# WRITTEN OBSERVATIONS

# OF THE GOVERNMENT OF THE REPUBLIC OF MACEDONIA

**Regarding the Admissibility and Merits**

**of the Application in the case of**

**Fatmir MEMEDOV**

**against the former Yugoslav Republic of Macedonia**

**(Application no. 31016/17)**

**26 October 2018**

1. The European Court of Human Rights on 5 July 2018 informed the Macedonian Government that, following a preliminary examination of the admissibility of the application no. 31016/17, filed by Mr Fatmir Memedov (hereinafter referred to as the "applicant") , the President of the Section to which the case had been allocated decided, under Rule 54 para. 2 (b) of the Rules of the Court, that notice of the application should be given to the Macedonian Government ("the Government") to submit a statement of facts together with written observations on the admissibility and merits of the complaints under Article 14 taken in conjunction with Article 3 and under Article 1 of Protocol No. 12 to the Convention.

2. The Government was asked to submit its Written Observations on the admissibility and merits in the above case, including observations regarding the following questions:

   - Did the treatment to which the applicant was allegedly subjected on 5 May 2013 during police intervention in a Romani neighborhood in Skopje demonstrate discrimination (based on the applicant's Roma origin) on the part of the State agents and was, in consequence, in violation of Article 14 taken in conjunction with Article 3 of the Convention, or of Article 1 of Protocol No.12?, and

   - Have the authorities failed in their duty to carry out an effective investigation into possible racists motives for the acts complained of, in violation of Article 14 taken in conjunction with Article 3 in its procedural aspect, or of Article 1 of Protocol No.12?

3. The Government express gratitude to the Court for providing an opportunity to submit their arguments regarding the above application within the prescribed time period. The written observations of the Government respond to the facts and evidences submitted by the applicant in the present case and provide answers to the above questions of the Court.

# I. STATEMENT OF FACTS

I.1. The Government submits that the police action on the critical date - 5 May 2013 was not deliberately designed for the purposes of arresting the applicant himself, but it was aimed at arresting a convicted fugitive who was a local citizen, well-known in the Topaana neighbourhood in Skopje. Namely, the police action initially started by employing a small number of police officers, who were later reinforced by a number of additional police officers due to the sudden increase of a number of local citizens having protested against the said police action by expressing insulting words relating to the police officers. In particular, the local citizens` reaction eventually resulted in blocking one of the police's vehicle by a smaller group of local citizens, who threw stones towards the police officers and insulted them even after reinforcement came at the spot. Consequently, the police was forced to make a contact with the increasing crowd for the purposes of releasing and taking safely out the police vehicle which was blocked by a number of local citizens who were eventually forced to escape and hide in local buildings. The latter included a local shop where the applicant and four other local citizens were found and then arrested by the police officers concerned. All of those persons were previously seen by the same police officers while the police action aimed to take out the blocked police vehicle. Few police officers were injured during the action.

I.2. The Government submits written statements by several police officers, which describe the aforementioned events in a consistent manner as an unrest, noting that the police was obstructed and insulted (8 official notes of 5 May 2013: 1 official note of 6 May 2013, 1 official note of 9 May 2014 and 1 official note of 17 June 2013, enclosed as Evidence 1(a-k) to the Government's written observations. The Macedonian Ministry of Interior later brought criminal charges before the Basic Public Prosecution Office - Skopje (BPPO) against the applicant and four other persons (arrested in the local shop) under suspicion of having committed the criminal offence "*Preventing official person while performing an official action*" (stipulated in Article 382 of the Macedonian Criminal Code) and the criminal offence "*Participation in a crowd preventing an official person to perform an official action*" (stipulated in Article 384 of the Macedonian Criminal Code).

I.3. The above description and depiction of some of the arrested persons as violent protesters was confirmed by the Ministry of Interior's Sector for Internal Control in its repeated examinations (Sector for Internal Control's reports no. 27.1-247 of 7 May 2013, enclosed as Evidence 2(a-b)).

I.4. The Government like furthermore to stress the fact that while the applicant was detained in the Police Station "Kisela Voda", he was instructed on his rights and he has engaged Ms L.M. as his lawyer, who arrived very quickly. According to the Ministry of Interior's Minutes on provisory detention of Mr Fatmir Memedi no. 3989/1450 on 5 May 2013 (enclosed as Evidence 3) at p. 1: "THE PERSON WAS – ~~WAS NOT~~ – INSTRUCTED ABOUT HIS RIGHTS on *05.05.2013*, at *$23^{00}$* hrs, in accordance with Article 34 of the Police Act". ... "The person additionally requested a lawyer on *06.05.2013* at *$14,^{20}$ hrs*. The lawyer [L.M.] was contacted on 06.05.2013 at *$14,^{30}$ hrs* on *06.05.2013* she arrived to the police station in Kisela Voda". This document noted that there were injuries on the applicant's hand, neck and back, as well as that the applicant has not sought any medical assistance.

