

TREATY BODY MONITOR

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Information submitted to the Committee

The State Report

The Former Yugoslav Republic of Macedonia (Macedonia) acceded to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention) on 12 December 1994 and

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submitted its second periodic report¹ to the Committee against Torture (the Committee) on 2 June 2006. The report would have been due in 1999. The present report informs the Committee on measures taken, including legal and administrative, to ensure the implementation of the Convention and on steps taken since the presentation of the last report. This included amendments made in 2004 to the criminal code, with particular emphasis placed on the implementation of previous recommendations of the Committee. The adoption of the Strategy for Judicial System Reform also occurred in 2004. Other measures included improvements to detention centres and health care facilities. The report contains four parts: introduction, information on new measures and implementation article by article, responses to additional information requests, and finally observations on the Committee's previous conclusions in 1999.² The report noted that no additional requests had been made, and provided responses to concluding observations. These included the recommendation to introduce the definition of torture as stated in paragraph 9 of the observations. The current report claims that this recommendation has been implemented in full in the criminal code of 2004.

The List of Issues

The list of issues³ was sent to the State Party on 26 February 2008, but the written replies were only received the day before consideration. The list of issues requested further information or comment on several themes including matters concerning detention, police and reform, judicial reform, discrimination and the Ombudsman.

NGO Parallel Reports

Reports were received from several stakeholders, including the Civil Society Research Centre of Macedonia, the European Roma Rights Centre, the International Commission on Missing Persons, and The World Organisation against Torture (OMCT). OMCT and the Civil Society Research Centre also submitted a joint report. The report by the Civil Society Research Centre centred on article 3 of the Convention, raising concerns on matters of asylum.⁴ The report of the European Roma Rights Centre included ten recommendations, and in particular addressed discriminatory practices aimed at the Roma minority. These practices included ill-treatment by law enforcement officials, and the report cited several specific cases of ill-treatment by police officers. The European Roma Rights Centre also addressed matters of impunity in detail, including information from the latest report by the European Committee for the Prevention of Torture (the European Committee). The European Committee had highlighted that the authorities appeared to have only adopted limited measures in response to previous European Committee recommendations and that the procedure for internal accountability did not function effectively. The International Commission on Missing Persons addressed the cases of 22 missing persons, highlighting the legal and emotional ramifications of the lack of knowledge of their whereabouts. The report also addressed initiatives undertaken by the Commission in Macedonia to raise awareness about missing persons and introduce techniques to discover what had happened to those missing. The OMCT report documented concerns regarding women's and children's rights, including violence against women and children. The joint submission by OMCT and the Civil Society Research Centre included the situation of human rights defenders and in particular noted that the former

¹ CAT/C/MKD/2, available <http://www.2.ohchr.org/english/bodies/cat/cats40.htm>

² A/54/44, paras. 106-117, <http://tb.ohchr.org/default.aspx>

³ CAT/C/MKD/Q/2.

⁴ Article 3: '1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.'

Special Representative of the Secretary-General on the situation of human rights defenders had observed a lack of sufficient capacities for human rights defenders for the monitoring and protection of human rights.⁵ This was due to a lack of transparency in areas such as violations by the police. While noting a generally satisfactory situation of human rights defenders, the highlighted provisions in national law seen to restrict human rights, particularly in the law on police and the law on the Public Prosecution Office⁶. The report noted that even though protection mechanisms exist by law, these are often not implemented in practice. As an example, the NGOs reported that employees of the Ministry of the Interior convicted of ill-treatment are usually merely punished internally with a monetary fine. The report also includes specific cases and calls for amendments to afore mentioned laws.

Themes and Issues

The Committee considered the report of Macedonia on 7 and 8 May 2008. In introducing the report, Mr Mihajlo Manevski, Minister of Justice of the Former Yugoslav Republic of Macedonia (Macedonia), noted that the recommendations made by the Committee after the last review were welcomed and used as a starting point in the formulation of policies aimed at the elimination of torture. He further noted that a permanent dialogue is maintained with the European Committee and that all reports presented to the treaty bodies are available on the Ministry of Foreign Affairs web site. Mr Manevski stated that since the last review, a number of comprehensive reforms have been implemented in several areas, including the justice system, in the police force, and the fight against corruption and trafficking in human beings. He further noted that article 11 of the Constitution guarantees physical and moral integrity of people and prohibits any form of torture, inhuman or degrading treatment or punishment. Further, he claimed that the implementation of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the Optional Protocol) would contribute to widening the national legal framework. In this regard, a draft bill on the ratification of the Optional Protocol is currently under Governmental review.

