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WRITTEN COMMENTS OF THE EUROPEAN ROMA RIGHTS CENTRE (ERRC)

CONCERNING MACEDONIA

FOR CONSIDERATION BY THE UNITED NATIONS COMMITTEE AGAINST TORTURE AT ITS 40th SESSION

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I. INTRODUCTION

The European Roma Rights Centre (ERRC) respectfully submits written comments concerning The Republic of Macedonia for consideration by the Committee Against Torture at its 40th Session.

The ERRC is an international public interest law organisation engaging in a range of activities aimed at combating anti-Romani racism and human rights abuse of Roma, in particular strategic litigation, international advocacy, research and policy development, and training of Romani activists. Since its establishment in 1996, the ERRC has established a reputation as the leading international non-governmental organisation engaged in human rights defence of Roma in Europe. The ERRC has undertaken extensive research, policy, law and training work in Macedonia due to the very serious issues Roma face there. ERRC publications about Macedonia and additional information about the organisation are available on the Internet at: <http://www.errc.org>.

Regular monitoring of the human rights situation of Roma in Macedonia has been undertaken by the ERRC and its partner organizations.¹ On the basis of this, it is evident that the measures adopted and undertaken by the Macedonian government to date have been insufficient to ensure the effective implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The present document does not aim to address all issues of relevance to the implementation of the Convention or its provisions in Macedonia. Nor is this document a comprehensive summary of all human rights issues facing Roma in Macedonia. With this submission, the ERRC aims to present the results of their research in several areas of relevance to the Convention in order to complement the information provided in the State Report.

¹ ERRC partner organisations include the National Roma Centrum, Civil Society Research Center Roma Centre of Skopje and the Open Society Institute's Network Women's Program. ERRC work in Macedonia has been funded by the Swedish International Development Agency, the Open Society Institute, the Sigrid Rausing Trust, the European Union and UNIFEM.

II. RECOMMENDATIONS

1. Systematically monitor interrogation practices and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture and other cruel, inhuman or degrading treatment or punishment.
2. Establish an independent body supervising the police. Ensure zero tolerance of ill-treatment by the law enforcement officials at all levels.
3. Ensure an effective (timely, independent, comprehensive) investigations in cases of all suspected ill-treatments.
4. Police investigation should be sensitive and adaptable to the special needs of persons, such as minorities including Roma.
5. Ensure the protection of vulnerable groups such as Roma, who are especially at risk of being tortured, by introducing positive measures of prevention and protection.
6. Make available independent forensic examination free of charge for every victim of alleged police abuse.
7. Ensure the full implementation of the recent *Jasar v. Macedonia* judgment of the European Court of Human Rights and make all the necessary steps to avoid similar violations happening in the future, including amending the national statutes allowing the impunity of the police.
8. Amend the Law on the Public Prosecutor to ensure prompt consideration of complaints, in line with international standards in this area. Make the Public Prosecution Office accountable to citizens who have the right to an effective legal remedy.
9. Systematically collect and make available data disaggregated by ethnicity in areas of relevance to the CAT.
10. Adopt and implement measures, including but not necessarily limited to anti-racism training, codes of conduct and job performance reviews for the prevention of discriminatory and degrading treatment of Roma by public officials, including teachers and other educational official, doctors, medical personnel, civil servants and law enforcement officials.

III. DISCUSSION

A. Ill-Treatment by Law Enforcement Officials

Article 2 (1) of the Convention obliges Macedonia to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. In its General Comment No. 2. on the Implementation of Article 2 by States Parties the Committee against Torture states that "the obligation to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16, paragraph 1 are interdependent, indivisible and interrelated."²

In its report to the Committee, the government stated, that "...the persons, against whom sanctions are being applied are treated humanely, by respecting their personality and dignity, for the purpose of protecting their psycho-physical and moral integrity. Any form of torture, inhuman or degrading treatment or punishment is prohibited."³ Furthermore it states that "...[i]n discharging police powers, the police officer is obliged to act humanely and to respect human rights and freedoms of citizens."⁴

However, findings reported by the US State Department in their country reports on Macedonia highlight excessive use of force by Macedonia law enforcement officials in a number of cases and a continued lack of improvement in this respect. The 2001 report cited accounts of police violence against Roma, including beatings during arrest and detention, stating that Roma rights organizations claim that police harassment of Roma reinforces patterns of societal discrimination.⁵ The 2002, 2003, 2004, 2005, 2006 and 2007 reports on Macedonia reported that the situation continued.

In the 2007 US State Department report, the report gives an example, "on May 16, a man in Skopje accused police of using excessive force during a routine traffic stop. The Ministry of the Interior's Professional Standards Unit (PSU) determined that the police officers at this location abused their authority and initiated disciplinary procedures. Members of the Alphas special police unit beat Alsat television cameraman Igor Ljubovcevski on September 26, causing him bodily injuries. The television crew was filming police as they stopped the vehicle of a member of parliament of the Democratic Union for Integration party just outside of Skopje."

The report also stated that "[a] number of cases from previous years remained unresolved. Of five cases of alleged police mistreatment referred to the prosecutor's office by the ombudsman's office in 2005, an investigation was opened in one, and three remained officially under review; the prosecutor declined to pursue the fifth case. After the prosecutor's office dropped its investigation of their assertions that police beat them in a police station in 2005, three Romani filed a civil suit, which was pending at year's end."⁶

The report further stated, that the police statistical unit reported that citizens filed 251 credible complaints of police misconduct during the year, including 61 alleging excessive force. The

² CAT/C/GC/2/CRP.1/Rev. 4. Paragraph 3.

³ CAT/C/MKD/2, paragraph 51

⁴ CAT/C/MKD/2, paragraph 65

⁵ The U.S. Department of State 2001 Country Report on the former Yugoslav Republic of Macedonia, 4 March 2002, (<http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8293.htm>).

⁶ Macedonia - Country Reports on Human Rights Practices - 2007 - Released by the Bureau of Democracy, Human Rights, and Labor - March 11, 2008 - Page 2

ombudsman filed 50 such complaints, 14 charging use of excessive force and 36 other forms of misconduct, and various nongovernmental organizations (NGOs) filed 60.”⁷

In 2002 with regard to ill-treatment, the delegation European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), found evidence of recent ill-treatment in police custody⁶, including numerous allegations of beatings, some severe enough to induce loss of consciousness. Allegations of beatings including reports of punches and kicks on various parts of the body, as well as beatings with batons, metal rods, the butts of firearms, wooden sticks and/or truncheons, shovel handles and baseball bats. Some persons complained that loaded and cocked guns had been pointed at them.⁷ The CPT concluded that the situation had not improved from the last reporting period.⁸

In their report published on 13th February 2008 CPT stressed the “persistent non-implementation of its recommendations by the national authorities” and requested an interim response from the Government as regards combating impunity, the conditions of detention in prisons and the treatment and care of particularly vulnerable persons.⁹ It stated that “[a] considerable number of persons - including juveniles - interviewed by the delegation in the course of the visit alleged they had been ill-treated by law enforcement officials. The alleged ill-treatment consisted mostly of kicks, punches and blows with batons or various other objects, often inflicted prior to and during questioning; in some cases with a view to extracting a confession or obtaining information. Certain allegations also referred to the use of excessive force at the time of arrest.”⁸

i. Ill-treatment Targeting Roma

Roma are especially vulnerable to police abuses. The Skopje-based Helsinki Committee for Human Rights of the Republic of Macedonia found in 2002 that, the excessive use of force and inappropriate treatment by the police in the arrest and detention of persons belonging to the Roma ethnic community is of specific concern.⁹ The Committee’s 2003 report states that “torture and inhuman treatment are still everyday practice in police work and are not subject to any control, prosecution or appropriate sanctioning.”¹⁰ According to the report, the most common types of human rights violations by police include physical violence against citizens during the process of arrest, while in police custody, during investigation, and in the execution of other police duties. The Helsinki Committee report notes that in the most likely scenario, these cases are not investigated, nor are criminal charges brought against the perpetrators.

