

---

# amnesty international

---

## FORMER YUGOSLAV REPUBLIC OF MACEDONIA

### AMNESTY INTERNATIONAL'S FOLLOW-UP INFORMATION TO THE CONCLUDING OBSERVATIONS OF THE COMMITTEE AGAINST TORTURE

April 2010

AI index: EUR 65/002/2010

Amnesty International has welcomed the Committee's Concluding Observations on Macedonia. The organization is concerned that the state party appears not to have taken action to date to address a number of areas of concern identified by the Committee and to implement the recommendations made by the Committee. In particular we refer to the Committee's request to the Former Yugoslav Republic of Macedonia "[to] provide, within one year, information on response to the Committee's recommendations contained in paragraphs 6, 8, 13 and 20 ...".<sup>1</sup> In addition, we are providing information on paragraphs 5, 7, 9 and 16.

#### INVESTIGATION AND PROSECUTION OF SERIOUS VIOLATIONS OF INTERNATIONAL LAW (PARAS. 5 AND 13)

Amnesty International notes that scant progress has been made in the prosecution of the four cases returned to Macedonia for prosecution from the International Criminal Tribunal for the former Yugoslavia (Tribunal) in February 2008. As reported by the State party, in one of the cases, the "Mavrovo" road workers' case, an indictment has been issued and the court proceedings are pending. This case involved five individuals, employed as road workers by the Mavrovo Road Company, who were allegedly abducted in August 2001, and allegedly physically ill-treated, sexually violated and threatened with death before being released some hours later.

Proceedings in this case were due to open in September 2008, but were postponed until October 2008, due to the absence of the majority of the accused and a number of the victims. In October 2008, Skopje Criminal Court had requested that one of those indicted, the Democratic Union for Integration (DUI) assembly member Hisen (Hysen) Xhemaili, be stripped of his immunity from prosecution in order to face trial. Hisen Xhemaili apparently absented himself from parliament for four months. When he returned, his immunity was lifted by the Parliament, and the DUI

---

<sup>1</sup> Concluding Observations of the Committee against Torture, May 2008, (UN Doc. CAT/C/MKD/CO/2).

undertook that he would appear in proceedings which were due to take place in February 2009. However, proceedings were again adjourned. In March 2009, another suspect, Shkodran Idrizi, was arrested in Germany; he was subsequently extradited by Germany to Macedonia on the basis of a warrant issued by the Macedonian authorities in this case. As of February 2010, he was in pre-trial detention in connection with both the Mavrovo case, and a retrial for a lesser offence for which he had been sentenced *in absentia*. Proceedings were due to reopen in March or April 2010.

The State Party also reports that one of the cases is in the investigation stage, and the other two cases are in the preliminary investigative stage. However, as far as Amnesty International is aware, 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 under review by the public prosecutor. No indictments have been published and no proceedings have been opened in either of these cases.

Amnesty International requested information on the progress of each of these cases from the authorities in November 2009, but has not yet received a reply. Local and international non-governmental organizations (NGOs) consider that the cases have been delayed by shortcomings within the Macedonian justice system, including a massive backlog of cases and procedural delays in the system, including the length of time taken to obtain and issue documents within the time set out by law. Further, despite the appointment of an additional investigative judge, NGOs report that the judiciary have not been proactive in these cases.

Amnesty International is concerned that the lack of progress may in part be attributed to arguments made by ethnic Albanian political parties (including members of the coalition government and opposition parties), which have argued that the cases returned from the Tribunal should be subject to an Amnesty Law adopted in March 2002. This law applies to all those involved in the 2001 armed conflict, except in cases of war crimes taken under the jurisdiction of the Tribunal. As these cases had not been dealt with by the Tribunal but been returned some argued that the Amnesty Law should apply.

While the State Prosecutor is clear on Macedonia's obligations to try these cases, pressure from ethnic Albanian political parties within the coalition government appears to be creating a climate of impunity. Amnesty International considers that no such amnesty should be applied in cases of violations of international human rights and humanitarian law.

Impunity also prevails in other cases related to the armed conflict. Among them are the cases of six ethnic Albanians believed to be the victims of enforced disappearances by the Macedonian authorities during the 2001 internal armed conflict. The authorities have also failed to thoroughly investigate the abduction of 13 ethnic Macedonians and one Bulgarian national, who are believed to have been abducted by ethnic Albanian armed groups during the same conflict. The abductions of Macedonian civilians are included in the indictment in the "Neprosteni" case which was returned from the Tribunal, and relates to the discovery of a mass grave near the village of Neprosteni-Tetovo, which was exhumed by the Macedonian authorities, including the Office of the Prosecutor.

