

I. INTRODUCTION

This information is submitted by the informal Coalition “Macedonia without discrimination” whose members are: the Association for Democratic Initiatives – ADI, First Children’s Embassy in the world-MEGJASHI, Humanitarian and Charitable Association of Roma in Macedonia -Mesecina, Healthy Options Project Skopje – HOPS, Macedonian Association for Free Sexual Orientation - MASSO, Macedonian Centre for International Cooperation - MCIC, Macedonian Woman Rights Centre –MWRC, Polio Plus – movement against disability, Union of Woman Organizations of Macedonia –SOZM and Roma rights forum “Arka”¹.

II. EXECUTIVE SUMMARY

At the outset the information submitted deals with the scope of international obligations, further with constitutional and legislative framework, institutional human rights structure and promotion and protection of human rights obligations of the human rights on the ground. And lastly we propose recommendation how to address the identified problems.

The substantive issues dealt in the chapter regarding the protection and promotion of human rights on the ground is equality and non-discrimination in relation to various marginalized groups, on respect of the prohibition of torture, inhuman and degrading treatment, right to security and liberty of person, right to education, right to health and domestic violence.

III. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

The Republic of Macedonia generally has ratified the core human rights documents, but however some of the universal conventions and protocols have not been ratified or even signed. That is the case with UN Convention on the rights of persons with disabilities which was signed by Macedonia, but is not ratified, while the Optional Protocol is not signed yet. In addition, the Optional Protocol on the Convention against Torture is signed but is not ratified yet.

B. Constitutional and legislative framework

B.1 *Constitution*

The Macedonian Constitution in the article 9 and several other laws² deal with the prohibition of discrimination but this is mainly unsatisfactory. In the abovementioned provision the Constitution prohibits discrimination on numerous

¹ The last organization is not part of the Coalition but however decided to contribute to the submission.

² The Constitution of the Republic of Macedonia, Official Gazette No. 52 of 22 November 1992, as amended No.1/92, No.31. No.91, No.84 and No.107. Law on Labour Relations (Official Gazette No. 62/2005, 106/2008), Law on Equal Opportunities Between the Men and Women (Official Gazette No. 66/2006, 117/2008).

grounds but the horizontal applicability is rather limited. It can be relied directly only where the discrimination concerns civil and political rights, and not for economic and social rights. The limited scope of application of the constitutional provisions protecting against discrimination, including on grounds of sexual orientation, constitutes a serious limitation to the implementation of the Article 26 of International Covenant on Civil and Political Rights.

Article 9 of the Constitution, guarantees equality in the enjoyment of their rights and freedoms to all **citizens** on numerous grounds, but the Macedonian Constitution does not include a boarder term such as *personal circumstance* or *other status* which would among others cover sexual orientation and other possible grounds.

B.2 Antidiscrimination legislation

The Coalition “Macedonia without discrimination” stresses that even though Republic of Macedonia has ratified most of the international instruments on human rights a systematic Anti-discrimination Law has not been adopted yet. Currently, the Anti-discrimination Law proposal is in the process of drafting.

B.3 Draft Law on Protection of the Rights and Dignity of Persons with Disabilities

The Draft Law on Protection of the Rights and Dignity of Persons with disabilities (proposed as a first successful civic initiative in the Republic of Macedonia) from 2006 onwards is still pending before the Ministry of Finance where the costs for its implementation are being calculated.

B.4 Domestic violence

The domestic violence in Republic of Macedonia is increasing³. The domestic violence is regulated in the Family Law. In May 2008, one Member of Parliament submitted a Draft-Law on Protection against Domestic Violence, but there wasn't support by the majority of MPs.

MASSO refers to the definition included in the new amendments of supplementation Family Law⁴, involving domestic violence that fully de-realizes and excludes LGBT individuals as potential victims of domestic violence by the act of remaining silent (denying) the reality of same-sex intimate relations.

Currently, domestic violence is not regulated as a criminal offence in the Criminal Code, but it has been prosecuted under the category of physical injury, unlawful deprivation of liberty and in the worst cases murder. In that sense there is an urge to regulate the area by adopting systematic law which will deal with this problem.

³ For further statistical data please refer to NGO's Shelter and MWRC.

