

**Council of Europe contribution for the 18th UPR session
regarding the “former Yugoslav Republic of Macedonia”**

Prevention of Torture

CPT periodic visit in 2010

On 25 January 2012, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on its visit, from 21 September to 1 October 2010, to “the former Yugoslav Republic of Macedonia”, along with the Government's response. Both documents are attached below.

The CPT report states that a significant number of persons alleged ill-treatment by police officers and recommends the national authorities to continue to take action to combat ill-treatment by the **police**, including an effective investigation into every allegation.

The report also states that fundamental change is required to address challenges facing the **prison** system, and is particularly critical of the lack of a professional management approach, low staffing ratios and an absence of accountability and clear rules. At Idrizovo Prison, the country's largest establishment, a number of credible allegations of ill-treatment of prisoners by staff were received and inter-prisoner violence remained a significant problem. Many inmates were being held in deplorable living conditions, crammed together in a dilapidated, unsafe and unhygienic environment and most prisoners were offered no activities and locked in their units for up to 23 hours a day.

In the remand sections of Skopje and Tetovo Prisons, inmates were offered no organised activities of any sort and less than one hour of daily outdoor exercise, if any. The report also details the overcrowding and poor material conditions in which remand prisoners were kept. The CPT is particularly critical of the treatment of juveniles held on remand and recommends that action be taken to offer them educational and recreational activities and to ensure that they are never held in a situation of de facto solitary confinement.

As regards the three **psychiatric hospitals** visited, the CPT report refers to consistent allegations of ill-treatment of patients by staff, as well as of inter-patient violence, in particular at Demir Hisar Psychiatric Hospital. Recommendations are made on measures to put an end to this situation, including through a policy of zero-tolerance, improved staffing levels and professionalism and putting in place an independent system for complaints and inspections. Recommendations also include calls for the authorities to improve living conditions in the hospitals visited.

At the **Demir Kapija Special Institution** for mentally disabled persons, the CPT observed relaxed, positive relations between staff and residents. However, concerns were raised that the health-care needs of residents were not being adequately met. The national authorities responded that the quality of care to residents has improved following the recruitment of additional staff.

A complete list of the CPT's recommendations, comments and requests for information is contained in the Appendix I to the report¹.



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FYROM 2010
response.pdf

CPT ad hoc visit in 2011

On 20 November 2012, the CPT published the report on its *ad hoc* visit to "the former Yugoslav Republic of Macedonia" from 21 to 24 November 2011, together with the authorities' response. These documents have been made public at the request of the national authorities and are attached below.

The 2011 visit focused on the treatment and conditions of detention of persons held in Idrizovo Prison, which had been the subject of many recommendations following previous visits. The report on the visit states that the practice of some prison officers resorting to violence against inmates persisted, inter-prisoner intimidation/violence remained a significant problem, and the vast majority of the establishment's inmates continued to be held in totally unsatisfactory conditions (both material and in terms of activities). The report states that fundamental change is required to address these serious shortcomings and recommends the national authorities to develop a professional management approach within prisons.

As regards persons held on remand in Skopje and Tetovo Prisons, the report reiterates the Committee's long-standing recommendations to ensure all prisoners accommodated in multi-occupancy cells each have at least 4m² of living space and that material conditions are improved. It criticises the regime on offer to remand prisoners which results in them being confined to their cells for 23 hours a day. The CPT also makes specific recommendations concerning the treatment of juveniles held both on remand in Skopje Prison and in the "Tetovo" Educational Correctional Institution.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.²



FYROM 2011
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FYROM 2011
response.pdf

Fight against racism and intolerance

On 15 June 2010, the European Commission against Racism and Intolerance (ECRI) published its fourth report on "the former Yugoslav Republic of Macedonia" (attached below).³

ECRI's Chair at the time of the publication of the report, Nils Muiznieks, acknowledged that there had been improvements, but also expressed concern about the strong division of society along ethnic lines and the difficult situation of the Roma.

As regards positive developments, changes to the Criminal Code have been a significant step towards consolidating the legal framework to combat racism. Judges and prosecutors now

¹ pp. 71-85.

² pp. 29-35.

³ A summary of the report can be found on pp. 7-9.

receive compulsory initial training in this connection. A civil-law bill on protection against discrimination has been drawn up.

The authorities have adopted a national strategy to improve the housing, education, employment and health situation of the Roma. Measures have been taken in favour of other historical minorities in the fields of public-sector employment and use of languages. A large number of long-term residents have been granted citizenship.