I.5. The Macedonian Ministry of Interior, following the applicant's release from the Police Station Kisela Voda, in May 2013 submitted criminal charges to the Basic Prosecution Office Skopje against the applicant (and four other persons concerned) for reasonable suspicion of having committed the criminal offence "*Preventing official person while performing an official action*" (Article 382 of the Macedonian Criminal Code) and a criminal offence "*Participation in a crowd preventing an official person to perform an official action*" (as stipulated in Article 384 of the Macedonian Criminal Code). The above criminal procedure ended on 10 June 2013 by a Decision adopted by the Basic Court Skopje 1 Skopje due to a lack of evidence that the applicant has committed the above crimes.

I.6. Furthermore, the Government would like to inform the Court about the following developments of three proceedings pending upon the applicant's actions with reference to the impugned action of the police or alleged failure of two state bodies to process the case:

- The Basic Public Prosecution Office Skopje heard 6 suspects in 2016 (Evidence 4(a-f)).
- The Higher Public Prosecution Office notified the applicant's lawyer upon her request for taking over the criminal prosecution from the BPPO-Skopje, informing her that the conditions for such take over from Article 26 para. 3 of the Law on the Public prosecution office are not fulfilled (Notification И.РО.бр.55/2016 of 27.04.2016, Evidence 4g).

- The Higher Public Prosecution Office upheld the appeal against the first instance decision of the BPPO (Decision of the Basic Public Prosecution Office Skopje КО4 бр. 175/14, 17.03.2017, Evidence 4h1), instructing the BPPO to continue the investigating activities (Decision of the Higher Public Prosecution Office КОЖ БР. 244/17 of 31 May 2017, Evidence 4h2).

- The Basic Public Prosecution Office Skopje ordered the Ministry of Interior to provide information which police officers were on duty at the critical time and place (05.05.2013 at the Topaana settlement), and to submit the case files (BPPO's Order to the Ministry of Interior – Sector for Internal Control, КО4 бр.175/14 of 04.04.2016, Evidence 4i) and again ordered the Ministry's Sector for Internal Control to provide the aforementioned information regarding the police officers (BPPO's Order to the Ministry of Interior КО1 бр.175/14 of 23.06.2016, Evidence 4j).

- the Assistant to the Minister of Interior, acting upon a request from the MoI's Sector for Internal Control per.бр.14.2.1-635/15 of 07.07.2016 to MoI, informed the Sector about the names and other personal data of police officers being at the time and place when/where the impugned events took place (Notification from the Ministry of Interior's Assistant Minister to the MoI's sector for Internal Control per.бр.22.6.1-3534 of 29.07.2016, Evidence 4k).

- The Ministry of Interior's Sector for Internal Control, with reference to the order КО1 бр.175/14 (Evidence 4j), provided the requested personal data on the police officers to the Basic Public Prosecution Office – Skopje (Notification from the Ministry of Interior to the BPPO-Skopje per.бр.14.2.1-635/15 of 09.09.2016, Evidence 4l).

- The Higher Public Prosecution Office (HPPO), acting upon the applicant's urgent request of 21 October 2016 (already submitted by the applicant as document no. 21), on 1 December 201 6 informed her that the HPPO has contacted with the BPPO-Skopje and received information the case was in the investigation phase and that some persons were heard, as well as that the applicant was not summoned because he was in Germany (HPPO's notification to the applicant's lawyer I PO.бр.55/2016 of 01.12.2016, Evidence 4m).

- The proceedings are pending before the Basic Public Prosecution Office, which sent summonses dated 6 April 2018 and 27 June 2018, with accompanying letters to the Ministry of Interior's department in Skopje asking it to deliver the summonses (Evidence 5(a-o), and also heard some suspects (Minutes of 6 hearings, Evidence 6(a-f), respectively);

- the civil (contentious) proceedings against the Ministry of Interior is pending (see the Ministry of Interior's response to the applicant's lawsuit, 9 November 2016; & the Minutes on the hearing in the case П4.бр.476/16, 30 May 2018, enclosed as Evidence 7(a-b));
- the civil (contentious) proceedings against the Public Prosecution Office is suspended as of 16 May 2017 until the completion of the above proceedings П4.бр.476/16 (see the State Attorney Office's response per. бр.13.2-70966/1 to the applicant's lawsuit, 3 April 2017; & the minutes on the hearing in the case П4-244-17 of 16 May 2017, enclosed as Evidence 8(a-b));

1.7. On 31 March 2016 the applicant's lawyer informed the BPPO– Skopje that the applicant has claimed asylum and has left the State "due to constant harassment by police officers after filing the criminal complaint" (Letter from the applicant's lawyer to the BPPO-Skopje, 31.03.2016 (Evidence 9). The applicant failed to submit any evidence that the alleged harassment has been brought to the attention of the national authorities. The Government submits documents relating to the asylum proceedings in Germany, with 12 November 2014 as a date of filing the asylum claim (Minutes on the asylum claim in the case 5847289–144, Date of asylum application 12.11.2014, Evidence 10).

