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REPUBLIC OF
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COMMITTEE

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EXECUTIVE SUMMARY

Amnesty International submits this briefing to the United Nations (UN) Human Rights Committee (the Committee) ahead of its examination, in June 2015, of the third periodic report on the implementation by the former Yugoslav Republic of Macedonia (Macedonia) of the International Covenant on Civil and Political Rights (the Covenant).

In response to the List of Issues, this submission documents Amnesty International's ongoing concerns in Macedonia in relation to Articles 2, 3, 6, 7, 9, 10, 12, 13, 14, 18, 19, 22 and 26 of the Covenant.

This report is being submitted in the context of an ongoing political crisis in Macedonia, following the so-called "wire-tapping" scandal, which has undermined the rule of law and human rights to such an extent that the credibility and integrity of the government has been called into question, including by the international community. Until such time as a full and impartial inquiry is conducted into allegations of criminality, corruption and misconduct at the heart of the Macedonian government, suggested by the content of the recordings, Macedonia's commitment to protect and respect the rights set out in the Covenant will be called into question.

In this submission, Amnesty International highlights Macedonia's continued lack of an effective response to the decision of the European Court of Human Rights in December 2012, in the case of Khaled el Masri, a German national of Lebanese descent, who in 2003, was subjected to enforced disappearance by the Macedonian authorities, as part of the CIA's rendition and secret detention programme.

In context of continued impunity for crimes under international law, the organization highlights Macedonia's failure to provide access to justice, truth and reparation for the victims of war crimes, which took place during the 2001 internal armed conflict.

Macedonia's refusal to respect and protect the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people is documented, as is the continued impunity for the perpetrators of attacks against LGBTI individuals and LGBTI rights organizations. Recommendations to ensure the effective and impartial investigation of hate crimes aim to address Macedonia's failures in this regard.

Concerns that the rights of refugees, asylum-seekers and migrants are not respected in Macedonia are illustrated with respect to their unlawful detention, including the detention of unaccompanied minors and other children, in inhuman and degrading detention conditions. Further in the absence of an effective asylum system, those in need of international protection cannot find it in Macedonia.

Long-standing concerns about the lack of independence of the judiciary, including the office of State Prosecutor, have been again brought to the fore by the wiretapping scandal, illustrating the degree of government control over, and lack of respect for, the independence of these institutions.

Finally Amnesty International adds its voice to the growing international concern at restriction on the freedom of expression in Macedonia, and in response to the Committee's question, summarises some of the evidence for the control of the media by the present government.

Amnesty International makes a series of recommendations to the government of Macedonia, including with respect to the necessity of an independent investigation of the allegations of criminality and human rights violations made public in surveillance recordings.

The organization calls on Macedonia to provide access to justice and reparation to the victims of long standing violations of international humanitarian and human rights law, including Khaled el-Masri, a victim of rendition, and the victims of crimes under international law.

Immediate measures should be taken to restore the rule of law, and to respect the independence of the judiciary, and prosecutor's office.

Macedonia must also end discrimination, including through respect for and the protection of the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals, and bring those suspected of criminal responsibility for threats and attacks to trial.

It must also ensure respect for the rights of refugees and migrants, who suffer violations of their right to liberty through arbitrary detention, and refugees who are denied access to international protection through inadequate implementation of the Asylum Law.

Finally, the government must refrain from interference in the media, and ensure that print, broadcast and electronic media are free from political or other control, and guarantee the right to freedom of expression.

INTRODUCTION

This submission is written at a time when the rule of law is under serious threat in Macedonia. Both the constitutional and legal framework have been undermined by the so-called “wiretapping scandal”, and the publication, by the main opposition party, of surveillance tapes. The contents of published tapes suggest that the members of the ruling VMRO-DPMNE¹ party, which leads the government coalition in Macedonia, at the highest level, are responsible for violations of human rights, corruption and abuse of office.²

At the same time, concerns have arisen about the Macedonian authorities’ lack of transparency about the reasons for a security operation conducted by Macedonian Security Forces against armed ethnic Albanians, in the northern town of Kumanovo on 9 May 2015, which resulted in the deaths of at least 22 people, including eight police officers.

THE CASE OF MARTIN NESHKOVSKI

The background to, and developments in the “wiretapping scandal” are presented below. In this section, however, Amnesty International seeks to highlight how the content of published tapes appear to confirm long-held allegations of human rights violations by the Macedonian government, made by civil society, human rights organizations and independent media. The case of Martin Neshkovski is not only illustrative, but was the catalyst which triggered the first public demonstration in response to the release of recordings of surveillance tapes.³

On 5 May 2015, the opposition party published a surveillance tape, which featured conversations between a government minister, officials and others.⁴ These conversations revealed their apparent complicity in an attempt to cover up the criminal responsibility of a police officer and member of the Prime Minister’s guard, for the death of Martin Neshkovski,

¹ *Vnatrešna makedonska revolucionerna organizacija – Demokratska partija za makedonsko nacionalno edinstvo*, Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity.

² Selected extracts available in English, see, “Interactive Overview of Macedonia’s Largest Wire-tapping Scandal”, <http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/index.html>

³ A series of taped recordings of conversations, and transcripts of those conversations, between ministers, government officials and various third parties have been published by the main opposition party since February 2015. As yet it remains unclear how this material came into the possession of the opposition; nor has it conclusively been established who originated the surveillance programme.

⁴ In this particular case, recorded conversations reveal some government officials’ disdain for human rights, including the right to life. For example, Ministry of Interior spokesperson, Ivo Koteski is heard in conversation with former Minister of Interior, Gordana Jankuloska: “These morons from A1 [independent media] were asking me ... about a dead kid in the centre. Idiots.” Transcript available at, *ТРЕТА БОМБА: Љубе Бошкоски, Мартин Нешкоски, чистка во администрација (АУДИО+ТРАНСКРИПТИ)*, <http://bulevar.info/?p=13369>, accessed 3 May 2015.

who was severely beaten on 6 June 2011 during post-election celebrations in Skopje, and later died of head wounds.⁵

In 2012, Amnesty International reported: “Martin Neshkovski was severely beaten on 6 June 2011 during post-election celebrations in Skopje, and died of head wounds. Despite initial denials of police responsibility, Igor Spasov, a member of the “Tigers” anti-terrorist police unit was detained on 8 June. Repeated public protests questioned delays in the investigation and called for stricter civilian oversight of the police. Proceedings opened in November and Igor Spasov was convicted of murder and sentenced to 14 years’ imprisonment on 16 January 2012. Martin Neshkovski’s family and human rights activists have made credible allegations that the police and others initially attempted to cover up responsibility for the killing, and called for a further investigation into these allegations.”⁶

On the evening of 5 May 2015, following the publication of the recording, an angry demonstration, attended by the mother and brother of the dead man, took place in Skopje, calling for the resignation of the cabinet. Both protestors and riot police were injured. Over the following days, demonstrations, involving several thousand people, developed into wider protests calling for the dismissal of the prime minister and other officials for corruption, abuse of office and other criminality revealed by published surveillance tapes.

Dozens of people were injured on 5 and 6 May 2015, when law enforcement officers clashed with protestors outside the government building in Skopje. Local human rights organizations alleged that the authorities had used excessive force.⁷ This phase of demonstrations continued up until the evening of 8 May. Protests resumed on 17 May, in a large demonstration called by the opposition party; a similarly large demonstration supporting the Prime Minister and government was held on 18 May. Both sides subsequently set up camps, respectively outside the government building and the parliament.

KUMANOVO

In the early hours of 9 May 2015, Macedonian police forces launched an armed operation in Kumanovo, 40 kms north of Skopje, which continued well into the next day. According to government statements, the security operation in Kumanovo aimed to prevent planned

⁵ Balkan Insight, “Macedonia Officials Attempted Murder Cover-Up, Opposition Claims”, 5 May 2015, <http://www.balkaninsight.com/en/article/macedonia-officials-attempted-murder-cover-up-opposition-claims>

⁶ *Amnesty International: Submission to European Commission Progress Report: Macedonia, 2012*; see also Amnesty International Annual Report, Macedonia, 2011 and 2012.

⁷ The Macedonian Helsinki Committee, reported that “[police] were beating and stepping on all of the citizens, while large part of them were sitting on the ground and had their hands raised in the air. Right after, the Police started to apprehend and take participants of the protest in police custody. During the apprehension, the Police again, without discrimination, used disproportionate and excessive force”, *Demonstrations in front of the Government for the cover-up of the murder of Martin Neshkovski*, 6 May 2015, http://www.mhc.org.mk/announcements/291#.VWbD_c9VhHw; Amnesty International has been unable to independently verify these allegations.

attacks against state and civilian targets. Special police units, including members of the Unit for First Response and Intervention, known as the Alfa police, were deployed to the town and engaged with armed ethnic Albanians in heavy exchanges of fire, causing severe damage to property and infrastructure. At least 22 people, including eight police officers, and five ethnic Albanians living in the “Lagja e Trimave” area were killed. Hundreds of civilians fled to Serbia to seek temporary refuge.

The European Union, NATO and governments in the region have called on the authorities to promptly open an investigation into the conduct of the police operation and the killings.

The failure to promptly initiate an independent, thorough and effective investigation into the conduct of the operation again fuelled widespread suspicion amongst civil society. In Kumanovo, some residents considered that the operation amounted to extra-judicial executions, i.e. the deliberate and unlawful use of lethal force to eliminate specific individuals or groups by armed forces controlled by the state. Instead of opening such an investigation, on 12 May, the Minister of Internal Affairs resigned; she was replaced by Mitko Chavkov, former Head of the Public Security Bureau, responsible for overseeing some of the personnel engaged in the security operation.⁸

Thirty ethnic Albanians, who had either surrendered or were captured by government forces, were detained for investigative purposes for 30 days by the Skopje High Court, at the request of the state prosecutor for organized crime and corruption.⁹ Twenty-three individuals are suspected of Terrorist endangerment of the constitutional order and security, and 20 of them of having engaged in a criminal organisation to produce, possess and trade in weapons and explosives.¹⁰

Further concerns have been raised by allegations that the detained men had been ill-treated

⁸ On 12 May, the Minister of Transportation, Mile Janakieski, and the Director of the Secret Police, Sasho Mijalkov, also resigned.

⁹ A list of detained men was released by the Ministry of Interior and widely reported in local and regional media, see for example, <http://tocka.com.mk/1/159178/ova-se-28-te-uapseni-teroristi-zad-resetki-i-policaecot-arsim-bairami-koj-pukal-vrz-svoite-kolegi>, <http://www.blic.rs/Vesti/Hronika/558294/CRNI-SPISAK-Ovo-su-teroristi-uhapseni-u-Kumanovu>. They included both ethnic Albanian Macedonian citizens and ethnic Albanians from Kosovo, allegedly members of the Kosova Liberation Army.