At the same time, the country continues to be divided along ethnic lines. Statements by politicians and opinion leaders do not assist reconciliation. Segregation in the school system is common. There are wide divergences in school curricula. Teaching in languages other than Macedonian appears to be insufficient or of poor quality. Media are also separated according to their ethno-linguistic affiliation and ethnically tinged reporting of events is still widespread.

The national strategy notwithstanding, the living conditions of many Roma continue to be worrying. The authorities have not provided sufficient funds for the implementation of recent action plans. Roma face difficulties with education, employment and access to health care. Roma women are subject to multiple discrimination and there is a high number of Roma children in the streets who do not receive adequate care.

Racial profiling as well as cases of ill-treatment by the police, targeting in particular the Roma, continue to be reported and there is still no fully independent mechanism to investigate such acts.

The report contains findings and recommendations regarding the following issues:

- I. Existence and implementation of legal provisions⁴
- II. Discrimination in various fields, including education, employment, housing, health care, and access to justice⁵
- III. Racist violence⁶
- IV. Racism in public discourse⁷
- V. Interethnic relations⁸
- VI. Vulnerable/target groups, including Roma, Turks, religious minorities, refugees, asylum seekers and internally displaced persons⁹
- VII. Conduct of law enforcement officials¹⁰
- VIII. Monitoring of racism and racial discrimination, awareness-raising and education in fundamental rights and tolerance and co-operation with the non-governmental sector¹¹

The following three recommendations require priority implementation and will be revisited after a period of two years:

- Adopt comprehensive civil legislation on protection against discrimination;
- Ensure that no Roma children are unnecessarily sent to educational facilities for pupils with a mental disability;
- Devise and implement, in close co-operation with civil society, a national strategy to combat racism and intolerance in the long term.



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⁴ pp. 11-18.

⁵ pp. 18-25.

⁶ p. 25.

⁷ pp. 25-27.

⁸ p. 27-29.

⁹ pp. 30-33.

¹⁰ pp. 33-36.

¹¹ pp. 36-37.

Protection of Minorities

Framework Convention for the Protection of National Minorities

On 4 July 2012, the Council of Europe Committee of Ministers adopted a resolution on the protection of national minorities in “the former Yugoslav Republic of Macedonia” (attached below). The resolution contains conclusions and recommendations, highlighting positive developments¹² but also mentioning issues of concern¹³. Moreover, it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I¹⁴ and II¹⁵ of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention.

Issues for immediate action¹⁶

- develop urgently and implement appropriate and targeted policies to address the problems confronting Roma in the field of employment; allocate adequate resources to address the situation of Roma with regard to housing, education, and access to health care and the particular needs of Roma women;
- undertake further measures to promote tolerance, mutual understanding, respect and intercultural dialogue, and further measures to combat prejudice towards persons belonging to national minorities, including through the effective implementation and monitoring of the laws adopted to implement the Ohrid Framework Agreement; create opportunities for interethnic dialogue in all spheres of life, in particular aiming to involve in joint activities children and young people living in ethnically-mixed areas;
- take measures to effectively redress the underrepresentation of persons belonging to numerically-smaller national minorities in the state administration bodies and in other public institutions at all levels.

Further recommendations¹⁷

- provide the newly established Commission for Protection Against Discrimination with the appropriate financial and human resources and the composition and structures necessary to allow it to fulfil its duties effectively and independently; continue to support the Office of the Ombudsman;
- seek to increase support for the cultural activities of the national minorities' organisations and ensure that financial difficulties will not affect disproportionately persons belonging to national minorities; involve national minority representatives in the decisions on the distribution of funds allocated to cultural projects;
- put in place effective and independent supervisory mechanisms to monitor police behaviour, in line with European standards and to apply appropriate sanctions in established cases of human rights violations by the police;
- put in place conditions necessary for the use of languages of national minorities in dealings with administrative authorities in particular by providing financial means necessary for employment of more qualified interpreters and translators; provide additional support to civil servants to acquire more skills in the minority languages;
- make sustained efforts to ensure access to preschool education for all Roma children and guarantee that the curriculum in such kindergartens corresponds to the diverse needs and multi-

¹² Part 1.a) of the resolution.

¹³ Part 1.b) of the resolution.

¹⁴ pp. 5-8 of the third Opinion of the Advisory Committee on the Framework Convention on “the former Yugoslav Republic of Macedonia”.

