noticed that some of the MPs were hit with fists, kicked, hit with chairs, bottles, and pulled and pushed around violently. During the entrance into the legislative body, and during the violence, as well as during the act of endangering the life, body and general safety of the MPs and the media teams caught up there, there was almost no police action or activities of the Assembly's security service. The order for action and a safe pull out, according to media reports, started two hours after the first physical attacks took place, followed by shock bombs, pushing and persuading that resulted in the Assembly building being emptied. This event became known among the public as "Bloody Thursday". The epilogue of the several hours' rampage at the legislative body was that 70 people injured citizens, 22 of whom were police officers, and four being MPs.[6]

2. Unjustifiably minor qualification of the criminal acts by the Basic

5 Source: http://24vesti.com.mk/shto-se-sluchuvashe-na-krvaviot-chetvrtok

6 Source: http://ombudsman.mk/mk/novosti_i_nastani/241396/reakcija_na_narodniot_pravobranitel_po_ povod_sluchuvanjata_so_nasilstvo_vo_sobranieto.aspx

Public Prosecutor in the indictments against the individuals that were members of the violent mob on 27th of April 2017. On the 30th of April 2017 MOI stated[7] that it has filed criminal charges against 15 persons who had taken part in the unrest at the Assembly of the RM. The criminal acts allegedly committed were: "Participation in a crowd, which prevents an official person from performing an official act" according to Article 384 from the Criminal Code of the RM, "Participation in a crowd which commits a crime" according to Article 385 from the Criminal Code of the RM. MOI, in front of the Basic Public Prosecutor submitted a separate notification to the organizers of the protests regarding the possibility of further investigation so as to allow for a complete legal resolution of the events on 27th of April this year. Only two participants in the event who attacked an MP and caused life-threatening injuries are suspects for the crime "attempted murder"[8]. Nearly a month after the event, the Public Prosecutor's Office (PPO) filed charges for only nine persons for crimes that are too lightly qualified[9] and do not correspond to the criminal event[10]. A statement from the President of the state, sent to his parliamentary majority, stating that "to have virtue and to show an act of goodwill through amnestying the suspected protesters" is worrying.[11]

3. Gynecologist continuously lied to his female patients, telling them that they were pregnant. Despite being informed about his unethical and unprofessional behavior, the Ministry of Health and the Medical Chamber of the RM did not take appropriate action. BThe second quarter of 2017 was marked by the information leaked to the public about the gynecologist who performed a series of medical examinations on women, the results of which were false, with these 'fake' results revealing that the women examined were pregnant, when indeed they were not. During the 'false' pregnancy, the doctor performed gynecological examinations, measured the cervix, verbally reassured the patients that they were pregnant, made them take medication and performed gynecological screenings for a detailed fetal examination.[12] One of the victims of the fake pregnancy diagnosis and subsequent unnecessary antenatal care filed charges against the gynecologist. The Public Prosecutor investigated the crimes, claiming: "Severe crimes against the health of people", "Fraud", "Falsifying an official document". Besides the criminal charges, the Medical Chamber of the R.M had been notified about this case (although it had had previous knowledge

7 The official statement of the MOI is available at http://www.mvr.gov.mk/vest/4050

8 Source: http://telma.com.mk/vesti/pravnicite-i-ekspertite-baraat-celosno-raschistuvanje-na-nastanita-vo-sobranieto

9 Source: https://www.slobodnaevropa.mk/a/28497383.html

10 In this regard, the Macedonian Helsinki Committee published separate document in which they analyzed 28 possible criminal acts from "The Bloody Thursday" events. The report is available at: http://mhc.org.mk/system/uploads/redactor_assets/documents/2282/Poseben_izvestaj_Sobranie_27_04_17.pdf

11 Source: http://24vesti.com.mk/amnestija-za-napagjachite-vo-sobranieto-ne-smee-da-ima-izjavata-na-ivanov-e-neumesna

12 Source: http://novatv.mk/ginekolog-devet-mesetsi-lazhel-patsientka-deka-e-bremena/

of the case. The Chamber stated that due to objective reasons, for a long period of time it had been unable to supervise the work of the gynecologist)[13] ; neither had the Ministry of Health (that knew about the case via submitted complaints received some years earlier and still the doctor has been transferred from the private sector to work in the public health sector).

4. The practice of conducting cadaveric transplantation of organs in the RM reveals serious shortcomings in the health system that significantly violates the dignity and integrity of families whose relatives were organ donors. In 2017, the MYLA became acquainted with the case of a 58-year-old woman who, due to a suffering a stroke, was referred to one of the hospitals in the capital city for treatment, where she later died. Following the death, the doctor in charge of the case notified the deceased woman's family that was the possibility that her kidneys could be donated by the family and subsequently save two children's lives. The deceased woman's family agreed to the donation of their deceased-mother's kidneys and signed a certain document, which they did not get a copy of. The transplant was then conducted without further consultation or dialogue with the deceased-mother's family. As an organ-donor, the family of the deceased has the right to reimbursement of the costs of the funeral paid by the state. When they scheduled the burial, at the time, in the presence of relatives and friends, the deceased's body did not arrive and the funeral was cancelled. The family had to look for the body with the assistance of the police and it was not found until the following day. The family were then given the body of their mother, naked, rolled in a bloody sheet, without a proper casket, with visibly incision marks on her front and back, with an incision in the kidney area and the head. No documentation was provided or given to the family. The funeral was then reorganized and rearranged for a new day/time, and the family has been subject to financial costs as a result. In the meantime, the son and the daughter sought the complete documentation for the medical history and transplantation procedure, but it was unsuccessful. The entire case is full of serious indications of crimes being committed against the dignity of the deceased person and the family of the deceased, as well as inflicting pecuniary and non-pecuniary to the deceased's family; namely, according to the decree on the manner of work of the coordinator for the taking and transplanting organs of the human body, and the amount of compensation given for the work performed, the care of the body of the deceased person from which an organ or tissue was taken is the responsibility of, and should be organized by the coordinator.[14] According to the Law on the Taking and Transplanting Parts of the Human Body for Treatment, the Ministry of Health enables and coordinates distribution and exchange of organs or tissues between authorized healthcare institutions[15] , while the Ministry performs these matters through the National Coordinator for Transplantation[16]. Therefore, and taking into consideration the entire legislation, it is visible that there are a series

13 Source:: http://novatv.mk/nova-otkriva-serija-zheni-zhrtvi-na-istiot-ginekolog/

14 Article 3 paragraph 4 from the Regulation

15 Article 54 par. 1 line 4 from the Law on transplantation

16 Ibid., paragraph 3

of omissions where the personality of the donors is questioned, as well as the respect for the dignity of the person and his/her basic human rights, which additionally casts doubt on the overall procedure for organizing the process of donation and organ transplantation in Macedonia.

5. Four cases of femicide in 2017. The MoI statistics[17] for the first half of 2017 in terms of domestic violence note one murder of a woman by her husband, and two attempted murders. In June 2017, an 84-year-old former police officer, for reasons unknown, took his legally owned gun and shot a bullet in direction of his 78 year old wife, and afterwards shot his daughter, with the shot subsequently inflicting upon her wounds in the head area.[18] When his grandson entered the house, he was also and died on the spot. After that, the killer took his own life, by a shooting himself in the head. His wife succumbed to her fatal injury in the throat and died in hospital.

In July, a 43-year-old woman from Skopje died in the hospital in Shuto Orizari, after a physical attack from her husband the previous day.[19] In August, 2017, criminal charges were filed against a 35-year-old citizen of Skopje who set his 32 year old ex-wife on fire[20]. He is a suspect for the crime of "murder" and according to the initial information, he confessed to the crime. According to the MoI he lured his former wife to the village of Ljuboten, where he poured gasoline over her in front of her child and then set her on fire.[20] The victim immediately died and the suspect ran away, together with the child, from the crime scene.

In September, a 38-year-old man reported himself to the police station as the killer of his former wife, a 27-years-old, who was found in Gostivar with stab wounds on the body, the result of injury from a sharp object, probably a knife. According to the public prosecutor, the woman died from a "violent death"[21].

Right to equality and protection from discrimination

6. Deprival of employment rights as a result of political affiliation of the employee. A 63-year-old high school physical education teacher was deprived

17 Source: http://www.akademik.mk/najranliva-kategorija-vo-semejnoto-nasilstvo-i-ponatamu-se-zhenite-se-notira-vo-polugodishniot-izveshtaj-na-mvr/
18 Source: http://sitel.com.mk/pochina-i-soprugata-na-ubiecot-od-butel
19 Source: http://vesti.mk/read/news/13604787/4691235/zhena-pochinala-vo-shuto-orizar-otkako-bila-istepana-od-soprugot
20 Source: http://fokus.mk/skopjanets-ja-zapalil-zhiva-svojata-poraneshna-sopruga/
21 Source: http://www.libertas.mk/osomnichen-za-ubistvoto-vo-gostivar-sa/

of the right to extend her employment contract upon reaching the age of 64. She was told that her contract for employment had been terminated, with the explanation that the worker had fulfilled the conditions for retirement although she was not yet 64 years of age. According to the Law on Labor Relations, the deadline for submitting a statement for extending the work contract is the 31st August of the current year, at the latest. The 63-year-old high school physical education teacher had submitted this document on the 11th April, and by doing so had respected the legal deadline. During her employment, she often had disagreements with the School Principal, especially when she was President of the School Board. She believes that the reason for her contract not being extended, i.e. terminating the contract, is her "political disobedience"[22].

7. Deprived of employment right due to a health condition. The person was employed at a company with a contract for an indefinite period. Towards the end of January 2017, due to back pain, rest and therapy were recommended and this person was put on sick leave. Due to the condition worsening, he underwent spinal surgery. At the end of the sick leave, he returned to work on 02.05.2017, and this is when intense discriminatory treatment towards him manifested through the following incidents: a reduction in his work obligations, although he was able to perform these tasks; forcing him to work part-time at half-wage'; pressure put on him to quit; mobbing; giving him an ultimatum to accept an offer to 'voluntarily' cancel his employment contract and to sign a new one for a limited period (until 01.09.2017). Due to the objective ability of the person to fulfill his working duties, he resisted this treatment. However, on 22.5.2017 he was fired due to so-called 'business reasons' although the company worked at the usual volume of production. From the circumstances of the case it can be clearly seen that the health issues of the person, and especially the extended sick leave, were decisive in changing his employers' attitude towards him, and for him to fired from the workplace.

8. Limited access to education for children with special needs. A 12-year-old child, with a disability, was enrolled in a special education school since the age of 7. According to his parent, the child was never assisted and engaged in the education process. Several years later the parent was informed that progress with their child could not be made and the school suggested that the child will be transferred to another school. However, regardless of the fact that the child did not attend classes regularly, and had made insufficient progress, the school had issued certificates that suggest a certain level of success. After the transfer to another specialized school, sadly progress with the child was scant; however, the institution, as with the first school, issued a certificate that suggested that the child had reached a certain level of success. But in fact, the child had not been engaged in the education process at all. Although article 30

22 Source: http://civilmedia.mk/polititchka-odmazda-ili-npoznava-na-pravoto/

of the Law on Elementary Education prescribes an obligation for the Minister of Education and for the Bureau for Development of the Education to determine a curriculum and programs for children with disabilities, the fact remains that on the website of the Bureau for Development of the Education, such programs are not available for the 1st through 6th grade, with the programs beginning only from 7th grade. Also, Article 42 of the Law stipulates that in a class where there are children with disabilities, a special educator may be engaged; most of the children with disabilities who are enrolled in regular education are accompanied by an expert (special educator), who is paid for by the parents themselves.

9. Discrimination based upon disability due to inaccessible infrastructure. A child with a physical disability has difficultly accessing the child's own house because the infrastructure is not adapted to the child's needs. The road that leads to the house has yet to be laid, and additionally, with a privatization procedure, the access route passes through neighbor's property. The house can only be reached via stairs and a steep roadway, and therefore access to the house is difficult even with the assistance of another person. Because of all this, as well as the quiescence of the local authorities in regard to adapting the infrastructure for the benefit and assistance of a disabled person, the child is forced to spend most of the time at home. Despite the numerous requests from the parent to the local authorities regarding the need to adapt the infrastructure to assist the child, the local authority has remained unwilling to act. As such a lawsuit will be submitted to the competent court to determine whether there has been a violation of the right to equality based on disability.

10. Limited access to water supply in settlements where the majority of residents are part of the ethnic Roma community. The residents of two Roma settlements (around 80 houses) in the Municipality of Prilep are facing a problem with the water supply. In these two settlements there is only one central fountain built with the cooperation of NGOs, but due to the fact that the municipality has not built an infrastructure, there is no pipeline network, and residents are unable to supply their homes with water. Therefore, the residents are forced to supply themselves with water from the central fountain in the settlement. Although it has been requested many times, the municipality has not taken any action with regard to solving this issue. According to Article 185 from the Law on Waters, the mayor is responsible for the *"development and maintenance of an efficient and economical system for drinking water supply in sufficient quantities and according to the requirements of all legal users",* an obligation also laid down in Article 22 from the Law on Local Self-governance that says that the municipalities are responsible for communal activities such as drinking water supply, technological water supply, drainage, and purification of wastewater.

11. Restricted access to restaurant services for persons from the ethnic Roma community. From direct talks with citizens it is evident that there are frequent cases when people from the ethnic Roma community have been denied access to coffee bars, restaurants, and discotheques. This practice is noted in almost every municipality in the RM and especially in the Municipality of Prilep where Roma are not even allowed to make a reservation at a restaurant for a family celebration. The explanation given to the Roma is that "we are fully-booked" and that "everything is reserved", although the café or the restaurant is completely empty. In 2016, the Commission for Protection against Discrimination (CPD) found evidence for discrimination, namely limiting access to public services based on ethnicity. In the case in front of the Commission, access to a swimming pool has been denied to persons from the Roma community only because of their ethnicity. Still, regardless of the recommendations of the CPD, the practice of Roma discrimination still persists in the RM.

12. Segregation of Roma children in elementary education. A case has been noted of Roma segregation in an elementary school in the Municipality of Stip. In the case of three classrooms of children enrolled in first grade, one is comprised solely of Roma children. In this case, the Ministry of Education and Science conducted a special inspection and found irregularities. The school principal did not follow the suggestions addressed to him by the MoES. The lawmaker's intention in terms of developing multiculturalism, interethnic integration and tolerance is clear. In that direction, Article 3-c from the Law on Primary Education prescribes organizing activities where the groups should be of mixed linguistic and ethnic composition.

13. Persons with recognized right to asylum under subsidiary protection have been denied the right to subsidies for their electricity bills. Persons with the recognized right to asylum under subsidiary protection have the right to housing in a residential place assigned to them, based on a decision from the PI Inter-municipal Center for Social work (PIIMCSW) of the City of Skopje. They also have a contract for the use of the residential space for a period of five years. At the same time, some of these persons have acquired the right to social financial aid. The MYLA was acquainted with the case of a person with the recognized right to asylum under subsidiary protection who enjoys the right to social financial aid, but is not the recipient of the right to subsidies for electricity bills. The electricity bills of one of these persons are paid in a timely manner. Due to a difficult financial situation, this person requested subventions for payment of the said bills, but when they addressed the Center for Social Work they were informed that this right is granted to Macedonian citizens only. Such an interpretation is neither based on the Law on Asylum and Temporary Protection (LATP), nor on the Law on Social Protection (LSP). The persons under subsidiary protection should enjoy the same rights regarding social protection,

as do Macedonian citizens. Therefore, this practice is discriminatory towards this group of people.