Mr Manevski said that the law on criminal procedure prohibits all kinds of torture and extortion of evidence and added that between 2004 and 2006, the public prosecutor indicted 40 individuals and 18 were convicted for crimes of torture. In addressing the issue of violence against women, Mr Manevski noted that there is now a bill on domestic violence with five centres for women in operation, as well as an 'SOS Hotline' for victims. Turning to child rights, he stipulated that a new law on juvenile justice and an action plan for its implementation and activities has also been passed. Additional activities in conjunction with the new law and action plan have been implemented in cooperation with UNICEF. He stressed that the concept of 'child victims' has also been introduced in the above law, and in early 2008 an urgent amendment to the criminal code was made to strengthen legal protection against trafficking, child pornography and the protection of children who are victims of trafficking. A general law on non-discrimination has also been drafted and was said to enter into force soon.

When highlighting issues related to the prison system, Mr Manevski stressed that 14 million Euros had been put aside for use in the improvement of detention centres. Some of these improvements include new prisons, refurbishments of old prisons, an increase in staff, training, and improved healthcare. Covering legal aspects, a new law on sanctions regulating the management of penitentiary systems has been introduced.

The Committee's Rapporteurs for Macedonia were Mr Luis Gallegos and Ms Nora Sveaass. Mr Gallegos recognised the 'enormous and profound' change that had been implemented during the past year. However,

⁵ During the review of special procedures mandates by the Human Rights Council, the title of the Special Representative of the Secretary-General was changed to 'Special Rapporteur'. See ISHR's *Daily Update* of 27 March 2007, available at www.ishr.ch. For the presentation of the report on the country visit to Macedonia, see *Daily Update* of 12 March 2007.

⁶ <http://www2.ohchr.org/english/bodies/cat/cats40.htm>, pg 18

he regretted that the written replies to the list of issues had only been received the previous day. He addressed matters pertaining to, among other things, the definition of torture, custodial issues and the Ombudsman.

Ms Sveaass supported Mr Gallegos in acknowledging the work done so far by Macedonia. She noted that there have been significant legislative developments and felt that some of her questions may very well be questioning the past. She noted the implementation of legal measures and asked how 'visible' these new legislations are to the population and what their intentions and effects may be. Ms Sveaass also raised issues related to training for law enforcement personnel required by Article 10 of the Convention, centres of detention, the rights of women and children, the police and minorities.

Definition of torture in domestic law

Mr Gallegos questioned whether Article 142 of the Criminal Code was fully compliant with Article 1 of the Convention, and drew the attention of the delegation to the Committee's General Comment on Article 2, which was approved in November 2007. She reminded the delegation of the responsibilities of the State in the prohibition of torture. In response, the delegation stated that Article 142 is 'practically harmonised' and that the Criminal Code was amended in April 2004 taking into account the General Comment.

Mr Gallegos noted with 'some surprise' that the crime of torture is sanctioned with a relatively short sentence of one to five years of imprisonment, whereas those convicted of trafficking received a far higher penalty of up to ten years. While recognising the importance in combating trafficking, he seemed to feel that this imbalance was not acceptable. Taking a similar stance, Ms Belmir noted that minors could be incarcerated for up to ten years for serious offences and five years for less serious offences. She drew attention to comments of the Committee on the Rights of the Child in relation to EU-legislative standards. Underlining her point, Ms Belmir compared the maximum sentence for minors (ten years) with the sentences for police officers convicted of torture (from one to five years).

Judicial System

In relation to the judicial system, Ms Belmir observed that Macedonia is currently re-defining the status of judges. She asked if their status had previously been defined and what would be the added value of doing so now. Mr Gaye noted that lawyers, judges and prosecutors are all trained in a single academy and asked if lawyers are free to organise themselves freely in 'professional terms'.

