

## FORMER YUGOSLAV REPUBLIC OF MACEDONIA

### “We shall not tolerate ill-treatment<sup>1</sup>”

#### Zero tolerance for impunity too?

On 20 February 2003, in response to a letter which followed a visit by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Macedonia a few months earlier<sup>2</sup>, the Macedonian authorities wrote back to the CPT stating that:

*“The Government of the Republic of Macedonia points out that the ill-treatment of persons held or detained by law enforcement officials is contrary to the fundamental values on which a democratic society is based, to the respect of human rights and to the rule of law; **such phenomena will not be tolerated and those who perpetrate them will be subject to severe sanctions as prescribed by law.**”* [Amnesty International’s emphasis].

Pledging that they would act on the CPT’s recommendations, the Macedonian authorities committed themselves to *“investigate all cases of ill-treatment or improper behaviour by law enforcements officials identified in the reports of the European committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and to take appropriate action.”*

Two years after this statement was made, Amnesty International remains concerned about the willingness of the Macedonian Government to deal effectively with allegations of torture and ill-treatment. During the years 2003 and 2004 Amnesty International has continued to receive serious allegations of ill-treatment by the Macedonian police, such as those described below<sup>3</sup>.

On 28 June 2004 Sashko Dragovich was allegedly beaten at Butel Police Station No 1 in Skopje to force him to confess to theft. A medical certificate reportedly recorded injuries to his face, head and arms inflicted by truncheon and fist. On 8 October 2004, the Ministry of Internal Affairs informed the Macedonian Helsinki Committee that an investigation had failed to prove the injuries had been inflicted by police officers, but that disciplinary proceedings against the officer involved would be instituted for other legal infractions in connection with the arrest.

<sup>1</sup> Extract from the Draft minutes of the 17<sup>th</sup> session of the Macedonian Government, held on 10 February 2003, quoted in CPT/Inf (2004) 29 dated 9 September 2004.

<sup>2</sup> Visit of carried out between 18 and 27 November 2002 (reference: CPT/Inf (2004)29).

<sup>3</sup> Information about the cases of Sashko Dragovich and Petre Nikoloski come from the Macedonian Helsinki Committee, a local non-governmental organization which collaborates with Amnesty International.

The Macedonian Helsinki Committee (MHC) also reported the case of Petre Nikoloski, a former member of the “Lions” – a paramilitary police force set up by the Ministry of Internal Affairs following the insurgency in 2001, which was disbanded in January 2003. Petre Nikoloski alleges that at 2am on 6 November 2003 he was forcibly arrested and taken to the Prilep police station where he was beaten with rubber bats, baseball bats and police flashlights while he was handcuffed, in order to extort a confession from him. The MHC reported that there was medical documentation and photographic evidence corroborating the allegations.

Three ethnic Albanian men, Xhezair Shabani, from the Malino village, and his two sons, Resmi Shabani, aged 27, and Shefket Shabani, aged 23, were allegedly brutally beaten by members of a special police unit from 5pm on 26 August 2003 until 3am on 28 August. They were stopped while returning from a timber-gathering expedition in Ramno by a large number of masked special police members apparently seeking an ethnic Albanian fugitive, Avdyl Jakupi (also known as Commander Chakalla). Some of the 20 masked policemen allegedly started beating the three men and insulting them with racial slurs, while other policemen watched. One of the masked policemen allegedly carved the letter ‘M’ (for Macedonia) with a knife on one of the victims. The three men were then driven to the Mirkovci police station with the police allegedly holding Resmi Shabani in front in the vehicle as a human shield, and forcing him to shout that he was an Albanian in order to deter any possible attack from armed Albanian insurgents operating in the area. The ill-treatment allegedly continued in Mirkovci police station until they were finally released at 3am on 28 August 2003. On 5 September 2003 it was reported that the then Minister of Internal Affairs Hari Kostov had confirmed that the three men had been maltreated for 30 hours by the Macedonian special police forces and that measures would be undertaken against those responsible for exceeding their authority. Amnesty International has not received any further information on this case.