14. The intensified hate speech from public figures and politicians has contributed directly to the development of the events that occurred on 'Bloody Thursday". 'Bloody Thursday' is an event that, in itself, is littered with a series of detected violations of basic human rights and liberties. The statement preceding the event consisted of frequent calls for violence against political opponents. The same thing can be said about the media reports and speeches of public figures and politicians, as well as the daily calls of protesters from the initiative 'For Joint Macedonia' through which on several occasions the ethnic communities in the RM were referred to in a negative connotation. In isolated cases, there was a direct hate speech against political representatives, in the form of calls for their "death or lynching"[23].

15. Discrimination based on language in a local government. An employee in a municipality in Skopje was discriminated against on several occasions on the basis of language used at their place of work, in such a way that the head of the section did not allow him to use his native language in the everyday, informal communication with his colleagues[24] . Upon the submitted complaint on the head of the section's behavior, the CPD found that there is discrimination and recommended the violation be removed within a certain time period. The explanation of the recommendation is that the official language in the municipality is the Macedonian language, and it should be used in the official communication, but that everyone can use their native language in informal communication, and that this right cannot be restricted and prohibited for any employee in the municipality.[25]

16. Discriminatory content towards single-parent families in a fourth-grade Social Studies textbook. In a fourth-grade Social Studies textbook there is an exercise that asks the students to glue a picture of their parents' wedding and to write whether their parents were married at a church or at the registry office. This exercise is part of the curriculum and designed for every child. Civil society organizations reacted to this treatment that they consider disturbing and systematic towards all children and parents who live in non-traditional families, single-parent families, out of wedlock partnerships, or parents who were married but did not organize a wedding reception[26].

23 Source: http://mhc.org.mk/reports/586?locale=mk#.Walq3sgjGUk
24 Source: http://mhc.org.mk/reports/570?locale=mk#.Walq5cgjGUk
25 Ibid.
26 Source: https://goo.gl/gsDJCB

Freedom of religion

17. A principal of an elementary school forbade students to attend classes because the students were wearing scarves, due to religious reasons. The principal justified the decision on the basis of a letter sent from the Ministry of Education and Science. The elementary school principal's behavior was criticized by the Ombudsman, that had given directions that the Constitution of the RM and the ECHR prescribe freedom of religion and freedom of expression of religion. Moreover, according to the Convention on the Rights of the Child, the freedom of manifestation of religion can be limited only by restrictions provided by law, and such limitations are not stipulated within the Law on Elementary Education, or in the other legal regulations[27].

Freedom of association and expression of public protest

18. Arbitrary and targeted inspections and controls affecting CSOs in the RM. During the period from December 2016 to May 2017, 21 CSOs were subject to intense external control from the Public Revenue Office[28] (PRO). Simultaneously, within the same organizations, controls were conducted and data and documentation were collected for the purpose of investigative activities implemented by the Financial Police, upon the orders of the Public Prosecutor. The subject of the control and the data gathering were, although imprecisely defined, the entire financial work of these organizations from 2012 up to the present time. Controls were directed towards organizations working on human rights protection and democratization of Macedonian society, and which had publicly came forward against the policies of the then-ruling political parties on several occasions. Since the very beginning of the controls of the concerned CSOs it was pointed-out that such controls are neither regular nor lawful, and the same represent a form of pressure towards them.[29]

In addition to this, the fact that the controls coincided with parallel public statements by leading politicians that the process of "desoroization" on society will be initiated and a new "authentic" civil sector will be established[30] as well as a coordinated media attack[31] and climate of pressure on organizations

27 Source: http://www.pravdiko.mk/ombudsman-na-devojchinata-vo-ohrid-da-im-se-dozvoli-so-shamija-da-ja-sledat-nastavata/
28 Source: https://advox.globalvoices.org/2017/02/26/macedonias-ruling-party-is-draining-civil-society-groups-time-and-money/
29 Source: https://www.state.gov/documents/organization/265658.pdf
30 Source: https://monitor.civicus.org/newsfeed/2017/01/31/Maceonia-Soros-funded-civil-society/
31 Source: https://stopsoros.mk/

and individual activists[32]. On the 30th May 2017, a representative from the Anticorruption Commission of the RM publicly stated that the Commission had initiated the controls and sought from the PRO and Public Prosecutor to act[33]. On 17th November, the Minister of Internal Affairs, Oliver Spasovski, stated that all pre-investigative activities were to be terminated due to the fact that no evidence for illegal activities by the CSO's had been gathered[34].

19. Activists and organizations were publicly vilified and defamed as foreign mercenaries and traitors. In the first half of 2017 the previously initiated practice of publicly calling out and unjustifiably defaming CSOs and prominent activists as foreign mercenaries continued. This unethical and unprofessional treatment of targeting prominent intellectuals and activists, and of labeling them as "traitors" violates their right of association and public expression of thought. The vilification and the pressures included establishing a "civil" movement called "Stop Operation Soros"[35] which ran articles and media statements that were not based on truth, but rather gave false allegations, as well as revealing confidential information about persons who were deemed by the movement as being opponents.

20. Pressures and obstructions from the municipal Council of Valandovo towards the civil initiative "Safe Valandovo - SOS" that sought to conduct a local referendum where the citizens would vote "pro" or "against" opening mines on the territory of the municipality. In May 2017, the non-formal group of citizens from the Municipality of Valandovo "Safe Valandovo - SOS" submitted a citizens' initiative for organizing a local referendum. The aim of the initiative was for the citizens to be given an opportunity to vote "pro" or "against" in regard to opening mines on the territory of the municipality. Following the successful collection of 100 signatures for initiating a civil initiative for collecting the needed number of signatures for organizing a local referendum (20% of the total number of registered voters), the initiative faced obstructions and open threats and pressures by the local government. The obstructions, open threats and pressures were performed through prolonging the activities that the local government was obliged to carry out in regards to the legal deadlines in order to organize and conduct the referendum.

32 http://www.mcms.org.mk/images/docs/2017/izveshtaj-za-ovozmozhuvachkata-okolina-za-razvoj-na-gragjanskoto-opshtestvo-vo-makedonija-2016.pdf P. 11
33 Source: http://sdk.mk/index.php/makedonija/antikoruptsiskata-komisija-prva-ja-pochnala-desorosoizatsijata-shto-ja-naracha-gruevski-pobarala-kontrola-za-21-nevladina-organizatsija/
34 Source: http://24vesti.com.mk/zatvorena-istragata-za-desoroizacija
35 Source: https://www.facebook.com/stopoperacijasoros/

Right to privacy

21. Adoptees do not have the right to information about their biological parents. Person XX is an adoptee in a family, having been sheltered in the Orphanage for Infants and Children in Bitola until she was three years old, when based on a decision from the Center for Social Affairs, Skopje, she was to full adoption. She does not possess official data regarding her birth, early childhood, overall medical history and anamnesis, nor does she possess reports from social workers on her progress and adaptation at the Orphanage for Infants and Children in Bitola. Person XX has the need to form the complete picture about her emotional and psychological childhood development, as part of her private and family life, so she submitted a request for information on the adoption procedure to the Center for Social Work in Skopje. Upon this request, it was answered with a notification that did not have the proper form of an act in accordance to the Law on General Administrative Procedure (LGAP), stating that the date she had requested are confidential. Person XX then addressed the MLSP due to the silence of the administration to which, again, a proper act was not prepared, but merely notification was sent to person XX on the inability to provide the requested information to her. In a subsequent the appeal, it was pointed out that at the time when the adoption took place, the Law on Adoption of SRM (published in the Official Gazette of the RM no.5 from 12.02.1973) was applied, which does not prescribe secrecy of the data of biological parents in full adoption. Additionally, the person referred to the jurisprudence of the ECtHR in the case Godelli V Italy (33783/09). An administrative dispute has been initiated.

22. Citizens are yet to receive a judicial outcome and answer to the question of who tapped their telephone conversations, later published in the spring of 2015. The citizens of the RM, in 2017, did not get a judicial or parliamentary outcome and a determination of who was responsible for the wiretapping scandal that arose from the opposition party (CDCM) publishing the so-called "bombs" or wiretapped conversations between the politicians. The published conversations contained indications of committed crimes and caused the state to enter into a serious political crises that has yet to be resolved - even after two years. Particularly worrying is the fact that in addition to politicians, a number of journalists and non-governmental sector employees were also tapped. One of the first steps taken to resolve the eavesdropping scandal was the visit of a group of independent and experienced experts in the field of rule of law from the European Commission led by Reinhard Priebe, who produced a report (the so-called "Priebe Report"). This report precisely identifies the key shortcomings and problems in the rule of law that have contributed to the mass wiretapping.

23. Unlawful leaking of personal data of students from the Faculty of Mechanical Engineering. At the start of each school year, through the official mails of the Faculty of Mechanical Engineering, the personal data of over 4,700 students was "leaked". The data are from a database used by the Center for Development of New Businesses and the Career Center (bsc.ukim.edu.mk)[36]. One of the theories is that this database of personal data is possibly accumulated by different competitions and trainings for students organized by the new Business Start-up Centre at the Faculty of Mechanical Engineering[37]. The students received an email from info@mf.edu.mk with an attached Excel file which contained the following data: ID- identification number at the base where they are registered, user name, password, name, surname, date of birth, gender, personal e-mail, address, city, phone number, mobile phone, university and faculty, department, status (undefined), year of study at the moment of the recording, year of competition of faculty, and additionally undefined columns such as info and info BSC[38]. The danger is that persons with access to the network using the passwords can log into the social networks such as Facebook, Instagram, SnapChat using the personal e-mail listed at the base[39].

24. Personal data continue to be abused through the social network Facebook. The trend of abuse of personal data through the social network Facebook is still present. The abuse is most commonly seen in creating false profiles on the network or unauthorized entry into existing profiles and abuse of attached photos. The Directorate for personal data protection asked the citizens to protect their personal data, thus protecting their privacy. The reason for this request and for indecisive action from the Directorate is explained by the inability for a 100% guarantee of the right to privacy.

Social protection

25. Closure of the public soup kitchens in Kumanovo and Staro Nagoricane due to parliamentary and local elections affecting the local population at social risk. Soup kitchens in Kumanovo and Staro Nagoricane, for which food was prepared at the dormitory 'Professor Mijalkovikj', have fed over 230 families at social risk for 9 years. In Kumanovo food was served at two points of the soup kitchen: at the premises of the local community near the

36 Source: https://www.it.mk/lichni-podatotsi-na-nekolku-iljadi-studenti-se-shirat-po-mejl/ . It.mk
37 Ibid.
38 Source: https://www.it.mk/shto-da-pravite-dokolku-vashite-lichni-podatotsi-se-zloupotrebeni-na-studentskata-lista/
39 Ibid.

Musical School and at the green market at the October Revolution Boulevard. For users of Staro Nagorichane, food was served in the dormitory in the village of Dragomance. From Monday to Friday the beneficiaries received cooked meals, and for the weekends canned food. Since the 15th of February it has been closed due to the parliamentary elections and afterwards due to the local elections scheduled for October. The closure is explained as being because of the elections, and the fact that there is an absence of a responsible person conducting the public procurement process who cannot be employed due to the elections. As a result of this, the kitchens cannot procure the essentials needed to ensure the proper functioning of the soup kitchens. The poorest and the local population at social risk have been left alone to feed themselves, with some (the younger) forced to search for food in dumpsters, while the sick and the children are literally left starving[40].

26. Retirees suffered material harm as a consequence of their membership at the second pension fund due to fraudulent actions. In 2017 information was released and revealed that more than 300 citizens, recent retirees, had suffered material loss as a result of conscious misdirection and were insured in both the private and the mandatory state pension funds. The misdirection was conducted by the retirement agents of the private funds who had advised the affected citizens that their monthly pensions will not be affected by their membership in the private fund[41], contrary to the analyzes of the MLSP from 2007 which have showed that membership in the second pension fund will not be of interest to elderly persons and that they should only pay their monthly contribution to the state fund[42]. The discovery of such damage began when one of the insurers filed a complaint with the Ombudsman who conducted a procedure for investigating the case. The Ombudsman found that the amount of the pension due to insurance in the state pension fund and in one of the private funds is less than the supposed amount. Also, the Ombudsman found that these citizens were damaged because when signing a private pension fund contract they were not told that this would have a negative impact on their pensions[43].

27. Single parent of three, is unable to realize the right to parental allowance for a third child due to the length of preliminary administrative procedures. A single mother of three minors, submitted a request for the right to parental allowance for a third child after the legal deadline for application (up to three months upon child's birth). The reason for this is due to the late action of the directions of the officials at the registry office that saw that the

40 Source: https://sdk.mk/index.php/dopisna-mrezha/gladuvaat-230-kumanovski-sotsijaltsi-oti-narodnata-kujna-6-mesetsi-e-zatvorena-poradi-izborite/
41 Source: http://telma.com.mk/vesti/se-cheka-analizata-za-problemot-vo-penziite-od-vtoriot-stolb
42 Ibid.
43 Source: http://www.slobodenpecat.mk/naslovna/po-ve-ke-od-300-gra-ga-ni-ke-ze-ma-po-nis-ki-pen-zii/

mother has a different surname from the one that was requested for registering the child. The mother, following advice from the registry office, submitted a request to change her surname to her parents' surname. The procedure for changing the surname lasted for nearly two months and resulted in decision that she could change her surname. Once this decision had been completed, she submitted the documents for registering her son, the registration of which took an additional month. This caused the mother to miss the deadline for submitting a request for the right to parental allowance for a third child, which was confirmed with a decision of the MLSP when deciding upon her appeal and request for reverting into a previous state prior to expiration of the deadlines. In the second instance, the authorities did not accept the mother's appeal and did not take into consideration her request for reverting into a preceding state of the case, therefore, a lawsuit has been submitted for initiating an administrative dispute for assessing the legality of such a decision.

28. Only the mother can submit a request for parental allowance for a third child. A mother who gave birth to a third child, who takes care of the child directly, whose previous children are not placed in a social protection institution or given up for adoption, and who has not been deprived of the parental right of children from the previous order of birth, has the right to seek approval for parental allowance for a child, in accordance to the Law on Child Protection. Thereby, the mother must have had regular health examinations with a gynecologist and obstetrics specialist, and she would have had to have provided the child with mandatory health vaccinations, and the child must have been enrolled in a regular elementary school, unless, due to illness and injury, the child was unable to attend regular school, or has a certain degree of disability and is unable to be educated according to the law[44]. This allowance, according to the same law, can be exercised by the father of the child as his / her parent only when the mother is not alive, has left the child, or when she is prevented from taking care of him directly due to justified reasons[45]. The allowance for this type of right is received monthly, and amounts to 8,048.00 MKD. This allowance is limiting for the people who are struggling for existence so that their children cannot be send to school, which raises the question why it is the mother who is the bearer of this right, and not the father if he takes care of the child, takes him regularly to vaccines, enrolls him to school and is with him in the whole process of growth and development[46].