Amnesty International notes that in cases of enforced disappearances, the failure of the authorities to provide the relatives of the disappeared with information about the fate and whereabouts of their loved ones amounts to inhuman, cruel and or degrading treatment.

## INVESTIGATIONS OF ALLEGATIONS OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT (PARAS. 6, 7 AND 16)

In February 2009 Macedonia ratified the Optional Protocol to the Convention against Torture (OPCAT). In September 2009 amendments to legislation on the Ombudsperson's Office enabled its designation as a National Preventive Mechanism (NPM) and created a specific unit within the Ombudsperson's Office to make it compliant with the OPCAT. The Ombudsperson's Office is empowered in the amended law to collaborate with NGOs in its role as NPM. NGOs, including the Macedonian Helsinki Committee for Human Rights, plan to monitor its work.

The police and some NGOs report a decline in reports of torture and other ill-treatment in 2009. They attributed this to a number of factors including: the disbanding of the special "Alfi" police units outside Skopje, (following the visit by the European Committee for the Prevention of Torture (CPT) in November 2008); improvements in the effectiveness and conduct of investigations by the Ministry of Interior Sector for Internal Control and Professional Standards (SICPS); and the introduction of custody records at police stations.

Notwithstanding this positive development, complaints of ill-treatment continue to be reported by individuals or by NGOs acting on their behalf. Furthermore, Amnesty International is concerned that continued failures to ensure prompt, independent and effective investigations of allegations of ill-treatment continue to lead to impunity.

Judges and prosecutors continue to fail to initiate investigations into cases of ill-treatment, including when persons have appeared before the courts showing clear signs of ill-treatment. For example, in 2008 the Tetovo Public Prosecutor initially failed to open an investigation into a complaint by Jovica Janevski who alleged he had been beaten while in detention at Tetovo Police Station. It was only after the Macedonian Helsinki Committee for Human Rights subsequently reported the case to the SICPS, that the SICPS conducted an investigation. The SICPS then referred the case back to the Tetovo Basic Public Prosecutor for prosecution in March 2009. Charges were brought against an officer, who was then tried and convicted in the Tetovo Basic Court. On 2 July 2009 the officer received a suspended sentence; on appeal, the suspended sentence was increased to a prison term of eight months' imprisonment in October 2009. Other cases, where there were few such positive outcomes, have been documented by local NGOs. Amnesty International notes that in April 2009 these NGOs – with the World Organization against Torture (OMCT) – called upon the judiciary and public prosecutors "to investigate in due time all allegations of torture and to sanction the perpetrators appropriately"; they also called for measures to be taken to ensure that evidence allegedly gathered under torture was ruled inadmissible in prosecutions, in accordance with international standards.<sup>2</sup>

While there has, however, been a reported increase in the number of disciplinary actions as a result of internal investigations, and of cases referred to the prosecutor, the numbers of reported prosecutions still remains low. As of November 2009, according to SICPS, some 26 out of 54 complaints received in the previous nine months alleging excessive use of force or unprofessional behaviour, were found not to have been grounded. In three cases where excessive force was found, two cases were referred to the Prosecutor, and in one case disciplinary action was taken.

---

<sup>2</sup> OMCT, *Macedonia must urgently ensure accountability of law enforcement agents responsible for torture and other ill-treatment*, 29 April 2009, <http://www.omct.org/pdf.php?lang=eng&articleId=8504&type=print&PHPSESSID=75>.

No further information was available. For a more comprehensive analysis, Amnesty International refers the Committee to a detailed report on individual cases by the Macedonian NGO, Coalition "All for Fair Trials".<sup>3</sup>

The failure of the Macedonian authorities to effectively investigate serious allegations of torture and other ill-treatment has resulted not only in continuing impunity for the perpetrators, but also a failure to ensure that the victims of such violations may receive adequate redress in Macedonia. Following the failure of the Macedonian authorities to fully investigate the death in custody of Sabri Asani, an ethnic Albanian, on 17 January 2000, Jasmina Sulja, the partner of Sabri Asani, complained to the European Court of Human Rights alleging violations of the right to life and prohibition of torture and other ill-treatment guaranteed under Articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) that Sabri Asani had been beaten, as a result of which he had died at the hands of the police. She further complained that no effective investigation had been carried out by the relevant authorities, and alleged that there was no effective remedy under Article 13 of the Convention. The case remains pending.