On 8 February 2003 three Roma, Senad Rustemovski, Ejvas Sherfovski and Jashar Ramadan were allegedly beaten and ill-treated by a number of police officers at Prilep police station after being taken into custody for not having personal identification papers on them. They claimed that on their release they were forced to sign a statement stating that they had no comments on how they were treated in custody.

Amnesty International unconditionally opposes torture and other forms of cruel, inhuman or degrading treatment or punishment of all prisoners and detainees. The organization urges the Macedonian authorities to ensure that a prompt, thorough and impartial investigation are undertaken into all incidents of torture and ill-treatment, and to ensure that any police officer responsible is brought to justice, and that all victims receive fair and adequate compensation.

## Methods and Practices: a Traumatic catalogue

In its report, (CPT/Inf (2004) 29) the CPT deplored that the situation had not improved since its previous visit<sup>4</sup> and that it continued to receive allegations of beatings including punches and kicks on various part of the victims' body as well as "*beatings with batons, metal rods, firearms butts, wooden sticks, shovel handles and baseball bats*". Its delegates reported having found metal rods ranging from 75 to 90 cm in length and 0.75 to 2 cm in diameter were found in Kumanovo Police Station, a baseball bat, a 70cm iron crowbar and 2 wooden sticks measuring between 80 and 90 cm in length and 2cm in diameter in Struga Police Station. Some victims alleged that they had received repeated blows on the gluteal region and been subjected to *falaka*. Victims also complained about having been threatened with loaded, cocked firearms pointed at and pressed against their temples<sup>5</sup>.

Such equipment is clearly used by the police. A prisoner claimed that after his head had been covered with a sack, he was beaten by the police two days earlier during his arrest at Gostivar and while under detention in Skopje. The medical file at Skopje Prison recorded on 28 August 2002 that the victim presented an "*haematoma over the entire area of the left elbow. Two clearly delineated haematomas on the left part of the back at shoulder-blade level. Haematomas on both soles. Intensely marked haematomas covering the entire area of both buttocks*". According to the doctors who accompanied the CPT delegation in November 2002, "*the injuries recorded are consistent with the person having sustained a heavy beating in the manner which he described*".

On 22 November, the CPT doctors examined another prisoner who claimed that he had been punched, kicked and beaten with a wooden stick by police officers at Stenje Border Police Station two days earlier. The CPT report notes that the victim "*displayed (five) 5 fresh, violet-blue irregular haematomas 4cm in diameter over a 10 x15 cm area on the left side of the head, below the ear towards the chin and neck*" and that "*his left shoulder was painful*". The doctor concluded that the victim's injuries were consistent with his allegations and "*resulted from blows inflicted with blunt and hard objects (e.g. fists, kicks, wooden sticks)*".

## Zero tolerance for impunity too?

Amnesty International has for several years expressed its concerns about continued allegations of police ill-treatment and torture in Macedonia. The organization is seriously concerned that the police appear unwilling to thoroughly investigate reports of torture and ill-treatment, such as the cases described above, and fail to bring those responsible to justice. To Amnesty International's knowledge, despite the frequency of allegations of police torture or ill-treatment, the number of prosecutions of police officers for such offences is so low as to be almost negligible. Amnesty International is further informed that, in the past, most if not all of the cases raised with the Ministry of the Interior by the office of the People's Defender

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<sup>4</sup> "Report to the Government of 'the former Yugoslav Republic of Macedonia' on the visit to 'the former Yugoslav Republic of Macedonia' carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 19 July 2002", CPT/Inf (2003) 5, Strasbourg, 16 January 2003. See also Amnesty International *Former Yugoslav Republic of Macedonia: Continuing failure by the Macedonian authorities to confront police ill-treatment and torture* (AI Index EUR 65/008/2003).

<sup>5</sup> CPT/Inf (2004) 29, pages 11-12.

(Ombudsperson) have been dismissed as unfounded despite at times compelling evidence to the contrary.

There have been, to Amnesty International's knowledge, cases where, apparently due to public pressure, the Ministry of Internal Affairs has overruled the initial police investigation and ordered new investigations which have confirmed that the ill-treatment had occurred. However, in these cases, Amnesty International believes that the relevant provision in the criminal code dealing with torture and ill-treatment were not applied, and that the penalties imposed on the perpetrators were often not commensurate with the gravity of the crime.