¹⁵ pp. 9-30 *ibid*

¹⁶ The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

¹⁷ *Idem*.

lingual composition of the groups; raise awareness of teachers on Roma culture and provide those working in areas with substantial numbers of Roma with more adapted training.

The Committee of Ministers resolution is largely based on the corresponding third Opinion of the Advisory Committee on the Framework Convention on “the former Yugoslav Republic of Macedonia”¹⁸. The concluding remarks, contained in Section III¹⁹, serve as the basis for the Committee of Ministers’ Resolution. The Opinion of the Advisory Committee and the comments on the Opinion by the government of “the former Yugoslav Republic of Macedonia” are also attached below.



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European Charter for Regional or Minority Languages

“The former Yugoslav Republic of Macedonia” has signed but not yet ratified the European Charter for Regional or Minority Languages. Thus, the country is not yet covered by the monitoring carried out by the Committee of Independent Experts under the Charter.

Council of Europe Commissioner for Human Rights

On 9 April 2013, the Commissioner for Human Rights, Nils Muižnieks, released his report based on the findings of his visit to “the former Yugoslav Republic of Macedonia” from 26 to 29 November 2012.²⁰ The Commissioner’s report and the comments of the national authorities are attached below.

The Commissioner’s report focuses on the following selected human rights issues:

- I. Certain aspects of transitional justice and social cohesion²¹
- II. Protection of the human rights of Roma²²

For each issue the Commissioner provides specific conclusions and recommendations.²³

Upon releasing his report Nils Muižnieks said that “several milestones have been reached since the signing of the Ohrid Framework agreement which ended the 2001 conflict, including in the areas of local government, the use of languages and equitable representation. However, deep politicisation along party lines and political patronage undermine social cohesion”. While “the former Yugoslav Republic of Macedonia” has a well-developed system of education in non-majority languages, the Commissioner stressed the importance of integrated education. “Ethnic Macedonian and ethnic Albanian students have very few chances to interact and are thus deprived of the possibility to learn about and from one another. Children and young persons should not be hostages to zero sum debates on community rights”, said the Commissioner.

Action should be taken to resolve the human rights issues related to the 2001 conflict. “Impunity for gross violations of human rights committed in 2001 impedes lasting reconciliation between the two largest communities. Justice is needed to ensure accountability and to restore the rights and dignity of victims. The 2011 decision of Parliament on the interpretation of the Amnesty Law, which stipulates that the latter applies to all criminal acts committed during the 2001 conflict, adds

¹⁸ A summary of the report can be found on pp. 1-2.

¹⁹ pp. 31-35.

²⁰ A summary of the report appears on pp. 2-4.

²¹ paras. 12-22, 27-31, 35-46, 52-58, 61-66.

²² paras. 70-80, 84-91, 95-105, 109-113, 116-118.

²³ Paras. 23-26, 32-34, 47-51, 59-60, 67-69, 81-83, 92-94, 106-108, 114-115, 119-120.

to such difficulties. Amnesty should not apply to serious human rights violations and violations of international humanitarian law”.

The Commissioner also calls for the clarification of the fate of the remaining fourteen persons who went missing during the conflict and recommends that the authorities find durable solutions for the 334 remaining internally displaced persons, giving urgent attention to the 95 persons who are still living in collective centres.

While welcoming measures taken to improve the situation of Roma, the Commissioner underlines that serious problems persist. “Roma continue to be trapped in a cycle of poverty and unemployment, residing in separate neighbourhoods often featuring unacceptable living conditions. Roma children are over-represented in special-needs schools. This perpetuates their exclusion and violates their human rights. All children should have access to mainstream education.”

Concerns also relate to measures adopted to control emigration. “Between December 2009 and November 2012, about 7000 Macedonian citizens, mainly Roma, were not allowed to leave the country and had their travel documents confiscated. Such measures interfere with the internationally established right to leave a country and undermine the right to seek asylum. Instead of penalising people for attempting to exercise their human rights, the authorities should better address the root causes of poverty and social exclusion which push individuals to seek refuge abroad in the first place.”

As to lustration, Commissioner Muižnieks stressed that it should never be used for political or personal purposes or as an instrument of revenge. “A democratic state has sufficient means to ensure that the cause of justice is served and the guilty are punished. The Constitutional Court’s decisions concerning lustration must be fully respected.”

The report also contains additional recommendations, including on addressing the situation of the more than 1 000 stateless people, ensuring that all Roma have identity documents, as well as on combating discrimination.