⁴ Article 6 (2) of the Family Law (Official Gazette No. 84/2008). “*This law hereby understands intimate relations as intimate relations between individuals of the opposite sex who are or have been in a partnership, and do not live out of wedlock.*”

B.5 Law on equal opportunities between the men and women

The Law on Equal Opportunities between the Men and Women does not treat the gender issue in its full complexity. The Article 3 in the Law on Equal Opportunities of Men and Women “prohibits discrimination on the ground of sex”, but does not refer explicitly to gender, gender expression/identity. The main remarks regarding the Law on Equal Opportunities and the National Plan for Action for Gender Equity 2007-2012⁵ refer to the lack of serious definition of gender, and consequently sex, which causes interchangeability of the two terms and fails to provide prohibition of discrimination on the ground of gender expression/identity and further protection of transgender people which are not included in the gender binary frame promoted with this Law and the Strategy.

B.6 Terminology in Various Laws

Megjashi reports that in various laws there are five different definitions of a child and lack of unified terminology.

Polio Plus notes that in the Constitution and other laws the used terms “invalid persons” and “physical and intellectual impairment” are products of the medical model and are found to be deeply humiliating⁶.

MASSO underlines that the basic problem with the Law on Labour Relations is that it uses a term that could be translated as "sex orientation", which is different than sexual orientation. Sexual orientation refers to sexuality, underlying the conceiving of sexuality in all of its aspects, including the biological, cultural, social, psychological and political condition (gender norms as well) in the development and the forming of sexuality. On the contrary, the term ‘sex orientation’ refers rigidly to the biological sex (and not to sexuality in its complexity).

C. Institutional human rights structure

C.1 Ombudsman

In accordance with Article 2 of the Law on the Ombudsman⁷, and Constitutional Amendment XI, the Ombudsman is a body that protect the rights and freedoms of the citizens and all the other persons and undertakes actions and measures for the protection of the (*inter alia*) principle of non-discrimination.

But, the scope and mandate of the Ombudsman, as well as the lack of confidence of the citizens that they will get satisfactory and appropriate protection results in small number of submissions (in 2006 only 11, but unfortunately nine of them were not resolved, compared with 2005 which was 4) related to discrimination and equal representation. In 2007 a total of six received petitions were noted⁸.

⁵ National Plan for Action for Gender equity - <http://www.mtsp.gov.mk/WBStorage/Files/NPARR-finalen%20dokument.pdf>

⁶ Law on Employment of Persons with Invalidity (Official Gazette No. 44/2000, 16/2004, 62/2005 and 29/2007) Law on Social Protection (Official Gazette 50/1997,16 /2000, 17/2003, 65/2004, 62/2005, 40/2007, 98/2008).

⁷ Law on the Ombudsman, (Official Gazette No. 60/2003).

⁸ According to the 2007 Annual Report of the Ombudsman of Republic of Macedonia.

The lack of submissions regarding discrimination affirms the fact that citizens in Macedonia are uninformed on how to proceed and to whom to turn to when discriminated against. Therefore, the indicated data should not be interpreted as a lack of discriminatory behaviour, in opposite the practice shows increase, but as lack of awareness about the rights to be exercised and mechanisms for protection. Such a situation is due to the fact that in the Republic of Macedonia there is not efficient system for prevention and protection from discrimination⁹.

As an illustration since 2005 and up to date the Ombudsman applies passive response in the cases concerning the drug users whose rights of privacy are often being abused by the police officers, and in cases amounting to torture, degrading and inhuman treatment and unlawful arrest¹⁰.

C.2 Actions for protection against discrimination and promotion of equality by the institutions

Bearing in mind the wording used in the Article 9 of the Constitution, the general clause on discrimination, which does not contain the sexual orientation ground, and Article 2 of the Law on Ombudsman which deals with the competences of the Ombudsman opens ample space for discretion and interpretation. Such a situation is reflected in the answer received from the Ombudsman that he doesn't have mandate to react on the cases which MASSO tried to submit.

Therefore, this results in no submitted cases on sexual minorities and other marginalized groups, which reflects the fear and the stigma they are facing and continuous lack of promotion of the equality principle by the state. The required promotion is not only an obligation which derives from the international conventions but is relevant for changing the stereotypes and prejudices among the marginalized groups and encourage them to start to practice their rights¹¹.

C.3 *Specialized body for protection from discrimination*

Coalition "Macedonia without discrimination", led by Polio Plus during the consultation process in 2007 with relevant stakeholders (including Governmental representatives), has identified that there is a lack of existing independent national body in accordance with the Paris Principles with an open mandate in the field of human rights that would enable continuous support and promotion of normative solutions and activities towards implementation of the international standards¹².