During the course of documentation in 2005-2006, the ERRC have been informed of numerous cases of ill-treatment of Romani individuals by law enforcement officials. The following is a summary of several illustrative cases documented by the ERRC, National Roma Centrum (NRC) and partner organisations recently:

7 Macedonia - Country Reports on Human Rights Practices - 2007 - Released by the Bureau of Democracy, Human Rights, and Labor - March 11, 2008 – Page 2

8 CPT/Inf (2008) 5, II, A, 2, paragraph 12

9 Helsinki Committee for Human Rights of the Republic of Macedonia Annual Report 2002, Para 4,

(http://www.mhc.org.mk/eng/a_izveshtai/a_2002gi.htm).

10 Helsinki Committee for Human Rights of the Republic of Macedonia Annual Report 2003, Para 3.1, 6,

(http://www.mhc.org.mk/eng/a_izveshtai/a_2003gi.htm).

Seventeen-year-old Trajan Bekirov was last seen alive after Macedonian police “Alpha”¹¹ units chased him and his friend, Orhan Isemi, on 11 May 2006. His body was discovered on 28 May 2006 in the Vardar river near the village of Tubarevo. On 16 June 2006, the ERRC and NRC submitted a letter of concern to the Prime Minister, Minister of Justice, Minister of Interior and the Public Prosecutor, in which they urge the respective authorities to undertake any and all measures available to ensure a swift, full, thorough and effective investigation into the death of Trajan Bekirov, and that any and all perpetrators involved in illegal actions in connection with his death be swiftly brought to justice. The organisations also urged further that authorities investigate the possibility of racial motive or animus in the circumstances leading to and/or surrounding Trajan Bekirov’s death, in addition to seeking to determine whether other forms of wrongdoing have taken place.

The Institute for Judicial Medicine carried out an autopsy on Trajan Bekirov’s corpse. This found that Bekirov’s death was caused by drowning. The Skopje Public Prosecutor’s Office decided that no indictment would be raised against the Alpha police due to lack of evidence related to the causal link between the police intervention and the death of the boy. Trajan Bekirov’s parents believe that the initial police chase was influenced by racial considerations. They also allege an anti-Romani bias among Macedonian authorities. With the assistance of the Helsinki Committee for Human Rights the father filed a private criminal complaint against the Alpha unit. They believe that there was a clear reason-consequence connection between the way the police approached the children and their escape which resulted in the death of Bekirov.

On 30 June 2005, police officers reportedly ill-treated three Romani men – Idaver Ramadanovski, Juksen Imeroski, Abdi Mamudovski – while in custody at the Kicevo police station. According to the testimonies of Mr. Idaver Ramadanovski and Mr. Mamudovski, at around 11:30 PM on the date in question, ethnic Albanians attacked their family in front of their house in the presence of two police officers, who did not intervene. One of the ethnic Albanians reportedly hit Dilaver Ramadanovski, a Romani man, on the head with a truncheon; he was taken immediately to hospital. The police officers then brought two of the Romani men, Mr. Idaver Ramadanovski and Mr. Mamudovski, to the police station to take statements. While driving to the police station, one of the officers reportedly started insulting and threatening the Romani men, saying such things as “You Gypsies will see what we are going to do to you at the station”. At the police station, the Romani men were placed in separate rooms. Shortly thereafter, the detained men’s cousin, Mr. Imerovski, who had heard what had happened, arrived at the police station to inquire after his cousins. According to his statement to ERRC/NRC local monitor the officers reportedly took him into custody as well and began beating him in the hallway of the police station, where he subsequently fell unconscious. At this point, Mr. Ramadanovski was left alone in a room. When he heard the shouting and beating, he came out and saw his cousin being beaten. When they tried to help him, the officers also beat them, using rubber truncheons. After approximately one hour, the men were reportedly released. According to

¹¹ The special Mobile Unit “Alpha” was established in 2005 by Ministry of Interior. According to the information provided by Ministry of Interior this special police unit has the mandate to counter the so-called “street crime” and to increase the citizens’ security. The units operate in eight cities: Skopje, Stip, Kumanovo, Bitola, Prilep, Tetovo, Ohrid and Gostivar. However, data from the Ministry of Interior revealed that that the unit targets not only street crime, but also traffic violations, poaching, and other crimes (<http://www.moi.gov.mk/ShowAnnouncements.aspx?ItemID=2609&mid=1094>). Many persons have complained about instances of brutality perpetrated by this unit. The Macedonian Helsinki Committee on two occasions officially asked the Ministry of Interior about the legal basis of the mandate of “Alpha”, but no reply was reportedly provided (Monthly report December 2005 – January 2006 1.1. “Accountability” of the Special Mobile Units – Alphas at http://mhc.org.mk/eng/a_izveshtai/a_2005-12-2006-01mi.htm#_ftnref3).

medical certificates issued by the JZO Medical Centre, Mr. Ramadanovski suffered injuries to his back, a 30-by-3 centimetre laceration to his right shoulder and blood loss. Mr. Imerovski sustained injury to his head and swelling, a 3-by-2 centimetre laceration on the back of his neck, and blood loss from three locations. Mr. Mamudovski sustained injuries to his back, lacerations, the largest being 10 by 2.5 centimetres, and blood loss. The victims filed a complaint against the officers responsible for maltreatment while on duty, according to Article 143 of the Criminal Code, however the police officers were declared innocent on 15 February 2007.

At around 11:00 PM on 5 July 2004, three police officers reportedly beat Mr. Trajan Ibrahimov and Mr. Bergiun Ibrahimović, Romani men from Skopje, after approaching Mr. Ibrahimov's home in search of a fugitive, according to information provided to the ERRC by attorney Aksel Ahmedovski. Mr. Ahmedovski reported that Mr. Ibrahimov, Mr. Ibrahimović, and a young girl named Aisha Ibrahimova, also Romani, were sitting on porch of Mr. Ibrahimov's home, when the three officers approached, asking, "Are you the Gypsy who escaped from Idrizova prison?" Mr. Ibrahimov responded that he had never been in the Idrizova prison before, at which point one of the officers moved towards him holding a truncheon and stated that he would see if Mr. Ibrahimov was that person or not. The officer reportedly proceeded to beat Mr. Ibrahimov on his head and all over his body then a second officer grabbed him by the hair and also beat him with a truncheon. At this point, the third police officer reportedly told the other two officers not to beat Mr. Ibrahimovic because it was possible that he was not the man they were looking for. The third officer then left Mr. Ibrahimov's home. The two officers continued beating Mr. Ibrahimov until Mr. Ibrahimović and Aisha tried to stop the officers' assault. According to Mr. Ahmedovski, one of the officers handcuffed Mr. Ibrahimović and proceeded to beat him, also with a truncheon. When the officers finished beating the two Romani men, they placed them in their car. Aisha Ibrahimova begged the officers to let the men go, but was pushed aside roughly. Her right hand was injured as a result. The officers then took the Romani men to the police station where they were held for more than a day before being released. According to Mr. Ibrahimov's medical certificate number 1694 issued on 8 July 2004, he suffered injuries to his head, eyes and body. On behalf of Mr. Ibrahimov and Mr. Ibrahimović, the ERRC and Mr. Ahmedovski filed a criminal complaint concerning maltreatment in the execution of a public function with the Public Prosecutor's Office in connection with the incident. The victims also filed a private criminal complaint against the officers involved in the incident for inflicting bodily injuries.