Mr Gallegos referred to the functioning and effectiveness of the public prosecutors office, noting that the European Court of Human Rights (the Court) had commented on the inactivity of the office and its failure to investigate cases. In this context, he highlighted the prevailing impunity, stipulating that whilst impunity persists, acts of torture will continue to be committed. He enquired about the main features of the new law on police, echoing concerns expressed by civil society actors at the lack of an independent oversight mechanism for acts committed by 'actors of the Ministry of Interior'. In response, the delegation stipulated that in the course of reforming the legislation regulating police activities, a legal framework distinguishing between the Ministry of Interior and the police was developed. Further, Macedonia is cooperating with the Organisation for Security and Cooperation in Europe (OSCE) and NGOs to establish a new concept for external evaluation and monitoring of police action.

Ratification of Outstanding Instruments

Turning to the outstanding ratification of other core instruments, Ms Sveaass asked if the Government intended to ratify the *Convention on the Rights of Persons with Disabilities* (CRPD), which had been signed by Macedonia in 2007. Continuing in this vein, Mr Mariño asked if there was a possibility of ratification of

the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (ICRMW), which he described as one of the corner stones of the UN human rights system. According to the delegation, a working group has been established to ensure that national legislation is in accordance with the provisions of the CRPD, however it underlined that the ICRMW is not a priority for Macedonia at this time.

Ombudsman

Mr Gallegos also questioned whether Macedonia had intentions to bring the Office of the Ombudsman in line with the Paris Principles on national human rights institutions.⁷ Ms Sveaass questioned the lack of response to the Ombudsman's requests to investigate the death of an individual linked to the 'Alpha Unit', a special unit within the police force, and demanded clarification of this. The delegation did not respond to these questions. It merely noted that there remained a recurring issue of funding, which it seemed to consider an obstacle to bringing the Office of the Ombudsman in line with the Paris Principles.

Detention

In addressing the rights of persons in police custody, Mr Gallegos stressed the importance of the three fundamental rights of detainees: the right to counsel, the right to medical treatment and the access to family. In its questions, the Committee focused on overcrowding, gender issues, violence against prisoners, and juvenile detention.

Ms Sveaass addressed concerns raised by the European Committee and civil society on the matter of overcrowding in places of detention, and enquired how this was addressed. She also expressed interest in information received concerning the detention of female and male prisoners together, and asked for clarification of this issue. Turning to allegations of women forced to perform sexual favours for guards in return for 'goods', Ms Sveaass stressed the seriousness of these allegations, and requested further information. Mr Gallegos also noted that in the large amount of data provided on prisons, there seemed to be a 'fundamental preoccupation' by the State with sexual violence against prisoners. He asked how this was being dealt with, especially regarding women. The delegation responded strongly to allegations concerning sexual favours demanded by prison officers in return for goods. It stressed that no records or complaints of this practice exist and therefore the allegations must be untrue.

Ms Sveaass expressed concern about allegations concerning harsh discipline, inadequate care and ill treatment of child detainees. She added that despite the respective provisions in Macedonian law, there seems to be no special procedure for the arrest of children. As an example, she stated that the rule of an adult accompanying the child being interrogated was not always respected. She requested that the delegation clarify how existing safeguards can be implemented, and to provide more information about possibilities for education and health care of children deprived of their liberty. The delegation confirmed that there had been negative incidents concerning the detention of children. These had resulted in the sanctioning of police officers concerned, and police officers are now specially trained for dealing with children.

In addressing pre-trial detention, Ms Belmir noted that it could last for up to 400 days from the day of arrest. She emphasised that pre-trial detention should last no longer than 180 days. She asked what recourse is available to persons who have been proved innocent, after prolonged pre-trial detention.

⁷ The Paris Principles were adopted by the United Nations General Assembly as an Annex to Resolution 48/134. They define the role and functions of national human rights institutions (NHRIs) in the promotion and protection of human rights. Available at: www.un.org/Depts/dhl/res/resa48.htm.

Training

Ms Sveaass positively noted that a programme for training police officers in human rights was underway and especially highlighted that this programme was run in collaboration with international bodies. However, she enquired if any training was conducted in relation to gender and violence and enquired about the amount of training modules specifically focused on gender issues within the overall training provided to police officers and prison personnel. In this regard, Ms Sveaass stressed that training of police officers is an important part in efforts to encourage women to denounce violence perpetrated against them. The delegation noted that special training is given in gender equality to prison personnel. Training is also being provided to police and health and social workers in relation to domestic violence. However, it accepted that there remained insufficient reporting of domestic violence cases. In this regard, the delegation stressed that the skills required to help detect victims had been developed across several sectors, and a national campaign encouraging victims to come forward had taken place.