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Execution of judgments and decisions of the European Court of Human Rights

At 31 December 2012, there were 122 cases pending before the Committee of Ministers for supervision of their execution against “the former Yugoslav Republic of Macedonia”. 21 of these cases were “leading cases”, i.e. raising a new structural /general problem and requiring the adoption of general measures. The two main cases or groups of cases revealing such structural problems are listed below:

- ❖ Unjustified dissolution of an association - *Association of citizens “Radko” and Paunkovski* (application No. 74651/01, judgment final on 15.04.2009)
- ❖ Torture and ill-treatment, arbitrary detention and lack of an effective investigation in this respect, violation of private and family life, lack of an effective remedy in respect of these complaints - *El-Masri* (application No. 39630/09, judgment final on 13.12.2012)

The document attached presents a brief description of the violations and the latest detailed decision taken by the Committee of Ministers and the responses given thereto by the respondent state.



Contributions to the
18th session of the U

European Commission for Democracy through Law (Venice Commission)

The Venice Commission has adopted a number of opinions on draft laws and on the constitutional situation in “the former Yugoslav Republic of Macedonia”. A list of adopted opinions, with hyperlinks to the text of the opinions, appears below.



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Action against Trafficking in Human Beings

A delegation of the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) carried out a visit to “the former Yugoslav Republic of Macedonia” in from 20 to 23 May 2013. GRETA's final report on the implementation of the Convention by “the former Yugoslav Republic of Macedonia” will not be available before late spring 2014.

Preventing and Combating Violence against Women and Domestic Violence

“The former Yugoslav Republic of Macedonia” has signed but not yet ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence. For this reason, it is not yet concerned by the monitoring procedure which to be carried out once the Convention enters into force.

Social and economic rights

“The former Yugoslav Republic of Macedonia” ratified the Revised Charter on 6 January 2012, accepting 63 of the Charter's 98 paragraphs.

On 31 March 2005, “the former Yugoslav Republic of Macedonia” ratified the European Social Charter, accepting 41 of the Charter's 72 paragraphs. On the same occasion it also ratified the Amending Protocol to the Charter.

The country has signed but not ratified the Additional Protocol to the Charter and it has neither signed nor ratified the Additional Protocol providing for a system of Collective Complaints.

Cases of non-compliance

Thematic Group 1 “Employment, training and equal opportunities”

► Article 1§1 – Right to work - Policy of full employment

It has not been established that employment policy efforts have been adequate in combatting unemployment and promoting job creation.

(Conclusions XX-1 (2012), p. 5)

► Article 1§2 – Right to work - Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

Nationals of other States Parties do not have access to civil service jobs.
(Conclusions XX-1 (2012), p. 8)

► Article 1§4 - Right to work - Vocational guidance, training and rehabilitation
It has not been established that the right of persons with disabilities to mainstream education is effectively guaranteed.
(Conclusions XX-1 (2012), p. 12)

► Article 15§1 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement - Education and training for persons with disabilities
1. The anti-discrimination legislation covering education for persons with disabilities is inadequate;
2. It has not been established that the right of persons with disabilities to mainstream education and training is effectively guaranteed.
(Conclusions XX-1 (2012), p. 15)

► Article 15§2 - Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement - Employment of persons with disabilities
It has not been established that persons with disability are guaranteed an effective equal access to employment.
(Conclusions XX-1 (2012), p. 18)

Thematic Group 2 “Health, social security and social protection”

► Article 12§1 - Right to social security - Existence of a social security system
The minimum duration of payment of unemployment benefit is too short.
(Conclusions XIX-2 (2009), p. 18)

► Article 13§1 - Right to social and medical assistance - Adequate assistance for every person in need
- the level of social assistance is not adequate;
- the right of appeal against the refusal of social assistance is not effectively guaranteed.
(Conclusions XIX-2 (2009), pp. 27-28)

Thematic group 3 “Labour rights”

► Article 6§2 – Right to bargain collectively - Negotiation procedures
The requirements to enter negotiations infringe the right to bargain collectively.
(Conclusions XIX-3 (2010), p. 12)

Thematic group 4 “Children, families and migrants”

► Article 17 – Right of mothers and children to social and economic protection
Corporal punishment is not explicitly prohibited in the home and in institutions.
(Conclusions XIX-4 (2011), p. 18)

Please find attached below the Conclusions regarding “the former Yugoslav Republic of Macedonia” from 2009, 2010, 2011 and 2012, as well as the fact sheet.



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MKDXIX3_en.pdf



MKDXIX4_en.pdf



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