On 14 April 2004, Dehran Rusitovski, a 15-year-old Romani youth, was physically attacked by a police officer near the Sredorek Romani settlement in the Macedonian city of Kumanovo, according to the Roma Community Center DROM (DROM). DROM informed the ERRC that at around 11:45 PM on the date in question, Mr. Dehran Rusitovski was near the Sredorek Romani settlement with his sister Djulten when a police officer saw them and immediately began to brutally beat Dehran. The officer reportedly beat Dehran until he lost consciousness. After a short while, the officer brought Dehran to the police station where he continued to beat him while verbally abusing him. According to DROM, Dehran was only released from police custody when his father arrived at the police station. There was no criminal complaint filed by the family in fear of retaliation by the police.

According to the Romani organisations Roma Rights Forum Arka (ARKA), DROM and Association for Human Rights Protection of Roma (ARRP), unidentified police officers physically abused and otherwise humiliated three Romani men at the police station in Prilep, Macedonia, on February 8, 2003. According to the information received, Mr. Jašar

Ramadan, a 28-year-old Romani man from Bitola, Mr. Senad Ristemovski, a 21-year-old Romani man from Prilep, and Mr. Ejvaz Serifovski, a 19-year-old Romani man from Prilep, were walking in the centre of Prilep around noon on February 8, when they were stopped by two police officers who asked them to show their identification documents. After the Roma replied that they did not have their documents with them, the officers brought them to the Prilep police station and placed them in an office where they were joined by a second group of police officers, altogether totalling fifteen persons. Without any explanation, the officers present -- reportedly with the exception of two officers of supposed ethnic Albanian origin -- took turns beating the Romani youths. For at least five minutes, the officers beat the Roma with rubber truncheons on their hands. One of the officers occasionally also hit them on their bodies with a wooden club. After this, the officers interrogated the Roma in relation to the whereabouts of an elderly man whom the Roma had allegedly beaten up. As the Roma denied knowing about this purported incident, the physical abuse continued. After some time, the officers questioned the Roma about an elderly woman and some money that had allegedly been stolen from her. When this crime was also denied, more violence followed. The beating reportedly made the young men feel so weak that they could no longer stand on their feet. The officers also ordered the young men, who were Muslim, to pray in the Muslim way. The Romani men refused to obey, after which the police officers reportedly physically abused them again and forced them to pray. The three men were released from the police station at around 4:30 PM, after they were forced to sign a statement that they had no complaints regarding their treatment at the police station. Following their release, they were diagnosed by medical practitioners as having sustained light bodily injuries. According to the parents of the young men, they were invited to the police station and threatened that their children would not be released before the parents signed statements that they would not press charges in relation to the case, and they eventually did so.

On 7 February 2003, police officers physically abused two Romani men – 26-year-old Mr. Skender Sadiković and 25-year-old Mr. Memet Dalipovski – in Kumanovo, Macedonia, according to information by ARKA and DROM. In the early afternoon of February 7, two police officers reportedly arrived to the house of Mr. Dalipovski and searched his house without showing a warrant, reportedly looking for a safe stolen from a local church containing around 500,000 Macedonian denars. The officers then took Mr. Dalipovski with them and continued to the house of Mr. Sadiković in another Romani settlement. The officers searched the house of Mr. Sadiković with the same explanation, again without showing an appropriate warrant. According to the statements of the victim and eyewitnesses, the officers also beat Mr. Sadiković with their hands, in full view of his family and neighbours. After both the men were taken together to the Kumanovo police station at around 1:00 PM, they were taken to separate offices. In the course of the physical abuse that ensued, a group of five police officers, including two officers who brought Mr. Sadiković to the police station, put him in a chair and handcuffed him. The officers then beat him with instruments including the handles of axes, particularly on the lower part of his back. Under coercion, Mr. Sadiković confessed that the safe was at his home. This was not, however, true, and Mr. Sadiković later told representatives of local non-governmental organisations that the sole reason for his confession had been to secure release from the duress to which he was subjected by police officers. Separately, two police officers beat Mr. Dalipovski by punching him in the head until he fell to the floor. At that point, the officers were joined by three other colleagues and they all continued kicking Mr. Dalipovski with their feet as he lay on the floor, particularly on his ribs. In the course of the physical abuse, the officers also cursed the Romani men's ethnicity. It is reported that at a later point the police officers brought the Romani men together and forced them to fight

each other, apparently to make it seem as if the injuries caused by the officers were caused by the men themselves. Mr. Sadiković was held at the police station for around six hours, after which the police officers told him that the real culprits had been identified, and they reportedly apologised to him. Mr. Dalipovski was held at the police station for approximately twenty-six hours, during which time officers physically abused him. He was then released with the same explanation. Officers reportedly warned him not to report his physical abuse. With the assistance of ARKA, both Romani men underwent medical examinations, during which their injuries were documented. The doctors emphasised the need for further hospital treatment, thought Mr. Sadiković and Mr. Dalipovski did not have medical insurance and could not afford the expenses. Reportedly, several days after the abuse took place; the officers contacted the Romani men and offered to cover the medical expenses in exchange for an agreement whereby the men would not pursue complaints. When the Romani men refused the offer, the officers reportedly made unspecified threats.

On 18 September 2002, Mr. Zija Dalipov, a 38-year-old Romani man, reportedly was beaten by three police officers in Štip, Macedonia. According to testimony provided to the ERRC/ARRP on 19 September 2002, at around 5:00 AM, Mr. Dalipov brought his wife, Ms. Amdije Vejselova, to the hospital in Štip for treatment. After Mr. Dalipov told the doctor that Ms. Vejselova, who had taken a mixture of nerve medication and alcohol, had cut him with a knife and he had grabbed the knife from her and cut her in reflex, the doctor notified the police. Mr. Dalipov stated that three officers came to the hospital -- one of whom he identified as Officer D.A. and the two unknown officers -- handcuffed him and repeatedly hit and kicked him for around fifteen minutes in the hallway of the hospital. Mr. Dalipov was then taken to the Štip Police Station. According to Mr. Dalipov, at the station, he was forced to face a wall and was tied to a radiator, at which time officers, whom he could not see, proceeded to beat him for approximately half an hour. After about two hours, the three officers took Mr. Dalipov to his home to find the knife. At his home, Mr. Dalipov testified, the officers beat him until he fell to the ground in the presence of his mother, Ms. Ramize Mustafafova, and his uncle, Mr. Bejzat Mustafafov. Mr. Dalipov was then pushed back into the police vehicle and taken back to the police station where he was kept for three hours before being released. Ms. Mustafafova notified the ERRC/ARRP of the incident. On the same day, Mr. Dalipov was treated at the Štip Medical Centre surgical division, however, he did not get a medical certificate for his injuries because he did not have medical insurance and could not afford to pay for one. The ERRC/ARRP wrote a criminal complaint at Mr. Dalipov's request, but it has not been filed because Mr. Dalipov had moved away from Štip.