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### CRIMINAL CODE

**Article 382 (Preventing official person while performing an official action)**

(1) A person who by use of force or serious threat to use force attacks the life or body or prevents an official person in performing his or her duty, or forces him or her to make something, shall be given a fine or imprisonment up to 2 years.

**Article 384 (Participation in a crowd preventing an official person to perform an official action)**

(1) A person participating in a crowd which with joint activity prevents an official person in performing his or her duty, or in the same manner forces him or her to make something, shall imprisoned from 3 months to 3 years.

**Article 143 (Mistreatment while performing a duty)**

(1) A person who while performing his duty mistreats another, frightens him, insults him, or in general, behaves towards him in a manner in which the human dignity or the human personality is humiliated, shall be punished with imprisonment of six months to five years.

**Article 386 (Act of violence)**

(1) A person who mistreats, roughly insults, endangers the safety or performs rough violence upon another, and with this causes a feeling of insecurity, threat or fear among the public, shall be punished with imprisonment of three months to three years.

**Article 417 (Racial or other discrimination)**

(1) A person who based on the difference in race, color of skin, nationality or ethnic belonging, violates the basic human rights and freedoms, acknowledged by the international community, shall be punished with imprisonment of six months to five years.

## LAW ON THE CRIMINAL PROCEDURE

### Article 15 (The principle of objectivity)

(1) The court and the state authorities shall be obliged to pay equal attention to the investigation and determination of both aggravating and exculpatory facts.

### Article 16 (The principle of free evaluation of evidence)

(1) The right of the court and any state authorities which participate in the criminal procedure to evaluate the existence or non-existence of facts shall not be bound nor limited by any special formal rules of evidence.

(2) The court and the other state authorities shall be obliged to clearly elaborate and indicate the reasons for their decision.

### Article 159

### (Grounds for holding and advising the person being held of his or her rights)

(1) ...

(2) Any arrested person who is being held, shall be informed about the reasons for the arrest and hold up, as well as about the crime he or she is accused of, and the person shall be advised of his or her right to keep silent, the right to inform the family or another person of his or her choosing, the right to a defense counsel and medical examination. The person may ask for these rights to be observed immediately or at any time while he or she is being held.

### Article 161 (Proceeding with persons in hold up)

**(5)** The custody officer shall maintain a separate record for each person who is being held, which shall include data on the following: the day and time of the arrest; reasons for the arrest; reasons for the hold up; the time when the person was advised of his or her rights; signs of visible injuries; illness; mental disorder and alike; when was the contact established with the family, the attorney, a physician, diplomatic or consular office and alike; information about the time and persons who spoke to him or her; if the person has been transferred to another police station; if the person was released or taken to appear before a court and other important information.

## LAW ON THE POLICE

### 19. Use of means of coercion

### Article 80

(1) Coercion, in the meaning of this Law, is the use of legitimate, appropriate and proportionate physical or mechanical pressure, by using means of coercion in a manner prescribed by Law, aimed at a certain person by the police officer, only if the police activities cannot be done.

(2) Coercion in the meaning of this Law includes: physical force [...].

### Article 81

(1) When means of coercion have been used within the limits of the police authorisations, the responsibility of the police officer who used is excluded, as well as of the competent superior police officer who ordered its use.

(2) The reasons, justification and correctness of the use of the means of coercion are estimated by the immediate superior police officer in every concrete case.

## RULEBOOK ON THE MANNER OF PERFORMING POLICE AFFAIRS

### 5. Detention

### Article 25

(2) A person detained [by the police] shall be allowed to call a lawyer and all activities shall be postponed until his or her arrival.

## LAW ON PREVENTION AND PROTECTION AGAINST DISCRIMINATION

### Court competence and procedure

### Article 34

(1) The person considering that his or her right has been infringed because of discrimination is entitled to submit a lawsuit before a competent court.