For example, on 07 February 2003 two Roma, Skender Sadikovich and Memet Dalipovski were allegedly beaten by police in Kumanovo. Skender Sadikovich claimed that he was beaten at his home by police and then by six policemen in Kumanovo police station with an axe handle to try and force him to confess to a theft. Memet Dalipovski claimed that he was beaten by five policemen at the station. The then Minister of Internal Affairs, Hari Kostov, in a newspaper interview on 19 April 2003, stated that an initial investigation had rejected the two men's claims but that he had ordered a further investigation which confirmed that the police had used ill-treatment. He promised that legal proceedings would be initiated. Amnesty International is informed that the police officers involved were eventually merely disciplined by a 15 per cent salary reduction for six months.

Amnesty International notes that Article 142 of the criminal code dealing with the use of torture to extract a confession stipulates imprisonment of between three months and five years (or a minimum of one year if serious consequences for the injured party), while Article 143 punishes ill-treatment, including insults to dignity, in the course of official duties with up three years' imprisonment.

In February 2005 the Ministry of Internal Affairs announced that 15 police officers were sanctioned in 2004 for ill-treatment and that all 15 were either suspended from duty or fined. However, it appears that criminal prosecutions were only undertaken if the violence caused serious bodily harm or actually endangered life as in the case of a police officer from Bitola who beat a 15-year-old boy so badly on 27 December 2004 that the boy was hospitalized with serious head wounds. The police officer, B. P.<sup>6</sup> was arrested and charged under Article 143 and with causing serious bodily harm.

The Council of Europe's European Commission against Racism and Intolerance (ECRI) in its report on Macedonia adopted on 25 June 2004 and published on 15 February 2005, noted improvements in the investigation of police ill-treatment but pointed to continuing weaknesses. ECRI stated:

*“the section for internal control and professional standards within the Ministry of Interior has significantly stepped up its efforts to seriously investigate complaints of mistreatment on the part of police and to punish those found guilty of such behaviour. However despite these improvements ECRI notes that it has received reports from a range of sources indicating that this investigation mechanism remains unsatisfactory. Problems reportedly occur at different stages of the procedure, with the result that many cases of misbehaviour seem to go unpunished. NGOs also report that in cases where sanctions are handed down, they tend to be minimal. A further problem seems*

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<sup>6</sup> Name known to Amnesty International.

*to be that many victims do not bring complaints, from fear of reprisals as well as lack of confidence that their complaint will lead to action.”*

ECRI recommended that:

*“cases of police violence which are brought to court should be dealt with as rapidly as possible and perpetrators appropriately sanctioned, in order to transmit the message to society that such behaviour on the part of the police is not tolerated and will be punished.”*

Amnesty International believes that the lack of thorough investigation into reports of torture and ill-treatment coupled with the judicial reluctance to apply penalties commensurate to the gravity of the crime perpetrated, as per the dispositions of the law, compound the current climate of impunity. The organization called on the new government of Macedonia to seriously address the issue of police ill-treatment and impunity.

## **Macedonian Constitution and Legislation.**

The Macedonian Constitution and national law specifically prohibit the use of ill-treatment or torture. Article 11 of the Constitution states that: “[t]he right to physical and moral dignity is irrevocable. Any form of torture, or inhuman or humiliating conduct or punishment is prohibited”. Article 142 the Criminal Code specifically prohibits the use of torture to extract statements and allows imprisonment of between three months and five years for those convicted under the Article. If serious violence is used or if there are serious consequences for the accused (the injured party) in the criminal process, the minimum sentence is one year imprisonment. Furthermore Article 143 of the same code forbids ill-treatment, including insults to dignity, in the course of official duties and allows for imprisonment for up to three years.

The Code of Criminal Procedure also stipulates that individuals deprived of their liberty must be brought before a court immediately, or at the very latest, within 24 hours of their arrest (Article 3). The arrested person must be informed of his or her right to consult a lawyer of his or her choice during questioning (Article 3). Access to a lawyer and the review of the legality of detention by a court are recognized in international human rights standards as important safeguards against torture and ill-treatment.

