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Amnesty International's Concerns in Macedonia: January-June 2009

General and political developments

The dispute between the former Yugoslav Republic of Macedonia (FYROM, hereafter Macedonia) and Greece over the name of the country continued. On 19 January a hearing opened at the International Court of Justice in proceedings initiated by Macedonia in November 2008; both countries claimed that the other had violated an interim agreement made in 1995, in which Macedonia had temporarily agreed to use the name FYROM, while Greece had agreed not to block the FYROM's membership of international organisations.

Greece, which has a province of the same name, continued to block Macedonia's invitation to join the North Atlantic Treaty Organization (NATO), and threatened to block Macedonia's application to the European Union (EU). Relationships between the countries deteriorated to a point where both governments advised their citizens not to visit the other country. Separate UN-brokered talks on the name continued.

The first round of presidential and local elections, held on 21 March, passed with only minor incidents, which observers noted was a vast improvement on the June 2008 elections, which had been marred by armed attacks, allegations of ballot rigging, the closure of polling stations and the suspension of police officers suspected of electoral fraud. After the second round on 5 April George Ivanov of the ruling party – the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity, – was elected President with 63.41 per cent of the vote. The Organisation for Security and Co-operation in Europe (OSCE) asked the Ministry of Justice how a country with a population of 2.2 million could have 1,792,082 registered voters.

On 15 May the Working Group of the Human Rights Council adopted a draft report on their Universal Periodic Review of Macedonia.

Students, human rights and women's non-governmental organizations (NGOs) expressed increasing concerns at measures – including the building at public expense of monuments and statues - taken by the government to reinforce Macedonia's claims to an historic identity, and the increasing influence of the Orthodox Church on the secular state. However in April the Constitutional Court ruled several new laws unconstitutional, including in April when the court abolished Article 26 of the Law on Primary Education which would have allowed for introduction of religious education in elementary schools.

In May the International Monetary Fund observed that Macedonia's economy was "slowing sharply", and forecast an economic decline, caused largely by the impact of the recession on exports in the metal, construction and textile industries.

Macedonia continued to aspire to membership of the EU, but had not been given a date for the start of accession talks by the end of June.

Impunity for War Crimes, including enforced disappearances

Little progress has been made in the prosecution of the four cases returned in February 2008 from the International Criminal Tribunal for the former Yugoslavia (Tribunal) to Macedonia.

Proceedings in the "Mavrovo road workers" case reopened in February after a long delay. Due to have opened in September 2008 proceedings had been delayed in the absence of the accused, including Democratic Union for Integration (DUI) assembly member Hisen (Hysen) Xhemaili who in September 2008 had been stripped of his immunity from prosecution in order to face trial, and subsequently absented himself from the parliament for four months. Proceedings were adjourned on 20 May, and were expected to resume on 25 June 2009, but were again adjourned until September, pending the extradition from Germany of one of the accused. The four road workers had been abducted in August 2001, allegedly physically ill-treated, sexually violated and threatened with death before being released some hours later.

No progress was reported on two other cases returned by the Tribunal ("Neprosteni" and "Lipkovo Water Reserve") which in September 2008 had been submitted to an investigative judge, or the "NLA [National Liberation Army] Leadership" case, which had reportedly been under review by the public prosecutor in 2008.

Impunity continued in the cases of 20 missing persons, including six ethnic Albanians, the alleged victims of enforced disappearances by the Macedonian authorities, and 13 ethnic Macedonians and one Bulgarian national, believed to have been abducted by ethnic Albanian armed groups during the 2001 conflict. The abductions of ethnic Macedonian civilians are included in the indictment in one of cases returned from the Tribunal. There have been no reports of any progress in investigations into the enforced disappearances of ethnic Albanians.

Impunity for torture and other ill-treatment

In February 2009 Macedonia ratified the Optional Protocol to the Convention against Torture but has yet to put in place a National Preventive Mechanism (NPM), although in 2008 the Ministry of Foreign Affairs had consulted the Office of the Ombudsman with regard to it becoming the country's NPM.

International and local NGOs in April reported an improvement in the effectiveness and conduct of investigations into cases of cases of alleged ill-treatment by the Sector for Internal Control and Professional Standards (SICPS) within the Ministry of Interior. They also reported an increase in the number of disciplinary actions as a result of such investigations, and an increase in the number of cases referred for prosecution, although the numbers of reported prosecutions remain low. According to an April 2009 report by the NGO Coalition for All Fair Trials, the number of Romani victims of ill-treatment remains disproportionately large at 18 per cent; Roma comprise between four and 12 per cent of the population.