Ms Sveaass also raised questions concerning the plans for a permanent training centre for prison officials. These included whether a time frame for construction is in place and whether it was envisaged as state-wide training facility or one aimed at training officers working in one particular prison only.

Police Internal Control Centre

Ms Sveaass expressed interest in the Sector for Internal Control and Professional Standards (the Sector), an internal review mechanism of the police force. She noted that it is a well-known mechanism in Macedonia, and frequently referred to by both the State and NGOs in reports submitted to the Committee. Her interest centred on the fact that the system appears very strong and wide-ranging, but she noted that there are allegations of ineffectiveness of the Sector. These allegations related in particular to women, children and Roma. The delegation drew attention to the increased overall number of complaints received by the Sector, and the declining number of complaints submitted through NGOs and the Ombudsman. In the view of the delegation, this demonstrates the acceptance by citizens of the Sector as the main oversight mechanism for the police.

Ms Belmir was concerned about the means available to the police in the enactment of their duties. Accordingly she noted that under the law police officers are authorised to use physical force, including batons, dogs, chemical substances and firearms against certain persons. She wished to know who authorised such usage, whether monitoring was conducted and if the police had discretion in using physical force. She reminded the delegation of decisions by the European Court of Human Rights on the abuse of force by the police.⁸

Missing persons

Ms Sveaass said the issue of persons missing after the war is a well-known challenge for Macedonia. She asked if there had been any development on clarifying the whereabouts of these persons, and if there had been cases reported of enforced disappearances. In its concluding observations, the Committee recommended a full and thorough investigation into all cases of forced disappearances.

In relation to the same issue, Ms Sveaass asked Macedonia for further information concerning cases transferred to the *International Criminal Tribunal for the Former Yugoslavia* (ICTY). Mr Marino questioned the level of cooperation with ICTY, stating that he is aware of the extradition treaty that Macedonia has with

⁸ Recent cases brought before the Court can be found at <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=12487485&skin=hudoc-en&action=request>.

the United States, ensuring that US citizens will not be extradited to the International Criminal Court (ICC).⁹ In this regard, he asked if that 'Bilateral Immunity Agreement' would be maintained once Macedonia joined the EU. Continuing this theme, Mr Kovalev suggested that the ratification of the *International Convention for the Protection of All Persons from Forced Disappearances* (ICPPED) would be helpful in enforcing legislation. The delegation's response was concise. It was underlined that this subject was part of the Government's medium term priorities. As a result, this would be reviewed in the framework of the partnership with the EU.

In its concluding observations the Committee, whilst welcoming the ratification of the Rome Statute of the International Criminal Court by Macedonia, expressed regret at the bilateral agreement with the United States. The Committee recommended that Macedonia should consider reviewing the relevant agreement in accordance with articles 6 and 8 of the Convention.

Minorities

There were several observations and comments concerning minorities, in particular problems facing the Roma minority. Ms Sveaass drew attention to allegations of police brutality and noted that the European Court of Human Rights (the Court) had dealt with such cases in 2007 and 2008. Whilst the Court concluded that there had been no violation under Article 3 on account of alleged ill-treatment but generally that there had been a failure to conduct an effective investigation into the alleged ill-treatment of persons belonging to the Roma Minority.¹⁰

Ms Kleopas questioned the apparent lack of implementation of the law prohibiting marriage under the age of 18 in relation to Roma women. The delegation accepted that such marriages take place and that they are authorised under State law if the girl is 16 years old, and has written permission from her parents. In addition to these requirements judicial approval is required.

Violence against Women and Children

Ms Sveaass noted that domestic violence, although legislation prohibits this in national law, is still highly prevalent and requested more information on how this was addressed. She stressed that many cases of domestic violence against women and children go unreported for reasons including fear and social stigma. She also highlighted the need for a better understanding of the psychological effects of violence on women.

Turning to the crime of rape, she stated that information received suggests that the crime of rape is still defined in a very traditional way. She sought the assurance of the delegation that all aspects of rape would be covered under the law. She also wondered whether any changes had been made to cover the 'brutal actions' that often accompany rape. The delegation confirmed that there remained a traditional definition of rape in the criminal code and that the Human Rights Committee (HRC) had also made comments in this regard.¹¹ It was stressed that those recommendations, alongside the recommendations of CAT, will be taken into account in redefining the criminal code.