44 Art. 38 par. 4 и 5 from the Law on protection of the children

45 As a justifiable reasons in accordance with the art. 38 par. 9 from the Law on protection of the children are stated: long-term continuous hospital treatment of the mother, serious health problems, study visit, professional specialization and revoked legal capacity.

46 Source: https://10bez10.com/vesti/makedonija/6056-narodniot-pravobranitel-bara-i-tatkovcite-da-zemaat-pari-za-treto-dete

29. After two years of being in an administrative 'labyrinth', a person with 99% visual impairment is finally granted the right to have an administrative hearing regarding the assessment of the legality of the decision where her request for permanent financial aid was initially denied. A.I is person that besides having visual impairment, is also diagnosed has having diabetic retinopathy. As a result of the opinion of the medical council she is entitled to a first-degree allowance for blindness. However, as a member of a low income household, without any additional income, A.I submitted a request for permanent financial aid. The Center for Social Welfare gave a Decision denying the request, claiming it was ill-founded. A.I appealed to the MLSP within the legal deadlines. The MLSP, acting upon the appeal, passed a Conclusion for rejecting the appeal based on formal grounds. The A.I appealed this concluding decision. Concurrently, the Center for Social Affairs, acting *ex officio*, although informed about the pending appeal procedure, rendered a second first instance Decision, denying the right to permanent financial aid. A.I filed an appeal (for third time in the same case) against the newest Decision. This time, the Center for Social Affairs of the City of Skopje (and not the local Center) rendered a Decision for declining the appeal as ill-founded on formal grounds *(contradictio in adiecto).* Then A.I appealed this decision to the MLSP through the Center. However, yet again the Center instead of processing the appeal through the competent organ - the MLSP - wrote a letter to A.I informing her that she does not have the right to an appeal but to direct administrative dispute. As a result of this wrongful implementation of the Law on Administrative Procedure a petition was submitted for an inspection of the Center for Social Welfare. At the beginning of October 2017, MLSP decides to the take into consideration the appeal submitted in March 2017, however, once again MLSP passes decision by rejecting the appeal as unfounded. Even after two years odyssey in a legal labyrinth of writs, appeals and requests, A.I manages to receive a second instance decision. This represents a base for challenging the legality of the Administrative court's decision.

Right to healthcare:

30. Health protection of convicted and detained persons in penitentiary institutions is below any decent level. There has been no progress in the standard of health systems at the penitentiary institutions, and in fact, the situation is deteriorating and becoming non-functional. There is a lack of staff and a lack of equipment in the clinics with appropriate medical devices. There is no access to a doctor at the prisons, or it is limited to no later than 4.00pm. The frequent lack of medication is an obstacle in exercising the right to health protection of the convicted and detained persons. Over the past three years the Ombudsman has pointed out the need for a systemic regulation of health care, because the existing health system is dysfunctional. The Ombudsman has also stated that there exists the need to undertake urgent measures for the purpose of, removing these deficiencies and creating conditions that would provide health care for convicted and detained persons according to domestic and international standards[47].

31. After 10 years, the women of Shuto Orizari received access to a gynecologist. In the middle of 2017 in the Shuto Orizari municipality, the long-announced gynecological ordination began working. The women of Shuto Orizari had been left without a gynecologist for 10 years. It is estimated that more than 13,000 women in the reproductive age live in the Shuto Orizari, with most of them receiving social assistance, and living in substandard conditions, with many of them without health insurance. Multiple requests and protests from the Initiative of Roma Women from Shuto Orizari have pointed out that these women do not have the means to go to other settlements for treatment, besides which there is also the problem that were they able to get to other settlements for treatment, it's unlikely that they would be seen by the gynecologists there. For a certain period of time, the gynecology clinic was given under concession, but due to personal reasons of the gynecologist, the clinic stopped working several months later. Three years ago, under pressure from the public, a gynecologist from the Specialist Gynecological Hospital in Chair began coming, but this did not solve the problem as the visiting gynecologists were not able to issue prescriptions and referrals to the hospital[48].

32. Unpaid health insurance contributions to 220 MoI employees. Over 220 employees of the Ministry of Interior did not have health insurance over the course of 2017, according to the Independent Police Union (IPU). The Union requested that the MoI give a statement on this data, and explain why health insurance was not paid for some of the employees, and why for some of the

47 Source: http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf page 11
48 Source: http://novatv.mk/po-10-godini-ginekolog-vo-ambulantata-vo-shuto-orizari/

employees no payment had been made since December 2013. As a consequence of the non-payment of contributions, the employees of the Ministry of Interior did not have the right to health insurance. Therefore, the costs of health care services and medicines had to be covered by the employees themselves[49].

33. Alarmingly high infant mortality rate in the Republic of Macedonia In the first eight months of 2017, 127 infants died in Macedonia. In 2015, 198 infants died, and in the following year - 2016, that number had increased by almost 40 percent, or 273 deceased infants[50]. The infant mortality rate in Macedonia is 11.9% of 1,000, which is an alarming figure compared to the European average for 2015, which is 3.7% of 1,000[51]. After the death of four prematurely born babies at the Gynecology and Obstetrics Clinic in Skopje on the same night, the State Sanitary and Health Inspectorate conducted extraordinary controls. The inspectors identified a shortage of incubators, as well as the fact that two infants were placed in one incubator. On the night of the infants' death, there were 49 newborns in the intensive care unit, although the capacity was for only 25. Furthermore, due to a construction fault in the ventilation and thermoregulation system, the inspectors gave serious remarks about the situation in the operating rooms, in the curing room and, the working rooms. In several hospital rooms and basement rooms where the laboratories are located, the air moisture level was above the acceptable level[52]. The director of the clinic stated that 3,500-4,000 births are predicted annually at the clinic, and the clinic is dealing with 6,000 per year. The clinic has a shortage of nurses, midwives, neonatologists-pediatricians, and anesthetists. The staff is tired and the nurses are engaged in work every second night. The problem is the cytological laboratory where only two doctors/specialists and two laboratory technicians work, conducting between300-400 analyzes per day. In the breast-feeding room there is no running water, the sterilizers for diapers and heating of the milk bottles are old and outdated, as are the beds, and there are holes in the mattresses.

Right to a Healthy Environment

34. Significant air-pollution for most of the year effects the bigger urban centers where two-thirds of the citizens of the RM live. In 2017 the RM was ranked second in Europe in terms of pollution[53]. Today, Macedonia's cities top

49 Source:http://www.pravdiko.mk/vraboteni-vo-mvr-nemale-zdravstveno-osiguruvane/
50 Source: http://telma.com.mk/vesti/na-sekoi-32-chasa-vo-makedonija-umiralo-po-edno-novorodenche
51 Source: http://ec.europa.eu/eurostat/statistics-explained/index.php/Mortality_and_life_expectancy_statistics
52 Source: http://novatv.mk/uzhasot-na-ginekologija-pridonese-za-golemata-smrtnost-na-novorodenchina/
53 Source: https://www.numbeo.com/pollution/rankings_by_country.jsp?title=2017&region=150

the lists of the most polluted cities in Europe, while Skopje, Tetovo and Bitola are constantly at the top of such lists in terms of air-pollution. Sadly, this situation is no better from other environmental aspects either. Kumanovo, whilst not a big industrial city, falls into this category of cities. According to data from the measuring stations, at the beginning of the year pollution in Kumanovo reached over 950 micrograms of PM - 10 particles. In the same period, 996 micrograms of PM-10 particles were measured in Bitola; 885 in Gazi Baba; 795 in Karpos, and 763 in Rectorate. Annually in Macedonia, there are 900 to 1,000 deaths related to the air quality that is inhaled, and malignant diseases are on the rise[54]. As a result of this catastrophic situation, pulmonary, carcinogenic and almost all chronic and malignant diseases in Bitola and its surroundings, as well as in Tetovo and Skopje, are several times higher compared to Europe[55]. The City of Skopje, on the other hand, has data[56] derived from measurements and investigations that households are the largest source of pollution, causing 32% of the pollution, through utilizing their individual means for warming whilst transport emissions contribute 20%; dust 19%, and industry with 18%.

Children's Rights

35. Abuse of children and high-school students for use at political protests. In March 2017 the presence of high school students from several schools in Macedonia was observed at the protests "For Joint Macedonia" with banners in front of their schools with the words "3.00 o'clock is a good time for a revolt". The students were invited to participate in preserving the unity of Macedonia. The media[57] passed on testimonies from high school students who spoke about widespread calls, through leaflets, for students to leave classes and engage in protests. A principal of a high school in Prilep held a political speech to the students in the high school, while another principal of another high school in Prelip encouraged the students on to go on the protests that were in the defense of the former government. One of the Prilep school principals faced criminal charges for giving a nationalistic speech to the students. The principal of a Skopje high school, who was the donor of the then ruling party VMRO-DPMNE, ordered the students to leave the school at 3 pm[58]. All of these

54 Source: http://novatv.mk/gradonachalnitsite-bez-konkretni-merki-za-vozduhot-baraat-reshenija/
55 Source: http://fokus.mk/mokta-e-vo-graganite/
56 Information by the City of Skopje No. 17-1176/2 from 23.02.2017
57 Source: http://tv21.tv/mk/?p=122862
58 Source: http://www.slobodenpecat.mk/drustvo/si-la-te-ra-ni-uche-ni-tsi-te-od-jo-sip-broz-tito-da-odat-na-pro-test/

examples are just some of the actions of a number of responsible persons in schools who have used children, encouraging them to be present at political protests, which caused a series of reactions from the parents themselves, from the Ministry of Education, and the Ombudsman.

36. Inadequate legal and institutional protection of children who are victims of violence In 2017 there were several acts of violence against and between children, which highlighted serious problems in the legal and institutional protection of children who are victims of violence. In a mass fight during a football tournament between high school students from the state high school "Ilinden" and the state high school "Boro Petrusevski" five children from the first school were injured. A nine-year-old child from Ohrid was raped by two older children at the age of 10 and 12[59] , and an 11-year-old boy was abducted and raped by another minor near the road to Kitka in the settlement Dracevo[60]. These are just some of the 2017 notices that include violence against children in Macedonia. Although in Macedonia there exists a certain legal and institutional framework for the protection of children who are victims of violence, it has not led to a reduction of the problem of violence against children, nor has it provided adequate legal and psychosocial protection for children. The re-victimization of child victims often occurs in the proceedings following the reported violent act, primarily because of the lack of adequate knowledge by the professionals (social workers, health workers, educational institutions, etc.), but also by lawyers and the judiciary.

37. Poor conditions and improper protection at the state institutions that accommodate children. The Orphanage '11th October' is home to approximately 50 children for which the state acts like as a 'stepfather'. Besides the numerous donations from different persons and legal entities, the orphanage still has broken fence, dilapidated furniture, peeling paint on the walls, and broken doors. There are no plants and the facility has poor hygiene standards, and lacks any protection for the children living there[61]. A survey conducted by a news agency showed that this institution has had no progress at all, no matter how many donations have been made to help the children. Quite where the funds intended for the orphanage were ultimately spent, is questionable, given that there are no visible results of the spending. Such conditions in the orphanage point to total negligence on the part of the state, and those responsible for these children, children who are in the category of

59 Source: https://goo.gl/hALN4N
60 Source: https://kajgana.com/11-godishno-dete-siluvano-vo-skopsko-drachevo
61 Source: https://goo.gl/vqDw2V

'special vulnerable', and are living in an environment that is not in accord with any principle of child protection on a national or international level. Many of these children are constantly on the street and are additionally exposed to negative influences and violence, which raises the question of how they will stand on their own two feet once adults. Their integration into society is also problematic and is an added burden to the reality in which children without parents, whose rights are constantly violated, live.

Right to citizenship and a legal identity

38. Identified 27 stateless persons in 2017. As of September, the MYLA identified 27 new persons who are facing this problem. 8 of them are persons who are long-term regular residents of the Republic of Macedonia (who were born on its territory, but because they originate from one of the neighboring countries that were part of the former Yugoslavia, were not granted citizenship either for the Republic of Macedonia or of their country of origin), and 19 of them are children whose birth or personal name has not been registered in the birth registry book. Until September 20th, 2017, the MYLA assisted and provided legal aid to 31 persons who were granted citizenship of the Republic of Macedonia, and as a result of their receiving citizenship, they were able to exercise the other rights guaranteed by the Constitution and the laws such as access to free health care, education, social assistance, employment, etc. 22 children were registered in the birth registry book, and 18 of them as a result of this registration, were granted citizenship of the Republic of Macedonia. 24 persons, besides legal aid they received, were provided with financial assistance to regulate their stay in the Republic of Macedonia in accordance to the Law on Foreigners. Our goal is to assist these people in receiving Macedonian citizenship, but for this purpose it is necessary to regulate their stay as foreigners, according to the law, on a yearly basis.

39. Complex procedure for additional registration in the birth registry. The procedure does not respect the legally prescribed deadlines for resolving cases and reaching a decision, and the procedure still takes too long, especially in the cases of unregistered children born at home. Also, the procedure is even more complicated by the Law on Amendments to the Law on the Registering of Births. These amendments are intended to provide additional evidence in support of the request for additional enrollment, such as: pediatric confirmation

of the age of the child, DNA analysis, notarized statements from witnesses, etc. If the mother is a foreign national, additional evidence is required from the country of origin. All this complicates the already complex procedure for additional inscription, and because of this, it can last for several years as a result of which these children do not have access to the fundamental rights provided by the constitution and laws: access to citizenship, free health care, education, social assistance, employment, and so on. Additionally, some documents cannot be obtained at all because of the very expensive fee for obtaining them. In this way, the principle of economic efficiency and efficiency of the administrative procedure is violated, according to which the procedure should be carried out in the simplest way possible, thus reducing the costs for the parties involved. The problem is that the registry office in relation to the submitted requests does not reach a formal legal act - a conclusion to stop the procedure if there is insufficient evidence or a solution, even a negative one, which act could be appealed or against which could be filed a complaint to the Ombudsman for the protection of the rights of these children.

Right to an asylum and refugee integration

40. Deviating the deadlines in the asylum procedure. The MYLA, as of September 2017 had, over the year, represented 104 new asylum seekers in Macedonia. Out of this number of newly registered asylum seekers, 84 are men, 9 women, and 11 unaccompanied minors. During 2017, the Section for Asylum at the MoI recognized the right for asylum for 4 persons, 3 of them being unaccompanied minors, and were granted them status of persons under subsidiary protection. In 2017, the MoI did not grant a single recognized refugee status to anyone, as the most comprehensive form of international protection. The MYLA, during the conduct of asylum procedures, noted in many cases deviations from the legal deadlines. According to article 27 from the Law on Asylum and Temporary Protection (LATP), the regular procedure for recognizing the right to asylum is conducted by the Section for Asylum, and the section for Asylum is obliged to adopt the decision within six months from the day of submitting the request. In 2017, in part of the asylum procedures, the Section for Asylum brought the decisions on the applications for asylum two months after the expiration of the legally prescribed deadline.