In March the Helsinki Committee for Human Rights reported that the SICPS had concluded an investigation into the alleged ill-treatment of Jovica Janevski from Tetovo in October 2008. Jovica Janevski had informed the NGO that after being taken into custody at Tetovo Police Station, following his conviction and sentencing to two years' imprisonment, he had been beaten by two police officers, who told him that they were members of a special unit from Skopje. Although Jovica Janevski was handcuffed, he was allegedly hit with fists and a gun handle on the head resulting in serious injuries. These were recorded by a doctor at Skopje Prison, where he was transferred the following day. The SCIPS considered there was a reasonable suspicion of the criminal offence of "Torture" (Article 142 of the Law on Criminal Procedure), and had sent a report to the Tetovo Basic Public Prosecutor.

However, in April, local NGOs and the World Organization against Torture highlighted the continued failure of judges and prosecutors to initiate investigations into allegations of ill-treatment, including in cases where persons have been brought before the courts showing clear signs of ill-treatment. They called upon the judiciary and public prosecutors to promptly investigate all allegations of torture and to punish 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.

The UPR Working Group in May noted the continued lack of an external independent police oversight mechanism, which according to the authorities was “still in the pipeline”. The UPR Working Group also called for the strengthening of the Ombudsperson’s Office.

Sabri Asani

In June the European Court of Human Rights made a preliminary consideration in an application made by Jasmina Sulja, the partner of Sabri Asani, an ethnic Albanian who died while in police custody in 2000. The complaint was made under Articles 2 and 3 of the European Convention on 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 on 17 January 2000. Further, no effective investigation had been carried out by the relevant authorities, as a result of which Jasmina Sulja had been denied an effective remedy guaranteed under Article 13 of the ECHR. A summary of the facts had been communicated to the Macedonian authorities who are required to respond in September 2009.

Counter-Terrorism: Khaled el-Masri

On 24 January 2009 Khaled el-Masri filed a claim for damages (amounting to 50,000 Euros) against the government of Macedonia for its role in his unlawful abduction, detention and ill-treatment for 23 days in 2003. He was subsequently transferred to the custody of US authorities and, in the context of the US led programme of rendition and secret detention, flown to Afghanistan, where he was allegedly subjected to torture and other ill-treatment while held in secret detention outside the protection of the law. He had been returned home via Albania, after the US authorities realised that they had mistaken his identity. As of May 2009, there had been no response from the Office of the Prosecutor to this complaint; nor had any action been taken in reply to a complaint submitted to the Macedonian courts in October 2008 by Khaled el-Masri’s requesting a criminal investigation into his detention and ill-treatment. According to his lawyer, the statute of limitations on this complaint had expired on 24 January 2009. An application to the European Court of Human Rights by Khaled el-Masri’s lawyer is due to be lodged with the European Court of Human Rights.

Despite recommendations in 2008 by the European Commission, the UN Human Rights Committee and the Committee against Torture that the Macedonia authorities open a new and thorough investigation into their part in the detention of Khaled el-Masri in a Skopje hotel, no such investigation has been opened.

Freedom of Expression

On 28 March around 150 students, mainly from the Faculty of Architecture, opposed to the government’s proposal to build an Orthodox church in the central square of the capital Skopje, held a demonstration, calling for transparency in decision-making on the use of public space. The demonstrators were outnumbered and attacked by counter-demonstrators, apparently spontaneously organized by the Macedonian Orthodox church; the police reportedly failed to intervene to protect the architecture students, indeed some media reports described police officers as “passively observing the clash.

Responding to these events representatives of the international community in Skopje called on the government to guarantee freedom of expression. The Ministry of Interior brought criminal charges under the Law on Public Order and Peace against 12 participants in the original demonstration, and against

seven of the counter-protestors. However, three of the organisers of the demonstration, who despite having sent a letter to the police informing them in advance of the demonstration, (which is not an obligation required by the Law on Public Assemblies), were charged with failing to protect public safety during the demonstration.

On 9 April, a hearing of the Parliamentary Permanent Inquiry Commission questioned police reports on the incident and called on the police to immediately open investigations into any alleged violations by the police. In a statement made to a parliamentary debate on 15 April the Ministry of Interior confirmed that they had deployed only 30 police officers to protect the demonstration from an estimated 4,000 counter protestors.

In April, a much larger demonstration calling for the right to freedom of expression, organized by the student groups and supported by human rights NGOs, passed off without incident.