On 4 September 2002, around twenty-five police officers attacked a group of approximately one hundred and fifty Roma and ethnic Macedonians after the officers were called to the scene of a conflict between two Roma and five ethnic Macedonians in Kočani, Macedonia, according to the testimony of Mr. Erhan Hadzimintas, a 29-year-old Romani man, to the ERRC/ARRP on 5 September 2002. According to Mr. Hadzimintas, his taxi was parked in an area for taxis in front of the market in Kočani when an ethnic Macedonian man identified as "Čarli" parked his car behind his taxi. Mr. Hadzimintas reportedly told Čarli that the area was not for private cars; Čarli ignored him so he told him again. Čarli reportedly got out of his car and punched Mr. Hadzimintas. According to Mr. Hadzimintas, he hit Čarli back in self-defence and they began to fight. Four ethnic Macedonians, one of whom was later found to be a friend of Čarli's, sitting in the Stole café on the other side of the parking zone, saw the fight, left the café and began beating Mr. Hadzimintas. Mr. Hadzimintas told the ERRC/ARRP that, after a few minutes, his 21-year-old brother Mirsad arrived at the scene and was hit hard on his head when he tried to rescue him. After

approximately fifteen minutes, four or five police officers arrived. Mr. Hadzimintas testified that one of the officers attacked him and Mirsad and attempted to arrest them without having first performed any investigation into the incident. However, at this time, around one hundred and fifty Roma and ethnic Macedonians had gathered at the scene and reportedly told the officers that Mr. Hadzimintas and his brother had not started the fight, but had been provoked by Čarli. The gathered people then reportedly began chanting "Where are the rights of Roma? Why don't you protect Roma?" They also reportedly threw sticks at the officers, at which point, the police officers called for backup. According to Mr. Hadzimintas, five minutes later another twenty police officers appeared. The officers began hitting people in the crowd with truncheons, causing injury to some of them. At this time, 44-year-old Mr. Veli Hadzimintas and 43-year-old Ms. Mazlimsha Hadzimintas, Mr. Hadzimintas' parents arrived at the scene. Mr. Veli Hadzimintas informed the ERRC/ARRP that he entered the Stole café to get information on the fight in which his sons had been involved, and when he came back outside, he found his wife lying on the ground. Veli stated that Mazlimsha told him that a police officer had hit and pushed her, causing her to fall to the ground. Veli witnessed the police punching, kicking and hitting people in the crowd with truncheons. Among the injured parties were 18-year-old Mr. Bajram Akiov, 30-year-old Mr. Bahirat Akiov, 15-year-old Gokman Akiov, 31-year-old Mr. Majer Gerchen, Ms. Hadzimintas and 28-year-old Mr. Ferus Jusufov, all Romani. Bajram and Bahirat Akiov obtained medical certificates of their injuries, which were listed as light injuries, including abrasions on their backs, bruises and head pain. According to the police, three officers were injured during the incident. Mr. Veli Hadzimintas, Mr. Bahirat Akiov and Mr. Jusufov were subsequently charged under Article 383(2) of the Criminal Code of the Republic of Macedonia, for attacking a law enforcement official. The ERRC is unaware of any legal actions undertaken against Čarli or the police officers involved in the incident.

In its current assessment published on 4 April 2008, the UN Human Rights Committee noted "the longstanding concerns about the behavior of certain elements of the police forces, including ill-treatment of detainees, as well as reports of deficiencies of the current police internal oversight mechanisms." It was particularly "concerned about reports of police violence against members of minority groups, in particular against Roma, and the lack of effective investigation of such cases" and it called on Macedonia to ensure that "that all allegations of ill-treatment are investigated and those found responsible punished" together with an establishment of an independent monitoring body for the police.¹²

B. Police Impunity

Articles 12, 13 and 16 oblige Macedonia to ensure a prompt and impartial investigation and examination by the competent authorities whenever there is a reasonable ground to believe that an act of torture or other acts of cruel, inhuman or degrading treatment or punishment have been committed by a public official.

In its report to the committee, the government stated that "members of the police, in performing their tasks, respect the fundamental rights of the citizens, such as: right to life, freedom of belief, conscience, thought and public expression of thought, freedom of speech, public appearance and other rights guaranteed by the Constitution."¹³ Furthermore, it stated that preventative measures are taken through "[t]he keeping of detailed and precise records of all persons in police custody in all police stations" and that "[c]ontrol, insight and supervision

¹² CCPR/C/MKD/CO/2

¹³ CAT/C/MKD/2, paragraph 71

of the work of every police station by the senior managerial officers of the Ministry of Internal Affairs”.¹⁴

However, in its latest report to the government on its state visit, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) stated that “The authorities appear to have only adopted certain limited measures in response to the recommendations made by the Committee after previous visits. The CPT welcomes the action that has been taken; however, the fundamental measures required to improve the situation in, for example, the prisons and the psychiatric hospital visited were lacking.”¹⁵

In its previous review, the CPT delegation found that judges and prosecutors are not meeting their obligations regarding the prosecution of ill-treatment and other abuses of power by law enforcement officials. Even the President of the Judicial Council agreed that judges do nothing about allegations of abuse.¹⁵ The CPT recommended, as it had in previous reports, that prosecutors be told to ask for an investigation and judges to order a forensic exam when they receive any information regarding ill-treatment.

The report noted that the procedure for internal accountability did not function effectively, stating that the use of force was seldom investigated and individuals were hesitant to bring complaints out of fear of reprisals and out of a general expectation that no action would be taken. The Committee concluded that the situation had not improved, as “physical ill-treatment of persons deprived of their liberty by law enforcement agencies in the former Yugoslav Republic of Macedonia continues to be a serious problem, nearly five years after the first periodic visit when similar conclusions were reached”. The Committee specifically pointed to the inaction of judges, public prosecutors and investigating police officers in fostering a “climate in which law enforcement officials minded to ill-treat persons believe – with very good reason – that they can do so with impunity”.¹⁶

In its latest report following its visit in 2006 CPT noted with concern that no follow-up action has been taken by the national authorities in response to the various cases involving ill-treatment and impunity that the Committee raised in its previous reports. It concluded that:

“Once a practice has been allowed to develop which permits law enforcement officials to apprehend, detain (sometimes outside the remit of the law) and ill-treat suspects without any fear of being held to account, terminating such a practice requires determined action. A first step should be to ensure a proper investigation into any allegations. In various cases examined over the past five years by the CPT it is clear that this first step has not happened and is still not happening.”¹⁷

The Committee recalled its previous assessments and declared that the situation remained unchanged over the last years. “Even when detained persons manifest visible injuries or do indicate to an investigating judge and/or prosecutor that they have been ill-treated, there is no guarantee that any effective investigation will be set into motion. Moreover, in respect of internal accountability procedures, the Committee has found that the manner in which police

¹⁴ CAT/C/MKD/2, paragraph 73, (d) and (j)

¹⁵ CPT/Inf (2008),5, paragraph D7

¹⁶ Ibid, para. 124.