41. Insufficiently explained decisions and limited access to evidence for asylum seekers whose applications have been rejected. In cases where the applicants' applications are rejected because the applicant is allegedly posing a danger to the security of the state, the applicant in question has no

insight into the evidence that the state claims to have, nor does the applicant in question have the right to appeal against such a decision. In cases where more persons belonging to the same country of origin, and actual factual situation, the Bureau for Security and Counterintelligence (UBK) gave a negative impression by issuing a confidential official note to which neither the Sector for Asylum nor the Administrative Court (due to the classification of the information it contains) has access. In other words, the administrative body reaches decisions without seeing the evidence, which violates the principle of material truth from Article 8 of the LGAP whose implementation is only possible with direct insight into the evidence material. Additionally, there is a no unified case-law in relation to cases involving these persons and different judgments are made in relation to same factual situations. As of September 2017, the Administrative Court has reached 17 verdicts in area of asylum, while the High Administrative Court has decided on only 1 case. In the procedures in front the Administrative and the High Administrative Court, it was noted that there is a delay in the procedure and failure to comply with the prescribed legal deadline of 2 months. The competent courts have never entered into the meritorious decision-making of cases in the field of asylum, nor have they held a public hearing, although the Law on Administrative Disputes envisages this.

42. Limited access to the labor market for asylum seekers. The asylum seekers whose request for recognition of the right to asylum that has not been resolved within a period of one year, are denied the right to free access to the labor market, which they are entitled to under Article 48 paragraph 1 line 7 of the LATP. The reason for this is that according to Article 13, paragraph 3 of the Labor Law, the employer has the obligation, in submitting the application to the Employment Agency of the Republic of Macedonia, to include among the other required data the Personal Identification Number (PIN) of the employee, and the legislation of the Republic of Macedonia does not provide an option for determining the personal identification number of the person seeking asylum. With this, persons who have escaped their home countries due to the persecution suffered in their own countries, and have found shelter in our country, do not have the opportunity to exercise their right to work.

43. Non-recognition of the recognized refugee status for persons who fled Kosovo to the RM in 1999. The MYLA, as of September 2017, has represented 650 refugees (originating from Kosovo) in the Republic of Macedonia. Of this number, 408 persons were recognized to have the right to asylum under subsidiary protection; 18 are recognized refugees; 188 persons have had their applications rejected, and 36 persons who regulated their stay in the RM according to the Law on Foreigners. In the course of 2017, 111 decisions were taken, of which 46 were concerned with the extension of the

right to asylum under subsidiary protection, and 12 were concerned with the recognition of the right to subsidiary protection, while for the termination of the right to asylum 53 decisions were taken, out of which 49 decisions were taken in accordance with Article 38 of the LATP, and 4 decisions pursuant to Article 6 of the LAPT (i.e. that these persons pose a threat to the security of the Republic of Macedonia and they do not have access to the evidence based on which their applications are rejected and the decisions are insufficiently reasoned). The practice of adopting decisions on the termination of the right to asylum in accordance with Article 6 of the LATP has drastically reduced compared to 2016, in which 32 such decisions were reached.

44. Administrative and judicial protection of asylum seekers in the Republic of Macedonia. As of September 2017, the Administrative Court reached 32 verdicts for persons with recognized right to asylum, while the High Administrative Court, as of 30.11.2017, had not decided on a single case. In the procedures in front the Administrative and the High Administrative Court, it was noted that there is a delay in the procedure and failure to comply with the prescribed legal deadline of 2 months. The procedure in front the Administrative Court pending an average judgment lasts 265 days, while the procedure in front the High Administrative Court the verdict is reached after 324 days from the moment the appeal is first filed. This violates the right to a trial within a reasonable time guaranteed by the ECHR. The competent courts have never entered into the meritorious decision-making of cases in the area of asylum, nor have they held a public hearing, although this is provided for in the Law on Administrative Disputes.

45. Obstacles in the process of integration of persons with recognized right to asylum in the Republic of Macedonia, especially in regard to procedures that are conducted in front of the Directorate for registering the registry books of the Republic of Macedonia, the Citizenship Department of the MOI and the CSW of the MLSP. In the procedures for admission into citizenship of the Republic of Macedonia of persons with recognized right to asylum, although the main condition for legal stay of 8 years (for a person under subsidiary protection), and 6 years (for a recognized refugee) in the Republic of Macedonia is achieved, an obstacle in the process of naturalization are some of the conditions provided in Article 7 of the Law on Citizenship of the Republic of Macedonia; namely, the necessary documents from the country of origin - Confirmation that there is no criminal record of procedure against the applicant, and proof of release from the citizenship of the applicant's country of origin. In addition to these documents, the Citizenship Department of the MOI also requires documents from the home country that are not written in

the Law on Citizenship of the Republic of Macedonia, such as birth certificate and marriage certificate (if the person is married).

Also, in the procedure for marriage of a person with recognized right to asylum under subsidiary protection or recognized refugee, required documents requested by the Directorate for Register of Registers of the Republic of Macedonia at the Ministry of Justice of the Republic of Macedonia are the documents from the country of origin - Birth certificate and Certificate of proving that the applicant is not married. It is unclear why these documents are required by these authorities, given that the authorities know that the applicants in these cases have a recognized right to asylum in the Republic of Macedonia, and thus they are under international protection and cannot make contact with their country of origin. The issuance of all personal and status documents in Macedonia is under the responsibility of the Sector for Asylum at the MOI.

Regarding the necessary proof of the place of residence in the procedure for admission to citizenship of the RM, in accordance with the conditions stipulated in Article 7 of the Law on Citizenship of the RM, the foreigner should "have provided evidence of a dwelling". Most of the people under subsidiary protection live in rented accommodation undergoing legalization (because of a cheap lease), or subject to hereditary proceedings, and the owners of these houses do not possess a title deed. The Department of Citizenship according to its interpretation as a proof of secured residence, considers the possession of a property certificate or a notarized lease agreement as such proof (for the notarization of this agreement, a title deed is required for the house being leased), although as such it is not specified in the Law on Citizenship of the RM. This is because the procedures in front of the Directorate for Registry Books of the Ministry of Justice of the Republic of Macedonia for registration of a newborn, whose parents are persons with recognized right to asylum, are longer than the same procedures for Macedonian citizens. These procedures take a long time since the parents with a recognized right to asylum should additionally obtain a certificate of their status from the Sector for Asylum at the Ministry of Interior and submit it to the Directorate. After obtaining a copy of the birth certificate for the newborn child, the copy should then be submitted to the Sector for Asylum at the Ministry of the Interior by the parents in order to determine a personal identification number for the child, in order for the child to get access to health and social services.

These documents may be (but are not) collected or exchanged by the Directorate and the Sector for Asylum, ex officio, in accordance with the Law on the acquisition and exchange of evidence and data in order to justify the purpose for which this law was created, i.e. to facilitate access to guaranteed rights. The Directorate should take into account that it decides on the rights of persons (and families) who belong to particularly vulnerable categories of persons living in the country.

Rights of foreigners and migrants

46. Limited access to territory of the RM. In 2017, the so-called 'Western Balkan Route' remained closed, and refugees and migrants were not allowed access onto the territory of the Republic of Macedonia. The number of people who have been irregularly transiting the country has significantly decreased compared to previous years. A relatively small number of refugees and migrants stayed in the transit centers of 'Vinojug' and 'Tabanovce', where they were not given a status in the country in accordance with the legislation. Throughout the year, Macedonian authorities continued the practice of returning refugees and migrants to Greece beyond any legal procedure prescribed by national legislation and without issuing a decision for expulsion. Without a solution, refugees and migrants did not have the opportunity to leave the country voluntarily for a specific time frame or challenge the decision to expel them in front of the State Commission, as prescribed by law. As a consequence, they were deprived of the most basic rights, including the access to information and access to a remedy with a suspension effect. According to the statistics of the MYLA, approximately 534 persons were returned in this way. In February 2017, Macedonian authorities, in coordination with Greek authorities, returned 49 refugees and migrants from the transit center 'Tabanovce' back to Greece. According to the MOI of the RM, the return was conducted in accordance with the re-admission agreement between Macedonia and the EU. It is important to point out that neither the persons who were returned nor the field organizations, including the MYLA, were informed of the return in advance. In this case, the Ombudsman expressed his concern and doubts that it was not, in fact, a re-admission, but an unlawful persecution against the law and contrary to the Convention on the Status of Refugees.[63]

47. Limited access to asylum procedure. According to the MYLA, in 2017, the majority of asylum seekers in Macedonia (almost 58%) sought asylum in front of the police in the Reception Center for Foreigners in Skopje[64]. To all of them, the access to the asylum procedure was made possible after the reasons for their detention ceased, that is, after the persons made a statement in front of the court as witnesses[65]. The refugees accommodated in the transit centers 'Tabanovce' and 'Vinojug', who wanted to apply for recognition of the right to asylum, also faced difficult access to the asylum procedure. The usual

62 MYLA Monthly Field Reports, available on: www.myla.org.mk;
63 Source: http://bit.ly/2xYezdW
64 Until 30.09.2017.
65 Macedonian Young Lawyers Association, "Semi-annual Report on the practices of detaining foreigners in Macedonia under immigration reasons (January – June 2017)", August 2017, available at: http://bit.ly/2xXVxog

practice of the police in these cases was to inform the MoI Sector of Asylum for any person who expressed a desire claim seek asylum. The asylum sector conducted an informal hearing with these persons before allowing them to apply for asylum, which is not in accordance with the procedure regulated in the LATP. In addition, persons were not provided with access to a legal representative, which is also contrary to the LATP that stipulates that asylum seekers have the right to legal aid at all stages of the procedure[66].

48. Deprival of liberty of foreigners for immigration reasons. In 2017, the practice of arbitrary deprival of liberty of foreigners from immigration reasons continued. At least 60 people were detained in the Reception Center for Foreigners in Skopje[67] without being properly informed about the legal basis and the possibilities for challenging the legality of their detention. According to the MYLA's observations, based on talks with some of the detainees, they were detained at the moment when they were traveling with smugglers of migrants. Almost all of them were informed by the police that they were witnesses in criminal proceedings against migrant smugglers and were released after giving a statement in front of a court[68]. According to the relevant legal framework[69], a foreigner may be detained in order to determine his identity and for forcible removal from the country. Consequently, the retention of witnesses for the purpose of securing statements in criminal proceedings is unconstitutional and contrary to Article 5 of the ECHR. According to the MYLA, the retention in 2017 lasted on average for 14 days, with the longest period of detention lasting 60 days. The conditions of the detentions vary from domestic and international standards, especially since people are not able to spend time outdoors/exercise.

49. A politically motivated campaign of xenophobia towards refugees. In the second half of 2017, in the wake of the local elections in the Republic of Macedonia, there was a campaign against the settlement of refugees or migrants in the country. As a result of this campaign, in 14 municipalities, referendums were announced for declaring the population 'for' or 'against' the settlement of refugees in their territory, and they were scheduled to be held the same day as the local elections in Macedonia. The State Inspectorate of Local Self-Government decided to stop the decisions on organizing local referendums on the settlement of refugees on the day of the local elections,

66 Law on Asylum and Temporary Protection (49/2003, 66/ 2007, 142/2008, 146/2009, 166/2012, 101/2015, 152/2015, 55/2016 & 71/2016).
67 As of 30.09.2017.
68 Macedonian Young Lawyers Association, "Semi-annual Report on the practices of detaining foreigners in Macedonia under immigration reasons (January – June 2017)", August 2017, available at http://bit.ly/2xXVxog
69 Law on Foreigners (35/2006, 66/2007, 117/2008, 92/2009, 156/2010, 158/2011, 84/2012, 13/2013, 147/2013, 148/2015 & 217/2015).

and initiated a procedure in front the Constitutional Court for determining the legality and constitutionality of the decisions for announcing a referendum adopted by the municipalities. The decision was made on the basis of Article 22 of the Law on Local Self-Government, according to which the municipalities do not have the competence to decide on the settlement and integration of refugees and/or migrants on their territory, because that competence lies with central government bodies[70]. What is further worrying is the statements of the representatives of the state institutions that in response to the campaign stated that the refugees will not inhabit (the RM), no apartments will be built, and that citizenship of the refugees in the Republic of Macedonia[71] will not be granted, which means disrespect of the obligations arising from the international conventions to which the Republic of Macedonia is a signatory, as well as the positive regulations in the Republic of Macedonia. All this contributed to the rise of feelings of xenophobia towards the refugees among the citizens of the Republic of Macedonia, which will complicate, and may impede, the process of integration of refugees into Macedonian society.

ACCESS TO JUSTICE IN MACEDONIA

50. The conditions which must be fulfilled in order for the applicant to exercise the right to free legal aid are restrictive and do not facilitate access to justice and access to institutions. We look at the case of a 71-year-old woman from Skopje, a retiree and recipient of a monthly pension of 10,800.00 MKD, with a retention of 3,740.00 mkd on the grounds of an Enforcement Warrant, who lives in a joint household with her son, daughter-in-law and their two young children. Her son is unemployed and her daughter-in-law receives an average monthly salary of 13,800.00 MKD. They own a 51m2 apartment, which is also the home in which the aforementioned people live. The applicant requested preliminary legal assistance from the MYLA to complete the FLA request being granted free legal aid in the court procedure which was to be initiated on the grounds of legal property issue. The request was filed on grounds of Article 12 paragraph 1 of the LFLA, as a person lacking sufficient amount of finances for paying the lawyers' services of assisting the applicant in the protection of her rights and interests before the court. Approval of the right to free legal aid would allow the applicant to obtain equal access to institutions and equal access to justice. The Ministry of Justice rendered a decision by which it did

70 Source: https://goo.gl/EVZSMv
71 Source: http://sitel.com.mk/carovska-nema-da-se-gradat-stanovi-za-migranti-i-begalci

not approve enjoyment of such right, elaborating that the applicant did not fulfill the requirements laid down in Article 12 paragraph 2 of the LFLA. Against this decision, a lawsuit was filed before the Administrative Court.

51. The procedure for evaluation of the Request for FLA breaches the legally stipulated deadline and is not guided by the principle of urgency. The applicant is a single parent of a disabled child, for which she receives a monthly special allowance. She is unemployed, since the child has specific needs and requires extensive care. Several years ago she was married, and although the marriage has not been officially annulled, the marriage is considered that it did not exist for which reason she then entered into a relationship with another man with whom she had a child. The excerpt from the Register of Births in the field of a Father, as per law, has the name of the man with whom the applicant was married, instead of the biological father of the child. The applicant requested preliminary legal aid for completing a request for FLA in a procedure for children and minors' protection; more precisely, for initiating a procedure for challenging and determining the child's biological father. The request was submitted in the first quarter of 2017, and the Ministry of Justice adopted a decision to approve the right at the beginning of the fourth quarter of 2017. With these actions of the first instance body, the principle of urgency of the procedure for approving the request for free legal aid was breached, i.e. the procedure lasted five times longer than the law stipulates it should.