¹⁰ Art. 313, Criminal Code: A person who, with the intention of endangering the constitutional system or the security of the Republic of Macedonia, causes or seriously threatens to cause an explosion, fire, flood, or some other generally dangerous act or act of violence, creating a sense of insecurity or fear among the citizens, shall be punished with imprisonment of at least 10 years; Art. 39 – b, CC. Terrorism, para (6): Any person who organizes manufacture, prepares, produces, sells, buys, transports or holds explosives, firearms or other types of weapons or hazardous substances intended to commit the crime as referred to [above], shall be sentenced to imprisonment of at least four years. These charges were brought in conjunction with sentencing and other provisions of Art. 324 (2), Association for hostile activity and Art. 396 (2) Unlawful keeping [of] weapons or explosive materials, Притворени 30 заробени терористи од Куманово , 1 May 2015, <http://tocka.com.mk/1/159058/pritvoreni-30-zarobeni-teroristi-od-kumanovo>

whilst in detention, in violation of Article 7 of the Covenant. Amnesty International has received credible testimonies from the relatives of two of the detained men, who had visited them in Shutka prison in Skopje, and who called for their relatives to be provided with urgent medical attention.¹¹

The Ombudsperson's Institution of the Republic of Kosovo, had not, as of 25 May 2015, received permission to make a joint visit in cooperation with the Macedonian Ombudsperson's Office; other national and international NGOS have also been denied access to the detained men.¹²

Amnesty International recommends that:

- An independent investigation is opened into the actions of members of the government in relation to the death of Martin Neshkovski;
- An independent investigation is opened into the Kumanovo operation, including to assess whether the law enforcement officers acted in accordance with international standards;
- Suspects detained in the Kumanovo operation are treated in accordance with international standards, including not to be subjected to torture or other ill-treatment, and should be tried in proceedings meeting international standards for fair trial.

¹¹ In a statement dated 19 May, H.K, brother of detainee, A.K. stated that he saw "clear signs of eye injury and violence in the head and face, which was entirely bruised, and his open wounds from the torture he had suffered from the Macedonian police". His brother told him, "After they arrested us, they took us to a police station somewhere in Skopje where they beat us and tortured all those who were in there for 30 hours non-stop." "I have grenade wounds in the back and in my left eye, with which I cannot see almost anything. I have about 35 pieces of grenade in my back and have big pain in the ribs due to the heavy torture by the police."

B.K, the brother of detainee, E.K wrote in his statement, "Yesterday, on 18/05/2015 at 17:30, I visited my brother in the Shutka prison. After talking with him, he told me that his condition is serious, and that he has not been given any regular medical treatment. He has wounds from shrapnel shells on the left side of his face, and has pieces of shrapnel in other parts of his body, broken ribs on his right side, and bruises near the right eye from torture and beatings. He told me that they were maltreated in most brutal ways by the Macedonian police forces. They were beaten, tortured, insulted and above all, they were not given any medical treatment and were not provided with food for three days. He told me that due to the injuries and torture they inflicted on him he could not see at all for two days, and from what I have seen, he does not have full consciousness yet".

¹² Both offices are designated as their respective National Preventive Mechanisms, with the power to make unannounced visits to places where people are deprived of their liberty, in accordance with the Optional Protocol to the Convention against Torture.

CONSTITUTIONAL AND LEGAL FRAMEWORK (ART. 2)

In February 2015, Zoran Zaev, leader of the opposition party, the Social Democratic Union of Macedonia (*Socijaldemokratski Sojuz na Makedonija*, SDMS) released the first in a series of taped recordings, which appear to provide evidence of the unlawful surveillance of thousands of Macedonian citizens, including government ministers, government employees, journalists, and others. Such surveillance would also be in contravention of domestic law, unless it was conducted as part of a criminal investigation. From the nature and topics covered by the recordings, this would not appear to be the case.

The “wire-tapping affair” and its repercussions have raised serious questions about the Macedonian government’s respect for the rule of law and human rights, guaranteed both in the country’s constitution and its legal framework.

While questions remain about the origin of the published tapes, and how they came into the hands of the opposition party, there are also questions about the lawfulness of the surveillance revealed by published tapes; They suggest a programme of what appears to be targeted surveillance, suggesting a degree of interference in the right to privacy and freedom of expression which is neither necessary nor proportionate, and a serious interference in the enjoyment of fundamental rights.

Zoran Zaev has alleged that some 20,000 individuals, including government officials, members of the opposition, “all the judiciary, the Synod of the Orthodox Church, NGOs, and [2,000] journalists were tapped.”¹³ If these allegations are borne out, then there has been a systematic programme of surveillance, which impacts on and undermines respect for the rule of law and human rights, including those set out in the present Covenant.

While the origin of the surveillance tapes remains to be determined, their authenticity is not disputed, and their content points to the government’s lack of respect for fundamental rights. Published surveillance tapes cover conversations which reveal government interference in the judiciary and the office of the prosecutor, including interference in the right to a fair trial.¹⁴ They reveal both the extent of the government’s interference and control of the media¹⁵ and

¹³ META.mk, “Zaev: Officials and opposition members were tapped”, 9 February 2015, <http://meta.mk/en/zaev-prislushuvani-bile-i-funktsioneri-i-opozitsioneri/>.

¹⁴ For audio recordings revealing interference by members of the government, and others, in the appointment of judges and prosecutors and in influencing the outcome in certain cases, Аудио разговори од партиски местенки во судството, <http://makvesti.com/archives/51>, accessed 4 May 2015.

¹⁵ For example, audio recordings and transcripts revealing, “Control and bribing of media and journalists”, <http://novatv.mk/index.php?navig=8&vest=21805&cat=2>, accessed 4 May 2015.

point to interference in the conduct of elections, undermining the right to participation in public life.¹⁶

While the content of published tapes and transcripts is shocking, in their content, much of what has been revealed is not surprising. For the past several years, intergovernmental organizations, including media freedom organizations, and domestic non-governmental organizations (NGOs) have repeatedly expressed concerns about the narrowing of space for human rights in Macedonia.¹⁷

THE RIGHT TO PRIVACY (ARTICLE 17)

Under international law, states have a responsibility to protect persons from unlawful or arbitrary interference with their privacy or correspondence. Protection of the privacy of communications is guaranteed in Article 17 of the Macedonian Constitution: “The freedom and confidentiality of correspondence and other forms of communication is guaranteed. Only a court decision may authorize non-application of the principle of the inviolability of the confidentiality of correspondence and other forms of communication, in cases where it is indispensable to a criminal investigation or required in the interests of the defence of the Republic”.

Unauthorized surveillance is regulated under the Macedonian Criminal Code, (Section 15, Crimes against The Freedoms and Rights of Humans and Citizens), which prohibits unauthorized tapping and audio recording (Art. 151) and unauthorized recording (Art 152).

The Law on Personal Data Protection, provides that personal data should be, “collected in a way prescribed by law for specific and precise legal objectives, and to be used and processed further on in a way which is in compliance with the aims for which the personal data have been collected”.¹⁸

The Law on Electronic Communications requires that communication providers ensure the confidentiality of communications. However, in 2010, amendments were proposed which would have allowed the Ministry of Interior unhindered access to communications, without a warrant; ¹⁹ these failed, and the law was amended in 2014, to bring it into line with EU

¹⁶ For example, audio recordings, at “АУДИО: СДСМ - Како се местат избори?”, <http://www.makdenes.org/content/article/26885984.html>, accessed 4 May 2015, in English, <http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/bomba-07.html>

¹⁷ See more recently, “Assistant Secretary-General voices deep concern at human rights challenges in the former Yugoslav Republic of Macedonia,” 22 May 2105, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16000&LangID=E>

¹⁸ Article 5; the law at Art. 1 “regulates the protection of the basic freedoms and rights of citizens, and especially the rights of privacy with regard to the collection, procession, storage, usage and exchange, as well as public disclosure of personal data”, http://www.libertas-institut.com/de/MK/nationallaws/Draft_%20Law_on_Personal_Data_%20protection_%202004.pdf

¹⁹ Assembly of Republic of Macedonia: Proposal for changing and amending the Law on electronic communications (second reading, in Macedonian),

standards.²⁰

In 2012, amendments to the Law on Interception of Communications increased the government's ability to conduct surveillance in criminal investigations, extending the temporal limits on wiretapping from 30 days to four months, and removing a provision stating that the period and nature of surveillance should be in furtherance of the goals of an investigation, compromising the principle that any interference in the right to privacy should be proportionate and necessary, and meet a legitimate aim.²¹

THE "WIRE-TAPPING" SCANDAL

Prior to the release of the first tape, and following Zoran Zaev's public announcement that he planned to release the material, on 31 January 2015, the opposition leader was charged with espionage for conspiring with a foreign intelligence service to destabilize the country.²² He is among four suspects who were subsequently indicted on 30 April 2015, by the State Prosecutor.²³ Charges against all four included "Unauthorized wiretapping and audio recording",²⁴ 'espionage'²⁵ and 'violence against representatives of the highest authorities'.²⁶ A police official, Gjorgji Lazarevski was also indicted for 'unauthorized wiretapping and audio

<http://www.sobranie.mk/ext/materialdetails.aspx?id=4055857c-81de-45b1-b3d6-838f5eaeaa8a>

²⁰ See EC, *The former Yugoslav Republic of Macedonia Progress Report, October 2014*, pp. 28-29, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf; Ministry of Transport and Communications, Law on Electronic Communications, https://www.itu.int/ITU-D/tech/OLD_TND_WEBSITE/digital-broadcasting_OLD/Bulgaria_Assistance_Transition/Macedonia/Electronic%20Communications%20Law.pdf

²¹ "[I]n particular, measures should be taken to ensure that any interference with the right to privacy complies with the principles of legality, proportionality and necessity, regardless of the nationality or location of the individuals whose communications are under direct surveillance", Human Rights Committee, *Concluding observations on the fourth periodic report of the United States of America*, (CCPR/C/USA/CO/4), 23 April, 2014, para 21, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUSA%2FCO%2F4

²² In the so-called 'Putsch' case ('Putsch' (Coup) case), other indicted suspects include Zoran Verushevski, a former Macedonian secret service director; Sonja Verushevksa, his wife, and Branko Plafirov, an employee in Strumica municipality. The European Union has not accepted the invitation of the Prosecutor, Zoran Zvrlevski, to monitor this case. See *Dnevnik*, <http://www.dnevnik.mk/?ItemID=4977C80AD553F04FAE1CD2324F3AF61F>, accessed 3 May 2015.

²³ Indictment, dated 1 May 2015, published on 30 April 2015, <http://jorm.gov.mk/?p=1620#Macedonia%20prosecutor%27s%20statement>, accessed 4 May 2015.

²⁴ Under Article 151(4) in relation to para. 1 in conjunction to Articles 23 and 45 of the Criminal Code.

²⁵ Under Article 316(4) of the Criminal Code.

²⁶ Under Article 311 in conjunction with Article 24 of the Criminal Code.

recording'.²⁷

The indictments laid by the prosecution consider the taped recordings to be the result of unauthorized surveillance by a foreign intelligence service. However, the opposition alleges that the programme of surveillance was instigated at the highest level of government, an assertion which has not been independently verified. The SDMS, on the other hand, alleges that surveillance was carried out at the instigation of Prime Minister Gruevski and his former counter-intelligence chief, Saso Mijalkov, and conducted by the Macedonian Administration for Security and Counter-Intelligence (Uprava za bezbednost i kontrarazuznavanje- UBK).²⁸

If the former is the case, then the authorities have complied with their obligation to investigate. Yet, although it could be assumed that some investigation into the origin of the tapes would form part of any investigation leading to the charging of Zoran Zaev and other suspects, to Amnesty International's knowledge, no information has yet been made public on the origin of the published recordings, or how they came into the hands of the opposition.²⁹

Should the evidence instead suggest that the state is responsible for the unlawful surveillance, then the Prosecutor's Office would be obliged to investigate.

