HELSINKI COMMITTEE FOR HUMAN RIGHTS

ХЕЛСИНШКИ КОМИТЕТ ЗА ЧОВЕКОВИ ПРАВА НА РЕПУБЛИКА МАКЕДОНИЈА

KOMITETI I MAKEDONYA PËR TË DREJTAT E NJERIUT I REPUBLIKËS SË MAQEDONISE

HELSINKIT

COMITET DI CUMHURİYETI'NİN HELSINKI TI- NDREPTULI-A OMLUIDIREPUBLICA MACHEDONIA

HELSINKI

HELSINŠKO COMITETI BAŠO E MANUŠENGERE NEJAMIJA KI REPUBLKA MAKEDONIJA

ХЕЛСИНШКИ КОМИТЕТ ЗА ЉУДСКА ПРАВА РЕПУБЛИКЕ МАКЕДОНИЈЕ

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MONTHLY REPORT
ON THE HUMAN RIGHTS SITUATION IN THE REPUBLIC OF MACEDONIA
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PUBLIC EVENTS AND VIOLATIONS OF DEMOCRATIC PRINCIPLES

1.1. Right to religion – privilege of big religious communities!

One of the preconditions for practicing religion in the Republic of Macedonia is for the given religious community to be registered in the Unique Court Register of Churches, Religious Communities and Religious Groups, and in compliance with the Law on the legal position of churches, religious communities and religious groups.

This law in 2007 was adopted after many years of international pressure, and its adoption was one of the preconditions for NATO membership supported by the explanation that the old law limits the religion freedoms in the section on registration of other religious communities. The Law now allows registration if "the name and the official symbols of every new church, religious community or religious group are different from the names and the official symbols of the already registered churches, religious communities and religious groups"[1].

The representatives of the non-registered Orthodox Ohrid Archbishopric addressed the Basic Court Skopje 2 with a request for registration of the "Greek-Orthodox Ohrid Archbishopric of the Pec Patriarchy", which was refused by the court.

In the decision refusing the request, the Court firstly informs them that they contacted the Macedonian Orthodox Church (MOC) asking for information what the Pec Patriarchy was, was it a religious group, and if it was a religious entity with a legitimate legal status, where it belonged. We should not even emphasise that this enquiry by the Court is a precedent and it is contrary to the legal norms according to which if the court needs an expertise it should address recognised and independent experts or court experts.

The very fact that the court did not utilise this authority but it decided to address the MOC, which is not a party in the procedure or an independent expert on religious issues, the Court only confirmed the claims by the Applicant that the state of Macedonia once again through its institutions puts it in an unequal position with the other citizens and legal entities, favouring the MOC by giving it a status of a state religion. The court instead of sticking to its obligation for monitoring and implementing the Constitution and the Laws of the Republic of Macedonia, it followed the claims of the MOC treating them as absolute truth and founded facts and by that indisputably discriminating the applicant.

The Court also acted contrary to the practice of the European Court according to which the state is obligated to act in a neutral and unbiased manner when establishing the legality of the religious believers and at the same time to ensure tolerance among the groups, even if they originate for the same religion[2].

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[1] The Law on the legal position of churches, religious communities and religious groups, Official Gazette of the Republic of Macedonia No. 113/07 from 20 September 2007.

[2] Metropolitan Church of Bessarabia and Others v. Moldova; Serif v. Greece; Ouranio Toxo and others v. Greece

Furthermore, in its elaboration the Court states that the law does not allow in the name of the religious entity which applies to be registered to use the names and derivates of names that are part or sound like the official titles i.e. names of states or already registered religious communities. According to the Court, the use of words such as the Orthodox Ohrid Archbishopric as part of the name in the application is a violation of the Law since it is part of the name of an already registered religious community MOC-Ohrid Archbishopric.

However, we need to mention that the above quoted law requires for the name and the official symbols of every new religious community to be different from the names and the official symbols of the already registered ones. Neither this or any other law does not use the term "part of the name" or "name that sounds like the existing official name" so that this elaboration by the court could be treated as well-founded".