Concerning corporal punishment, the Committee noted that there has been a proposal to penalise such punishment in the home. Ms Sveaass specifically requested more information on this issue. The delegation

⁹ See also <http://www.iccnw.org/?mod=bia>.

¹⁰ Two cases that appeared before the Court alleging ill-treatment from members of the Roma are: *Jasar v The Former Yugoslav Republic of Macedonia* and *Sulejmanov v The Former Yugoslav Republic of Macedonia*. Both are available at: <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=12487485&skin=hudoc-en&action=request>.

¹¹ CCPR/C/79/Add.96, 1998. Recommendation 15: <http://tb.ohchr.org/default.aspx>.

responded to the issue of corporal punishment by saying that a hotline now existed for children who are victims of corporal punishment, and that special centres had been established to offer support to them.

Trafficking

Ms Sveaass noted positively that a number of measures are being developed in relation to human trafficking. Mr Kovalev asked if Macedonia had signed and ratified the *EU Convention against Human Trafficking*. Mr Grossman queried whether the legal regime and the allocation of resources are sufficient to sustain the necessary efforts. The delegation noted that the EU Convention had been signed but not yet ratified. However, it stressed that, due to Macedonia's 'strategic position' in the Balkans, the fight against trafficking is intensive. It includes regional co-operation and the prosecution of organised crime. The delegation further noted that it could be difficult to assess the level of smuggling of illegal aliens or the trafficking of persons, and added that in the last few weeks alone, three groups had been detected smuggling migrants into Europe

Asylum Seekers

Mr Gallegos noted that the Human Rights Committee and the Committee on the Elimination of all Forms of Racial Discrimination had expressed concern on the issue of asylum seekers. He requested more detailed information on asylum laws and practices. In particular, he expressed interest in a case concerning Mr Khalid El-Masri, a German citizen of Lebanese origin accused of terrorism offences. He demanded further information as to the procedural rights available to Mr El-Masri. The delegation acknowledged the right of Mr Masri to file a civil suit in Macedonia. In its concluding observations, the Committee said that a thorough investigation should be undertaken to assess whether the treatment of Mr El-Masri was in accordance with the Convention and other human rights standards. This case also produced concluding observations from CERD¹² during the consideration of Macedonia's 4th – 7th periodic reports (submitted as one document) before the Committee during its 70th Session.¹³

Conclusions and next steps

Both parties described the dialogue as substantial and informative. The Committee expressed gratitude for the responses provided and many Committee members noted the rapid legislative changes that had been undertaken by the State Party since the submission of the report in June 2006. The Macedonian delegation seemed to take a co-operative approach, and stressed that the prevention of any inhuman treatment is deemed of 'huge importance' in Macedonia.

In its concluding observations, the Committee referred to comments by other human rights mechanisms on particular issues throughout the dialogue, including decisions of the European Court of Human Rights. The Committee specifically welcomed the adoption of an action plan for the implementation of recommendations by the European Committee. Macedonia has been reporting regularly to treaty bodies.¹⁴ As a result there are several overlapping areas of concern within the treaty body system. In addition to the attention paid to the case of Mr El-Masri as noted above, this particularly includes violence against women and children and trafficking. In its concluding observations after consideration of Macedonia's initial report in 2006, the Committee on Economic, Social and Cultural Rights had called for the criminalisation of domestic violence and a broader definition of violence against children.¹⁵ The Committee on the Elimination of Discrimination

¹² CERD/C/MKD/CO7; observations 11 and 12. Available at <http://tb.ohchr.org/default.aspx>.

¹³ CERD/C/MKD/C7 available at <http://tb.ohchr.org/default.aspx>.

¹⁴ A full list of records for Macedonia can be found at : <http://tb.ohchr.org/default.aspx>.

¹⁵ E/C.12/MKD/CO1, available at <http://tb.ohchr.org/default.aspx>

against Women, also in 2006, called for full implementation of legislation in relation to trafficking and domestic violence.¹⁶

The Committee set the deadline for the 3rd periodic report on 30 June 2012. In the interim, the Committee requested that the State Party provide written responses to recommendations included in paragraphs 6, 8, 13 and 20. These are to be submitted within one year.

Last revised and updated: 15 October 2008.

¹⁶ CEDAW/C/MKD/CO/3.

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