Amnesty International notes that in November 2008 the CPT expressed concern about the independence and abilities of the SICPS to carry out prompt, thorough and effective investigations.<sup>4</sup> The SICPS' conduct, in relation to a case in March 2010, indicates that there is still reason for such concern. In an incident in March 2010, the police allegedly failed to protect around 150 students, who were demonstrating against a government proposal to build a church in Skopje's central square, from attack by a large counter-demonstration which was reportedly organized by the Macedonian Orthodox Church. In April a parliamentary committee called for an investigation into the case. Despite the available evidence that the student had been attacked, SICPS found that police had acted correctly.

#### "ALFI" POLICE (PARA. 16)

With regard to the Committee's concerns and recommendations about the "Alfi" police unit, Amnesty International is also concerned in particular at the continued insistence of the SCIPS (including in an interview with the organization's delegates in November 2009) that complaints made about the "Alfi" police in relation to the November 2007 Operation Mountain Storm were not grounded. However, the allegations were never fully investigated. In February 2008 mobile phone footage, apparently taken by a police officer, was broadcast on national television showing the bruised and bloody face of a man detained in the village of Brodec during Operation Mountain Storm. While police officers responsible for the footage were suspended pending investigation, the Minister of Interior has persistently refused to reopen an internal investigation into the incident, which in 2007 had found that no excessive force was used by members of the

---

<sup>3</sup> *Efficiency in The Protection Of Human Rights Where Police Powers Are Exceeded, Legal Analysis for 2009*, Skopje, November 2009, available at <http://www.all4fairtrials.org.mk/en/3PolZloup.htm>

<sup>4</sup> The Council of Europe's Committee for the Prevention of Torture (CPT) November 2008 report on the findings of their visit to Macedonia earlier in that year stated that "the SICPS cannot be considered as an independent body which is able to carry out prompt, thorough and effective investigations", *Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 June to 3 July 2008*, CPT/Inf (2008) 31, 4 November 2008, paras 35-36. <http://www.cpt.coe.int/documents/mkd/2008-31-inf-eng.htm>

“Alfi” police believed to have been involved in the Brodec incident in which six people were killed and others allegedly ill-treated by the police. In July 2008, 17 men, including 13 of those arrested in Brodec, were convicted of armed attacks against the police, preparation of a terrorist act and weapons possession.

## DETERMINATION OF ASYLUM CLAIMS (PARA. 8)

Amnesty International is concerned that the majority of persons currently seeking asylum in Macedonia, including Roma and Ashaklia from Kosovo, have been denied access to a full, fair and effective procedure for determining their need for international protection. According to the Skopje Office of the UN High Commissioner for Refugees, asylum was not granted to any Roma from Kosovo during 2009.

Following the introduction of the Law on Asylum and Temporary Protection (Official Gazette of the Republic of Macedonia No. 49/ 25 July 2003), the organization has monitored the progress of asylum cases, where it considers that applicants may meet the definition of a refugee set out in Article 2 (sub-paragraph 1) and Article 4 of the Law on Asylum and Temporary Protection.

In cases reviewed by Amnesty International, and cases reviewed by local lawyers, determinations demonstrated a lack of individualized assessment (lack of consideration of the facts in individual cases) but rather a reliance on generalized assessments that were, in some instances, irrelevant to the individual case.

A law amending the Law on Asylum and Temporary Protection entered into force on 15 December 2009, following representations by and in consultation with UNCHR. It introduces an Administrative Court to act as an appeal body in rejected cases. According to UNHCR some 15 cases had been submitted by the end of 2009; as of mid-April 2010, no final decisions had been reported.

## THE TORTURE AND OTHER ILL-TREATMENT OF KHALED EL-MASRI<sup>5</sup> (PARA. 9)

Amnesty International remains concerned at the continued lack of action on the case of Khaled el-Masri, arbitrarily detained by the Macedonian authorities for 23 days in 2003 before being unlawfully transferred to the custody of US authorities. In the context of the US led programme of rendition and secret detention, Khaled el-Masri was then flown to Afghanistan, where he was subjected to torture and other ill-treatment while held in secret detention.

In October 2008 Khaled el-Masri filed a complaint in the Macedonian court against unknown Macedonian officials involved in his abduction and torture. As of 24 January 2009, when the statute of limitations for the October complaint expired, there had been no response from the Office of the Prosecutor to his complaint. On the same date, on behalf of Khaled el-Masri, a

---

<sup>5</sup> “... ensure that a new thorough investigation is undertaken in order to assess whether the treatment of Mr. El-Masri has been in compliance with the Convention and other international human rights standards.”

complaint for damages (50,000 Euros) was filed against the government of Macedonia for its role in his unlawful abduction and detention, claiming he was unlawfully deprived of his liberty – on the basis of mistaken identity – and subsequently ill-treated. The Macedonian authorities failed to reply to this complaint.