¹⁷ 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), Strasbourg, 13 February 2008. (<http://www.cpt.coe.int/documents/mkd/2008-05-inf-eng.pdf>) p. 20.

complaints were investigated did not meet the principles of an effective investigation as set out in previous CPT visit reports.”¹⁸

The Committee noted that in the course of their 2006 visit, many of the persons who alleged ill-treatment by law enforcement officials claimed that the judges who remanded them into custody paid no attention to such allegations, even when they made a formal statement and displayed visible injuries. Moreover, when injuries were noted following the initial medical examination of newly remanded prisoners there was no automatic process for informing the prosecutor's office and initiating proceedings. The Committee concluded, that „the fight against impunity ...was left to non-governmental organisations and the Ombudsman's Office, as opposed to the Ministry of Interior and the Prosecutor's Office.”¹⁹

According to the 2007 report of the Macedonian organization, the Human Rights Support Project, ”there is no independent, external authority for investigation of the complaints about police authorization overstepping. The Sector is hierarchically bonded with the MoI, due to which it lacks the necessary dose of independence and impartiality”.²⁰ The report also states “[o]ne of the main problems in the procedure before the Public Prosecutor's Office is the insufficient data in the reporting forms or lack of medical documentation (medical certificate). The Public Prosecutor's Office does not have any budget from which it could pay for the medical certificate, so if the latter is not obtained by the victim and there is no other evidence - the Public Prosecutor's Office will not initiate a procedure”.²¹ The report goes on to say “During their contacts with the persons deprived of freedom, public prosecutors and investigative judges rarely use their authorization to propose / order that these persons go through medical examination...”²²

ERRC and NRC documented several cases which indicate that law enforcement officials still act with impunity in cases of abuse of Romani individuals. For instance:

A Romani man and a soldier were reportedly wounded in an incident that occurred in the training area of the Macedonian Army in the Macedonian village of Krivolak on 4 February 2002, at approximately 6:00 PM. According to an article published on 6 February 2002 in the Skopje daily *Večer*, the incident took place when an army patrol intercepted a group of Romani civilians who were driving two carts loaded with wood. According to the paper, the patrol asked the group to stop, which they failed to do. As the group continued to approach the patrol, one of the soldiers fired a warning shot in the air. After this, the cart reportedly continued moving towards the soldiers, and ran over one of them, causing him bodily injury. In response, the other soldiers fired three shots at the group, and wounded a civilian. Both wounded persons were given first aid and taken to a medical institution in the nearby town of Negotino. However, research by the ERRC and the Association for Human Rights Protection of Roma (ARRP) revealed a different account of the same incident. According to eyewitness testimony, Mr. Same Šabanovski, his son Senad Šabanovski, Mr. Memet Ametov, Mr. Beki Memkov and Mr. Sandokan Ustinov were driving two carts loaded with firewood towards the village. On their way, they were met by a group of at least five Macedonian soldiers. Reportedly, one of the soldiers immediately fired in the air. The patrol then surrounded the carts and directed the Roma to drive towards the military barracks. At a crossroad on the way, the soldiers fired in the air again and scared one of the horses, which caused it to run in the opposite direction,

18 Op. cit.

19 Op. cit.

20 Human Rights Support Project, 2007 Annual Report, Page 26

21 Human Rights Support Project, 2007 Annual Report, Page 33

22 Human Rights Support Project, 2007 Annual Report, Page 34

while the cart it dragged ran over one of the soldiers. At this point, the other soldiers from the group reportedly started firing shots, despite shouts from Mr. Šabanovski, who was in the cart, that they should not do it because it would only scare the horse even more. One of the bullets hit Same Šabanovski's right leg under the knee and he fell off the cart. As the horse continued running away, the soldiers shot it from behind. The soldiers reportedly refused to assist the wounded Mr. Šabanovski, using offensive terms against Roma, and then left. Only when another group of soldiers arrived on the spot was a car called to take Mr. Šabanovski to the Negotino medical centre, from which he was first transported to the town of Veles and later to Skopje, where he was held in a hospital in intensive care and the bullet was removed from his leg. Mr. Šabanovski remained in hospital until 4 March 2002. According to a certificate issued by the Skopje Medical Center, Mr. Šabanovski was again hospitalised from 22 March 2002, as a result of his injuries from the shooting. ARRП wrote letters to the Ministry of Interior of Negotino on 13 February 2002; the Public Prosecutor's Office in Kavadarci on 14 February 2002; and the Public Prosecutor's Office in Skopje on 18 February 2002. On 1 March 2002, the ARRП was informed by the officials of the Ministry of Interior in Negotino that they should refer to the Ministry of Interior of Skopje, while on March 6, they were told by the Public Prosecutor's Office in Skopje that the office of the Ministry of Interior in Negotino was conducting the investigation into the case. As of 27 June 2002, no official decision had been rendered in connection with the case. The ARRП has been providing legal assistance to the Romani victims of this incident.

On 15 February 2007 the European Court of Human Rights ruled that Macedonia violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in connection with the ill-treatment by the police of Mr Pejrusan Jasar, a Macedonian national of Romani ethnic origin. On 16 April 1998, Mr Jasar, a Romani man from Stip, Macedonia, was in a local bar where gambling took place. One of the losing gamblers complained that the dice was fixed, drew a firearm and fired several gunshots. Several police officers were called to the bar. Mr Jasar maintains that police officers grabbed him by his hair and forcibly placed him in a police van. During his detention in police custody, he was kicked in the head, punched and beaten with a truncheon by a police officer. The medical report issued immediately after Mr Jasar was released the next morning stated that he had sustained numerous injuries to his head, hand and back. In May 1998, Mr Jasar, represented by local attorney Mr Jordan Madzunarov, in cooperation with the ERRC, filed a criminal complaint with the public prosecutor against an unidentified police officer. More than eight years later, no steps were taken to investigate the complaint. At the same time, Mr Jasar also began civil proceedings for damages against the State, which were dismissed in October 1999. Having exhausted available domestic remedies, the ERRC and Mr Jordan Madzunarov filed a claim on behalf of Mr Jasar against Macedonia on 1 February 2001 with the European Court of Human Rights. The applicant complained under Article 3 of the Convention that he had been subjected to acts of police brutality amounting to torture, inhuman and/or degrading treatment. Mr Jasar also argued that the prosecuting authority's failure to carry out any official investigation capable of leading to the identification and punishment of the police officers responsible for the ill-treatment constituted a procedural violation of Article 3. Finally, Mr Jasar argued that he did not have access to an effective remedy with respect to the prosecuting authority's failure to investigate his allegations of ill-treatment, in violation of Article 13 of the Convention, read in conjunction with Article 3.

In its ruling, the European Court of Human Rights recalled that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and

freedoms defined in ... [the] Convention”, requires that there be an effective official investigation. Such an investigation should be capable of leading to the identification and punishment of those responsible. The Court emphasised that, “it is particularly striking that the public prosecutor did not undertake any investigative measures after receiving the criminal complaint.” The Court also noted that “the national authorities took no steps to identify who was present when the applicant was apprehended or when his injuries were received, nor is there any indication that any witnesses, police officers concerned or the doctor, who had examined the applicant, were questioned about the applicant’s injuries. Furthermore, the public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicant as to the alleged ill-treatment... In addition, the inactivity of the prosecutor prevented the applicant from taking over the investigation as a subsidiary complainant and denied him access to the subsequent proceedings before the court.” Having regard to the lack of any investigation into the allegations made by Mr Jasar that he had been ill-treated by the police while in custody, the Court held that Macedonia violated Article 3 of the Convention and awarded non-pecuniary damages to the victim.

The Stip-based NGO “Cerenje” reported that within 8 months following the judgment of the European Court Mr. Jasar was again severely beaten by the police. The incident happened on November 2, 2007 around 10.30 am, when the police detained Pejrushan as guardian of his nephew Turkmen who was allegedly involved in a theft. While he was in the police vehicle, the officers offended and threatened him for talking in Romani language with his nephew. Later on he was beaten in the police station with clubs and wooden sticks and a policeman even kicked him. The ambulance arrived around 11.00 upon the call of a representative of “Cerenje”. Pejrushan Jashar was hospitalized for several days as he sustained a broken rib and contusions.