One of the goals of the new law is to ensure religious pluralism and freedom for every citizen to practice his/her religion regardless whether it is contrary to the interests of the bigger religious communities or not.

Religious pluralism is nothing more than a feature of contemporary democracies and a condition for practicing human rights in the area of religion. Namely, the European Court has also confirmed that an organised structure recognised by the state that enables legal existence of the religious communities i.e. groups is an essential part of the religious life and at the same time it is a way of manifesting religion and conviction[3]. The European Court believes that the failure of the state to remain neutral in the process of governing and at the same time its direct infiltration in the decision who could found a religious group, and who cannot represents a violation of the right to freedom of religion guaranteed in Article 9 from the Convention on Human Rights.

Unfortunately, judging from the increasing number of motions to the Helsinki Committee submitted by members of the smaller religious communities that could not be registered, the logical conclusion is that there is a problem in the proper implementation of the Law by the competent courts.

The same conclusion is evident also in the positions presented in the last EU Progress Report for Macedonia as well as the State Department's report on the religious freedoms, where it is clearly stated that the absence of effective implementation of the law prevents the religious communities to acquire a legal status.

The Committee has also received motions regarding police mistreatment of certain religious communities. If we add also the latest statements by the Director of the State Committee for Relations with the Religious Communities and Religious Groups about the carte blanche support by the state of all the activities of MOC, it is

[3] The case of Hasan and Chaush v. Bulgaria

more than obvious that the constitutional principle of separation of the state from the church is violated by favouring the big religious communities and at the same time blocking the right to religion of all the other citizens from the smaller religious communities.

1.2. Segregation of the Roma at the Bitola primary schools

The events that were made public regarding the probable segregation of Roma children at the Bitola primary schools draw the attention of the Directorate for Development and Promotion of Education in the Languages of the Communities at the Ministry of Education and Science, as well as of the Helsinki Committee.

After the visit by the representatives of the Committee of the Bitola Municipality, the representatives of the NGO sector in Bitola, the primary schools "Trifun Panovski" and "Gyorgyi Sugarev" from Bitola based on the acquired data from the competent services 3 different situations were established:

1. According to the Municipality of Bitola and the Report by the Director of the Directorate for Development and Promotion of Education in the Languages of the Communities, it was established that … with the exception of two classes (one in the first and one in the second grade) there were no other classes that were mono-ethnical (either with Roma or Macedonian children). [4]

2. According to the written response received from the primary school of "Gyorgyi Sugarev", Bitola, an information was received that the number of students enrolled in first grade in the academic year of 2009/2010 was 105 (18 were Macedonians, 2 Albanians and 85 Roma). The number of students in the second grade was 101 (17 Macedonians, 84 Roma) … and that the classes were made before the start of the academic year and in each class there are several students of Macedonian ethnic origin. The small number of students from the Macedonian ethnic group in the last two years was the explanation given for the reasons for their withdrawal and transfer to other schools. Thus, according to the primary school in the first and second grade there were two classes that consisted strictly of students from the Roma ethnic group which was not the case in the higher grades where the ratio of the students based on their ethnic origin was balanced.

3. Based on the inspection and the conversation with the representatives of the Helsinki Committee with some of the employees at the primary school "Gyorgyi Sugarev", Bitola, we were informed that at the time of the visit (24 September 2009)

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1. [4] Regardless, the Directorate for Education in the Languages of the Communities of the local self-government proposed the following measures:

- Consistent and full respect of the district division by all the primary schools' principles in the Municipality of Bitola;
- To ensure for the Roma students who wish to go to some of the other primary schools in the Municipality of Bitola not to be refused with the excuse that they are full; and

To organise free transportation in order to ensure enrolment in the other schools for those Roma students that at the moment study at the primary school of "Gyorgyi Sugarev" if their schools decide to transfer them to the other schools in the municipality.

the number of students enrolled in the first grade for the 2009/2010 academic year was 72 (18 Macedonians, 2 Albanians, 52 Roma). At the school there were 7 ethnically pure Roma classes: two classes in the first, second and third grade and one in the fourth grade.