⁹ Macedonian Association for Free Sexual Orientation – MASSO, *LGBT people and the Legal Framework in the Republic of Macedonia*, comparative analyses, 2007

¹⁰ For further information please refer to HOPS.

¹¹ Results from MCIC survey "The trust in civil society" in 2007, regarding to tolerance towards various communities into society shows that the majority of people don't like neighbors who are drug users, alcoholic users, LGBT, or even victims of the domestic violence, and minority don't like Roma people as their neighbors. There is a big growth of the intolerance against drug users (92,8 %), alcohol users (88,9% in spite of 62% in 2004) and LGBT (82,9% in spite of 36, 7%).

¹² www.equal.org.mk.

III. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

1. Equality and non-discrimination

The discrimination is widespread in regard to some categories of marginalized groups especially: persons with disabilities, especially intellectual disability, drug users, alcoholics, LGBT people and Roma's, in areas such as health, social protection and employment.

1.1 *People with disabilities*

Polio Plus so far submitted several initiatives to the Constitutional Court for examining the constitutionality of discriminatory legislation. The most evident example is related to a provision in the Law on Employment of Persons with Invalidity. The contested provision states that person with disability to be employed on higher position, such as Manager, must get a decision from a medical commission which is a part of the Government and evaluates its working ability. This regulation applies both to persons with physical or intellectual disability. The initiative was however rejected.

According to the Law on Employment of Persons with Invalidity the shelters companies are beneficiaries of financial support by the state. There are 256 registered such companies in Republic of Macedonia, which employ 1839 persons. However, there are abuses of this Law by the employers/managers from the shelter companies. This most frequently occurs by fictive employment of persons with disabilities whereas the companies benefit from the allocated financial support envisaged by this Law. The most striking is that the state institutions are silent about this problem and do not take measures to prevent and address the violations.

Polio Plus also evidenced cases where persons with disabilities have no personal documentation, which prevents the access to public services, such as health services and social protection.

1.2 *Roma*

According to the Coalition of Roma organizations the discrimination against Roma people is widely spread in the society. Especially in the field of employment, Roma people are excluded¹³.

Roma rights forum "Arka" in the period 2006-2008 registered persons without personal documentation in several cities. During its work Mesecina, which work in west part of Macedonia, also has noted that 600 to 800 Roma individuals who are not registered and do not possess birth certificates. This is officially confirmed with the Ministry of Health. These individuals who also have families (so the number is much larger than the indicated) are excluded from the society without opportunity to be included into the educational, health care or social protection system. They do not have proper housing conditions, do not have addresses and are not in position to function within the Macedonian legal system.

¹³ About 70% of registered Roma persons are unemployed.

There have been instances where Roma children with learning difficulties were transferred to special institutions for children with mental disorders, thus raising concerns about segregation and unlawful discrimination as established in the jurisprudence of the European Court of Human Rights.

Another area where Roma face serious problems is the way media report on Roma. Recently we have witnessed several titles dishonouring Roma, such as the title “Roma are asked not to do Gypsy business” (“Gypsy business” is a common pejorative sentence used to describe actions that are fraudulent, dirty, dishonest, etc and to dishonour Roma people). Often when media report on criminal cases in which Roma are involved, the names of the Roma are reviled, the term “alleged” is not used, the ethnicity is also reviled.

1.3 LGBT people

As a most indicative example for high level of homophobia and discrimination of LGBT people in Macedonia is the case with the Centre Municipality. Namely, in 2007, the Centre Municipality forbid, hindered, and denied MASSO the right to freely assemble by refusing to grant a permit for the closing party of the Queer Square festival in Skopje. Initially the Municipality informed that Square was available. MASSO after applying for a permit did not get any reply from Centre Municipality¹⁴. Subsequently, an NGO for fighting against cancer, BORKA, which had applied a full month later than MASSO was granted a permit to hold a event on the same Square and on the same date when MASSO intended. Even though MASSO coordinated with the said NGO to hold concurrently their events, MASSO could not provide a permit. Only answer it got was an oral explanation from the Mayor that was not “morally suitable” to hold an event coordinated with BORKA and that it was not morally suitable because the Square included a monument of Mother Theresa where people lay flowers¹⁵.