On 24 April 2015, Zoran Zaev, in a challenge to charges made against him, filed a complaint to the Office of the Public Prosecutor, which included 1,000 pages of transcripts, recordings of 100,000 telephone conversations, 18,000 SMS messages, and lists of more than 12,000 telephone numbers, for some 20,000 persons, which were allegedly wire-tapped.³⁰

By 3 May 2015, Zoran Zaev and the SDMS had held 28 well attended press conferences, in which the tapes, in both audio and transcript form, were released in what Zoran Zaev has described as a series of "bombs".³¹ Neither the press conferences, nor the content of the

²⁷ A sixth suspect was sentenced to three months' imprisonment for 'espionage and 'unauthorized wiretapping and audio recording', after reaching a settlement with the Public Prosecutor see, , Akademik.mk, <http://www.akademik.mk/se-spogodi-eden-osomnichenite-vo-puch-tri-godini-zatvor-za-shpionazha-i-neovlasteno-prislushuvane>, accessed 3 May 2015.

²⁸ Under Article 151(4), related to para. 1, in conjunction with Article 23 and 45 of the Criminal Code.

²⁹ Defence lawyers have called for the charges to be dismissed, the Skopje court will decide in mid-June whether the prosecution will continue, "Macedonia Court to Rule on Trial for Zaev", 1 June 2015, <http://www.balkaninsight.com/en/article/macedonia-court-decides-on-opposition-leader-s-coup-charges>

³⁰ See, for instance, *Telma.com.mk*, <http://vesti.mk/read/news/5237472/1984803/sdsm-gi-predade-dokazite-vo-javnoto-obvinitelstvo>, accessed 3 May 2015. See also: *Independent.mk*, "SDSM Leader Files Thousand-page Evidence to Prosecution Office", 24 April 2015, <http://www.independent.mk/articles/16770/SDSM+Leader+Files+Thousand+page+Evidence+to+Prosecution+Office>, accessed 3 May 2015.

³¹ Extracts of taped telephone conversations publicly revealed since 9 February 2015 include discussions between government officials, including ministers, and also between officials and third parties, which are suggestive of the selective application of law and the prosecution of political opponents. The recordings revealed so far are available on the SDSM website,

tapes, have been covered in media sympathetic to the government.³²

While there has, as yet, been no independent authentication of the tapes, the government has not contested their existence, or their content, instead attributing the surveillance to “foreign intelligence agencies”, and suggesting that the tapes had been selectively edited, and “created, montaged, cut, glued and glued over”.³³

Further, no investigation has been opened into the potential allegations of corruption or criminality raised by the tapes. Concerns have been raised by the European Union, in the context of Macedonia’s aspiration for EU membership,³⁴ by the European Council,³⁵ and a series of EU ambassadors, urging the authorities to fully investigate the claims against the government, arising from the surveillance tapes.³⁶

[http://www.sdsm.org.mk/default.aspx?mld=55&agld=5&lld=1&ContentContainer5\\$ctl00_page=0#comments](http://www.sdsm.org.mk/default.aspx?mld=55&agld=5&lld=1&ContentContainer5$ctl00_page=0#comments), accessed 3 May 2015.

³² For a request by the newly established pro-government Association of Journalists for the media not to cover the issue, see, <http://vesti.mk/read/news/4505748/1695301/man-mediumite-da-ne-objavuvaa-prislushkuvani-telefonski-razgovori-od-puch>

³³ See, for instance, *GRID.mk*, <http://grid.mk/read/news/509838654/9738854/vmro-dpmne-razgovorite-se-kreirani-montirani-secheni-lepeni>, accessed 3 May 2015. See also: *NETPRES*, <http://netpress.com.mk/vmro-dpmne-pravdata-i-vistinata-kje-go-stasaat-zaev-i-nema-da-mozhe-da-go-izvadat-ni-seckani-materijali-ni-stranski-centri/>, accessed 3 May 2015; *Telegraf.mk*, <http://vesti.mk/read/news/4893382/1840414/vmro-dpmne-sdsm-prizna-deka-gi-montira-i-gi-secka-razgovorite-shto-gi-objavuva>, accessed 3 May 2015.

³⁴ Talks between the two parties were opened in Brussels, under the supervision of MEPs Elmer Brok, Chair of the Parliamentary Foreign Affairs Committee, Edward Kukan and Richard Hewitt, EP Rapporteur on Macedonia. The EP has firmly called on the main opposition party to end their most recent boycott of parliament, which began in 2014 following accusations of a flawed election process, see *European Parliament members call of SDMS to return to Parliament*, 24 March 2015, <http://www.mia.mk/en/Inside/RenderSingleNews/61/132568678>

³⁵ On 21 April, the EU Council, expressed grave concerns “in particular in the area of rule of law, fundamental rights and freedom of media” and urged all parties to constructively engage in political dialogue with the aim of restoring trust in the countries institutions. The Council also urged that, “All allegations [should] be investigated by the relevant authorities, including those allegations of potential wrongdoing being made public, with full regard for due process, the principle of independence and the presumption of innocence”, *Council conclusions on the former Yugoslav Republic of Macedonia*, 21 April 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/04/21-conclusions-fyr-macedonia/> Talks between the two parties, with the aim of resolving the current political crisis, including between the Prime Minister and the leader of the opposition, have been facilitated by the European Parliament. On 2 June, Enlargement Commissioner Johannes Hahn announced that an agreement had been reached on transitional agreements prior to elections to be held in April 2016, *Remarks by Commissioner Hahn following his meeting with political leaders in Skopje*, http://europa.eu/rapid/press-release_SPEECH-15-5107_en.htm.

³⁶ 12 May 2015, <http://www.balkaninsight.com/en/article/ambassadors-macedonia-fails-to-probe-wiretap>

Instead, on 13 May, following a meeting with representatives of parliamentary groupings, the Speaker announced the intent to establish a parliamentary Committee of Inquiry “to investigate the wrongdoing implied by the wiretap disclosures, and to offer the chairmanship of that committee to an opposition member, as soon as the opposition party returns to parliament”.³⁷ As the Venice Commission has noted, “Parliamentary committees of inquiry conduct processes that are essentially of a political nature and which should not be confused with criminal investigations and proceedings”.³⁸ Amnesty International considers that while a Committee of Inquiry as proposed, would – depending on its terms of reference – contribute to the public scrutiny of aspects of the “wire-tapping scandal”, it is not a substitute for an independent, thorough and effective criminal investigation.³⁹

Amnesty International calls on the Macedonian government to:

- Ensure that prompt, independent, thorough and impartial criminal investigations are conducted into all allegations of criminality, including corruption and human rights violations, arising from the publication of surveillance tapes;⁴⁰
- Ensure that the legal framework on data protection, electronic communications and the interception of electronic communications is brought into line with international standards; and that any authorized surveillance is necessary, proportionate and meets a legitimate aim.

claims

³⁷ The SDMS has boycotted parliament since elections held in May 2014, refusing to take up their 34 seats, accusing the government of electoral malpractice. United States Mission to the OSCE, On Developments in Macedonia, PC.DEL/620/15, <http://www.osce.org/pc/158356?download=true>; Macedonian Information Agency, “Inquiry Committee to be set up right after opposition’s return to Parliament”, 13 May 2015, <http://mia.mk/en/Inside/RenderSingleNews/61/132639226>

³⁸ European Commission for Democracy through Law (Venice Commission), Amicus Curiae Brief (On Parliamentary Committees of Inquiry) CDL-AD(2014)013, 25 March 2014, para. 19, see also paras 6-24, <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282014%29013-e>

³⁹ An investigation into about the “wiretapping affair”, police conduct during the protests and events in Kumanovo has also been opened by the Macedonian Ombudspersons Office, 22 May 2015, http://www.ombudsman.mk/en/activities/51275/meeting_of_ombudsman_mr_ixhet_memeti_with_un_assistant_secretary_general_for_human_rights_mr_.aspx

⁴⁰ For further recommendations, see Committee against Torture, *Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia*, Advance Unedited Version, May 2015, para. 7, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MKD/CAT_C_MKD_CO_3_20486_E.pdf

RENDITION OF GERMAN NATIONAL KHALED AL-MASRI ⁴¹

(QUESTION 2 IN THE LIST OF ISSUES)

In its April 2008 Observations on the state report of Macedonia, the Committee concluded that the Macedonian authorities “should consider undertaking a new and comprehensive investigation of the allegations made by Khaled al-Masri” and that any such investigation “should take account of all available evidence and seek the cooperation of Mr. al-Masri himself.” ⁴² The Committee also noted that should the investigation conclude that Khaled al-Masri’s covenant-protected rights had been violated, Macedonia should provide him with “appropriate compensation” and review its practices and procedures to ensure that Macedonia would never again perpetrate acts such as those alleged by Khaled al-Masri.⁴³

Amnesty International remains concerned that, to date, the Macedonian authorities have failed to conduct an independent, impartial, thorough and effective investigation into Khaled al-Masri’s allegations. On 31 December 2003, the Macedonian authorities arrested el-Masri, a German national of Lebanese descent, after he entered Macedonia from Serbia. They held him incommunicado, subjecting him to enforced disappearance, repeated interrogations and to ill-treatment, until 23 January 2004 when they handed him over to the US Central Intelligence Agency (CIA), which transferred him to a secret detention site in Afghanistan. There he was held unlawfully in secret, not charged with any crime and his detention was not subject to judicial review. He did not have access to a lawyer. His whereabouts were not acknowledged. As a result he was subjected to enforced disappearance for over four months. While in Afghanistan, he was subjected to torture and other ill-treatment. On 28 May 2004, Khaled el-Masri was put on a plane and flown to Albania where he was released.⁴⁴

The Macedonian authorities refused to conduct an effective investigation into Khaled el-Masri’s allegations, which led him to lodge an application in July 2009 at the European Court of Human Rights. In December 2012 the Grand Chamber of the European Court of Human Rights (ECtHR) held in *Khaled el-Masri v Former Yugoslav Republic of Macedonia*

⁴¹ While the Committee uses the spelling “al-Masri”, Amnesty International and the Court use the spelling “el-Masri”.

⁴² CCPR/C/MKD/CO/2, para. 14

⁴³ *Ibid.*

⁴⁴ Amnesty International, *USA/Macedonia/Germany: The Rendition of Khaled el-Masri*, AMR 51/133/2006, 8 August 2006, <http://www.amnesty.org/en/library/asset/AMR51/133/2006/en/8b8771b8-d404-11dd-8743-d305bea2b2c7/amr511332006en.pdf>.

that Macedonia was responsible for the German national's unlawful detention, enforced disappearance, torture and other ill-treatment, and for his transfer out of Macedonia to locations where he suffered further serious violations of his human rights.⁴⁵ Further, the Court ruled that Macedonia had not satisfied its obligation to carry out an effective investigation. The landmark ruling, which is final, has been widely hailed for its reasoned judgment, including advancing the principle of the right to truth.⁴⁶

On 25 February 2015, after a delay of over two years, the Macedonian government submitted an "action plan" to the Committee of Ministers (CoM) of the Council of Europe, which supervises the implementation of ECtHR judgments. The "action plan" consisted of the measures the government would take to fully implement the *Khaled el-Masri v Former Yugoslav Republic of Macedonia* judgment. Those measures did not include, however, the initiation of a comprehensive, effective criminal investigation into Khaled el-Masri's allegations because, as the Macedonian authorities claimed, the Skopje public prosecutor had already rejected "the applicant's criminal complaint at the domestic level as unsubstantiated" in December 2008.⁴⁷ This is the same information that the Macedonian authorities used to counter the allegations of Khaled el-Masri as detailed in his 2009 ECtHR application and in no way constitutes a meaningful response to the Grand Chamber judgment concluding that the Macedonian authorities had failed to effectively investigate el-Masri's claims in violation of their European Convention on Human Rights (ECHR) obligations. Moreover, Khaled el-Masri's civil action had been dismissed by the Skopje Court of First Instance in October 2014, and is currently on appeal.