With no access to redress in Macedonia, Khaled el-Masri filed an application with the European Court of Human Rights against Macedonia. In May 2009 the Court held a preliminary hearing into the case; a subsequent hearing on 7 October 2009 was postponed at the request of the Khaled el-Masri. The case remains pending.

## DISCRIMINATION AGAINST MINORITIES, INCLUDING ROMA (PARA. 20)

Amnesty International continues to be concerned about the absence of progress by the Macedonian authorities in guaranteeing the rights of minority communities, and in particular, the Romani community. These concerns were also reflected by the Universal Periodic Review (UPR) Working Group of the Human Rights Council, in their report on the Former Yugoslav Republic of Macedonia adopted on 15 May 2009.<sup>6</sup> In addition, according to an April 2009 report by a local NGO, the number of Romani victims of ill-treatment remains disproportionately large at 18 per cent.<sup>7</sup>

Although Article 417 of the Criminal Code prohibits racial discrimination or incitement to such discrimination, and Article 319 criminalizes the promotion of national, racial or religious hatred, discord or intolerance, a comprehensive anti-discrimination law was not adopted until April

---

<sup>6</sup> *Report Of The Working Group on the Universal Periodic Review, The former Yugoslav Republic of Macedonia*, A/HRC/12/15, 5 June 2009, para.41: “Continue efforts to ensure that the Roma, Albanian and other minorities have access to suitable and affordable housing, employment, education and health care, and that special attention be paid to promoting the integration of these populations in all areas of social life, without discrimination (Algeria); continue adopting measures to improve the situation of rural women belonging to ethnic minorities, above all Roma and Albanians (Argentina); ensure implementation of the relevant legislation, in particular the laws relating to the use of languages and those aimed at improving the living conditions of the Roma (Switzerland); effectively promote ethnically mixed organizations around common civil, professional and business interests in order to fully support the social cohesion of all ethnic groups (Austria); ensure the speedy implementation of the measures of the national Roma Strategy (Austria); make every possible efforts to implement the Roma Strategy and Action Plans, in compliance with the strategy and the Decade of Roma Inclusion, which is to end in 2015 (Brazil); implement the Roma Strategy and Action Plans, in compliance with the Strategy and the Decade of Roma Inclusion 2005-2015 (Canada); ensure equal and unhindered access to health care for the Roma (Austria); promote the exercise by the Roma of their economic, social and cultural rights, in particular by implementing programmes to facilitate birth registration and the issuing identity documents for this sector of the population (Mexico); provide the Agency for the Rights of the Ethnic Groups Which Are Less Than 20 per cent of the Population with the necessary resources to effectively deal with minority issues (Ireland); improve the situation of inclusion of some minority ethnic groups, in particular the Roma, who are frequently facing a situation of lack of protection (Spain); focus more resources on ethnic reconciliation in the education of school-aged children to foster tolerance and appreciation for diversity in the next generation (United States);” [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MK/A\\_HRC\\_12\\_15\\_MKD\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/MK/A_HRC_12_15_MKD_E.pdf)

<sup>7</sup> Coalition “All for Fair Trials”, *Access to Justice*, 14 April 2009. Roma make up between four and 12 percent of the population of Macedonia.

2010.<sup>8</sup> Ignoring recommendations from local and international actors, including from the European Union, provisions were not included in the law for the protection from discrimination on the grounds of sexual orientation. Despite the recommendations made to the government, concerns remain about the powers of the Commission on Equality envisaged in the law, its independence and capacity to conduct *ex officio* investigations.

Little other progress has been made by the authorities in improving respect, protection and fulfilment of the rights of the Roma. A revised *National Action Plan for the Decade of Roma Inclusion* was not adopted until May 2009, and there has been little subsequent progress in implementing these plans. The National Strategy for the Advancement of Romani women, adopted by the government in January 2008, has not been implemented, as no funding had been allocated to the relevant department within the Ministry of Labour and Social Affairs.

---

<sup>8</sup> A "Proposal for Adoption of a Law on Protection against Discrimination" was drafted by NGOs as early as 2005, but was rejected by the government which initiated a consultation process in December 2007, resulting in the production of a draft law by the Ministry of Labour and Social Affairs in October 2008. In a public debate on 14 April 2009 the draft Law on Protection from Discrimination was widely criticized by NGOs. Further opinions were submitted by the Venice Commission and the Organization for Security and Cooperation in Europe Spillover Mission in Macedonia, although not all their recommendations were included in the law finally adopted by the Parliament on 7 April 2010.

Amnesty International  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW

[www.amnesty.org](http://www.amnesty.org)

**AMNESTY  
INTERNATIONAL**