On 10 April 2008 the European Court of Human Rights ruled that Macedonia violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in connection with the ill-treatment by the police of Mr Amdi Dzeladinov, Mr Dudzihan Kamilov, Ms Remzie Durmišova, Mr Dagistan Alilov and Mr Mefail (Meta) Asanovski, Macedonian nationals of Romani ethnic origin. Around midnight on 2/3 August 1998, a group of Romani individuals was returning home from the restaurant Krushevo in the town of Stip. On the street in front of the restaurant, an argument broke out between this group and Mr Zoran Shorov, a former wrestling champion employed by the police who was driving by. Mr Sebajdin Usinov, a member of the Romani group, testified that he was almost hit by Mr Shorov’s car, which was speeding. Mr Usinov yelled “are you blind”, which might have made Mr Shorov angry (the applicants testified at several stages of the procedure that Mr Shorov smelled of alcohol) as he immediately parked his car for confrontation. Based on the witness statement given by Mr Memet Jusinov to the Association for the Protection of Roma Rights (ARRP) on 1 September 1998, after Mr Shorov got out of his car he immediately started hitting Sebajdin and a fight broke out. He, Dagistan Alilov and Amdi Dzeladinov intervened to separate the fighters, then he left the scene. Amdi Dzeladinov also stated to ARRP on the same day that they managed to separate the two fighters, but Mr Shorov wanted to wait for the police to come. Several police officers arrived at the scene and indiscriminately used physical force and truncheons against the Romani people in the restaurant and others gathered outside. As a result of the raid, about twenty Romani persons had to seek medical help at the Stip hospital. During the following two days, seven Roma were individually taken to the police station in relation to the raid and were subjected to various kinds of ill-treatment during questioning.

On 11 August 1998, Mr Dzeladinov, Mr Kamilov, Ms Durmishova, Mr Alilov and Mr Asanovski (the applicants), together with several other Romani individuals, filed a criminal

complaint with the Stip Public Prosecutor's Office against unidentified police officers for the crime of Torture under Article 142 paragraph 2 of the Macedonian Criminal Code. There was no effective official investigation capable of identifying the perpetrators and provide a remedy for the victims. On 12 December 2001, the ERRC filed a complaint with the European Court of Human Rights on behalf of the applicants, claiming violations of Articles 3 (prohibition of torture) and 13 (right to an effective remedy) of the European Convention on Human Rights. The applicants complained under Article 3 of the Convention that they had been subjected to acts of police brutality amounting to torture, inhuman and/or degrading treatment. They also argued that the prosecuting authority's failure to carry out any official investigation capable of leading to the identification and punishment of the police officers responsible for the ill-treatment constituted a procedural violation of Article 3. Finally, they argued that they did not have access to an effective remedy with respect to the prosecuting authority's failure to investigate the allegations of ill-treatment, in violation of Article 13 of the Convention, read in conjunction with Article 3. On 6 March 2007, the European Court of Human Rights declared the case admissible.

In its ruling, the Court reiterated that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other agents of the State, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. As with an investigation under Article 2, "such an investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity."

The investigation into serious allegations of ill-treatment must be thorough. That means that the authorities must take all reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. The investigation must be expeditious. In cases under Articles 2 and 3 of the Convention, where the effectiveness of the official investigation is at issue, the Court has often assessed whether the authorities reacted promptly to the complaints at the relevant time.

In the present judgment, the European Court emphasised that, "the public prosecutor was under a duty to investigate whether an offence had been committed. However, he did not take any investigative measures after receiving the criminal complaint, apart from requesting that the Ministry make additional inquiries ... He took no steps to identify the officers involved in the police raid, nor is there any indication that any witnesses or police officers concerned were questioned about the incident. No consideration was made as to what possible justification there might have been for the physical force used against the applicants. In conclusion, the public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicants.... In addition, the inactivity of the public prosecutor prevented the applicants from taking over the investigation as subsidiary complainants and denied them access to subsequent challenges in the context of the criminal proceedings."

Considering that there was no investigation into the applicants' claim that they had sustained the alleged injuries at the hands of the police, the Court found that there has been a violation of

Article 3 of the Convention in this respect and awarded non-pecuniary damages to all of the victims.

On 24 April 2008 the European Court of Human Rights ruled that Macedonia violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms in connection with the ill-treatment by the police of Demir Sulejmanov.

In March 1998, two Romani men, Demir Sulejmanov and Shukri Durmishov, stole two sheep. They couldn't manage to transport the sheep to the market so they decided to return them to the owner. They were caught by the police who began beating the men and even allowed the sheep-owner to participate. Mr. Sulejmanov and Mr. Shukri were taken to the police station where the beatings continued with truncheons and fists. As a result of the beatings, Mr. Sulejmanov's arm was broken and he had to be treated at hospital. On 21 October a civil action was brought before the Štip Court of First Instance against the respondent State and the Ministry of the Interior for compensation for non-pecuniary damage sustained as a result of police brutality inflicted on him. On 5 March 2001 the Štip Court of First Instance dismissed the applicant's claim as ill-founded, which was upheld on 17 September 2001 by the Štip Court of Appeal

On 3 November 1998 Ms. Sulejmanov filed a criminal complaint with the Stip Public Prosecutor's Office. After several inquiries addressed to the public prosecutor, on 11 November 1999, the public prosecutor responded that his office had acted with regard to the criminal complaint at issue by officially requesting additional inquiries from the Ministry of the Interior. However, as of that date his office had received no information from the said ministry.

Since there was no information from or action taken by any of the competent Macedonian prosecuting authorities on 11 May 2001 ERRC submitted an application to the European Court of Human Rights on behalf of Mr. Sulejmanov alleging the violation of Articles 3, 13 and 14 of the Convention. On 18 September 2006, the Court declared the applicant's complaints under Articles 3 and 13 admissible and the Article 14 complaint inadmissible. On 13 February 2006 the public prosecutor issued a "written conclusion" concerning the applicant's criminal complaint. It was based on a statement by the taxi driver given on 10 February 2006 and on the criminal case file against the applicant. As stated therein, the taxi driver attested that K. P. had hit the applicant and S. D. with a stick and that the police officers involved had not had recourse to any physical force when arresting them. There were, accordingly, no grounds for the public prosecutor's intervention. That decision was served on the applicant's representative on 10 October 2006, after the Court's admissibility decision given in the present case.

In its judgment, the European Court considered that, taken together, the applicant's criminal complaint to the public prosecutor and the civil claim for compensation, that he had sustained injuries at the hands of the police, amounted to a credible assertion that the alleged injuries could have been caused by the police as indicated by the applicant, which warranted an investigation by the authorities in conformity with the requirements of Article 3 of the Convention. "The public prosecutor was under the duty to investigate whether an offence had been committed. However, he did not take any investigative measures after receiving the criminal complaint, apart from requesting additional inquiries from the Ministry."

The Court further stated, that "the public prosecutor's 'written conclusion' about the incident cannot alter the Court's conclusion that the investigation did not satisfy the requirements of Article 3 of the Convention for the following reasons. First, it was given nearly eight years after the criminal complaint had been lodged and after the case was communicated to the

respondent Government. Secondly, it was given on the basis of the criminal case file against the applicant and the taxi driver's statement given in February 2006. The Court considers that that evidence was available after the incident and the Government did not present any convincing explanation as to why it had not been adduced at an earlier stage. Thirdly, that 'decision', as was the case with the findings of the civil courts, was given mainly on the basis of evidence provided by the police – no serious attempt was made to secure the evidence proposed by the applicant: to hear S. D., as an eyewitness to the incident, the cousin who had lent him his medical card or the doctor who had examined him. Finally, it took eight months for the public prosecutor to communicate it to the applicant.”