Other measures in the "action plan" included the payment in December 2013 of a "just satisfaction" award to Khaled el-Masri; and some general remedial measures, including amendments to the Criminal Code that provided for harsher penalties for torture and other ill-treatment by law enforcement officials; enhanced supervision of the security services, border police and special units as regards detentions of individuals; expert "awareness raising" and technical trainings; measures aimed at preventing impunity for torture and other ill-treatment; and plans "to establish a new independent external body composed of civilians, empowered to effectively investigate allegations of torture or ill treatment in [the] hands of the state agents, including the competence to initiate criminal prosecution against the perpetrators."⁴⁸

⁴⁵ *Khaled el-Masri v The Former Yugoslav Republic of Macedonia*, Application No. 39630/09, 13 December 2012, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621>

⁴⁶ Amnesty International, "Historic Ruling on Europe's Role in CIA Renditions," 13 December 2012, <http://www.amnesty.org/en/news/historic-ruling-europe-s-role-cia-renditions-2012-12-13>

⁴⁷ Committee of Ministers, Communication from "The former Yugoslav Republic of Macedonia" concerning the case of El-Masri against "The former Yugoslav Republic of Macedonia" (Application No. 39630/09), DH-DD(2015)241E, 26 February 2015, p. 3, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2695216&SecMode=1&DocId=2240376&Usage=2>.

⁴⁸ *Ibid*, p. 6.

The CoM responded on 12 March 2015 to the Macedonian government's "action plan." The CoM expressed regret over the considerable delay in receiving the Macedonian government's plan; noted the general measures and ordered its Secretariat to undertake an assessment of them; and instead of accepting the government's claim that Khaled el-Masri's allegations had previously been deemed "unsubstantiated," urged the Macedonian authorities "to carry out a fresh investigation with a view to bringing the responsible individuals to justice and to keep the Committee informed."⁴⁹ The case will be reviewed again by the CoM in June 2015.

In December 2014, the Senate Select Committee on Intelligence (SSCI) released a 524-page summary of a 6,500 page report titled "Study of the Central Intelligence Agency's Detention and Interrogation Program" (Senate torture report). The Senate report summary serves as further confirmation of what had been an open, but officially unacknowledged (by the USA and Macedonia), secret for a decade: based on poor intelligence, German national Khaled el-Masri was a victim of "wrongful detention" by the Macedonian authorities and the CIA, whose agents mistakenly apprehended, illegally transferred, secretly detained and tortured him in the course of his five months in CIA custody.⁵⁰ This admission by the USA, coupled with the ECtHR judgment against Macedonia, calls out for broader investigation by both countries of Khaled el-Masri's torture and other ill-treatment, and enforced disappearance – and for bringing all those responsible for these human rights violations to justice.⁵¹

Amnesty International calls on the Macedonian government:

- To conduct an independent, impartial, thorough and effective investigation into the rendition and enforced disappearance of Khaled el-Masri and any other involvement on the part of Macedonia in the CIA's rendition and secret detention programmes.

⁴⁹ Committee of Ministers, 1222nd Meeting, Case against the Former Yugoslav Republic of Macedonia, 12 March 2015, <https://wcd.coe.int/ViewDoc.jsp?id=2297973&Site=CM>.

⁵⁰ *Senate torture report*, pp. 128-129. The study concluded that "at least" 26 persons were wrongfully held in the course of the CIA's secret detention and interrogation operations, p. 12.

⁵¹ See Amnesty International, "Breaking the Conspiracy of Silence: USA's European 'Partners in Crime' Must Act after Senate Torture Report," EUR 01/002/2015, 20 January 2015, pp. 22-23, <https://www.amnesty.org/en/articles/news/2015/01/europe-complicit-governments-must-act-wake-us-senate-torture-report/> and Amnesty International, "Crimes and Impunity: Full Senate Committee Report on CIA Secret Detentions Must be Released, and Accountability for Crimes under International Law Ensured," AMR 51/1432/2015, April 2015, pp. 7-8, http://www.amnestyusa.org/sites/default/files/cia_torture_report_amr_5114322015.pdf .

IMPUNITY FOR CRIMES UNDER INTERNATIONAL LAW (ARTS.6 & 7)

“The question of accountability for gross human rights violations committed during the 2001 conflict must be resolved and the fate of those who are still missing must be clarified”⁵²

Macedonia has failed to bring more than a few of those suspected of criminal responsibility for crimes under international law, including war crimes, to trial, or to provide victims, be they Macedonian or Albanian, with access to justice, truth and reparation. This failure continues to be one of the factors fuelling continuing inter-ethnic tensions between Macedonian and Albanian citizens.

In 2008, in their review of Macedonia’s second periodic report on implementation of the Covenant, the Committee urged Macedonia to “ensure that the Law on Amnesty is not applied to the most serious human rights violations or violations that amount to crimes against humanity or war crimes.”⁵³

Nevertheless, in July 2011 the Macedonian parliament adopted an “authentic opinion” on the 2002 Amnesty Law, which has subsequently denied access to justice to the victims of war crimes which took place during the 2001 armed conflict.⁵⁴ The decision, which was inconsistent with international law, and the country’s international obligations, terminated the investigation and prosecution of four war crime cases, “NLA leadership”, “Mavrovo Road Workers”, “Lipkovo Water Reserve” and “Neprošteno”, returned to Macedonia from the International Criminal Tribunal for the former Yugoslavia (ICTY) for prosecution in 2008.

The adoption of the “authentic opinion” was part of a post-election deal between the parties in the current governing coalition.⁵⁵ It raises serious questions about the rule of law in the

⁵² Section 3, *Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to “the former Yugoslav Republic of Macedonia”, from 26 to 29 November 2012*, CommDH(2013)4, 9 April 2013, [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2013\)4&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2013)4&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

⁵³ CCPR/C/MKD/CO/2, para.12. The committee also urged the authorities to: “also ensure that human rights violations are thoroughly investigated, those responsible brought to justice and that adequate reparation is made to the victims and their families”.

⁵⁴ *Authentic interpretation of Article 1 of the Amnesty Law* (“Official Gazette” No. 18/2002), 14 July 2011.

⁵⁵ Amnesty International understands that the request for an opinion on the Amnesty Law was initiated as part of a post-election agreement between the VMRO-DPMNE (party and the Democratic Union for Integration (DUI) to form a new coalition government. Reportedly the ethnic Albanian DUI had demanded that the four cases returned from the Tribunal should be subject to the 2002 Amnesty Law, as one of

country and, in particular, the interference of the executive in the independence of the Office of the Prosecutor.⁵⁶

Macedonia is obliged to thoroughly and impartially investigate all cases returned from the ICTY and ensure that all those allegedly responsible for violations of international humanitarian law are brought to justice, and not to grant them an amnesty law or any similar measure. The ICTY Rules of Procedure and Evidence sets out that the authorities of the state where a case has been handed over must "refer the case to the appropriate court for trial within that state".⁵⁷

Prior to the "authentic opinion", in 2009, in a follow up response to the Committee against Torture (CAT) the government reported that in the "Mavrovo" road workers' case, an indictment had been issued and that court proceedings were pending.⁵⁸ This case involved five individuals, employed as road workers by the Mavrovo Road Company, who were allegedly abducted in August 2001 and physically ill-treated, in some cases sexually assaulted, and threatened with death before being released some hours later.

Macedonia had also reported to the CAT that one case was under investigation, and that two others were in the preliminary investigative stage. However, according to Amnesty International's research, both the "Neprosteni" and "Lipkovo Water Reserve" cases had already been submitted to the investigative judge by September 2008 and the "NLA (National Liberation Army) Leadership" case was then under review by the public prosecutor. According to a second follow-up response, received by the CAT on 3 May 2011, two persons had been extradited in the Mavrovo road-workers case.

Macedonia also has a duty to investigate and, if there is sufficient admissible evidence, prosecute all other cases of crimes under international law and human rights violations which took place during the armed conflict, and provide victims or their relatives with access to justice, truth and ensure full reparation.

REPARATION

Following the Council of Europe Commissioner for Human Rights' April 2013 report, the relatives of abducted Macedonians called, to no avail, on the Chief Prosecutor to reopen the

several conditions for their continued participation in the coalition. The DUI had, during the previous administration, repeatedly called for the cases to be brought under the 2002 Amnesty Law.

⁵⁶ For conversations in which the government seeks support from wavering MPs for approval of the authentic opinion, see <http://aktuelno24.mk/%D0%B2%D0%B8%D0%B4%D0%B5%D0%BE-%D0%B7%D0%B0%D0%B5%D0%B2-%D0%B3%D1%80%D1%83%D0%B5%D0%B2%D1%81%D0%BA%D0%B8-%D1%81%D0%B5-%D0%B8%D1%81%D0%BF%D0%B0%D0%B7%D0%B0%D1%80%D0%B8%D0%BB-%D1%81%D0%BE-%D0%B0>, accessed 3 May 2015.

⁵⁷ ICTY Rules of procedure and evidence, Rule 11 bis, Referral of the Indictment to Another Court.

⁵⁸ Received by the CAT on 15 December 2009, see http://www2.ohchr.org/english/bodies/cat/docs/followup/ReportFU_FYRM.doc

“Neprošteno” case.⁵⁹ Yet, Macedonia is obliged to provide survivors, victims and their relatives’ access to full reparation.⁶⁰ Among them are the relatives of six ethnic Albanians, who were victims of enforced disappearance by the Macedonian authorities in 2001; and the relatives of 13 ethnic Macedonians and one Bulgarian, abducted by the National Liberation Army.

In October 2012, the Macedonian Constitutional Court refused to consider a complaint, submitted by relatives of the abducted Macedonians on the legality of the “authentic opinion”. Although the complaint was never considered by the court, one dissenting member of the judicial panel publicly stated that the 2011 parliamentary decision had violated international law and conventions to which Macedonia is a state party.⁶¹ The relatives had requested that the Court determine whether the state had the right to close these cases, effectively through an act of Parliament. They argued that Parliament’s decision was a breach of international law, under which there is no statute of limitations for war crimes.⁶²

The obligation to make reparations is well recognised under international law.⁶³ Reparation is the term for the concrete measures that should be taken to address the suffering of the survivors and victims and to help them rebuild their lives. The aim of reparation measures is to “as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”⁶⁴ States are obliged to ensure that as much as possible is done to address the suffering of the victims of serious violations of international humanitarian law, and guarantee their rights to “(a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered, and (c) Access to relevant information concerning violations and reparation

⁵⁹ Report by Nils Muižnieks, op. cit.; “Families of Macedonian Missing Demand New Prosecution”, 23 April 2013, <http://www.balkaninsight.com/en/article/relatives-demand-reopening-of-macedonian-missing-persons-case>

⁶⁰ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, <http://www2.ohchr.org/english/law/remedy.htm>

⁶¹ “Macedonian Court Rejects Review of War Crimes Amnesty”, 31 October 2012, <http://www.balkaninsight.com/en/article/macedonian-court-rejects-review-of-war-crimes-amnesty>

⁶² See, for example, Rule 160, study by the ICRC on Customary International Humanitarian Law, Cambridge University Press (“Statutes of limitation may not apply to war crimes”). Macedonia is, since 1994, a state party to the 1968 Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity.

⁶³ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles), adopted by UN General Assembly resolution 60/147 of 16 December 2005.

⁶⁴ Chorzow Factory Case (Germany v. Poland), Permanent Court of International Justice, 13 September 1928, para 125.

mechanisms”.⁶⁵

As noted above, Macedonia has denied the relatives of the missing access to justice by failing to investigate enforced disappearances, including in the “Neprošteno” case.⁶⁶ They have also been denied access to any form of reparation, including compensation, for their pain and suffering.