- The situation was a little bit clarified with the information received from the NGOs according to which the total number of enrolled Roma children in the first grade on the territory of the Municipality of Bitola was: one in each of the primary schools of "Dame Gruev" "Todor Angelovski" and "Goce Delcev", two at the primary school of "Trifun Panovski", 3 at the primary school of "Kiril and Metodij", while all the others were enrolled at the primary school of "Gyorgyi Sugarev.

Now the authorities need to establish what of all this is true.

The situation with segregation[5] and discrimination of the Roma children in education is evident as an existing problem also in the Strategy for the Roma in the Republic of Macedonia. The recommendations given in the Strategy are along the following lines: the education initiatives to bare in mind the efforts for avoiding ghettoisation, which has a destimulating effect on the competitiveness and the motivation of children; evidently this is not respected in practice and the situation is getting worse on daily bases, so consequently at the moment we have the fourth generation of mono-ethnic Roma classes.

Equality of citizens before the Constitution and the laws also means equal treatment of the laws and equal treatment and position in the application of legal acts (law), which means that the citizens must be given an equal access to the legal system and equal treatment at the institutions of the system.

Equality of citizens is closely related and linked to the absolute prohibition of discrimination, which as a provision could be found in the domestic legislation (Article 2 from the Law on Primary Education), and in many international documents and conventions, such as the European Convention on Human Rights (Article 14), the Universal Declaration of Human Rights (Article 7) as well as the UNESCO Convention against Discrimination in Education (Article 1).

In this specific case it would mean equal access for all children to the primary school in their district, regardless of the religion, colour or ethnic origin[6], and avoiding (through internal school policy) selection and enrolling children from the Macedonian community and refusing the children from the Roma community because they were allegedly full, and that they already had "their own" school and they need not enrol at other schools.

[5] The Roma children are not properly accepted by the environment where they attend school; the other children do not seat or play with them, so usually they seat alone or in the back desks; some professors do not work enough with these children; the Roma children are ashamed of their clothes and discrimination in the marking system has been noticed.

[6] Article 46 Par. 3 from the Law on Primary Education

1.3. Draft Law on Free Legal Aid

In the course of September 2009 after two years of working on the draft version the Parliament of the Republic of Macedonia received the draft Law on Free Legal Aid. The Standing Inquiry Committee for Protection of Civil Freedoms and Rights had a session at which the Minister, the MPs and the representatives of the NGO sector discussed it.

This Law envisages regulating of the right to free legal aid, the required procedure, beneficiaries, conditions and the way in which it is done, who will provide the free legal aid, the decision-making bodies, protection of the right to free legal aid, financing and supervision of its implementation, organising days of free legal counselling, free legal aid in cross-border cases and supervision of the implementation of the provisions from this law.

The goal of the law is to ensure equal access to the citizens and other persons envisaged in this law to the institutions of the system for the purpose of familiarisation, receiving and providing effective legal aid following the principle of equal access to justice.

Even though the draft Law on Free Legal Aid was delivered and efforts were invested in the adoption of this law, the NGO sector both at the workshops and at the very session of the Standing Inquiry Committee gave a number of remarks. The Helsinki Committee also had some concrete remarks that were forwarded to the Parliament of the Republic of Macedonia and the Standing Inquiry Committee for Protection of Civil Rights and freedoms. The remarks incorporate the following:

1. The definitions of the notions definitely need additional clarification since later on in the text of the draft-law they do not coincide with the content of the draft law;
2. Specific defined criteria and conditions both for the civil associations and for the local branch offices of the Ministry of Justice;
3. Unequal treatment of the bodies that provide free legal aid in the area of supervision and control implementation. Namely, the local branch offices of the Ministry of Justice are not controlled or supervised by the Ministry of Justice, and on the other hand the lawyers and the civil associations are;
4. The procedure is defined as urgent and on the other hand the deadlines for adopting the decisions (for acting upon the requests for free legal aid or based on other grounds) is 15 days which is basically the deadline for the regular procedure in compliance with the provisions from the Law on General Administrative Procedure.
5. For the beneficiary to select on his/her own the institution where s/he will ask for free legal aid, regardless whether it is a preceding legal aid (local branch offices of the Ministry of justice or the associations of citizens) or a legal aid (selection of a lawyer from the list made by the Ministry); and
6. Precise and concise determination of the notion 'property', including the minimum residential space.

The Helsinki Committee believes that the draft Law on Free Legal Aid also has some discriminatory provisions and does not ensure equal treatment of the institutions that should provide free legal aid, the beneficiaries of free legal aid as well as when it comes to their supervision.

The Helsinki Committee expects that the authorities will show sense and openness and they will accept the remarks made by the expert community and the NGO sector, and at the end the tree will give good fruits and the citizens of the Republic of Macedonia will get a Law that would be effective in practice.

1.4. The right to protest and expression once again under attack!

In the past period the Helsinki Committee presented its opinion regarding the situation with the professional soldiers in the Army of the Republic of Macedonia (ARM) and demanded amendment of the relevant legislation to their benefit.

Namely, in compliance with the same law[7], the employment of the professional soldiers is immediately limited to a period of 12 years at the most. Still, this is not the only limitation of their working relation, i.e. if they sign an employment contract they could continue working until the age of 38. After that their employment is terminated[8]. The professional soldiers tried to express their discontent with a public protest and familiarisation of the broader public with their demands.

Unfortunately, the state apart from not responding to their demands, they also decided to apply number of different kinds of pressures in order to suffocate the freedom of expression and the right to a public protest.

In that context, even though only orally stated, a number of measures were applied against the soldiers such ban on using their days-off, forbidding them to have contacts with the media, their holidays were discontinued, they were forbidden to organise protests under the threat that their employment would be terminated.

Macedonia once again failed to respond to the challenges that determine its status as a democratic state and that is creating conditions for free practicing of the right to public protest. The state failed even to respect the obligations it has undertaken from the international agreements regardless of the warning in the last EU report regarding the number of cases of threats aimed at the farmers in Bitola,

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[7] **Article 35, Law on Army Service**
With the professional soldiers serving in the Army, the Ministry of Defence concludes employment contracts. The employment contracts with the professional soldiers are concluded for a period of three years.
Depending on their performance and the needs in the given army branch i.e. service the employment contracts for the professional soldiers could be prolonged three times at the most.

[8] **Article 259a, Law on Army Service, Official Gazette of the Republic of Macedonia No. 134 from 6 November 2007.**

those opposing the construction of a church on the capital's city square, the students from Resen, continuing with its practice of suffocating the freedom of thought and public protest of the professional soldiers.

The Helsinki Committee once again expresses its concern with this trend and appeals to the authorities to show their democratic capacity of respecting one of the fundamental human rights - freedom of protest, instead of using methods typical for totalitarian regimes.

2. POLICE AND THE COURT CASES

2.1. The case of Fatime Idris Maslar

In the course of March[9] 2009, the Helsinki Committee registered the case of Mrs. Fatime Idris Maslar who applied for a citizenship of the Republic of Macedonia in 2008. On 23 July 2008 the Ministry of Interior adopted a Decision[10] refusing her application with an elaboration that Mrs. Maslar did not fulfil the conditions provisioned in Article 7 Paragraph 1 Subparagraph 2 from the Law on Citizenship of the Republic of Macedonia i.e. that before submitting the application she had not lived on the territory of the Republic of Macedonia for at least 8 years.

Within the envisaged period of 30 days Mrs. Maslar complained to the second instance governmental committee, which as a second instance body within an envisaged period of 60 days failed to adopt a Decision.