1.4 Drug users and sexual workers

HOPS possesses numerous data which show that in the most of the cases the right to a medical treatment has been infringed to persons who are drug users, or they have been discriminated against in the health institutions (dentist, gynecologists) on the ground of their status as drug users which is visible from the F11 code included in their health identification.

The discrimination in exercising the right to a health persists in regards to sex workers. The medical treatment is being denied only because of their status or job.

The discrimination in regard to access to medical assistance often exists in cases of prisoners who are drug users. The most extreme cases date back to 2004 and 2005 when in the penitentiaries of Sutka and Idrizovo a medical treatment had been denied to persons sick from cirrhosis on the grounds that they were drug users¹⁶.

2. Prohibition of torture and inhuman and degrading treatment

¹⁴ Letter from Center Municipality to MASSO, received September 24, 2007 (on file with MASSO).

¹⁵ Letter from Center Municipality to MASSO, received September 24, 2007 (on file with MASSO).

¹⁶ Please refer to HOPS for further information.

HCARM Mesecina from Gostivar, in providing administrative and legal support and assistance to the Roma through its Civil Advisory Centres throughout the country evidenced cases such as the mistreatment of Roma by police and judiciary.¹⁷

MASSO has documented case with few transgender persons in the Roma municipality Shuto Orizari in Skopje. They have been beaten up and raped by “the police officers without uniforms” several times in the one of these people’s houses. They did not wanted to proceed in the court and they have allowed MASSO to document the case only anonymously, because they feel unsafe, unprotected and they are scared that the torture will be repeated¹⁸.

According to HOPS the drug users are most often submitted to a torture, inhuman and degrading treatment. They are being beaten up, tortured and humiliated by the police with intent to extract an admission for commission of certain crime or to testify against other person¹⁹.

Particularly vulnerable are the prisoners’ drug users who are often beaten up and left without any medical therapy in solitary confinements while in crisis. There is a lack of documented cases, but a lot of national and international organizations are reporting about the awful conditions in the prisons in the Republic of Macedonia.

The sex workers and MSM (men having sex with men) are most often victims of inhuman and degrading treatment. This has been particulary registered in case of raids by the police when these people are taken to police station, are forced to strip down and are mocked and humiliated by the police officers. The most extreme cases witness of sex extortion and physical ill-treatment by police.

The sector for internal control within the Ministry of Interior acts passively when the submissions are logged against the abuses done by the police²⁰.

3. Right to liberty and security of person

The drug users are often being arrested by the police officers which in most of the cases amounts to unlawful deprivation of liberty, denial of the right to contact a lawyer and family, and access to a doctor. They are kept in police station more than 24 hours without providing explanation of the reasons for the arrest²¹ or are being transferred from one police station to another which sometimes lasts for more than 3 or 4 days without being brought before a judge²². This kind of transfer also results in nobody knowing their actual whereabouts, amounting to enforced disappearance.

HOPS has information that several requests for determining the legality of such deprivations are submitted in period of 2005 to 2006 to the competent investigative judge in Tetovo and Skopje but they neither have initiated a revision nor pronounced on that. Furthermore, the victims have not received any kind of notification regarding the progress of those requests.

¹⁷ The police recently started a huge action against homeless and beggars, most of whom Roma. Police is taking children to daily centres against their will and the will of their parents, not considering the best interest for the children.

¹⁸ Archives of the Macedonian Association for Free Sexual Orientation - MASSO

¹⁹ In 2005 there are six registered cases of torture, inhuman and degrading treatment committed by police officers against the drug users. In 2006 there have been registered thirteen cases, whereas in 2008 eight registered cases have been noted.

²⁰ HOPS in 2005 have registered one case of torture, inhuman and degrading treatment. In 2006 four cases, whereas in one case the alleged victim was forced to sex, and in 2007.

²¹ Article 144, Law on Criminal Procedure (Official Gazette 15/1997, 83 /2008)

²² Article 9 of the International Covenant for Civil and Political Rights entry into force 23 March 1976.

In most of the cases the drug users and the apartments where they live or reside are being searched without: a search warrant, a presence of the witnesses, making a record and explaining the reasons for the search. When the females are submitted to a search there is no consideration about the sex of the person who is doing the search. Often for the persons for whom there is an assumption that possess drugs or are drug users are being searched on the street while stripped naked.