The European Court of Human Rights (the Court) has ruled that a state’s continued failure to investigate cases of persons missing following a military intervention results in a continuing violation of the prohibition against torture and other ill-treatment set out in Article 3, ECHR. The Court stated that “the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attained a level of severity which can only be categorized as inhuman treatment within the meaning of Article 3”.⁶⁷

Amnesty International recommends that the government of Macedonia:

- Abides by their international obligations to investigate and prosecute all cases returned by the ICTY in independent and impartial trials, which meet international standards of fairness, within a reasonable time;
- Investigates and prosecute all cases of enforced disappearance and abduction, ensuring that victims and/or their relatives have access to justice, truth and reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition.
- Promptly ratify the International Convention for the Protection of All Persons from Enforced Disappearance, signed on 27 February 2007, and implement it into national law.
- Recognise the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims or other states parties to the International Convention for the Protection of All Persons from Enforced Disappearance.

⁶⁵ Article 11, UN Basic Principles

⁶⁶ These duties arise, inter alia, under Articles 2, 6, 7 and 9 of the ICCPR and Article 13, 2, 3 and 5 of the ECHR, *Cyprus v Turkey* (Judgment of the European Court of Human Rights (10 May 2001) at para 147; *Cicek v Turkey*, Judgment of the European Court of Human Rights (27 February 2001) at para 164. See Articles 12 and 3 of the International Convention on the Protection of All Persons from Enforced Disappearance.

⁶⁷ The Court has stated that “the silence of the authorities of the respondent State in the face of the real concerns of the relatives of the missing persons attained a level of severity which can only be categorized as inhuman treatment within the meaning of Article 3, *Cyprus v Turkey*, paras. 136 and 156-158. The Human Rights Committee has recognized that the “anguish and stress” suffered by a family member of a victim of enforced disappearance can amount to a violation of Article 7 of the ICCPR, torture, inhuman or degrading treatment. *Quinteros v. Uruguay* (107/1981), Report of the Human Rights Committee.

NON-DISCRIMINATION AND EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, 3 AND 26)

DISCRIMINATION AGAINST LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX (LGBTI) PEOPLE (QUESTION 3 IN THE LIST OF ISSUES)

The Macedonian authorities have failed to amend the 2010 Anti-Discrimination Law to bring its provisions into accordance with international standards, with respect to the protection of lesbian, gay, bisexual, transgender and intersex (LGBTI) people. The failure to amend this legislation has been repeatedly criticized, including by the Committee for the Elimination of Discrimination against Women⁶⁸ and, in the context of Macedonia's aspiration to join the European Union, by the European Commission.⁶⁹

Repeated attacks in the media, by government officials and by non-state actors against LGBTI people, underscore the urgent need for protection in law against all forms of discrimination on the grounds of sexual orientation and gender identity. In 2013, LGBTI NGOs drafted a law on hate crimes. In November and December 2014, the same organizations protested the absence of any concrete measures by the government, and continued impunity for attacks on LGBT individuals and organizations.⁷⁰

ATTACKS AGAINST LGBTI ORGANIZATIONS

The Macedonian Criminal Code fails to specifically include discrimination on the basis of sexual orientation and gender identity in Article 319, (Causing hate, discord or intolerance on national, racial, religious and other discriminatory ground), or Article 39 (5), which provides for aggravating circumstances, when a crime is suspected to be motivated by a person's identity. Moreover, the authorities do not collect any data on hate crime.⁷¹ Threats to the lives

⁶⁸ *Concluding observations on the combined fourth and fifth periodic reports of The former Yugoslav Republic of Macedonia adopted by the Committee at its fifty fourth session (11 February – 1 March 2013)*, paras. 10-11. <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW.C.MKD.CO.4-5.pdf>

⁶⁹ This issue has been highlighted since 2010, in successive European Commission reports on Macedonia's progress towards EU accession.

⁷⁰ "Macedonia: Hate crimes on LGBT people spark "body bag" protests", <http://sdgln.com/causes/2014/12/23/macedonia-hate-crimes-lgbt-people-spark-body-bag-protests#sthash.3bjyUlfb.dpuf>

⁷¹ Macedonia has reported to ODIHR that it does not collect hate crime data, see <http://hatecrime.osce.org/former-yugoslav-republic-macedonia>

and property of LGBTI organizations and human rights defenders are rarely effectively investigated, and suspects are seldom brought to justice.

In the early hours of 24 October 2012, the office of the newly established LGBTI Support Centre in Skopje was stoned and several windows broken. According to the police, the attack was perpetrated by three masked people. Fortunately the building was not occupied, and no one was injured. The building was again stoned during demonstrations, which took place in early March 2013.⁷²

On 22 June 2013, during Skopje's Pride week, a crowd of more than 30 people attacked the LGBTI Support Centre, where 40 LGBTI activists were watching a film screening. The crowd shouted homophobic slogans, threatened the activists at the Centre, and threw stones, bottles, and bricks at the building. On 5 July 2013, an attempted arson attack on the LGBTI Support Centre took place. Police reportedly found evidence that tiles had been removed from the roof, and petrol poured on the roof beams, which were then set alight.

On 23 October 2014, around 30 young men surrounded a coffee bar in Skopje, where more than 60 members of the LGBTI Support Centre and the Helsinki Committee for Human Rights were celebrating the second anniversary of the centre. Wearing hooded clothing and armed with glass bottles and other weapons, they stoned the coffee bar and then vanished. Two people standing outside the bar were attacked with bottles and sustained injuries on their heads and bodies. Their assailants repeatedly told them to leave as "faggots are not welcome". Several people inside the bar were cut by flying glass. The Ministry of Interior, in its public report on the incident,⁷³ failed to recognise the organized nature and alleged discriminatory motivation for the attack, merely recording the attack as violence by unknown perpetrators.

This was the sixth attack on the LGBTI Support Center, or its activities, since October 2012. Although the authorities have formally opened criminal investigations, there has been little progress in the identification of suspects. Only the attack in March 2013 - which took place during a demonstration unrelated to LGBTI rights (as noted above) has, according to the LGBTI Support Centre, been investigated.⁷⁴

LGBT United Macedonia, which is based in the predominantly Albanian city of Tetovo, has received similar threats. One of the leaders of LGBT United Macedonia, who was inside the LGBTI Support Centre in Skopje, at the time of the June 2013 attack, subsequently received several death threats on Facebook. On 20 April of the same year, three activists from LGBT

⁷² Email to Amnesty International. Demonstrations were held on 1 March by Macedonians opposed to the appointment former guerrilla commander Talat Xhaferi as Minister of Defence; counter demonstrations by ethnic Albanians took place the following day.

⁷³ Ministry of Interior, Daily Gazette, 24 October 2014, <http://mvr.gov.mk/ShowAnnouncements.aspx?ItemID=14040&mid=1846&tabId=209&tabindex=0>

⁷⁴ See also, "Organizers of March for Tolerance Attacked in Skopje", 19 November 2012, <http://oneworldsee.org/content/organizers-march-tolerance-attacked-skopje>; communication from LGBTI Support Centre, 26 October 2014.

United were violently attacked, by seven individuals while putting up posters about the human rights of LGBTI people, as they walked carrying a rainbow flag in the town of Bitola. Their assailants grabbed the posters which promoted equality, non-discrimination and non-violence, and hit the activists with them; they were also ridiculed, spat at, shoved, and hit on their faces and heads. Their assailants also threatened to kill them; after the event the group also received further threats on social media.⁷⁵ Since 2013, members of LGBT United have received continued threats, including death threats, on more or less a daily basis. The security of their premises has been compromised, and individual members have been targeted in violent assaults, and in one case, abducted. The NGO also receives regular reports of homophobic attacks, which the victims are reluctant to report to the authorities.⁷⁶

THE RIGHT TO EQUAL MARRIAGE

Amendment XXXIII, currently pending before the parliament, will discriminate against LGBTI people in the enjoyment of their family life, and all the reproductive and social rights associated with marriage. If adopted, the Constitution will define marriage as the exclusive union between a man and a woman.⁷⁷

On 1 July 2014, the government of Macedonia submitted a set of seven draft amendments to the Parliament, among others Amendment XXXIII. In its current form, the amendment would define marriage restrictively as a union between a woman and a man. On 27 August 2014, the text of all the drafts was debated and adopted by a majority. Following a month-long window for public debate – ineffective and symbolic due to the persistent pressure on media and civil society – the amendments were re-submitted to the Parliament for final approval.

The original amendment would have introduced a restrictive definition of registered cohabitation, or any other form of registered partnership, as a union solely between a woman and a man. However on 16 October 2014, following the publication of the Venice Commission's Opinion on the draft amendment,⁷⁸ the Minister of Justice announced that this

⁷⁵ "Macedonia must prevent homophobic attacks", 23 April 2013, www.amnesty.org/en/documents/document/?indexNumber=EUR65%2F002%2F2013&language=en

⁷⁶ Amnesty International communications with LGBT United from 2012-2015. Incidents targeting private individuals are rarely publicly reported or reported to the authorities. Exceptions include the attack on 25 June 2013, by a crowd which threw stones and abuse outside the house of Petar Stojkovikj, an openly gay actor and activist.

⁷⁷ On 12 October 2012, the Minister for Labour and Social Policy, responsible for ensuring protection from discrimination, had stated his opposition to equal marriage for LGBTI people at a UNICEF conference, subsequently reiterating his position on national television, and on his personal Facebook page. President Gruevski had also publicly criticized calls for marriage equality by linking it to falling birth rates, Macedonia Helsinki Committee and LGBTI Support Centre, *Homophobic Campaign is Hovering Over Macedonia*, available at <http://archive.globalgayz.com/europe/macedonia/homophobic-campaign-is-hovering-over-macedonia/>

⁷⁸ CDL-AD(2014)026-e, Opinion on the seven amendments to the Constitution of "the former Yugoslav Republic of Macedonia" concerning, in particular, the judicial Council, the competence of the Constitutional Court and special financial zones, adopted by the Venice Commission at its 100th Plenary Session (Rome, 10-11 October 2014), <http://www.venice.coe.int/webforms/documents/?pdf=CDL->

definition would be removed from the proposed amendment.

Amendment XXXIII was drafted with the intention to constitutionally determine the status of marriage in a way “in which the interests of the spouses, family and society are realized”. However, by limiting marriage to different-sex couples, Amendment XXXIII directly discriminates against LGBTI people, who live or wish to live in a same-sex union, in the enjoyment of their right to family life and all the reproductive and social rights associated to marriage. Although the debate was scheduled for late 2014, the measures remain pending.

Amnesty International recommends that the government of Macedonia:

- Amend the 2010 Anti-Discrimination Law, to ensure the protection of the rights of LGBTI people from discrimination, and guarantee access to an effective remedy;
- Ensure that the police and State Prosecutor conduct prompt, impartial and effective investigations into all attacks on LGBTI individuals and organizations;
- Ensure that police and prosecutors investigate the reasonable suspicion that such attacks are motivated by discrimination based on sexual orientation and gender identity, and aim to uncover any alleged homophobic and transphobic motives;
- Prosecutors should include any alleged discriminatory motives associated with the attack in any charges and indictments issued against suspects. If such a motive is identified, the judiciary should also take into account Article 39 (5), which provides that a discriminatory motive should be reflected in the sentencing of crimes committed against persons on the basis of their identity;
- Ensure that authorities collect data on hate crimes at all levels, including reporting, investigation, prosecution and sentencing. Data should be disaggregated by protected ground, made publicly accessible (taking into account privacy) and regularly reviewed to assist the development of policies to combat hate crimes;
- Authorities should condemn hate crimes when they occur and make clear that crimes targeting people for discriminatory reasons will not be tolerated
- Withdraw Amendment XXXIII, and respect, protect and fulfil the right to family life of all people in Macedonia without discrimination, including through ensuring equality in marriage, for all couples, irrespective of gender or sexual orientation.