Even though in April 2009 the Helsinki Committee wrote to the second instance governmental committee[11] with a request to be informed about the claims of violation of the legal deadlines envisaged in Article 247 from the Law on General Administrative Procedure as well as whether the state body received the complaint, whether it was reviewed, what was the outcome and why the party was not informed, regretfully they had not given any answer.

On the other hand the Helsinki Committee even though had not addressed the Ministry of Interior on 22 May 2009 received information that the party received the first instance decision on 14 August 2008 and there was no complaint against it addressed to the second instance committee for deciding in the second instance proceedings in the area of internal affairs, judiciary, public administration, local self-government and issues of religious character at the Government of the Republic of Macedonia.

After receiving this answer the Helsinki Committee immediately called on the phone the father of Mrs. Maslar who informed us that the complaint was submitted to the MOI and that when he checked he was told that it was registered in the journal with a remark that it was forwarded to the second instance body on 25 August 2008.

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[9] On 30 March 2009 Mr. Idris Maslar addressed the Helsinki Committee.

[10] Decision No. 16.11.1 – 68765/1 – 2007

[11] The letters were sent on 15 April 2009, 8 June 2009, 16 July 2009 and 17 September 2009.

Consequently, the Helsinki Committee addressed the Ministry of Interior enclosing a copy of the timely submitted complaint and demanded official response whether the complaint was registered at the Ministry. If so (Mr. Maslar already has some kind of confirmation) what were the reasons for the complaint not to be forwarded to the competent second instance body in compliance with the legal provisions[12] envisaged in the Law on General Administrative Procedure.

On 14 September 2009 the Helsinki Committee received the second response from the Ministry informing us that the party had submitted a complaint against the first instance decision. This response fully confirmed the claims of the party.

The Helsinki Committee seriously concerned concludes that the above stated case presents the real picture of the evident (non-)functioning of the second instance governmental committees and in the given cases it was specifically the Committee for resolving administrative proceedings in the second instance in the area of internal affairs, judiciary, public administration, local self-government and issues of religious character.

3. VIOLATIONS OF THE ECONOMIC AND SOCIAL RIGHTS

3.1. The case of Nice Nicevski

Mr. Nice Nicevski informed us that the Inter-municipal Centre for Social Welfare Skopje-Karpos adopted a decision[13] for exercising the right to a social pecuniary welfare. With the decision the party was recognised the right to social welfare in the amount of 2,109.50 Denars, and in the depositive it is envisaged that the decision would be effective starting from 1 March 2009.

From the document provided, i.e. the money order for a cash payment it is evident that the party in the months of March and April received a payment in the amount of 1,457.50 Denars, an amount that does not correspond to the amount established in the adopted decision.

Furthermore, based on the submitted documentation it was noticed that the Public Institution MCSW Skopje-Karpos refers to the Articles from the Provision on the conditions, criteria, amount, way and proceedings for establishing and exercising the right to social welfare (Official Gazette of the Republic of Macedonia No. 15/98, 21/98, 28/01, 23/02, 91/02, 59/03, 37/03, 41/05 and 109/05).

This decision based on which the welfare decision was adopted was terminated with the adoption of the Decision for annulment of the decision on the conditions, criteria, amount, way and proceedings for establishing and exercising the right to social welfare (Official Gazette of the Republic of Macedonia No. 58 from 11 May 2007).

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[12] Article 233 from the Law on General Administrative Procedure
The complaints are submitted indirectly or they are sent by mail to the body that adopted the first instance decision.

[13] Decision No. 677.07,-32225/3 from 9 April 2009

The Helsinki Committee on several occasions addressed the competent body in writing in order to get an answer why the party for the given months had not received social welfare in the amount of 2.109 Denars as it was stated in the Decision for exercising the right to social welfare i.e. why the decisions in which it was decided on the right to social welfare for almost two years had been based on a document which was not effective since 2007.