52. Free legal aid does not cover the court fees for initiating litigation. The applicant was married to a person with whom they have three children, and one of the children had reached maturity. During the marriage, the applicant suffered various forms of domestic violence, and the situation escalated when her husband attacked her with a sharp object. As a consequence, the applicant suffered severe bodily injuries, namely a brain coma, and various fractures of the body and skull. The applicant requested preliminary legal assistance for completing three requests for FLA, as follows: 1. In the area of children and juveniles protection, 2. In the area of protection of victims of domestic violence, and 3. For solving property issue, i.e. initiation of inheritance proceeding covering the property of the applicant's deceased parent. The requests were submitted in the first quarter of 2017, and the Ministry of Justice, following the MYLA's previous interventions, has adopted only one decision for approving a request referring to the settlement of an issue in the area of children and juveniles protection, i.e. initiation of divorce procedure with determination of alimentation for the both of the minor children. With the approved attorney at law, a divorce procedure was initiated and an additional proposal was submitted for releasing the applicant from court fees, considering her financial and material condition. For the remaining two requests, the Ministry has not yet made a decision.

Chapter 2: EFFICIENCY OF THE CONSTITUTIONAL GUARANTEES FOR PROTECTION OF HUMAN RIGHTS IN 2017

2.1 Protection of human rights in front of the courts in the RM

The courts as protectors of human rights in the 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 subject that the courts must decide upon, alongside disputes between citizens, crimes and misdemeanors, as well as other matters of law under the competence the 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.** In contrast to this, disputes between citizens are decided upon through a litigation procedure; crimes and misdemeanors are decided upon within a criminal or a misdemeanor procedure; the assessment of the legality of individual acts is decided upon by the courts in an administrative dispute, while other matters are decided upon 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.

Case studies of cases decided upon by the courts in 2017

Case 1: LF v. Basic Court Skopje 2

The Supreme Court found a violation of the right to a trial within a reasonable period of time in favor of the defendant

a. Facts of the case:

On 21.08.2000 the legal predecessor of the AD for construction and management with residential and office space of importance to the Republic of Macedonia submits a proposal to the Basic Court Skopje 2 for passing decision based on a credible statement in amount of 29,340 denars against L.F. The dispute arose from the agreement for purchase of a socially owned apartment (social housing), solemnized by a notary public on September 28, 1999. On October 25, 2000, the court issued a decision approving the proposal. LF submitted a timely objection stating that there are no debts owed to the plaintiff, and that the claim does not have any legal basis.

14 years after filing the objection, the court scheduled the first main hearing on 7th April 2015, and judgment was passed on 24th February 2016. Thus, the total duration of the first instance procedure was 5 years 6 months, which is an unreasonably long period for a case of this kind, despite the complexity and scope of the case. It should be pointed out that for the entire duration of the process, the interest on arrears of the alleged debt accrued and was calculated into the debt, which only served to increase the uncertainty of the outcome of the procedure.

b. Description of the procedure after submitting the request for the protection of the right to a trial within a reasonable period of time:

On April 27th 2016, the applicant, represented by her attorney, submitted a request for protection of the right to a trial within a reasonable period of time, with a request for fair compensation under Articles 35 and 36 of the Law on Courts. Upon this request, the first instance Chamber of the Supreme Court rendered a decision on March 15th 2017[72], by which the applicant's request was adopted, it found violation of Article 6 paragraph 1 of the ECHR and a violation of Article 35 and 36 of the Law on Courts, and subsequently awarded 10,000 MKD to the applicant in the name of fair compensation for a violation. The applicant

72 Decision PSRRG No. 97/2016 from 15.03.2017 by The Supreme Court of Macedonia

considered that with the decision of the first instance Chamber of the Supreme Court, the factual situation was wrongly and incompletely determined, and that insufficient financial compensation had been awarded, considering the violation committed and the requested compensation to the amount of 200,000 MKD as well as compensation of the costs of the procedure amounting to 10,000 MKD.

L.F, dissatisfied with the amount of awarded remuneration because it was insufficient to compensate for the legal uncertainty in which she lived for 15 years, filed an appeal requesting further compensation. In the decision making and assessment of the reasonableness of the duration of the procedure, the Appeal Chamber assessed that the awarded monetary compensation of 10,000 MKD did not constitute adequate financial compensation, if it were taken into consideration the various facts and circumstances of the concrete case, and the criteria in accordance with the Law on Courts, in assessing the reasonableness of the duration of the procedure. The actions of the applicant had not affected the length of the proceedings, and the courts had not acted in a manner that allowed for the implementation of the procedure in the shortest possible time; ergo, the court was ineffective, and allowed for the process to be unnecessarily delayed.

The Supreme Court partially adopted the appeal[73] by changing the decision made on 15.3.2017 in regard to awarding a fair compensation to the applicant due to a violation of the trial within a reasonable time, so that besides the amount of 10,000 MKD, a further amount of 20,000 MKD was awarded, making a total amount of 30,000 MKD. This had to be paid within three months from the date of the decision of the Court Budget Council. In this way, the Appeals Chamber finds that awarding the fee is fair, given the circumstances of the case, and taking into account the case law of the ECtHR in cases against the Republic of Macedonia in similar cases, also the duration of the proceedings, the conduct of the court, the behavior of the applicant, the complexity of the case, and the economic and social position of the state, as well as the amount of the dispute about this question.

c. Conclusions:

The Supreme Court of the Republic of Macedonia found a violation of the right to a trial within a reasonable period of time, and with the second instance decision, it increased threefold the amount of money to be paid for fair compensation to be awarded to the applicant. This case is particularly important because it concerns the right to a trial within a reasonable period of time by a defendant who was in no way responsible for the delay, and was in fact forced to live for 15 years in uncertainty as to whether or not the court

73 Decision PSRRG No. 129/2017 from 02.10.2017 by The Supreme Court of Macedonia

case was actually over. However, the decision of the Supreme Court must have repercussions for the court that has allowed a very simple case from both a factual and legal point of view to take more than 15 years to be resolved.

Case 2 EK v. Ministry of Interior

The Basic Court Skopje 2 and the Skopje Court of Appeal continue to institute judgments by reference to a regulation that has no legal force in the Republic of Macedonia

a. Facts of the case:

EK is a Macedonian citizen of Roma ethnicity. On June 19, 2014, departing from Alexander the Great Airport, Skopje, she intended to travel to Constance, in the Federal Republic of Germany, travelling via Basel, Switzerland, to visit her sister. At Alexander the Great Airport she had with her a valid biometric passport, an invitation letter, a certificate of employment, and a certain quantity of cash. Passing through the border control in Skopje, the police officer on duty refused to give her permission to leave the territory of the Republic of Macedonia, giving the explanation that she does not fulfill the travel conditions for entering the destinations she plans to visit, and that there are indications that she would abuse the visa-free regime within the EU in order to seek asylum in one of the member states of the EU. According to the police officer, the invitation letter was written illegibly and she did not have enough financial resources with her. EK did not receive any written act that explains why she was refused to leave the territory of the Republic of Macedonia. Every other passenger on the flight, who was not Roma, was permitted to leave the territory of the Republic of Macedonia.

b. Description of initiated court procedure:

EE.K filed a lawsuit against the MoI on 18th July 2014 at the Basic Court Skopje 2. In the lawsuit she claimed that her constitutionally guaranteed right to freedom of movement was violated and that the prohibition of crossing the state border was as a result of her ethnicity. In the lawsuit, E.K stated that she has never been prosecuted, she is not a threat to the security of the Republic of Macedonia, nor is she a threat to the health of the citizens, essentially the only three reasons under the Constitution of the Republic of Macedonia that could forbid a person leaving Macedonian territory. The plaintiff also refers to the case of the ECtHR in the Stamose v. Bugaria (Application No. 2971/05).

As a response to the lawsuit, the MoI stated that it acted in accordance with the legal authorizations contained in Article 15 paragraph 4 of the Law

on Border Control. The main reason for not allowing the plaintiff to leave the country was that she did not have sufficient financial recourses for staying at the designated location, and for her return to the Republic of Macedonia. Therefore, there were indications that she would abuse the visa liberalization, which is a threat to the international relations of the Republic of Macedonia with the EU Member States. It was also explicitly pointed out that, with the intention of leaving the Republic of Macedonia, it is necessary to respect the constitutions and laws of other EU member states defined in Article 17 (1) of the Schengen Border Code.

After a five-month trial, the first-instance court ruled[74] to reject the lawsuit as unfounded. In the judgment, the court applied Articles 5, 6, 38 of the Law on Encryption and Protection against Discrimination, Article 2, 3, 4 and 8 of the Law on Border Control, Article 5 item C, Article 34 item C and Annex 25 of the Schengen Border code, focusing on Article 17 of this Act, with the interpretation that with the intention of leaving the territory of the Republic of Macedonia it is necessary to respect the conditions of entry and the right to freedom of movement within the territory of the EU Member States, the Schengen Border Code and the EU Directive of 29th April 2014. The Court concluded that there were no signs of discrimination, that the right to equality of the plaintiff had not been violated, that all persons were treated equally by the defendant and all the regulations in force in Macedonia were respected during the proceedings.

E.K appealed the judgment. In the appeal, E.K refers to the wrong and incompletely established factual situation and misapplication of the substantive law. The factual situation was not fully established because the court did not give clear reasons in terms of establishing, with certainty, what the official person made a decision on when he found that the plaintiff did not meet the necessary conditions for leaving her own country. Furthermore, the first-instance court did not establish with certainty whether the specific Schengen Border Code, which as a regulation is valid and applies exclusively to EU Member States. Hence, the main omission of the basic court is its failure to determine whether the Schengen Border Code can be adopted as part of the legislation of the Republic of Macedonia and accordingly a decision be based upon it. On the other hand, in the sequence of omissions in the first instance verdict, there were omissions in determining whether the code is being enforced and is only applicable when entering an EU member state and whether only official persons of an EU member state can prohibit entry into their country by referring to these terms.

74 Judgement XII П4 – 1277/14 rendered on 24.12.2014 by Basic Court Skopje 2

The appellate court upheld the appeal and decided[75] to abrogate the first instance judgment, and to return the case for another hearing. All allegations raised in the appeal were found by the second-instance court as grounded, and on their basis, the court also gave instructions for the first instance court to act in the new procedure. After hearing all the contested facts, the first instance court should, in the repeated procedure, be sure to determine whether EK fulfilled the conditions for exiting Macedonia, whether the authorized official did or did not act in accordance with the Constitution, the laws, the international agreements ratified by Macedonia, and most importantly, whether such actions had violated EK's right to equality and the right to free movement.

In the re-opening procedure, the first instance court, in the rendered judgment[76], re-established the factual situation as they had originally found. The court found that E.K did not have enough money and an original guarantee letter, therefore she was returned back from the border and her right to leave Macedonia was not enabled. This meant that she did not meet the conditions for entering Germany under Article 5 point C of the Schengen Border Code. According to this code, the border authorities of member states have the right to refuse entry and they make the final decision on entry, but given that the Schengen Border Code is a regulation of the European Parliament and the Council of Ministers of the EU, the court asks whether this regulation can be applied in Macedonia and in what way. In addition, the court found that the basis for applying the Schengen Border Code is the adoption of the Law on Ratification of the Stabilization and Association Agreement between Macedonia and the European Community and its members since 2001, as well as the candidate status of Macedonia for EU accession. Hence, and bearing in mind this law on ratification, the court considers that Macedonia and the European Community and its member states have undertaken an obligation to cooperate, in addition to areas such as that of visas, border control, asylum, migration, and in this regard the Government of the Republic of Macedonia undertook measures aimed at annulling this phenomenon of abuse of visa liberalization. The court continues with statement that applying the Schengen Border Code does not contravene the Constitution of Macedonia because Macedonia has committed to this type of cooperation by signing the Stabilization and Association Agreement. Given these reasons and although E.K was not allowed to exit the country, the court considers that in this particular case, it is not a matter of discrimination and violation of the right to a freedom of movement

E.K appeals against a first-instance judgment in which it is again decided to reject her claim in full. In general, the appeal is concentrated on the scope of the Law on Ratification of the Stabilization and Association Agreement between the Republic of Macedonia and the European Community

75 Decision GZ – 2958/15 rendered on 07.07.2016 by the Court of Appeal Skopje
76 Judgment XVIII П4 no. 785/16 rendered on 29.03.2017 by the Basic Court Skopje 2

and its members since 2001, which the first instance court takes as the basis for rejecting the claim. Considering the content of the provisions of the treaty, the heart of the main argument is that there is no established way or opportunity to forbid exit from the state. Regarding the Schengen Border Code, it is stated that it is exclusively valid and applied in EU member states and signatory countries on the very border code, and Macedonia is not a member of the EU. From this aspect, this code is not part of the legislative framework of the Republic of Macedonia, so it is completely unclear how a first instance court can base a decision on a regulation that is not part of the domestic regulations. In addition, as an argument more in the complaint, the stress was given to the burden of proof in cases of discrimination. Hence, the defendant during the entire procedure (both the first procedure and the procedure for a further trial and proceeding), did not submit any evidence that would have established that they had been banned from exiting and that they were required to inspect other accompanying documents and evidence of persons who are not members of the Roma ethnic community.

The complaint lodged by E.K was rejected as unfounded by a July 2017 Judgment[77]. The second-instance court takes the view that for the plaintiff, E.K, to stay in Germany she first needed a sufficient amount of money that she in fact did not have, and a guarantee letter was missing in its original form. These conditions derive from the second-instance court from Article 5 point C of the Schengen Border Code. In light of the above, the court considers that the first instance court passed the correct judgment when it took the Association Agreement and the Stabilization Agreement as the basis for applying the Schengen Code, in accordance with the Law on Ratification of the Agreement. In this respect, the second instance court found there to be no discrimination against the plaintiff on a national basis, even though she was not allowed to leave her own state.

c. Conclusions:

The Courts standpoint where the 2001 Stabilization and Association Agreement is the basis for application of the Schengen bordering code is completely wrong.

The Schengen Border Code[78] is a regulation of the European Parliament and the Council of the EU, which establishes community rules governing the

77 Judgment GZ-3994/17 rendered on 17.07.2017 by the Court of Appeal Skopje
78 REGULATION (EC) No 562/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)
79 Although this is not allowed. According Article 98 from the Constitution of Republic of Macedonia and the Article 2 paragraph 1 from the Law on courts, the courts rule and establish their decisions on the basis of the Constitution, laws and international agreements ratified in accordance with the Constitution. The Schengen Border Code is not among these regulations.

movement of persons across borders. This Code should not be confused with the Schengen Agreement. The regulation is a legally binding instruction that has a direct legal effect on the entire territory of the EU. Such a regulation is legally educational for the states that are members of the EU. The Republic of Macedonia is not a member of the EU and, accordingly, until Macedonia joins the EU, EU regulations are not a source of law in the Republic of Macedonia, and the decisions and actions of state bodies and courts cannot be based upon them. If the courts are already referring to this regulation , and in fact indicate Article 13 of this regulation, which clearly points that in case of refusal to enter the countries of the Schengen Zone, a reasoned decision must be made and submitted, on which the person will have the right to appeal. That was not the case with the treatment of the border guards in the Republic of Macedonia.

Establishing a court decision on the basis of such a regulation is a large violation because it does not represent an international agreement nor is it ratified and hence part of the Macedonian legislation. In addition, Macedonia has not committed itself to nor may it be obliged to directly apply the Schengen Border Code. Regulations as separate legal instructions under Article 288 of the agreement on the Functioning of the EU are directly and fully binding only for and to the EU Member States. The Stabilization and Association Agreement does not contain any provision that the Republic of Macedonia has committed to the direct application of EU legal acts in its internal affairs.