[AD\(2014\)026-e](#)

PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (ARTS. 2, 6, 7, 9 AND 10)

DETENTION CONDITIONS IN THE RECEPTION CENTRE FOR FOREIGNERS, (QUESTION 9 IN THE LIST OF ISSUES)

Amnesty International is deeply concerned at the unlawful deprivation of liberty of refugees, asylum-seekers and migrants at the Reception Centre for Foreigners at Gazi Baba in Skopje, without any legal safeguards, including the right to challenge the lawfulness of detention.

Amnesty International interviewed four individuals, one couple and three family groups who had been detained at Gazi Baba. The organization understands that up to 350-400 asylum seekers, refugees and migrants at a time – including pregnant and breastfeeding women, children and babies – have been deprived of their liberty, for periods of up to six months and in some cases longer. Irrespective of their length, these detentions appear to be automatic, in that there is no individualized assessment of the specific circumstances of each individual, nor of the lawfulness, necessity and proportionality of a deprivation of liberty.

Around 1,500 refugees and migrants were detected irregularly on the territory of Macedonia by Ministry of Interior Border Police during 2014, the majority of them Syrian nationals. Those found to be in the country irregularly and/or without documents were deprived of their liberty and taken to the Reception Centre for Foreigners, apparently in order to establish their identity. Others were detained so that, after their identity was established, they could testify as witnesses in criminal proceedings against alleged smugglers.⁷⁹

Amnesty International has received both direct and indirect reports exposing the inhuman and degrading conditions in Gazi Baba, all testifying to grossly inadequate conditions.⁸⁰

⁷⁹ Amnesty International interview with Marinko Kocovski, Assistant Director of the Department of Border Management, Bureau for Public Security, Ministry of Interior, Skopje, January 2015.

⁸⁰ Amnesty International delegates were not provided with the opportunity to visit the Reception Centre for Foreigners, despite requests made in December 2014. The information in this report is based on

In Gazi Baba there were about 400-450 people when we entered. There was hardly anywhere for people to sleep, but we did get food. People were sleeping even on the stairs, the overcrowding was terrible. There were mattresses on the floors and in corridor; but we had showers and medical treatment. It was better for the women and children, it was less crowded for them, and there was a mattress, hot water, a doctor and basic hygiene.

Kurdish-Syrian family, interviewed in Macedonia, January 2015.

Concerns about the length and conditions of detention, as well as the detention of children, pregnant women and nursing mothers, have been expressed by the Macedonian Ombudsperson's Office, in the role of National Preventive Mechanism (NPM).⁸¹ Following their visits to Gazi Baba, the Ombudsperson recalled international standards which prohibit the detention of children and called for them to be provided with adequate social, medical and psychological assistance.⁸²

Amnesty International considers not only that lengthy detention periods in the conditions described below amount to inhuman or degrading treatment, but that detention conditions themselves are inhuman or degrading.

Originally a nursery, the reception centre, housed in a dilapidated building was "converted" to its current use in 2006. It is overcrowded: while the official capacity allows for between 120-150 people, according to a Ministry of Interior official around 200 individuals are normally detained there.⁸³ However, refugees suggest that at times upwards of 350 -400 people may be detained in the centre. The centre has one section for men and one for women and children. There is no section for families: married couples are separated. There is no separate section for unaccompanied minors, who are detained with adults, nor any specific provisions for their identification.

During such periods, there are insufficient bed-spaces, in the men's section in particular, and detainees have to sleep on the floor, or wherever there is space.

The police said they were arresting us because we had no documents or paper. They took all of us, 14 adults and four children, all families. Some were released. There was a baby girl born in Greece and she was taken to Gazi Baba. They separated the families. We just got a blanket on the floor, and

interviews conducted with Syrian, Eritrean and Afghan refugees (including an unaccompanied minor), in January and March 2015, photographic evidence, reports from non-governmental organizations, the National Preventive Mechanism, and information provided by UNHCR, the EU Delegation to Macedonia and the Macedonian Association of Young Lawyers.

⁸¹ The NPM, established under the Optional Protocol to the Convention against Torture (ratified by Macedonia in 2009), has powers to make unannounced visit to places where people are deprived of their liberty, http://www.ombudsman.mk/en/national_preventive_mechanism/npm_in_rm.aspx

⁸² National Preventive Mechanism, Ad hoc visit to Reception Centre for Foreigners, 14 November 2014, <http://ombudsman.mk/upload/NPM-dokumenti/2014/Poseti/Vonredna%20poseta-Prifaten%20Centar%20za%20stranci-14.11.2014-Ang.pdf>

⁸³ Amnesty International interview, Ministry of Interior, February 2015.

that's what people sleep on. When people come to visit, they made us clean [the centre]. They do not treat people well at Gazi Baba. You do not get food. Look at my hands [A.S showed Amnesty International red patches on his hands]. They would not take people to hospital, the police said, "When you are dead we will take you to hospital".

A.S., Afghan national, interviewed in Asylum Centre, Vizbegovo, January 2015.

Access to adequate sanitation and healthcare is extremely limited. Several former detainees have reported inadequate healthcare, including that, because of the lack of hot water, both children and adults had developed allergies or infections on their skin, but were provided with no medical treatment. Meals provided are also inadequate, consisting mainly of bread, butter and jam, and occasionally canned fish or other processed food.

Gazi Baba is not a proper prison: there are no clean blankets, no hot food, you cannot go out, except for 30 minutes a day – that is not a prison. People are sleeping in the hall, on the stairs, everywhere, even in the kitchen. The children were in the woman's part with their mothers, on the other side. The men were down underneath and the women's room at the top. Everything was awful in Gazi Baba. The water was cold, the place was dirty, but people cleaned themselves, and their clothes. There were more than 200 in the men's part, around 60-70 women in the women's area. We [a couple] were allowed to meet for an hour each day, between 9-10pm.

F & KI, interviewed in Serbia, March 2015.

In March 2015, Amnesty International interviewed two asylum seekers from Afghanistan, one of whom was an unaccompanied minor. They had been detained in Gazi Baba for more than two months. They described the conditions at the detention centre in detail, and drew a plan of the facility. They had to sleep on the floor in the hallway, without a bed or mattress. They told Amnesty International that at the time of their detention there were more than 300 men in the centre, with only one functioning shower and two toilets; other sanitation facilities were broken or otherwise unusable. Photographs from Gazi Baba taken in secret by other detainees confirm the unsanitary and unhygienic conditions they described.

ILL-TREATMENT

The police beat you if you ask for anything. I didn't know the rules. We wanted something from the market. But the guard/manager said "Can't you see that I'm busy", and then he just hit me in the face with his hands – I just knocked the door, that's all. Then I learned the rules, and so I didn't speak. If people made a mistake they were beaten.

K., interviewed in Serbia, March 2015.

In absence of procedures and safeguards for the protection of their rights, it is not surprising that detainees do not make complaints to the authorities of ill-treatment at Gazi Baba. However, allegations made by former detainees of ill-treatment at the hands of police officers and other Ministry of Interior officials, as well as other reports received, including from NGOS providing assistance to Syrian and Palestinian Syrian refugees, are sufficiently consistent to be credible.

I saw women being beaten. One of them wanted to go to the manager's office, and the woman police officer said, "It's not allowed", and the woman said "I just wanted..." and then she [policewoman] said "No, get back!", and she started to slap the Syrian woman, and the Syrian woman started to fight back; then the policeman came and beat her so badly.

F. interviewed in Serbia, March 2015.

One Afghan national told Amnesty International how he was beaten by security guards, allegedly for taking a shower at an inappropriate time, and also witnessed a Syrian man being ill-treated without apparent reason and beaten by the guards on the head until he bled:

The police beat me in Gazi Baba and I also saw a man being hit in the ear, a person from Syria, [he was] beaten until he was bleeding. When I got to Gazi Baba I was new and did not know that we have to stay in the room at the exact time. I went to shower and to brush my teeth. They came – one officer punched me and beat me in the salon with the hands. Some Arabs from Syria threatened with hunger strike. The police came and said, "If you die here, nobody will come and ask about you. We will throw your dead body out."

M, interviewed in Serbia, March 2015.

Amnesty International urges the Macedonian authorities to:

- Take immediate measures to end the automatic detention of refugees and migrants, and ensure that all detentions are lawful, necessary and proportionate;
- Take immediate measures to ensure that children, both accompanied and unaccompanied, are no longer detained;
- Close the Reception Centre for Foreigners, as recommended by the Committee against Torture in May 2015;⁸⁴ and ensure that where detentions are necessary and proportionate, detention conditions meet international standards;
- Investigate all allegations of inhuman or degrading treatment and other human rights violations, and ensure that where evidence is presented, suspects are subject to appropriate criminal or other sanctions.

⁸⁴ Committee against Torture, Concluding observations on the third periodic report of the former Yugoslav Republic of Macedonia, Advance Unedited Version, Paras. 17 (a-c), http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MKD/CAT_C_MKD_CO_3_20486_E.pdf

FREEDOM OF MOVEMENT, NON-DISCRIMINATION AND THE RIGHTS OF REFUGEES AND ASYLUM-SEEKERS (ARTS. 2, 12, 13 AND 26)

SAFEGUARDS FOR ASYLUM SEEKERS (QUESTION 14 IN THE LIST OF ISSUES)

INADEQUATE AND DELAYED ASYLUM PROCEDURES

Macedonia's Law on Asylum and Temporary Protection (LATP) was initially adopted in 2003.⁸⁵ Since then, only 32 applicants have been granted asylum, including 22 Roma and Ashkali refugees from Kosovo. Between 2009 and 2014, at least 4,231⁸⁶ people applied for asylum in Macedonia;⁸⁷ only 10 Syrian nationals, and an unaccompanied minor, were afforded asylum, and one Afghan received subsidiary protection - in 2014.

In 2014, some 1,249 requests for asylum were lodged, including 735 by Syrian citizens and 374 by Afghan nationals: the Syrian nationals noted above were amongst 265 applicants who remained within the procedure, but were denied international protection.

ACCESS TO ASYLUM

I arrived in Macedonia on 3 May 2013, and took a train to Skopje. I met a policeman and I said I wanted asylum. But I didn't understand what he said to me. Then I was taken to a police station where they asked if I wanted to go to Serbia. I said 'Yes' at that moment. The police took me in a car to Gazi Baba, I stayed two months in Gazi Baba – the conditions were good then. There was food. But now everybody says it's terrible. After five days, they took fingerprints and photos. Then, after two months, on 13 July 2013, they brought me here [Vizbegovo].

After 14 days I filled in the documents with MYLA, to submit my request. I got the first ID card after a year. My last interview was three months ago, maybe more. I complained that the procedure took so long. I don't know what will happen to my application. MYLA will inform me if there is any news.

H.A., from Eritrea, interviewed by Amnesty International, January 2015.

In law, having crossed the border into Macedonia, asylum seeker may request to seek asylum from border or other police. In practice, the majority of asylum seekers make their requests in the capital Skopje. They will then be taken to the Asylum Reception Centre, where they may submit an asylum application.

⁸⁵ Entered into force 2004; the most recent revised text was adopted in April 2013.

⁸⁶ UNHCR, Skopje; figures provided by the Asylum Department differ slightly.

⁸⁷ UNHCR, Skopje.