The competent body to this very day has no provided any answer to these questions so it remains unclear why the party could not exercise his right fully, i.e. why he was financially damaged.

Even though the Law on Social Welfare that was effective until 2 July 2007 in Article 29 envisaged that the more immediate conditions, the truth, the criteria and the way of exercising the right to social welfare was established by the Government, the Helsinki Committee considers as absurd and unacceptable for the Centre for Social Welfare in its decision to refer to an ineffective regulation and based on it to decide on certain issues.

The Helsinki Committee hopes that the competent bodies will not allow this kind of mistakes in the future and that they will undertake all the necessary activities for overcoming the given situation, all in the best interest of the beneficiaries of social welfare.

3.2. Internally displaced persons from the village of Radusa

The Helsinki Committee for Human Rights was addressed by a group of internally displaced persons from the village of Radusa who informed us that since they left their homes in 2001 until today proper conditions for their return to their homes had not been created.

In the course of the last 8 years the competence for the resolution of the problem was constantly transferred from the Government to the Ministry of Labour and Social Policy and back to the Government.

Currently, even though they are temporarily accommodated in rented apartments paid by the Ministry of Labour and Social Policy the fact remains that it is not a permanent solution. Furthermore, the parties informed us that they also had a problem with the social welfare they receive based on the number of members in the family.

The parties informed us that they had already addressed the Government and the Ministry of Labour and Social Policy requesting a meeting with a purpose of finally resolving the problem.

The Helsinki Committee in the course of October 2009 addressed the Government of the Republic of Macedonia and the Ministry of Labour and Social Policy requesting information whether they had a meeting with the representatives of the displaced persons from the village of Radusa, what were the conclusions from that meeting and what kind of activities would be undertaken for the final solution of

the given situation. Regretfully, the competent bodies have not provided any answer, yet.

Having in mind the sensitivity of the situation, the Helsinki Committee addresses all the competent bodies for final resolution of the problem with all the internally displaced persons aimed at respecting their rights guaranteed by the international documents and the national laws.

3.3. The case of Zineta Nurkovic

The Helsinki Committee was informed about a case in which the party for ten years had continuously worked at postal company "Macedonian Post Office"-Skopje, as post office window clerk however during the entire time instead of being employed with an Employment Contract she only had a Contract for Providing Services in compliance with the contract relations regulation.

Based on a submission to the Labour Inspectorate they carried out an inspection and only concluded an indisputable state of affairs. Still it is unclear why the inspectorate did not take into consideration the provisions from the Law on Labour Relations or those from the Collective Agreement of the public enterprise the Macedonian Post Office where it is clearly stated that the working relation between the employee and the employer is based on the signed Employment Contract.

After the Helsinki Committee addressed the state labour inspectorate they informed us that a new inspection was carried out and the above mentioned irregularities were detected and "measures were undertaken in compliance with the Law on Labour Relations". In the response it was stated that the employer tried to regulate the working relation of the party but it was impossible since they did not receive an approval from the Ministry of Finance and additionally because with a Conclusion by the Government they were informed that due to the implementation of the anti-crisis measures there would be no new employments by the end of 2009.

It seems that this was the appropriate explanation for the labour inspectorate because the party informed us that after the inspection she was fired ending the otherwise non-regulated working relation.

The absurdness in this case is clearly evident because it is obvious that the power of the government's decision is greater than the Law on Labour Relations and the Constitutional determination of the right to work for everyone. Still, the lack of logic goes so far that instead of sanctioning its illegal operation by harmonising the labour relation with the Law, they do not want to oppose the governmental measure and they terminate the contract with the party.

The Helsinki Committee expresses concern with the easiness with which the fundamental laws on the rights of the workers are violated and the non-functioning of the institutions that should provide protection. The Committee would like to reiterate that in the principle of the rule of law no Government or government's measure could have precedence over the

Constitution and the laws, and especially not to the disadvantage of citizens.