Against this background, the Court concluded that there was no thorough or effective investigation of the applicant's claim that he had sustained the alleged injuries at the hands of the police, therefore the Court found that there had been a violation of Article 3 of the Convention and awarded non-pecuniary damages to the victim.

This was the third time that Macedonia was found in violation of Article 3 of the European Convention of Human Rights owing to the lack of effective investigation of an arguable claim of police abuse against Roma.

C. Statutes Contributing to Impunity

Article 14 of the Convention obliges Macedonia to ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

In connection with the implementation of article 2 paragraph 1 of the Convention General Comment No. 2. states that "the States Parties are obliged to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented."²³

In its report to the committee, the government stated, that it "...has over the past period carried out criminal legislation reform in order to complete a consistent and efficient legal framework as an essential precondition for the effectuation of ratified international instruments and recommendations..."²⁴

The Macedonian Criminal Procedure Code (CPC) states, in Article 16, that formal criminal proceedings can be instituted at the request of an authorized prosecutor who can either be a) the public prosecutor or b) the victim herself. All criminal offences provided for by law are prosecuted ex officio by the state, i.e. through the public prosecution service, unless the Criminal Code explicitly states otherwise. With respect to the crime at issue, i.e. the crime of Torture under Article 142 (2) of the Criminal Code, there is no such provision. Accordingly, it falls within the category of those prosecuted by the state.

Article 42 (1) of the CPC sets forth that the prosecution of criminal offences specified as crimes prosecuted ex officio is both a basic right and an obligation of the public prosecutor. The public prosecutor's authority to decide whether to prosecute in such cases is bound by the principle of legality set out in Article 17 of the CPC. This principle dictates that, in cases to be prosecuted by the state, the prosecutor is duly bound to prosecute when there is probable cause

²³ CAT/C/GC/2/CRP.1/Rev. 4 Paragraph 4.

²⁴ CAT/C/MKD/2, paragraph 12

to believe that a criminal offence has been committed. It makes no difference whether the prosecutor initially learned of the incident from a criminal complaint filed by the victim or another person, through media reports, or indeed even if s/he had “only heard rumours” to that effect. A decision not to prosecute despite clear indication of a criminal act having been committed, unjustified delay in reaching the decision on whether to prosecute or not, as well as selective prosecution of only certain individuals at issue and not all of those responsible, all constitute violations of this principle.²⁵

Provisions of Articles 42 (2) and 144 (2) of the CPC, inter alia, authorise the public prosecutor to undertake measures necessary for the investigation of crimes prosecuted ex officio and the identification of the alleged perpetrators. To that end, the public prosecutor is entrusted with coordinating the work of various law enforcement agencies, as well as of other government bodies. Furthermore, when the identity of the alleged perpetrator of a criminal offence is unknown, under Article 148 of the CPC, the public prosecutor can, through law enforcement agencies or with the assistance of the investigating judge, request the necessary information and/or take the necessary steps in order to identify the individual/s at issue. All of this precedes possible subsequent commencement of a formal judicial investigation -- one which can only be undertaken against a known, i.e. identified, individual.

If the public prosecutor finds, based on the evidence before him, that there is reasonable suspicion that a certain person has committed a criminal offence prosecuted ex officio, he must request the investigating judge to institute a formal judicial investigation in accordance with Articles 150 and 151 of the CPC. On the other hand, if the public prosecutor decides that there is no basis for the institution of a formal judicial investigation, under Article 144 (1) of the CPC, he must inform the complainant/victim of this decision, who can then exercise his prerogative to take over the prosecution of the case on his own behalf -- i.e. in the capacity of a “private prosecutor”.

This seemingly precise legal provision contains a defect that creates a major potential for abuse. Namely, the CPC sets no time limit in which the public prosecutor, following the lodging of a criminal complaint by the victim, must decide whether or not to request a formal judicial investigation into the incident at issue. Furthermore, without the formal prosecutorial decision to dismiss the criminal complaint filed by the victim, the victim herself cannot take over the prosecution of the case on her own behalf. Prosecutorial inaction following a complaint filed by the victim therefore amounts to an insurmountable impediment in the exercise of the victim’s right to act as a “subsidiary prosecutor” and to have her case heard before a court. A simple stalling tactic by the public prosecutor’s office will be effective in thwarting this right.

²⁵ According to the Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990:

“Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.” (Section 11).

“Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.” (Section 12).

“In the performance of their duties, prosecutors shall: (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination” (Section 13 (a)).

“Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognised by international law and, where authorized by law or consistent with local practice, the investigation of such offences.” (Section 15).

In these circumstances, if the public prosecutor simply ignores a criminal complaint filed by the victim regarding a crime prosecuted ex officio, the only thing the victim can do is to wait for a prosecutorial decision or, alternatively, to urge the public prosecutor to take action as provided for by law. Even if there were a legal possibility for the victim to file for a formal judicial investigation because of the inaction of the public prosecutor, this would in effect be unfeasible where the police and the public prosecutor have failed to officially identify the alleged perpetrator or perpetrators. Article 151 (3) of the CPC provides that the person against whom a formal judicial investigation is requested must be identified by name. Such a request cannot be filed if the alleged perpetrator is unknown.

Based on Article 39 of the Law on the Public Prosecution Office (LPPO) the Public Prosecution Office (PPO) is obliged to deal with a submitted criminal complaint within 30 days from the day of submission, however the law does not contain provisions that require the PPO to provide information within a reasonable period of time upon request of the victim as to whether or not the PPO has initiated an investigation, submitted an indictment to the Court or rejected the criminal charges. There is no effective remedy for the inaction of the prosecutor either as citizens do not have an effective access to a higher prosecutor to complain and receive a response to the complaint regarding the inactivity of the lower prosecutor.

Given that the Law on the Public Prosecution Office does not prescribe time limits to investigate and inform the victims of the outcome, in the absence of such notification, a victim may lose the right and opportunity to take over the prosecution as a subsidiary complainant. Therefore if the PPO fails to act following the submission of the criminal charges for unreasonably long periods, this may result in the obstruction of justice and possible impunity of persons against whom criminal charges were brought and the loss of the victim's opportunity to bring a subsidiary complaint under the criminal procedure.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as Macedonia's other international treaty obligations²⁶ require the government to create legal conditions for timely functioning of the Public Prosecution Office, making it accountable to citizens who have the right to effective legal remedy, which requires prompt procedures.

D. Intimidation Preventing Victims from Reporting Abuse and Impeding the Judicial Process

Based on Article 13 of the Convention it has to be ensured that all individual who allege to have been subjected to torture (or other acts of cruel, inhuman or degrading treatment or punishment) and witnesses are protected against all ill-treatment or intimidation as a consequence of their complaint or any evidence given.

With regard to intimidation and fear, the CPT noted that as a result of the use of force being seldom investigated, individuals were hesitant to bring complaints out of fear of reprisals. The ERRC and NRC documentation confirms that this continues to be the case.

²⁶ For example Article 3 of the European Convention on Human Rights imposes on States the obligation to carry out an effective official investigation into an allegation of serious ill-treatment which is capable of leading to the identification and punishment of those responsible. This obligation is supplemented by Article 13, which requires an effective remedy, entailing effective access for the complainant to the investigating process and the payment of compensation where appropriate.