## **International Standards**

Amnesty International is concerned at these allegations of ill-treatment/torture. Article 2.1 of the Convention Against Torture Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Macedonia is a party, defines torture in Article 1 as:

*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain*

*or suffering is inflicted by or at the instigation or with the consent or acquiescence of a public official or other persons acting in an official capacity.*

Article 2.1 expressly forbids torture in all cases. It states :

*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

Macedonia ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1994. In doing so, it expressly undertook to prevent torture taking place within its territory by undertaking to educate and train law enforcement officers, to ensure that its competent authorities proceed to a prompt and impartial investigation of cases where there are reasonable grounds to believe that an act of torture has been committed, to ensure that victims of torture have the right to compensation or, where a death had occurred as a result of an act of torture, that the victim's dependants are entitled to compensation and that those responsible for the torture are punished by appropriate penalties. Article 2, Paragraph 1, of this Convention states that: *"Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction"*.

Macedonia also ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1997. Article 3 of the Convention states that: *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment"*. In the same year Macedonia ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This Convention prohibits the practice of torture and other cruel, inhuman or degrading treatment or punishment, and also sets up a system of regular inspections of places of detention by the European Committee for the Prevention of Torture. Macedonia is legally bound to observe the provisions of this treaty. The European Committee for the Prevention of Torture (CPT) visited Macedonia in November 2002. In its report to the Government of Macedonia, which was published in September 2004, the CPT deplored the lack of safeguards against ill-treatment. It observed that:

*"in certain cases, the severity of the ill-treatment alleged was such that it could be considered to amount to torture (...). The panoply of methods of ill-treatment alleged was much the same as that encountered during previous CPT visits. The delegation received numerous allegations of beatings, some of them severe or sustained enough to induce loss of consciousness and/or lasting sequelae (...). It should be added that after the November 2002 visit the CPT has continued to receive reports of ill-treatment by law enforcement officials"*<sup>7</sup> and added that *"the physical ill-treatment of persons deprived of their liberty by law enforcement agencies in "the former Yugoslav Republic of Macedonia" continues to be a serious problem, nearly five years after the first periodic visit when similar conclusions were reached"*<sup>8</sup>.

Moreover, the CPT blamed the *"inactions of judges, public prosecutors and investigating police officers"* which it concludes *"has fostered a climate in which law enforcement officials minded to ill-treat person have come to believe – with very good reason – that they can do so with impunity"* (CPT/Inf (2004) 29 paragraph 124). Among the remedies proposed by the CPT to combat impunity, it called on the Macedonian authorities to *"ensure that prosecutors issue a formal proposal to take action to an investigating judge in every case where they*

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<sup>7</sup> CPT/Inf (2004)29, paragraph 122.

<sup>8</sup> CPT/Inf (2004) 29, paragraph 123.

*become aware (...) that a person*” has been ill-treated; that “*investigating judges take necessary steps (...) whenever criminal suspects brought before them at the end of police custody allege ill-treatment*”; and that “*measures (are taken) to improve the manner in which complaints against the police are investigated by the Ministry of Interior Unit for Professional Standards*”<sup>9</sup>.

## **Recommendations to the Macedonian Authorities.**

### **Amnesty International is calling on the Macedonian authorities**

1. To conduct a prompt, thorough, impartial and independent investigation into all allegations of ill-treatment and to make the results of the inquiries public.
2. To bring to justice any police officer suspected of being identified as responsible, whether directly or on the basis of superior responsibility.
3. To ensure that all victims receive fair and adequate compensation if the allegations are found proven.
4. To ensure that detainees are immediately seen by an independent doctor after arrest, that they get prompt and effective medical attention and that medical records are kept in accordance with good medical practices and made available to detainees.
5. To ensure that witnesses / victims who complain about police ill-treatment are not subjected to threats or harassment.
6. To immediately act upon the recommendations made by the CPT and introduce adequate measures to bring an end to impunity in all cases of torture and ill-treatment.

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<sup>9</sup> CPT/Inf (2004) 29, paragraph 124.