HOPS holds information that he right to liberty is most often denied to the sex workers in cases of overall police raids, all present at the spot are taken to a police for several hours without providing an explanation for the reasons thereof, and without being brought before a judge²³.

4. Right to education

According to statistical data more than 53 % of the population has only primary education or even the said is unfinished. In Macedonia 18.500 children do not attend the compulsory primary school which is guaranteed with the Article 44 of the Constitution and Article 28 of the Convention on the Rights of the Child. There is also insignificant effort to prevent the violence in the schools which is in particularly in rise²⁴.

Arka points out that Roma children attending school in 2007 still have the lowest levels of participation in primary school, with only 63% attendance and the steps taken to tackle the high drop-out rates from the education system are inadequate.

In addition, more than 2000 children are forced to beg and are left without any kind of parental and institutional care. The abuse of children (sexual, economic, physical and the rest kinds of abuse) is a serious problem which demands a lot of attention, protection and action on all levels and is closely linked to the problem of not attending the compulsory primary education²⁵.

5. Right to health

The situation in our society is beginning to present itself as an indicative factor for the necessity of sexual health education. Some of the reasons which point towards this at this extremely fragile moment for Macedonian society are problems related to high level of unexpected pregnancies, physical and psychological violence against children and appealing rise of HIV/AIDS²⁶.

The drug-addicted persons are not provided with basic condition needed for proper medical treatment. Namely, there is only one treatment centre offering two treatment types. One of them is non-substitute treatment and the other one is treatment with a substitute – methadone. The capacity of treatment with substitute is 300 patients, which is already reached and it is closed for new clients for 7 years now. Only one option remains – non-substitute treatment. However, this treatment has not shown good results. In Macedonia the bad results in this treatment are also due to the fact that after therapy persons have no possibility to become part of programs for

²³ In 2005 there have been four raids in 2006 three and in 2008 one.

²⁴ Data from Megjashi and National Action Plan of Child Rights

²⁵ Megjashi possess the information provided through its work.

²⁶ Megjashi possesses information on unexpected pregnancies and physical and psychological violence against children. MASSO's information on HIV/AIDS.

rehabilitation and re-socialization. The situation is not any better in other parts of the country²⁷.

6. Domestic violence

The main problem is that the victims usually do not report a domestic violence because of their economic dependence (73% of the reported cases to MWRC). The Centres for Social Work are entitled to act *ex officio* if they have knowledge of cases of domestic violence²⁸.

Further problem noted both by Shelter and MWRC is the low capacity of the shelter centres for victims of domestic violence. In the Republic of Macedonia there is only one state shelter centre which is not specifically for the victims of domestic violence but also for homeless people.

Besides this state shelter centre MWRC is managing specialized Shelter Centre for Women, victims of domestic violence. In the last four years this Centre accommodated 2932 women and 1650 children.

IV. RECOMMENDATIONS

Recommendation: The development of the anti-discrimination legislation is necessary for establishment of systems of institutions and mechanisms that will promote, enable, monitor and protect the fundamental rights and freedoms of every human being at the territory of the Republic of Macedonia.

Recommendation: In order to effectively combat discrimination utilizing unified terms in the laws and other documents is more than required.

Recommendation: There is an urgent need for awareness rising regarding the anti-discrimination principle of the employees in the public and state institutions, especially for the extremely marginalized groups as LGBT people, drug users, sex workers etc.

Recommendation: The Government to undertake additional steps in order to address the low level of education in the country.

Recommendation: In regard to the violence against children the synchronized and mutual preventive action of all relevant factors which have a part in the upbringing and caring of children, such as the family, governmental institutions, citizen organizations and the media is required.

Recommendation: violence isn't kept in silence, and therefore the children, their parents and the closest relations to report sexual violence and abuse

Recommendation: Having in mind the rise of the victims of domestic violence and the low capacity of the state shelter there is a pressing need for specialized state shelter intended only for victims of domestic violence.

²⁷ The problem with the treatment of drug addictions (opiates in particular) is most saliently present in the capital, Skopje. According to the National Strategy for Drugs 2006-2011, 6000-8000 opiate users are registered in Macedonia and there is an assumption the 50 % of them are situated in the capital. Ministry of interior have registered 8345 drug users until 2007 , 4101 drug users are from Skopje

²⁸ Megjashi holds information on violence against children provided through its SOS line. MWRC and Shelter hold information on violence against women.