Case 3: EK v. PHI General Hospital Kocani

The Court found a violation of the rights of a patient injured by a medical intervention

a. The case facts

Person E.K., a citizen of the Republic of Macedonia, living in Berovo, whilst carrying out everyday chores at home, injured his left hand (in the area of the palm) with an ax. Following the injury, he went to a clinic where his wounds were bandaged, but because of the nature of the wounds he was referred to JZU General Hospital, Kochani. In the General Hospital in Kocani, he was diagnosed and treated for an incision on the index finger, the third, and the fourth finger on his left hand. His wounds were surgically processed with stiches. His hand was immobilized, but no X-ray was taken although mandatory for such injures according to medical protocols. The next day, due to intense pain, he went to a doctor at the health center in Berovo where he was X-rayed

and a fracture of the second finger was diagnosed, which had been damaged as a result of the previous immobilization. The plaintiff, on his own initiative, went to a private hospital in Bulgaria where he was diagnosed with having a lesion of the extensor muscle of the third finger, and this was then surgically intervened-sutured. E.K will have a lifelong inability to move one of his fingers as a result of the medical negligence and incompetence.

b. Description of the initiated court procedure:

E.K. filed a lawsuit at Basic Court in Kocani against the JZU General Hospital, Kocani asking the Court to establish that the defendant violated the plaintiff's right to be fully informed of the recommended medical interventions as well as their implementation, and the right to timely and effective treatment. The lawsuit also required the Court to determine that the defendant's hospital violated the plaintiff's right to proper care, treatment and rehabilitation in accordance with his individual needs in order to achieve the highest possible personal health care in accordance with medical protocols.

The plaintiff claims that the treatment of his injured fingers was done contrary to the established medical treatment rules, thereby violating the Law on the Protection of Patients' Rights. The plaintiff also refers to the finding and the opinion of the expert person - a specialist in general surgery, a subspecialist on traumatology where it was noted that during the treatment of the plaintiff's injury, a surgeon employed by the defendant, missed to carry out a physical examination of the plaintiff's injured fingers. If the physical examination had been carried out, the inability to move the third finger should have been detected after the x-ray examination, which was determined by the radiologists at the Berovo Health Center as a broken finger in remediation and that as a result, the plaintiff now has reduced mobility of the third finger.

In response to the lawsuit, the defendant disputes the lawsuit and states that the negligent treatment referred to by the plaintiff is a fact that should undoubtedly be established, i.e., supported by a legally valid verdict in a criminal court that will determine the responsibility and guilt of a specific perpetrator. It also states that the defendant cannot be held liable for the non-pecuniary damage of the plaintiff because the infringement was caused by the plaintiff himself, and the defendant only treated the injury.

With the first instance judgment[80], the Kocani Court of First Instance rejected the plaintiff's lawsuit. According to the court, the findings of the expert are insufficient to determine whether the surgeon acted negligently and in that

80 Judgment MALVP no. 78/16 rendered on 07.12.2016 by the Basic Court, Kochani

way breached the plaintiff's right for timely and efficient medical treatment and hence endangering his health. According to the Court, the existence of convicting criminal sentence for the doctor is a condition necessary for determining responsibility of the defendant in a procedure.

Regardless of this, the court pointed out that each doctor gives a diagnosis according to his knowledge and experience, and this was done in this case because he gave an examination of the defendant, whereby the plaintiff was provided with appropriate medical treatment in accordance with the rules of the medical profession and in accordance with the Law on Protection the Rights of Patients.

The plaintiff appealed to the Appellate Court that the basic court, when adopting the contested decision, committed a grave breach of civil procedure, since there was inadequate reasoning for the decisive facts in the explanation; there was a contradiction between the pronouncement of the contested decision and the reasons given in the explanation for the decisive facts. Also, the plaintiff complained that the reasons given by the first-instance court for lack of responsibility of the defendant for violation of rights and non-pecuniary damage were unclear and incomplete.

The Appellate Court upheld[81] the appeal, revoked the first instance judgment and returned the case for retrial. This court found that the first-instance court did not determine the decisive facts on which the merits of the claim depend. In this respect, the Court did not determine with what kind of violation the defendant appeared at the examination of the defendant and in what way the treatment of the injury should have been carried out according to the medical science and medical protocols, that is, in the case the doctor was obliged to perform physical examination of the injured fingers and an X-ray examination to determine the fractures of the middle phalanx of the middle finger or such an injury could be determined without an X-ray. Also, the court did not determine whether the prolonged treatment of the plaintiff and the reduced mobility of his third finger are related.

The Appellate Court stated that during the second trial, the Basic Court will have to give sufficiently clear and reasoned explanations for the decisive facts; to present evidence that has already been presented; invite an expert to the trial to determine the cause and effect relationship between the doctor's medical treatment given to the defendant, and the consequences that the plaintiff now endures due to reduced mobility of the third finger; and to take into account the provision of responsibility of the employer from the Law on Obligations.

81 Decision GZ-214/17 rendered on 20.02.2017 by the Court of Appeal, Shtip
82 Judgment MALVP no. 33/17 rendered on 16.05.2017 by the Basic Court, Kochani

After the retrial, the Court of First Instance, Kocani passed a judgment[82] stating that the defendant violated the plaintiff's right to be fully informed of the recommended medical interventions as well as their implementation; the right to timely and effective treatment, and that this subsequently endangered his health. The court also found that the defendant violated the right of the plaintiff to care, treatment, and rehabilitation in accordance with his individual needs and abilities in order to achieve the highest possible level of health in accordance with the available methods and medicine. Therefore, the court ruled that the defendant pay the plaintiff a total amount of 100,000 MKD in the name of fair financial compensation for non-pecuniary damage. Also, there was a failure to diagnose the fracture of the middle phalanx of the middle finger that was only recorded after the first examination, being later diagnosed by a radiologist at the Berovo Health Center. Subsequently, the plaintiff had reduced mobility and usage of that finger. In particular, the consequences suffered by the plaintiff due to the reduced mobility and usage of the finger were due to the treatment provided by the doctor which is the responsibility of the JZU General Hospital, Kocani, being the defendant's employer, and as such the hospital is obliged to pay compensation for non-pecuniary damage.

c. Conclusions

This case points to problems in the health care system, as well as violation of patients' rights. It is about the failure of the doctor to do something that he should do, in this case, to perform a physical examination on the injured fingers of a patient, in which the inability of the patient to move his finger again during his lifetime would be determined. As a result of this error, the patient suffers from psychological and physical pain which resulted in undertaking a surgery in a private hospital outside the Republic of Macedonia.

Regarding the court procedure after the filed lawsuit, the first instance court initially did not find fault with the plaintiff, but put in place a condition - the existence of another procedure (criminal or disciplinary) where the responsibility of the doctor would be established. After the accepted appeal to the Court of Appeal in the repeated procedure, the Basic Court acted upon the guidelines of the second instance court, to wit, this time the court found a violation of the plaintiff's right, and by assessing the evidence and listening to the expert brought in for the trial in connection with his finding and opinion, found an objective responsibility with the defendant - JZU General Hospital, Kocani, due to the failure in the treatment performed by the doctor, which was the cause of the consequences that the plaintiff suffered because of the reduced mobility of the plaintiff's third finger.

Case 4: X.X versus the Office for Management of Registers of Births, Marriages and Deaths

The first decision, with the full jurisdiction for changes of data in the Register of births, and the nullification of a Personal Identification Number

a. Facts

A 21-year old (X.X.), upon the professional opinion of a specialized psychiatrist, underwent hormonal therapy to facilitate a sex. This therapy resulted in X.X. exhibiting the secondary characteristics of a woman, and after one year of therapy, X.X. underwent surgery to change the external sexual characteristics. The final result was the acquisition of the external sexual characteristics of a female. With this surgery, her gender identity had been fully harmonized with her sexual characteristics. She is female in appearance, with a typical female name, but legally she is still a man, since her entry in the Register of births, and her identification document, contain a mark indicating that she is a man.

b. Description of the administrative procedure that preceded the administrative dispute

The party, represented by her proxy representative, submitted a Request for correction of the data in the Register for births, to the Office for Management of the Registers of Births, Marriages and Deaths, through the Ministry of Justice. The Request was submitted on the grounds of the Law on register records and the Law on general administrative procedure, so, as per Article 23 from the Law on register records, it was requested that a Decision be reached for correction of the data regarding the entered sex; essentially, instead of male, female be written in the register. Attached to the Request, the proxy representative delivered all the necessary evidence; medical documentation confirming that the party, after many medical interventions (hormonal therapy, surgery on the upper part of the body, and surgery on the genitalia), had now changed her sex.

The Office for Management of the Registers of Births, Marriages and Deaths, reached a decision[83] by which it denied the Request with the explanation that it is not authorized to decide upon such a Request. In the Decision, besides the statement regarding the lack of authorization to actually decide, the Office stepped into determining the factual situation, and accepted all the evidence attached to the Request. Nonetheless, the Decision did not contain the legal grounds on quite why such a decision was reached, but it only plain quotation of the legal provisions without explanation whether the evidence had been examined, and without any attempt to connect the evidence with the factual situation in a manner as described in the Request. Therefore, the first instance

83 Decision UP no. 0904/269 from 03.03.2015 of the Office for Management of Registers of Births, Marriages and Deaths within the Ministry of Justice

Decision was arbitrary, based on a personal standing of the persons reaching such decision, and subsequently, it was not based on any law.

The Proxy representative of the party filed a timely Appeal against the first instance Decision. In the Appeal, the Proxy representative insisted on applying the Law on register records, where it is explicitly stated that the only authorized body for keeping the register records is the Office for Management of the Registers for Births, Marriages and Deaths, depending on the place of residence of the person filing the Request. Attached to the Appeal, the Proxy representative added evidence showing that the Office had once before acted upon a case similar to this one - for change of data regarding sex. The Appeal emphasized the breach of the basic freedoms and rights of the party – right to privacy, physical and moral integrity as per Article 11 of the Constitution of Republic of Macedonia, and Article 8 from the European Convention on Human Rights and Freedoms. Since here the principle of rule of law was called into dispute, the party, through her Proxy representative, inter alia, addressed the standing of the European Court of Human Rights that the State must incorporate measures for legal protection against the arbitrary acting of the state bodies when it comes to the rights guaranteed with the Convention, especially since the failure of the State to adopt legal measures for providing legal recognition of the changed sex is a breach of Article 8 from the Convention.

Deciding upon the Appeal, the Ministry of Justice decided to reject[84] the Decision as unfounded, and to confirm the first instance decision. In summary of its Decision, the Ministry stated that the given arguments were unfounded, and that the Director of the Office for Management of the Registers for Births, Marriages and Deaths was right to reject the Request for correction of data as unfounded. Further in the Decision it is stated that although the Office is authorized to change data, "... there is no legal regulative in Macedonia addressing this issue". Regarding the breach of Article 8 of the European Convention of Human rights, the second instance body decided that in this case there is no such breach, "...since this provision does not address trans-sexuality, which means that it cannot create an obligation for the states which have ratified the Convention, to ratify international acts which regulate trans-sexuality, and to make them a part of the national legislative."

c. Administrative Dispute Procedure

The party, through her Proxy representative filed a lawsuit against the second instance Decision to the Administrative Court of Republic of Macedonia, on grounds of it being a wrongful and incomplete factual situation, misapplication of the material law, and misapplication of the law in the procedure preceding the passing of the act in which the Act was reached. While describing the wrongful and incomplete factual situation, the Proxy representative stated the failure to take into account, the overall surgery and

84 Decision no. UP2. 07-38/2015 from 16.10.2015 of the Ministry of Justice

medical procedures which the party undertook for the biological change of the sex. Also, the authorized bodies did not consider the fact that the plaintiff was exposed to a breach of her right to privacy and personal integrity during each and every interaction with the institutions, when filing requests for granting and access to goods and services by the state or private legal entities as well as in numerous other situations requiring that she identified herself. The Lawsuit, in the part which argues for the misapplication of the material law, states that the failure arising from the finding of the second instance body that there is no legal regulation addressing this issue by emphasizing the constitutional principle given in Article 8 par.2 that Everything which is not forbidden by the Constitution or law, is allowed. Hence the absence of the limitation to perform the requested change of data in the Register of births, without taking into consideration the fact that the Office had already once made such changes for another person. From this point, the existence of a legal vacuum in the national legislation upon a certain issue may not be treated as a justification for breach of the rights of the citizens, and failure to act and decide upon the legal affair. Certainly in this situation, the offices and state bodies must obey Article 118 from the Constitution of the Republic of Macedonia, since the obligation for acting upon the ECHR arises from there.

This was the first time for the Administrative Court of the Republic of Macedonia to reach a full jurisdiction Decision[85] by which it decided to accept the Request of the plaintiff, to perform the requested change in the data as given in the Register of births in the field "sex", and to nullify the personal identification number. It also obliged the body authorized for keeping the register of births to act ex officio and to deliver to the Ministry of Interior a Request for granting new Personal Identification Number, and it also obliged the Ministry of Interior to grant a new Personal Identification Number to the plaintiff. In the Verdict, the Administrative Court referred to Article 8 of the ECHR; the right to respect one's private life. The most significant part of this decision is that the Court applied case law and took into consideration the standing of the ECtHR from the Verdict in which it talks about the need for "improved social acceptance of the transsexuals and for legal recognition of the new sexual identity of trans-sexuals after undergoing a surgery..."[86]. The Verdict also states that, "... the sexual identity is one of the most intimate parts of the private life of a person... as per Article 8 of the Convention, the definition of personal autonomy is a significant principle which is the basis for the interpretation of the limits contained by this Article, protects the personal sphere of each individual, including their right to determining data for their identity as an individual...". Furthermore, the Administrative court calls upon another judgment from the ECtHR, according to which "... the affirmative obligation as per Article 8 obliges the States to conduct the recognition of the changes in the sex of trans-sexuals after undergoing surgery, through changes and amendments of their data for civil status with the consequences that follow"[87].

85 Decision UI no. 16/2017 from 25.09.2017 of the Administrative Court of the Republic of Macedonia
86 Judgment Christine Goodviwin v.s UK, no. 28957/95 from 11th July 2002
87 Judgment H v.s Finland No. 37359/09 from November 13th 2012

d. Conclusions

This is the first case in Macedonia where the Administrative court has fully fulfilled its function of a corrective of the legality of the acts reached by the lower bodies, especially since this is the first time that a Decision in full jurisdiction has been reached. This case is even more significant due to the fact that the basic human right, Right to a private life, has been dully respected by the application of the national and international normative. Nonetheless, what still raises concerns is the fact that the sensibility of one of the most important bodies which manage the elementary administrative affairs and issues is absent (in this area, as well as the authorized persons reaching the main decisions. This is unavoidably connected to the lack of professional capability of the management to recognize the meaning and significance of the human rights which are accepted as international standards.