When Amnesty International delegates visited the Vizbegovo asylum centre on the outskirts of the capital, about 30 people were being accommodated, although the asylum centre has the capacity to accommodate up to 150 people. One of the two accommodation buildings was closed and apparently unused. Of those resident at the centre in January 2015, only three were in the asylum process. The remainder had recently been released from Gazi Baba, and appeared unaware that they were there to claim asylum.

MYLA, which provides legal assistance to asylum seekers has documented how the authorities fail to meet deadlines set out in law, including for the issuance of identity documents (which should be issued within 15 days of the initial submission of an asylum application,⁸⁸ but may take as long as six months to be issued). The refugee status determination process should be concluded within six months, but, in practice, may take considerably longer.⁸⁹ An exception was made in the case of the 10 Syrians granted asylum in 2014, who were granted asylum in an accelerated process.⁹⁰

While the majority of refugees leave the asylum centre within seven to 10 days, the lack of prompt access to asylum deters many applicants. According to UNHCR and their implementing partner, the legal NGO MYLA⁹¹ most applicants – in the absence of progress in their asylum procedure – leave the country within six months of the registration of their asylum claim, after receiving no interview or further information in the case.⁹² Few stay until the end of the process: except, according to UNHCR, Syrian nationals.

According to UNHCR Skopje, around 80% of cases are discontinued on the basis that the asylum seeker has left the Asylum Centre for more than three days. For example, according to the Ministry of Interior, some 155 requests for asylum were lodged in January 2015, among them applications by 105 Syrian nationals, 20 Palestinians and 13 Afghan citizens. However, this number coincides exactly with the 155 persons released from the Reception Centre for Foreigners in the same month; Amnesty International notes that detainees are asked if they wish to claim asylum prior to their release. When Amnesty International visited the centre at the end of January 2015, with the exception of four families, they had left.

REFUGEE STATUS DETERMINATION

Interviews are conducted by Ministry of Interior Section for Asylum, which has a staff of 11, five of whom are dedicated to the legacy of Kosovo cases. While RSD interviews should be concluded, and a determination issued within six months, this is rarely the case.

⁸⁸ Art. 40, LATP

⁸⁹ See interview with H.A., above;

⁹⁰ Only one family of three remains in Macedonia; the other two families (seven individuals) returned to Lebanon later in 2014. UNHCR believes that the process became faster since 2014, Amnesty International interviews, UNHCR, July 2014 and February 2015.

⁹¹ Providing legal assistance and representation to UNHCR persons of concern in proceedings before the institutions of the asylum system in the country.

⁹² Amnesty International interview with Pakistani national, July 2014. See also interview with H.A.

Prior to the granting of protection in 2014 to three Syrian families,⁹³ all asylum applications were rejected on grounds that the applicant had “delayed himself” in a “safe third country”, as set out in Article 10, Asylum Law. All cases where appeals against decisions were made to the second instance court, were rejected, without a decision on the merits of the case. In 2014, for example, some 48 appeals were rejected, on grounds that the applicant had no real fear of persecution, was not fleeing armed conflict, or that they were a danger to the security of Macedonia.⁹⁴

Thirty-five decisions in appeal cases were based on threats to security; five of these were new asylum seekers, the remainder were brought by Roma and Ashkali refugees who fled Kosovo in 1999. Decisions on whether the applicant may be a threat are made by the State Security Bureau. According to MYLA this information is classified, and limited to one sentence. All appeals are rejected on procedural grounds, without examination of the merits, by the Administrative Court.

In May 2015, the Committee against Torture expressed concern at the State party's reported practice of denying or revoking the applications of refugees and asylum seekers on grounds of “threat to national security” without the possibility for the applicant to challenge those decisions, such as before an appeal body, stating “The Committee is deeply concerned at the reported practice of expulsions without proper assessment of whether an individual may be subject to torture, inhuman or degrading treatment or punishment on return”.⁹⁵

UNACCOMPANIED MINORS

There is a lack of clarity about the identification and care of unaccompanied minors.⁹⁶ According to MYLA, 71 unaccompanied minors applied for asylum in 2014, and 55 in 2013; but procedures for their identification, conducted by Centres for Social Work, (within the MLSP) appear arbitrary. “There is no technical test, we can see from their bodies sometimes whether they are minors or not, but we always treat them as minor. We don't have any statistics, but there are no more than 15 cases”.⁹⁷ The MLSP is also required to appoint a guardian: the concept of guardianship is not effectively implemented; only one guardian was appointed in 2014 for all the unaccompanied minors detained in Gazi Baba (exact number unknown), and another for those at the Asylum Centre. The guardian may file an asylum request for the minors, who is interviewed in the presence of social worker.⁹⁸ Only one

⁹³ Only one family of three remains in Macedonia; the other two families (seven individuals) returned to Lebanon later in 2014.

⁹⁴ “[A]n alien shall not be granted subsidiary protection, that is cannot enjoy the right to asylum in the Republic of Macedonia, also if she or he constitutes a danger to the security of the Republic of Macedonia”, Art. 6, para. 2., Law on Asylum and Temporary Protection

⁹⁵ Committee Against Torture, Concluding Observations, Macedonia, para.17.

⁹⁶ For NPM concerns, *ibid.* Minors are defined as a vulnerable group in the recently published Migration Strategy, <http://www.marri-rc.org/upload/Documents/MKD%20M%20R%202009-2014.pdf>

⁹⁷ Amnesty International interview with Assistant Head of Border and Migration, January 2015.

⁹⁸ Arts. 23-a & 22, LATP; MYLA report that in a recent asylum procedure, the guardian was not present. Unaccompanied minors in Gazi Baba are not even visited by the appointed guardian, see *CAT Alternative*

unaccompanied minor, has been granted asylum – in 2014.

Amnesty International recommends that the government of Macedonia:

- Ensures that all persons seeking asylum are guaranteed prompt access, in accordance with timescales set out by law, to an individualized determination of their protection needs in accordance with international and domestic law;
- Ensure that the refugee status determination process provides the necessary safeguards, including the right to meaningful appeal procedures, so that persons in need of international protection are not subject to *refoulement*.
- Ensure that the new Law on Asylum and Temporary Protection, currently under consideration, complies with international standards, including with respect to the unaccompanied minors and vulnerable individuals.

report by Ombudsman of Republic of Macedonia,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNHS%2fMKD%2f20245&Lang=en

ADMINISTRATION OF JUSTICE (ARTS. 14 AND 26)

INDEPENDENCE OF THE JUDICIARY (QUESTION 10 IN THE LIST OF ISSUES)

Macedonia's failure to ensure the independence of the judiciary – guaranteeing the separation of the powers of the executive from the responsibilities of the judiciary to provide impartial enforcement of the law, the provision of legal certainty and respect of human rights – is a long standing concern.

The government, through interference in the work of the judiciary, in the prosecution of political opponents⁹⁹ and independent media¹⁰⁰ has failed to ensure respect for the rule of law, and guarantee the impartial administration of justice.

The judiciary is required to provide independent and effective access to justice, in accordance with international standards and Article 98 of the Macedonian Constitution which provides for the autonomy and independence of the courts. However, concerns have been raised, for example, about the degree of government interference in the Constitutional Court. In 2012, for example, the appointment by the government of members of the Constitutional Court raised international concern, following the appointment of three members of the judiciary, who were alleged not to have the levels of competency required for appointment to the Court.¹⁰¹

In the same year, (as noted above, see Reparation), the Constitutional Court refused to even consider an application from the relatives of disappeared persons for the review of the “authentic opinion”, which effectively closed investigations into criminal responsibility for crimes under international law. In 2011, in a meeting with the then Public Prosecutor, Amnesty International raised the organization's concerns that the parliament's decision was inconsistent with international law and Macedonia's international obligations. The then Public Prosecutor responded that – following the adoption of the authentic opinion - he no longer had any grounds to work on the cases returned for prosecution by Macedonia by the

⁹⁹ See for example, transcripts and audio recordings related to the arrest of former interior minister, Ljube Boshkovski, <http://bulevar.info/?p=13369>, accessed 3 May 2015.

¹⁰⁰ See for example, the closure of independent media outlet A1 TV following the prosecution of directors and staff, Amnesty International, “Macedonian government must stop silencing critical media” 5 July 2011 <https://www.amnesty.org/en/articles/news/2011/07/macedonian-government-must-stop-silencing-critical-media/> Balkan Insight, “Macedonia's A1 TV Bankrupt, Facing Closure”, 27 July 2011, <http://www.balkaninsight.com/en/article/bankruptcy-for-macedonia-s-most-prominent-tv>

¹⁰¹ For recorded conversations seeking to influence the election of judges to the Constitutional Court, see <http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/bomba-02.html>

ICTY. When challenged, he replied “My hands are tied”.¹⁰²

In 2013, the Constitutional Court, following a complaint brought by NGOs concerned with reproductive rights, upheld the constitutionality of Law on Termination of Pregnancy, which placed a set of restrictions on access to abortion. The law was adopted by the parliament in an urgent procedure, in the absence of any consultation with civil society, including women’s organizations, human rights organizations and medical professionals, following a year-long government-sponsored anti-abortion campaign. It required women to make a written application for an abortion, and conditioned the right to abortion on mandatory counselling, a mandatory waiting period, and the consent of a spouse, in the case of married women.

Amnesty International found that the law violated international law and standards, with respect to Macedonia’s obligations to respect and protect women’s rights to life, to the highest attainable state of health and to freedom from discrimination.¹⁰³

The EC in 2014 concluded that changes in the composition of the Constitutional Court “have affected its independence, and that it has started to delay and compromise on decisions”. The EC cited two instances which indicated lack of impartiality of the Court, including the rejection of an initiative to examine the constitutionality of the 2013 budget and of the Lustration Law. The EC also urged the authorities “to take decisive action to address concerns about increased politicization and growing shortcomings with regard to the independence of the judiciary”.¹⁰⁴

Recent revelations have not only given cause for concern in relation to government’s interference in the judiciary, but raised additional concerns. In particular, it is alleged that numerous judges and prosecutors, close to the government have been appointed contrary to law. For example, taped conversations reveal that the former State Prosecutor, Ljupcho Shvrgovski used his personal connections with the Minister of Interior, to ensure the appointment of the son of the President of Appellate Court as a prosecutor.¹⁰⁵ After this audio conversation was publically released, Ljupcho Shvrgovski commented that he found nothing wrong in this, stating that the Public Prosecution was not an independent organ.¹⁰⁶

¹⁰² Amnesty International interview, Skopje, December 2011.

¹⁰³ IPPF, “Macedonian court backs restrictive abortion law, overrules NGO challenge”, 28 November 2014, <http://www.ippfen.org/news/macedonian-court-backs-restrictive-abortion-law-overrules-ngo-challenge>; see also Amnesty International, My Body My Rights, ACT35/001/2014.

¹⁰⁴ European Commission, *The Former Yugoslav Republic of Macedonia 2014 Progress Report*, SWD(2014) 303 , pp. 5-6, & 1, http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-the-former-yugoslav-republic-of-macedonia-progress-report_en.pdf. Similar concerns were expressed in US Department of State, ‘2013 Human Rights Reports: Macedonia’, <http://www.state.gov/j/drl/rls/hrrpt/2013/eur/220304.htm>, last accessed 6 April 2015.

¹⁰⁵ Taped conversations also suggest that the former Minister of Interior, recorded and evaluated judges according to their political merits.