Discrimination, including against Roma

In April the Ministry of Labour and Social Policy presented the draft text of the Law on Protection from Discrimination for public debate. Amnesty International considered the draft, which was criticised by local NGOs, did not provide a sufficiently robust framework for the prohibition of discrimination on the grounds of ethnicity. Not did it make any provisions against discrimination on the grounds of sexuality or sexual identity. The definition of discrimination was non consistent with international human rights standards and EU Directive No. 2000/43 ("Race directive") and EU Directive No. 2000/78 "on equal treatment in employment and occupation". Further, the draft law applies only to state bodies and fails to prohibit discrimination in the private sphere. The draft law does not establish a mechanism to ensure access to effective judicial remedies, but instead relies for its implementation solely on the Office of the Ombudsperson. Nor does it establish an independent anti-discrimination body to provide effective remedies against, or protect people from, discrimination, or any other measures to the draft to prevent and provide protection against discriminatory acts, nor does it either establish or mandate any mechanism to monitor its implementation. A public debate was held on 14 April to discuss the draft text, but the law had not been presented to the government by the end of June.

The UPR Working Group in May called on the authorities to ensure that sexual orientation and gender identity were explicitly included throughout the anti-discrimination laws and programmes, and ensure that same-sex partners were provided with equal rights and responsibilities as heterosexual partners.

National Action Plan for the Decade of Roma Inclusion

There was little progress in implementation of the National Action Plans (NAPs) for the Decade of Roma Inclusion, which had been in the process of revision since September 2008, and were finally adopted in May. The NAPs did not include specific measures to address the double-discrimination experienced by Romani women and girls.

Some measures had been implemented to improve Romani children's access to education, including: the availability of Romanes as an elective language in all schools, which was reportedly introduced in five schools at the beginning of the year; the continued provision of scholarships to Romani children enrolling in secondary education, and in February 2009, the laying of the foundation stone of a long-planned secondary school in the predominantly Roma municipality of Šuto Orizari.

Discrimination against women

A coalition of women's NGOs and the Helsinki Committee raised concerns in January about a public information campaign, funded by the Ministry for European Integration, which appeared to oppose the right to abortion guaranteed in law. Although the Ministry of Health denied media reports that MPs from the ruling party had launched an initiative for more restrictive legislation, NGOs remained concerned that amendments to the 1972 law would be introduced. They urged the government to protect women's right

to the highest standards of reproductive health care, in compliance with the Strategic Policy on Health Care, and not to introduce measures that would result in an increase in illegal abortions, endangering women's health.

In April in a case taken by NGOs to the Constitutional Court, the court ruled that provisions of Article 24 (a) of the 2008 Law on Health Insurance, relating to the payment of child benefits to mothers with more than one child, were unconstitutional. The court found that the law, if implemented, would have been discriminatory in that it provided for such benefits to be granted only to mothers living in municipalities where the annual birth rate was below 2.1 children per 1,000 persons.

This would have discriminated against the ethnic Albanian community, as municipalities with low birth rates are predominately those with majority Macedonian populations, and against mothers in the predominantly Roma municipality of Šuto Orizari, where the majority of Macedonia's Roma population live. As a result of the court's ruling all mothers living in Macedonia who give birth to a second, third or fourth child will now receive the payments..

Trafficking in Human Beings

On 27 May Macedonia ratified the Council of Europe Convention on Action against Trafficking in Human Beings, which will enter into force in Macedonia on 1 September 2009. Over the past two years, Macedonia has gradually introduced legislation required to give effect to the Convention. However, the Coalition for all Fair Trials reported in January how provisions of the law were not implemented in practice. For example, in cases of trafficking prosecuted by courts in 2008, some 40 trafficked women had sought compensation as the injured party. Despite the conviction of the perpetrator in 30 of these cases (in which case compensation for damages should be automatic), no enforceable orders for compensation had been made, as the courts had failed to confiscate sufficient funds from those convicted of trafficking for the payment of such compensation, as envisaged in law. Further, under the Law on Aliens, while trafficked persons are guaranteed a two month reflection period and a six month temporary residence permit if they cooperate with the authorities, neither judges nor prosecutors considered that the law allowed for trafficked persons to have the have the right to residence in Macedonia.

According to a Serbian police report published in May, the trafficking of Chinese nationals, who do not require a visa to enter Serbia, was increasing. They were reportedly trafficked from Serbia to Macedonia and from there to Greece or other EU member states, where they were believed to be exploited in forced labour. Women and girls from eastern Europe continued to be trafficked for the purposes of forced prostitution via Serbia into Macedonia.

Refugees

The majority of over 1,700 refugees, mainly Roma and Ashkalia from Kosovo, currently seeking asylum in Macedonia, continue to be denied access to a full, fair and effective procedure for determining their need for international protection.

According to the UN Refugee agency (UNHCR), as of the beginning of the year those granted temporary humanitarian protection would be considered eligible for local integration. However, the Integration Strategy for Refugees and Foreigners remains to be elaborated, and is not yet in force.