Case 5: A. and others vs. Ministry of Interior

A study of 10 cases before the Administrative Court of Republic of Macedonia, regarding the protection of the right to asylum in the Republic of Macedonia, indicating an inconsistent application of the law by the courts

a. Facts:

These cases are administrative disputes against Decisions reached by the Sector for Asylum within the MoI, by which the right to subsidiary protection has been terminated as per Article 6 of the Law on Asylum and Temporary Protection. The administrative disputes have arisen from Decisions of the MoI, by which 10 persons under subsidiary protection for a longer period of time received termination of their right to asylum, with the explanation that they are allegedly a threat to the safety of Macedonia. These persons are originally from Kosovo and have resided in Macedonia for more than 17 years now.

The plaintiffs initiated individual administrative disputes by filing individual lawsuits to challenge the reached decisions due to incomplete determination of the factual situation that states that the plaintiff is a threat to the safety of the State, since there is no evidence to prove this fact.

b. Reached decisions:

In four of the concluded first instance verdicts[88], the Administrative court has accepted the lawsuits and has nullified the Decisions reached by the Sector

88 U-6 no. 267/2015 from 05.11.2015, U-6 no. 770/2015 from 10.03.2016, U-6.no. 835/2015 from 07.10.2016 and U-6 no.1136/2016 from 22.02.2017

for Asylum within the MoI. In all of these Verdicts, the Court gave the same explanation, "… the Court finds that in the documentation of the case there is insufficient evidence which could enable the Court to evaluate the legality of the challenged Decision as per Article 1 of the Law on Administrative Disputes, i.e. there are no facts proved with appropriate evidence that the material truth has been determined as in accordance with Article 9 of the Law on General Administrative Decision, that the plaintiff is a threat to the safety of Macedonia due to which the reasons for exclusion have been fulfilled, i.e. the plaintiff as a person under subsidiary protection can no longer enjoy the right to asylum in Macedonia. The case must contain more evidence which will lead to that, that the provision from Article 6 par.2 it.1 of the Law on Asylum and Temporary Protection, is grounded and the provision has been justly applied, i.e. evidence from which it can be determined with certainty that the Plaintiff is a threat to the safety of Republic of Macedonia, something that the Plaintiff rightly emphasizes in his/her Lawsuit…."[89].

On the other hand, in the remaining six Verdicts[90], which have an identical factual and legal situation, the Lawsuits have been rejected as unfounded. The first instance Decisions in these cases are also inadequately and insufficiently elaborated on, with only one mark that their right to asylum (SP) has been terminated due to them allegedly being a threat to the safety of the State. The explanations of the first instance decisions are, as well as in the decisions described above, completely identical, which can be easily seen once one has an insight to the cases. Nonetheless, contrary to the elaborated Verdicts in the previous paragraph, in the Verdicts with which the Administrative court decided upon these cases, it gives the following explanation: "…upon check-ups of the MoI – Office for security and counter intelligence, and the given elaborate reasons in the case, a negative verdict was given, since the person is a threat to the safety of Republic of Macedonia… The Administrative court decided that in this case the defendant has rightfully decided the administrative affair, as per the rules of the procedure, has fully and justly determined the factual situation and has justly applied the material law when it decided to terminate the right to asylum due to subsidiary protection to the plaintiff from Kosovo as per Article 6 par.2 it.1 of the Law on Asylum and Temporary Protection. This, due to the fact that the above stated note (of the Office for security and counter intelligence no. 36.5.4.1-1334/2 from 25.02.2016) is confidential, due to which, this court decided that the defendant has given sufficiently detailed reasons, which this Court treats as just and accepts completely"[91].

89 Verdict of the Administrative Court U-6 no. 835/2015 from 07.10.2016, p. 2

90 Verdicts: U-6 no. 501/2016 from 22.09.2016, U-6 no. 218/2015 from 07.10.2016, U-6 no. 845/2016 from 14.10.2016, U-6 no. 846/2016 from 07.12.2016, U-6 no. 912/2016 from 14.12.2016 and U-6 no. 1121/2016 from 28.12.2016, all reached by the Administrative Court of the Republic of Macedonia

91 Verdict of the Administrative Court U-6 no. 501/2016 from 22.09.2016, p. 2-3

c. Conclusions:

From all of the above stated information, we can conclude that, for more persons who share the country of origin (Kosovo), and identical factual situations, the Office for security and counter intelligence has a given negative verdict through issuing a confidential note to which neither the Sector for Asylum, nor the Administrative court, due to the classification of the information it contains, have access to. In another words, the administrative body reaches decisions without even seeing the evidence, by which it breaches the principle of material truth as per Article 8 from the Law on General Administrative Procedure, which in reality is only possible with direct insight into the material evidence.

The inconsistently applied case law which we are addressing, and which is arguably noticeable from the above stated Verdicts, refers to the different answers received for the question: Is it possible to reach a lawful first instance administrative act in which the decisive fact is accepted without direct insight in the only evidence (in this particular case a confidential official note from OSC)? In another words, can this note containing confidential information, issued by the OSC, and to which both the access and insight are banned for the administrative body and the Administrative court, be used as direct evidence, evidence that serves to show that a certain person is a threat to the safety of the state. By reaching different decisions, it is evident that there is different interpretations regarding this issue within the Administrative court, which results in inconsistent court practice and case law.

The need for even court practice in these cases, despite its origin in the constitutional and legal obligation for equal and legal acting to everyone as a basic element to the rule of law is directly connected to the obligations which the RM has accepted with the ratification of the ECHR, highlighted in the case law of the ECtHR[92].

2.2 Constitutional Court of the RM

The Constitutional Court of the RM as human rights defender

The Constitutional Court of the Republic of Macedonia protects human rights in two ways. By evaluating the constitutionality and legality of the laws and other general legal acts, the Constitutional Court has the power to annul or abolish a piece of legislation if it assess 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

92 Al-Nashiv v. Bulgaria; and Cahal v. United Kingdom

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 which enjoys the protection of the Constitutional Court is violated[93].

The protection of human rights by the Constitutional Court of the RM in 2017

a. Evaluation of the constitutionality and legality of the laws and general legal acts

In 2017, the vast majority of initiatives for evaluation of the constitutionality and legality submitted to the Constitutional Court were dismissed. The Constitutional Court adopted a decision for repealing article 98 par. 5, line 6 from the Law on Administrative Officials regulating the termination of the employment of an administrative official by law if he/she reaches 62, 63, 64 or 65 years of age (for woman), and 64, 65, 66 or 67 years of age (for men). The Court reasons that the disputed provision does not establish the equal legal standing of the citizens. With this provision the termination of employment, and the pension depends upon the sex of the person, which constitutes unequal treatment. It is important to point out that the position of the Constitutional Court is that the disputed provision is contrary to the principle of rule of law due to the fact that it is unclear, vague and inconsistent. Such provisions lead to legal uncertainty among the citizens because the regulation of the termination of the employment is regulated within the Law on Labor Relations.

b. Request for protection of the rights and freedoms of the citizens

ГThe vast majority of requests for evaluating the legality and constitutionality before the Constitutional Court are dismissed due to lack of competence or existence because of procedural obstacles for making the decision. The reason for this may partially be attributed to the restricted number of rights for which protection can be sought in front of the Constitutional Court. In its 25 years of existence, the Constitutional Court only upon one request, has ever found a violation of the freedoms and rights. The case in question was in 2010, in the case U.br.84/2009, which annulled a decision adopted by the Municipal Electoral Commission.

In April 2017, the Constitutional Court of Macedonia adopted a decision

93 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 grounds of sex, race, religion or national, social or political affiliation.

94 U #: 166/2016-0-0 од 12.04.2017

dismissing the request for protection of the right to equality and non-discrimination on the basis of material and social condition for realization of the right to a healthcare and social security. The petitioner stated that with a judgment from the Higher Administrative Court, and the Administrative Court, as well as a decision from the Minister of Health, the principle of prohibition of discrimination had been violated.

Based upon the content of article 51 from the Rules of Procedure of the Court, and the current Constitutional Court case law in this procedure, protection can be given solely in cases where rights of the petitioner have been violated and not for another person. As a result of this reasoning and the fact that the petitioner did not request protection for his/her rights, but for another person, the Court decided to dismiss the request.

The request in the case U. 22/2017 was dismissed by the Court in a case related to protection from discrimination based upon religious affiliation that were allegedly violated with the 'List of holidays for 2017' adopted by the MLSP. The petitioners believed that as adherents of the Catholic Church their rights and freedoms were violated by this list and that they were unequally treated, compared with the adherents of the Orthodox Church. The adherents of the Catholic Church were entitled to only one holiday day for Easter (the Monday after the Easter Sunday), while the adherents of the Orthodox Church had two holiday days for the same holiday (Good Friday and the Monday after Easter Sunday). In regards to the procedure for protection of the freedoms and rights, the Constitutional Court provides protection only in cases of individually breached rights where the violation of such rights have been ill found with a previous final act of the state institutions. By taking into consideration that the petitioners did not provide an individual, and final legal act, the Constitutional Court dismissed the request. The Constitutional Court, in accordance with its Rules of Procedure, would have to decide upon these requests at a public hearing. However, since the adoption of the Rules of Procedure in 1992, to date only five public hearings had been held which, when compared to the information in the annual reports of the Court, implies that such hearings were only held in 3.8 % from the cases[95].

In February 2017, the European Court of Human Rights passes a judgment on the case Selmani and others against the Republic of Macedonia[96]. The Court found a violation of Article 6 from the ECHR as a result of the absence of a public hearing in the procedure in front of the Constitutional Court. With the judgment the Court also found a violation of the freedom of expression,

95 The visibility of the Constitutional Court of the Republic of Macedonia when making decisions, with a particular focus when deciding on the protection of the individuals' and citizens' freedoms and rights, Center for Legal Research and Analysis, available at http://cpia.mk/vidlivosta-na-ustavniot-sud, page 20

96 The case Selmani and others v. Republic of Macedonia (Application no. 67259/14), Judgment from 09.02.2017

protected under Article 10 from the ECHR. During a session held on 16th April 2014, in the absence of the parties the Constitutional Court rejected the request of the petitioners. In the decision, the Court stated that it had determined the facts of the case on the basis of the evidence enclosed, and the answers received by the Assembly of the RM. (The applicant, in the procedure in front of the ECHR, stated that they request a public hearing for determination of the facts. The ECtHR states that the applicants were entitled to the right of a public hearing in front of the Constitutional Court.

c. Conclusions:

In 2017, the vast majority of initiatives for the determination of the legality and constitutionality before the Constitutional Court, were dismissed. Additionally, the fact that only a small number of citizens requested protection from the Court is concerning. The Court continued in 2017 with the practice of avoiding conducting a public hearing upon request, although such an action is contrary to Art. 55 from the Rules of Procedure.

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

The standing inquiry committee for protection of human rights as a protector of human rights

The standing inquiry committee for protection of freedoms and rights of citizens is a working body of the Parliament of the Republic of Macedonia as stipulated in the Constitution of the Republic of Macedonia (article 76 para. 2 of the Constitution). The mandate of the Commission[97], 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 procedures to establish the responsibility of public office holders, if they have violated the human freedoms and rights (art. 76 para 3 of the Constitution). In order to prevent one-party bias 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).

97 Defined in art. 2 line 8 of the Decision establishing permanent working bodies of the Parliament of the RM, No. 85/2014

Activities of the standing inquiry committee for the protection of human rights in 2017

Due to the late constitution of the Assembly (27th April 2017) during the first four months of the year there was no action of the standing inquiry committee for protection of human rights.

In 2017 the composition of the standing inquiry committee for protection of human rights for the mandate 2016 – 2017 was determined. The President of the committee is Fadil Zendeli from the BESA political party while the deputy President has still not been elected. Members of the committees are: Pavle Bogoevski, Sashko Atanasov, Ferid Muhikj, Mirsada Emini-Asani, Ane Lashkoska, Trajcho Dimkov, Pancho Minov, Krsto Jovanovski, Keti Smileska, Alija Kamberovski, Nola Ismajlovska-Starova, Emilija Aleksandrova and Ziadin Sela, and their deputy members: Nikica Kurobin, Maja Moracanin, Blagojce Trpevski, Muhamen Zekiri, Redzailj Ismaili, Dafina Stojanoska, Goran Manojloski, Vankover Mancev, Boris Zmejkovski, Irina Stefoska, Beti Rabadzievska-Naumovska, Dragan Danev, Slagjana Mitovska, and Vesel Memedi.

In 2017 (until 31.10.2017) the Committee has scheduled only one session. The session was scheduled for 29.6.2017. On the agenda of this session were the presentation of the annual reports of the Inter-sectoral Commission for enforcement of the judgments of the European Court of Human Rights, the Bureau for representation of the RM in front of ECtHR and the Commission for Protection from Discrimination. Subject to the agenda was a letter from the Agency for Audio and Audiovisual Media Services from 30.3.2017. From the webpage of the Assembly we cannot conclude whether this session was held at all due to the fact that minutes from the session are not available.

The government of the RM in the plan 3-6-9 as one of the measures for reappearance of democratic spirit in the Assembly of the RM included reactivation of this Committee. However up until 31.10.2017 no activity had been undertaken by the Committee. Upon request from three CSOs' (including the MYLA) the Committee was asked to discuss the problem of racial profiling at the border crossings. In accordance with the information that we have, such a session was scheduled for late November 2017, but shortly afterwards was re-scheduled for December 2017.

c. *Conclusions:*

This constitutionally established parliamentary body has been for, for a considerable period of time, not functional, which is detrimental for the greater involvement of the Assembly in the protection of human rights. As a special

matter of concern is the fact that its inactivity can be partially attributed to the low priority among the MP's on the problem with respect to human rights. However, there are some indications emanating from statements of certain MP's, and the declarations by the Government for the reactivation of this body and for it to function as a mechanism for parliamentary oversight on human rights in Macedonia.

2.4 Ombudsman

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 the respect of human rights and calls for the protection of human rights; carries out relevant research; organizes educational activities; informs the public regularly and in a timely manner;, cooperates with the civic sector, international organizations, and the academic public; and also raises initiatives to harmonize national legislation with international and regional human rights standards.

The Ombudsman is in charge of ensuring the prevention of torture and any kind of cruel, inhuman or degrading treatment or punishment, by carrying out unannounced visits to places of deprival of liberty. Of special interest for the Ombudsman are the protection of the rights of children, and people with disabilities, 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 the ways to remedy the violations found;

- Propose to initiate a procedure provided by the law;

- Raise an initiative for disciplinary or misdemeanor procedure 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 March 2017, the Amendments of the Law on Ombudsman entered into force[98] strengthening the competences of this institution in the protection of human rights. The amendments introduced the following, especially significant, competences:

• Right to conduct regular and unannounced field visits to places were individuals are, or could be deprived of their liberty, for the necessity of prevention of torture or other type of cruel, inhumane or degrading treatment or punishment.

• Possibility for the Ombudsman to act as a friend of the court – amicus curie thus strengthening the judicial protection of human rights in cases where the Ombudsman has already found a violation of some of the rights and freedoms.

• In cases of violation of the constitutional and lawful rights of a greater number of citizens, children or individuals with disability, the Ombudsman can request, from the Standing Inquiry Committee on Human Rights, to investigate the cases and to take all measures necessary.

• Legal regulation of the rights and authority of the National Preventive Mechanism.