Further to fear causing victims to hesitate to report cases of abuse, such intimidation colours the actions of other key players, having a heightened impact on the greater judicial process as a whole. The UN Commission on Human Rights includes in their report on their Mission to the former Yugoslav Republic of Macedonia issued in January 2004,²⁷ interviews indicating that “discrimination on the basis of ethnicity”, as “a fundamental characteristic of many human rights violations within the former Yugoslav Republic of Macedonia”, posed major challenges for non-governmental organisations in their work defending victims of ill-treatment and abuse by police. Specifically, the report pointed to indications that “[...] a heavy police presence has been used to intimidate witnesses, lawyers, judges and others involved in the judicial process with the intention of preventing them from taking action on human rights violations.”

The report went on to state that those who defend human rights are at risk and that the lack of domestic remedy for these human rights violations was cited as one of the reasons human rights defenders looked to international remedies. The report also cited the following as factors as further contributing to impunity: the Ombudsman’s office is not an effective remedy; lawyers defending human rights are difficult to find; the lack of accountability even when the abuses are known is a significant impediment; the complaints procedure is not transparent and encourages impunity; and the judiciary is not independent.

The findings of ERRC/NRC monitoring activities confirm that, still today, many cases of police violence are not reported at all. In general, Romani victims of police ill-treatment continue to disclose fear of filing complaints against police officers allegedly responsible for such acts. For example:

- Mr. I.S. and his son were beaten by a gas station employee and subsequently by police officers outside a border crossing in Tabanovce. In a statement to ERRC/NRC monitors, he discussed the incident and his hesitance to report it:

“I saw the man who was maintaining the WC attack my son, grabbing him by the neck and hitting him. I defended my son. The attacker was a big man, and he hit me several times, but I also hit him. The fight did not last very long because the police saw us and reacted immediately. The maintenance man cursed at us calling us all kinds of words, saying things such as, "You dirty Gypsies, people can't go to the bathroom because of your children". After this, the police brutally chased away all of the Romani families present. We often have problems with the police. That day was not the first time that they drove us away like that. They often hit us and threaten to take our children away. The worst is the border police. They chase us down for 2-3 kilometres. They insult us, but we keep quiet in order not to provoke them. We did not report the fight at the bathroom to the police [...] there were also people there who were witnesses, but they also drove us away.”

E. Widespread and Pervasive Anti-Romani Racism and Discrimination Providing a Climate for Convention Abuses

General Comment No. 2 of the Committee against Torture confirms that “the protection of certain minority or marginalized individuals or population especially at risk of torture

²⁷ “Promotion and Protection of Human Rights: Human Rights Defenders”, Report submitted by the Special Representative of the Secretary-General on the Situation of Human Rights Defenders, Hina Jilani, 15 January 2004, E/CN.4/2004/94/Add.2
<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/6edf364688b31535c1256e4a00380110?Opendocument>

is a part of the obligation to prevent torture or ill-treatment.” Based on that Macedonia has to ensure “the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection.”²⁸

The Committee has also made clear that ”States authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by no-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with this Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.”²⁹

The European Court of Human Rights has on a number of occasions ruled that racial discrimination may, in itself, amount to degrading treatment within the meaning of Article 3 of the European Convention for Human Rights.³⁰

In May 2004, the Council of Europe Advisory Committee for the Framework Convention for the Protection of National Minorities issued an Opinion on the former Yugoslav Republic of Macedonia in which it found that:

“[...] discrimination suffered by persons belonging to the Roma community occurs in various fields [...]. The Roma are in a particularly vulnerable position and are often the victims of discrimination and prejudice, even being refused entry into public swimming pools. [...] Roma continue to live in settlements with no clear legal status or infrastructure, and face discrimination in access to health, social services and employment. Roma continue to find it difficult to qualify for citizenship. They face prejudice in the media and the refugees from the Kosovo war “live in precarious conditions” and do not have access to fundamental rights. The Committee remains worried about education access for Roma and employment discrimination.”

Documentation by the ERRC/NRC indicates that Roma in Macedonia suffer widespread discrimination in various sectors including housing, health, social services, education and employment. The following cases are illustrative of the discrimination faced by Roma in Macedonia:

- Mr. Kamil Rustemovski, hired through the employment bureau in Bitola as a person with special needs, was working on a three-year contract with Euro Trejd when the company terminated his employment without justification. He was told he would receive a telephone call shortly but months passed and the company refused to return his calls. NRC quoted him as saying: “No one is doing anything. I do not know where else to turn or what to do. I have three children who attend school but I do not have the means to send them there and I do not receive social welfare.” Mr. Rustemovski is persuaded that his ethnicity was a key factor in his treatment by the company.

²⁸ CAT/C/GC/2/CRP.1/Rev. 4. Paragraph 21.

²⁹ CAT/C/GC/2/CRP.1/Rev. 4. Paragraph 18.

³⁰ East African Asians v. the United Kingdom, Commission Report, 14 December 1973, DR 78, p. 5, at p. 62. and most recently in *Moldovan and others v. Romania*, Applications Nos. 41138/98 and 64320/01, Judgment No. 2, 12 July 2005.

- Based on the report of ERRC/NRC's local monitor from November 2005 Ms. Sevdjul Abdiev and her family have, for more than ten years, lived in social housing in a state of severe dilapidation and that in 2005 began to fall apart. Ms. Abdiev stated that her youngest child has become ill as a result. When Ms. Abdiev requested a different house from the Social Service Centre, employees refused to assist her. With the assistance of the non-governmental organisation Bairska Svetlina, Ms. Abdiev returned to the Social Services Centre and still no one would assist her. Ms. Abdiev and her family still live in the same substandard social flat. NRC believe that the treatment of Ms. Abdiev must at least partly be attributed to anti-Romani sentiment.

- In September 2005, Ms. E.D., an 18-year-old Romani student from Tetovo, testified to the ERRC/NRC that since the beginning of the school year her teacher, Ms. Elena Lentik had been subjecting her to unfair treatment and discrimination. For example, during a lesson one day while Ms. Lentik was dictating notation to the students who in turn were making notations in their notebooks, E.D. ran out of writing space in her notebook. When E.D. made Ms. Lentik aware of this, Ms. Lentik grabbed the notebook, threw it in the trash and shouted at E.D. expelling her from the class and marking her absent for the day, which amounted to a failing grade for that day's lesson.

- A tobacco company in Prilep published an advertisement for employment in local newspapers on 16 June 2006. The advertisement appeared for seven days. The information about the employment opportunity spread amongst the Romani population. On 23 June 2006, Mr. Kazimoski Bilent, a 24-year-old Romani man and his friend, Ademoski Orhan (a 35-year-old Romani man) submitted the necessary papers and inquired about the number of the Romani applicants. They were informed that from the 400 applicants about 80 were Roma. Two days later the list of employees was announced and only one Romani person was hired. Mr. Atanas Gagaleski, the manager for employment of the Tobacco factory stated to the ERRC's local monitor that the employer has the right and the freedom to employ people in his own criteria. "The employer decides whether he will take Nesime or Atanas", said the manager apparently confirming that the choice was made according to the name and the surname of the applicants, which reveal the ethnic background.

IV. CONCLUSION

As confirmed by the international and local human rights monitoring organization and three recent judgments of the European Court of Human Rights the Macedonia does not provide adequate guarantees of effective investigation and access to court and redress for the victim of torture and other cruel, inhuman or degrading treatment or punishment. This and the pervasive anti-Romani racism and discrimination in Macedonia provide a climate for Convention abuses against Roma. In a recent judgment, the European Court of Human Rights held, that "as a result of their history, Roma have become a specific type of disadvantaged and vulnerable minority requiring special protection."³¹ The especially vulnerable situation of Roma call for special measures, which was also confirmed by General Recommendation No. 2 of the Committee against Torture.

³¹ *D.H. v. Czech Republic* (Application No. 57325/00)