¹⁰⁶ “The public has a lack of knowledge of the constitutional position of the Prosecution. The Public Prosecution is an independent and single, but not independent body. The Government proposes the

The tapes also allege that the appointment of Judge Sofija Lalichikj was “sorted out” by Security and Counter-Intelligence Director Sasho Mijalkov. Furthermore, taped communications reveal that Albanian and Macedonian partners in the government coalition engaged in deals and trade-offs with respect to the appointment of prosecutors, “giving away” places to each other.¹⁰⁷

The EC in 2014 had already expressed concern that ‘[c]laims of indirect political influence on the conduct and outcome of high-profile court proceedings persist, especially in respect of organised crime and corruption prosecutions, as well as cases involving political personalities and the media’.¹⁰⁸ Taped communications published by the opposition now provide evidence of the abuse of power by government officials, contrary to Article 353 of the Criminal Code, (Misuse of official position and authorization), in influencing outcomes in court cases in their favour.¹⁰⁹

Amnesty International recommends that the government of Macedonia:

- Guarantees, and strengthens the independence of judiciary;
- Refrains from interference in the work of judges and prosecutors.
- Guarantees that appointment of judges and prosecutors is based on professional rather than political merits, and is in accordance with the law;

appointment of State Attorney General who is then appointed and dismissed by the Parliament. We are a [spilled] part of the executive. From that perspective, the cooperation of the prosecution and the executive is legitimate. The constitutional position gives us, the so- called, ‘exclusivity’. In the judiciary, however, this is impossible, because the judiciary is independent third power. The prosecution is not. That is the difference’. See <http://novatv.mk/index.php?navig=8&cat=2&vest=21068> last accessed 6 April 2015.

¹⁰⁷ For summary and audio recordings, see <http://www.plusinfo.mk/vest/19049/videogalerija-zaev-gruevski-mijalkov-i-jankuloska-mestat-sudii-i-obviniteli-kako-pioni>, accessed 3 May 2015.

¹⁰⁸ *EC Progress Report 2014*, op. cit., p 40.

¹⁰⁹ <http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/bomba-12.html>

FREEDOM OF RELIGION OR BELIEF, EXPRESSION AND ASSOCIATION (ARTS. 18, 19 AND 22)

INVOLVEMENT OF THE STATE IN THE MEDIA, (QUESTION 17 IN THE LIST OF ISSUES)

In April 2014, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, criticized the deterioration of freedom of expression, pluralism and media independence in Macedonia.¹¹⁰ International organizations subsequently reported that state media election coverage was biased towards the ruling party.¹¹¹ The latest Reporters without Borders assessment ranked Macedonia as 117th out of 180 countries, the lowest assessment in the region.¹¹²

Amnesty International has for many years monitored and reported on attacks on freedom of expression, including the abuse of civil defamation laws against journalists, restrictions of media freedom and the government's increasing control of the media.¹¹³ In interviews conducted over the past five years by Amnesty International, with journalists, NGOs, human rights activists and international organizations, interlocutors have emphasized how government pressure on journalists has led to widespread self-censorship, and the consequent lack of investigative journalists.¹¹⁴

¹¹⁰ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue - Addendum - Mission to the former Yugoslav Republic of Macedonia, A/HRC/26/30/Add.2, 1 April 2014, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/30/Add.2

¹¹¹ *The former Yugoslav Republic of Macedonia, Presidential and Early Parliamentary Elections, 13 and 27 April, 2014, OSCE/ODIHR Election Observation Mission Final Report*, pp. 3 & 16 <http://www.osce.org/odihr/elections/fyrom/121306?download=true>

¹¹² *2015 World Press Freedom Index*, <http://en.rsf.org/>, 6 April 2015. Reporters Without Borders, <http://csopeerex.euclidnetwork.eu/news>, last accessed 6 April 2015. '[A] very limited number of independent media voices actively expressed a variety of views without restriction' US Department of State, *2013 Human Rights Reports: Macedonia*, available at: <http://www.state.gov/j/drl/rls/hrrpt/2013/eur/220304.htm>, accessed 6 April 2015.

¹¹³ See for example, Amnesty International, *Macedonia: Submission to the UN Universal Periodic Review, 18th Session of the UPR Working Group, January – February 2014*, pp. 5-6, <file://intsec.amnesty.org/data/users/sjones/Downloads/eur650032013en.pdf>

¹¹⁴ Amnesty International interviews in July 2014 and January 2015. European Commission noted in

However, allegations by the opposition party, based on surveillance records, that as many as 2,000 journalists had been under surveillance, suggests that the degree of government interference in the freedom of the media has been grossly underestimated. Reporters Without Borders described the surveillance of journalists and others as a “massive assault on the fundamental rights of Macedonian journalists and all citizens”.¹¹⁵

The degree of government control of the media is illustrated by the case of Telma Television, which in May 2014 was fined three times by the government Agency for Audio and Audiovisual Media Services. During the 2014 elections, the Broadcasting Council found that Telma Television had dedicated nine minutes more to the opposition SDSM party than to the government. They were fined €3,000, reduced on appeal to €1,500. The station was also fined for playing only three hours, 14 minutes and 56 seconds of Macedonian folk music weekly. Article 92(4) and (6) of the Law on Audio and Audiovisual Media Services requires a minimum of four hours transmission of Macedonian folk music.¹¹⁶

Government control ranges far beyond that exercised over the national public broadcasting service, Macedonia TV (MTV), which has refused to broadcast information on the wiretapping and of contents of taped conversations, despite public demand.¹¹⁷ The Association of Journalists has expressed concern over amendments to the Media Law adopted in a shortened procedure in the Parliament in early 2014 and requested their repeal.¹¹⁸ Under these amendments, for example, only one member of the Council of Macedonian Radio Television, as opposed to two, would be proposed by the independent Association of Journalists – the other being proposed by the newly formed pro-governmental Macedonian Association of Journalists.¹¹⁹

The government reportedly spends around 1% of its budget on placing advertisements in, or otherwise favouring, pro-government media.¹²⁰ Both the Association of Journalists, and the OSCE have expressed their concerns with regard to the indirect financing of the media by the

2014 that ‘[t]he situation as regards freedom of expression continues to be highly problematic’, and that [t]he widespread use of defamation actions continues to impinge on the freedom of expression’, *European Commission Progress Report*, op. cit, p.12.

¹¹⁵ “Large-Scale Illegal Wiretapping of Journalists in Macedonia”, 27 February 2015, <http://en.rsf.org/macedoine-large-scale-illegal-wiretapping-of-27-02-2015.47633.html>

¹¹⁶ Media Freedom, “Macedonia: Telma TV under government pressure”, 27 May 2014, <http://mediafreedom.usahidi.com/reports/view/56>

¹¹⁷ See, for example, <http://novatv.mk/index.php?navig=8&cat=18&vest=21097>, last accessed 6 April 2015.

¹¹⁸ See, *Vesti.mk*, <http://www.vesti.mk/read/news/2404640/797122/znm-protiv-izmenite-na-zakonot-za-mediumi>, last accessed 6 April 2015.

¹¹⁹ <http://www.znm.org.mk/drupal-7.7/mk/node/736>, accessed 3 May 2015.

¹²⁰ OSCE, The Representative on Freedom of the Media, Dunja Mijatović, *Report*, 19 June 2014, p. 16, <http://www.osce.org/fom/119957?download=true>. For further allegations, see <http://www.balkaninsight.com/en/article/tvs-deny-getting-millions-from-macedonian-govt>

Government through the placing of advertisements, which puts some broadcasting outlets, in a more advantageous position, and impacts on the impartiality of the media.

Published surveillance recordings reveal an even deeper degree of control and influence over the media. They include conversations which refer to the appointment or tenure of journalists,¹²¹ or the suitability of candidates in state influenced and other media; influence over the content of news headlines, and the release by the government of exclusive footage to pro-government media – including in one case, advance notice of the arrest of a suspect in a criminal case.¹²²

Independent journalists, on the other hand, continue to be under threat, including from politically motivated prosecutions. On 21 October 2013, Nova Makedonija journalist Tomislav Kezarovski was convicted for revealing the identity of protected witness in an article he wrote in 2008. In what was considered to be a politically motivated prosecution, he was sentenced to four and half years in prison. Tomislav Kezarovski was held in extended pre-trial detention between 28 May and 7 November when he was released to house arrest awaiting the final decision on his sentence by the Court of Appeals. Local journalist associations, NGOs, the European Union, the OSCE and the European Federation of Journalists expressed strong criticism, calling for his release from house arrest. He was subsequently released into house arrest after international protest, On 16 January 2015, the Appeals Court in Skopje upheld his conviction, and ordered him to serve the remainder of his sentence, which was reduced to two years imprisonment. However, on 20 January 2015, whilst a protest march calling for his release was taking place in Skopje, he was unexpectedly released to “conditional freedom”.

Impunity also continues for violent attacks and the harassment of independent journalists. In March 2015, for example, the OSCE’s representative on media freedom Dunja Mijatović, called for investigations into three verbal attacks and death threats made against journalists in the same month.¹²³

In April 2015, the wife of the TV reporter Borjan Jovanovski, considered to be highly critical of the government, received a traditional funeral wreath addressed to him, and delivered to their home; it bore the words “final greetings”.¹²⁴ In May 2015, another critical journalist,

¹²¹ In a conversation between with the Spokesperson for the Ministry of Interior, Ivo Kotevski, and the former Minister of Interior, the latter reportedly stated that if a certain program at the Public broadcasting service (MTV) was broadcast, the responsible journalist would lose her job. Recording at <http://brif.mk/?p=178490>, accessed 4 May 2015. In English, see <http://interactive.aljazeera.com/ajb/2015/makedonija-bombe/eng/bomba-04.html>

¹²² “New Tapes Reveal Macedonia Govt’s Grip on Media”, 22 April 2015, <http://www.balkaninsight.com/en/article/tapes-reveal-government-s-grip-on-macedonian-media>

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<http://www.independent.mk/articles/16915/Dunja+Mijatovic+Expresses+Concerns+Over+Media%27s+Incidents>

¹²⁴ <http://www.balkaninsight.com/en/article/macedonia-journalist-receives-morbid-death-threat>

Sase Ivanovski, owner of the Maktel website, was assaulted with iron bars by two masked men; he accused the government of being behind the attack.¹²⁵

Defamation also continues to be used as a tool against independent investigative journalism: in 2014, for example, the Appeal Court upheld a decision against the magazine Fokus, and ordering the payment of €6,000 to Sasho Mijalkov, Director of the Security and Counter-Intelligence Directorate, for having published a former ambassador's statement alleging Mijalkov's involvement in various forms of corruption.¹²⁶ Further, in March 2015, Jadranka Kostova, editor in chief of Fokus, well known for her criticism of the government investigations into alleged corruption, was declared to have been a police informant during the 1990s by the Lustration Commission.¹²⁷

Amnesty International recommends that the Macedonian government:

- Takes all necessary measures to guarantee the right to freedom of expression and the encouragement of pluralism in the media;
- Conducts prompt, impartial and effective investigations into threats and attacks against journalists and other media professionals, ensuring that perpetrators are brought to justice;
- Refrains from malicious prosecutions and other punitive attacks on independent journalists.

¹²⁵ "Beating of Critical Macedonian Journalist Condemned", 25 May 2015, <http://www.balkaninsight.com/en/article/beatng-of-critical-macedonian-journalist-condemned-1>

¹²⁶ <https://edri.org/macedonian-investigative-magazine-fined-in-defamation-case/>

¹²⁷ A state office tasked with unmasking collaborators with the former Yugoslav secret police, which has been accused of targeting political opponents. See also, <http://www.balkaninsight.com/en/article/macedonian-journalists-protest-against-the-lustration-of-their-colleague>, See, *Plusinfo*, <http://vesti.mk/read/news/5026358/1896022/objaveno-reshenieto-za-lustracisko-ocnuvanje-na-jadranka-kostova>, last accessed 6 April 2015.

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