In March 2017, the Ombudsman stated serious concerns for the attempts to involve of children in protests *(the protests For a Joint Macedonia)* organized

98 Law Amending the Law on the Ombudsman („Official Gazette of the Republic of Macedonia" no. 181/2016)

in several towns in the RM. The Ombudsman condemned the acts where school principals openly called for students to go out on the protests, and immediately and without any delay summoned the School Councils, the Mayors, the State Educational Inspectorate, and the Ministry of Education and Science, calling upon each in its own competence to undertake appropriate measures against the individuals actively propagating or allowing propaganda and attempts for political involvement of students within schools.

The Ombudsman condemned the event of 27th April, and the intrusion into the Assembly of Republic of Macedonia by a mob, some of whom were violent against assembled MPs and journalists, and criticized the unprofessional and selective handling of the Ministry of Interior, who instead of preventing this debacle, actually permitted the violence. According to the Ombudsman, the application of double standards in the work of the MoI confirmed the assumptions of deep involvement of political parties within this Ministry, for which the Ministry has been condemned. The Ombudsman criticized the inertness of the political officials who evidently, from the available footage of the scene, although present, did not react and allowed violence, and journalists being prevented from performing their work, thus violating the freedom of media.

In July 2017, the Ombudsman presented the 6th annual report of the National Preventive Mechanism. The report identified serious problems related to the institutions where convicted individuals or persons deprived of their liberty are placed. In penitentiary Idrizovo, more than 1,996 convicted individuals were sentenced; double the capacity of this institution. The conditions are far from required standards, and directly violate the human dignity and point to inhuman and degrading treatment. According to the Ombudsman, in the prisons there is a high degree of corruption with involvement of convicts and prison officials from bottom to top level trading with items such as beds, mobile phones, miscellaneous privileges, and drugs. The security and the healthcare system are not functional and there is no educational system. The absence of reintegration activities for inmates contributes to a significant number of former convicts becoming reoffenders upon release from prison. In 2017, the Ombudsman submitted an initiative for amending the Law on Health Insurance (Art. 35), amending the Law on Non-Litigious Procedure, and an initiative for repealing Article 213 par. 4 from the Law on Social Protection and an initiative for amending the Law on the protection of children.

Conclusion:

In 2017 the Ombudsman identified and publicly pointed out key problems and challenges related to the protection of human rights in the country. For all serious challenges related to human rights, the Ombudsman, with in its competences, initiated procedures and informed the public using clear and simple language. The Ombudsman is recognized among the general public which is visible from the number of citizens that address this institution on a daily basis.

Chapter 3: OVERVIEW OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS CONCERNING THE RM IN 2017

Human rights in the RM through the prism of the judgments of the European Court of Human Rights

In 2017, the European Court of Human Rights (the Court) adopted seven judgments concerning the Republic of Macedonia. In five of them, the Court determined that the RM violated the basic human rights and freedoms of the citizens that had appealed to the Court, while in two[99] of these judgments the Court found that not violation had been committed. Based on these judgments the State, from its budget, was required pay to the applicants 42,600 euro for non-pecuniary damage, and 7,360 euro for the costs of procedure. In other words, in 2017, the RM was obliged to pay to a total amount of 49,960 euro for violations of human rights. This year, an appeal has been submitted against the RM from persons originating from Afghanistan, Iraq, and Syria concerning allegations for their collective expulsion from the RM to Greece. In this case, the MYLA has submitted a third party intervention. In the judgments where the Court finds evidence of a violation, it concluded that the RM has violated these persons right to a fair trial, the right to respect for private and family life, the right to an effective legal remedy, and freedom of expression.

99 Case Tolevski vs. the Republic of Macedonia (Application no. 17800/10), Case Spiridonovska and Popovski v. the Republic of Macedonia (Application no. 40676/11)

1.Violation of the right to a fair trial, and private and family life in a lustration procedure

Case: Karajanov vs. the Republic of Macedonia [100]

The Commission for the Verification of Facts (Lustration Commission) in the procedure against the person P. Karajanov, determined that he had collaborated with the state security bodies. Therefore, the Commission reached a decision determining that he fulfilled the condition for limitation of running and performing a public service in accordance with the law[101]. The person challenged this decision in front of the Administrative Court because of incorrectly determined identity (supported by proper documentation) denying collaboration with the state security bodies. The Administrative Court dismissed this claim. Concerning the indication for the unreliability of the documents, the Administrative Court was of the opinion that the applicant could have initiated a procedure in front of a competent basic Court for proving their incorrectness. The applicant appealed to the High Administrative Court, but it dismissed the appeal and upheld the verdict of the Administrative Court.

In the application to the Court, the person claims violation of the right to a fair trial, private and family life, and efficient legal remedy guaranteed by Articles 6, 8 and 13 from the ECHR. According to the Court, the Convention protects rights that are practical and effective. Therefore, the right to a fair trial cannot be considered effective if the requests and observations of the parties are not truly "heard" or properly examined by the court. The ECtHR also points out that in a procedure in front of a court of the first and final instance, the right to a public hearing means an obligation for an oral hearing. In this case, the applicant was not part of the procedure in front of the Lustration Commission and therefore, he could not present the arguments in his defense. Concerning the decision of the Administrative Court, Article 6 from the Convention that requires the national courts to give more extensive explanation than that "the appellant did not submit sufficient evidence that indicates anything different to the facts". Concerning the argument on the validity of the documents, according to the Court in Strasbourg, the Administrative Court did not specify what kind of procedure the applicant should have initiated. Furthermore, the ECtHR cannot accept that the applicant should have initiated such a procedure "before the disputed decision (of the Commission) has been reached." The Court in Strasbourg notes that in none of the phases of the procedure in front of the

100 Case Karajanov vs. the Republic of Macedonia (Application no. 2229/15)
101 Law on determining the criterion for limiting the exercise of public office, access to documents and for publishing information on cooperation with State security bodies ("the Lustration Act"), Official Gazette no. 86/2012)

domestic courts was a public hearing held where the applicant was present. Furthermore, the Court finds that the domestic courts did not fulfill their obligation from Article 6, paragraph 1 and did not provide proper reasoning for their decision.

Concerning the violation of the right to privacy, The Court has determined in other cases[102] as well that the lustration measures directly affect the right to private and family life. In this case, the publicity of the decision of the Commission affected the enjoyment of the right to respect of private life. In this particular case, the Court determined that the decision has been in accordance to the law, but the applicant was aged 77 when the Commission reached its decision, and he was not in public office, nor was he a candidate for such a function. When determining the violation, the Court also emphasizes the opinion of the Venice Commission that the publication of the findings of the Lustration Commission before their deliberation in front of a Court is contrary to Article 8 from the ECHR.

The Court finds that there is no need of examining the application in light of the alleged violation of the right to an efficient legal remedy from Article 13 of the ECHR. The Court states that the requirements of Article 13 are less strict and therefore absorbed by those of Article 6, paragraph 1.

Awarded non-pecuniary damage: 4,500 euro

Procedure costs: 1,000 euro

2.Length of denationalization proceedings

Case: Petrovikj vs. the Republic of Macedonia[103]

Mr. D. Petrovikj, born in 1926 and now deceased, was a duel Macedonian and Serbian citizen. In 2002, he initiated a procedure for denationalization of a nationalized property, to wit, a hotel in Skopje. The competent commission at the Ministry of Finance rejected his request in 2004, to which he appealed. The second-instance commission in the Government rejected his appeal. Afterwards, the case went back and forth several times in front of the authorities and courts in two levels of jurisdiction. A verdict from the High

102 Rotaru v. Romania [GC], no. 28341/95, § 46, ECHR 2000-V; Leander v. Sweden, 26 March 1987, § 48, Series A no. 116; Rainys and Gasparavičius v. Lithuania, nos. 70665/01 and 74345/01, § 35, 7 April 2005; Turek v. Slovakia, no. 57986/00, § 110, ECHR 2006-II; Sidabras and Others v. Lithuania, nos. 50421/08 and 56213/08, § 49, 23 June 2015

103 Case Petrovikj vs. the Republic of Maceonia (Application no. 30721/15)

Administrative Court is pending for this case, after an appeal was submitted on 26th of January against a verdict from the Administrative Court, although the applicant appealed to the Supreme Court that reached a decision determining longevity of the procedure.

Based on Article 6, paragraph 1, (right to a fait trial) from the ECHR, the person submitted an appeal to the Court complaining about the length of the procedure for denationalization. The ECtHR took into consideration the findings of the Supreme Court, that the length of the procedure was excessive and failed to meet the "reasonable time" requirement. Therefore and due to the fact that the Court often found violation of Article 6, paragraph 1 in similar cases (for example Mitkova[104] vs. the Republic of Macedonia), it found no reason to decide otherwise and determined violation of the right from Article 6, paragraph 1 from the Convention, in relation to the length of the procedure, but rejected the claim for damages. The applicant claimed damages for loss of income for not being able to rent the property. According to the Court, in order to evaluate this claim, the right to property has to be determined with a final and irrevocable judgment and causal link between the length of the procedure and the claimed damage. The Court finds that these preconditions have not been fulfilled in this case.

Awarded (non)-pecuniary damage: none

Procedure costs: none

3. Limited access to Court

Case: "Center for the Development of Analytical Psychology" vs. the Republic of Macedonia [105]

The applicant, M.A Karanfilova, MD, a psychiatrist, is the owner and manager of a limited liability company based in Skopje. In 2004, the private practice called 'Independent Specialized Ordination in Neuropsychiatry "Marija Karanfilova, MD"' sighed a contract with the State Fund for Health Insurance (the Fund) for financing the treatment of health insurance beneficiaries. In 2006, an inspectorate[106] of the Ministry of Health, after its supervision, ordered the practice to re-register as a private health institution in order to comply with the new legal provisions. Accordingly, the owner re-registered the ordination;

104 Number 48386/09, paragraph 51, 15th October 2015

105 Case "Center for the Development of Analytical Psychology" vs. the Republic of Macedonia (Application no. 29545/10 and 32961/10)

106 State Sanitary and Health Inspectorate

its name was changed to 'Private Health Institution-Specialist Ordination for Neuropsychiatry "Marija Karanfilova, MD"', and received a new tax number while the address stayed the same.

In the meantime, two procedures against the Fund had been initiated for failure to comply with the obligations from the contract from 2004. The domestic courts rejected the claims finding that the new practice cannot be considered legal successor of the first one because they have different tax numbers. The two procedures ended with judgments from the Court of Appeal. In other civil procedures between the applicant and the Fund concerning the same contract from 2004, which reached the Supreme Court of the RM due to the value of the dispute, a revision was adopted and the case was brought to retrial. The Supreme Court determined that the courts had ignored the fact that the disputed contract had been terminated with notification from the Fund from 2006 to the new practice, which had the same tax number as the applicant. Therefore, it cannot be considered that there was no legal continuity between the subjects.

The applicant complained about not having access to court in relation to her claims related to the contract with the Fund, i.e. violation of the right under Article 6, paragraph 1 of the Convention. The court determined this violation based on the fact that Article 6 ensures everyone has the opportunity of a claim concerning his/her rights in front of a court. According to the Court, "the right to a court", beside the right to initiate a procedure, includes the right to "deciding" in the dispute by the court. In the concrete case, the Court determined that the rejection from the courts to determine the essence of the disputes of the applicant, because their view of not having active legitimization, unjustifiably restricted her right to access to court.

Awarded non-pecuniary damage: 3,600 euro

Procedure costs: 1,360 euro

4.Violation of the right to freedom of speech and violation of the right to a fair trial

Case: Selmani and others vs. the Republic of Macedonia [107]

This case is related to the events in the Parliament of the RM from 24th December 2012. It is about the forceful removal of journalists from the

107 Case Selmani and others vs. the Republic of Macedonia (Application no. 67259/14)

Parliament's gallery while they were reporting on the session about reaching the state budget for 2013, which was a reason for tensions between the ruling party and the opposition, and was cause for great interest among the general public and the media. During the debate, a group of MPs from the opposition started to cause turmoil in the Parliament's Hall, and were removed by security. The applicants, accredited journalists were asked to leave the gallery without a clear reason as to why they should, so they refused to do so, in order to do their job, and were forcefully removed by security. The journalists requested protection of their rights in front of the Constitutional Court, but their request was rejected.

In its judgment, the Court in Strasbourg unanimously found violation of the right to a fair trial (Article 6) because a public hearing in front the Constitutional Court was not held. The Court also found a violation of the right to freedom of expression (Article 10) because of the removal of the journalists from the gallery by the security. This judgment is very important because it is the first time a violation on the right to freedom of speech in the RM has been determined. The Court considers that the Government of the RM failed to prove that the removal of the journalists from the gallery was necessary or justified. In particular, there were no indications that there was any danger from the protests held that same day, from the applicants themselves (who did not contribute nor take part in the tumult in the Parliament), or from the MPs from whom the tumult originated. The Court was not convinced that the applicants could effectively monitor the removal of the MPs, which was a matter of legitimate public interest.

Furthermore, the case of the applicants in front of the Constitutional Court is not only about legal matters, but facts that were disputed and relevant for the outcome of the case. Beside the applicants' request, the Constitutional Court did not hold an oral hearing for their case without giving reasons why it was not necessary.

Awarded non-pecuniary damage: 5,000 euro for each of the applicants

Procedure costs: none

5.Violation of the freedom of assembly and association and freedom of thought, conscience and religion

Orthodox Ohrid Archdiocese v. the Republic of Macedonia [108]

In the Republic of Macedonia, the association did not have possibility to be legally registered, i.e. the association's requests were dismissed due to formal reasons as well as it being formed by a foreign church or state, and that the name of the association "Orthodox Ohrid Archdiocese" is very similar to the "Macedonian Orthodox Church - Ohrid Archdiocese", and the intention was to create a parallel orthodox religious group next to the Macedonian Orthodox Church which had used that name historically and continuously. The Constitutional Court of the Republic of Macedonia rejected the requests for protection of the rights and freedoms due to formal reasons, and after the refusal, an application was submitted to the ECtHR by the Macedonian Helsinki Committee in the name of the religious association "Orthodox Ohrid Archdiocese".

The ECtHR determined that there had been a violation of Article 11 (Freedom of assembly and association) related to Article 9 (Freedom of thought, conscience and religion) of the ECHR due to the rejection of registering the association as religious community. The court determined that although the states have the right to be assured that the aim and the activities of the association should be in accordance with the rules laid down in the laws, they should do that in a way that is in-line with the obligations assumed by the state, with the ratification of the ECHR.

The court stipulated that the state was focused on formal aspects, and the reasons given by the state were insufficient and not relevant to justify its interference in registration, as well as taking into account the confrontation of religious pluralism that is crucial for the proper functioning of any democratic society. In addition, in its judgment the Court pointed to the State's duty of neutrality and impartiality in relation to other religions and religious groups.

Awarded non-pecuniary damage: 4,500 euro

Procedure costs: 5,000 euro

108 Case Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Pec Patriarchy v. The former Yugoslav Republic of Macedonia (Application no. 3532/07)

ABOUT THE USAID DEFENDING HUMAN RIGHTS PROJECT

The USAID Defending Human Rights project is a three-year program (2014-2017) 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 by 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 offering an apprenticeship program for young law professionals, with the purpose of contributing to their improved knowledge in the 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 the protection of human rights, so that they can jointly implement educational campaigns and activities to raise public awareness in this area.

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IN THE REPUBLIC OF MACEDONIA

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