## III. ADMISSIBILITY

### A) PRELIMINARY OBJECTIONS ON INADMISSIBILITY REGARDING NON-EXHAUSTION OD DOMESTIC REMEDIES

#### A1) Proceedings conducted by the Public Prosecution Office

III.1. At the outset the Government notes that applicability of some of the inadmissibility pleas depends on the Court's position as to whether the proceedings before the Basic Public prosecution Office was effective. It the answer is affirmative, then the "prematurity" plea comes into play. If one assumes that that the proceedings at prosecutorial level in this case is no (longer) effective, then there still might be a room for the "six-months" inadmissibility plea, providing that the applicant waited too long to file an application before the Court. The Government already noted above that the activities of the Basic Public Prosecution Office are pending (see paragraph I.6), in a period of about 4 years and 7 months from the date of filing criminal complaint (28.03.2014) until today. In the above period the Public Prosecution Office conducted investigation into the applicant's criminal complaint claims by, *inter alia*, sending numerous summonses to the suspects and hearing them in 2016 (see Evidence 4(a-f), 6(a-f), and after repealing the case to it, it continues to summon suspects (see Evidence 5 and Evidence 6) and to further process the case. The Government assume that the applicant, who had a legal representative from the very first day, must have been aware on the rule of exhaustion of effective remedies prior to addressing his claim at international level. The applicant in part "G" of the application form argued that he has filed the application because the last correspondence with the Higher Public Prosecution Office of 17 March 2017 has convinced him that the investigation proved ineffective.

III.2. The Government reminds that the criminal complaint was filed about 10 months and 20 days after 5 May 2013, when the impugned event took place. The applicant did not provide explanation of the delay. The Public Prosecution Office did not remain passive. Moreover, after the Basic Public Prosecution Office's dismissals of the criminal complaints against the police officers with a rationale that proofs were lacking, the Higher Public Prosecution Office twice repealed the first instance decision and reversed the case back to first instance. In such circumstances, the period of about 3 years from the filing of the criminal complaints to the time

of filing the application to the Court (referred to in para. I.6) is not too long a period in the context of this case and does not warrant a conclusion that the effective remedy turned into ineffective one.

III.3. In the particular circumstances of the case the proceedings before the Basic Public Prosecution Office are still pretty much "alive" (as described in para. I.6), and having regard to the measures taken so far by the authorities of the respondent State and to the fact that the investigation is still pending, the Government considers that the application must be regarded as premature and inadmissible pursuant to Article 35 paras. 1 and 4 of the Convention. Therefore, **the Government likewise invites the Court to declare the application as inadmissible on account of the applicant's failure to await the outcome of the Public Prosecution Office's work.**

### A2) Civil proceedings regarding alleged discrimination

III.4. The same applies with respect to the two civil proceedings under the Anti-Discrimination Law, which were instigated against the authorities (see paragraph I.6). The applicant pursued his discrimination claims in the said proceedings with apparent belief that they are effective and that they could provide redress for the violation alleged by him. The applicant's use of these remedies suggests that he considered this avenue of redress as offering reasonable prospects of success. Therefore, the applicant's argument about unforeseeability of the outcome of these proceedings is irrelevant for the effectiveness of this remedy. Moreover, the Government notes that the civil claims before the domestic courts are essentially the same as those raised before the Court in the case at hand.

## B) PRELIMINARY OBJECTION ON INADMISSIBILITY REGARDING NON-COMPLIANCE WITH THE SIX-MONTHS TIME LIMIT

III.5. As to the rule of six-months period running from the date of the final decision in the process of exhaustion of domestic remedies, the Government like firstly to make reference to the Court's judgment in case "*Deari and others v. Macedonia*" (Application no.54415/09) where it stressed (*among others*) the following:

"Where it is clear from the outset, that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of such acts or their effect on or prejudice to the applicant (See *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35& 1 to take the start of the six-months period from the date when the applicant first became or ought to have become aware of those circumstance (see *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 4 June 2001".

III.6. The Court has rejected as out of time applications where there had been excessive or unexplained delay on the part of applicants once they had, or ought to have, become aware that no investigation had been instigated or that the investigation had lapsed into inaction or become ineffective and, in any of those eventualities, there was no immediate, realistic prospect of an effective investigation being provided in the future (see, *inter alia*, *Narin*, cited above, § 51; *Aydınlar and Others v. Turkey* (dec.), no. 3575/05, 9 March 2010; and the decision in *Frandes*, cited above, §§ 18-23 Mozanu v. Romania [GC], application 10865/09.

III.7. In case of the Court's conclusion that the remedy before the Public Prosecution Office was ineffective (as an alternative to the Government's belief in effectiveness of the proceedings before it), the Government holds that running of the six-months period in the present case started far before 17 March 2017, as claimed by the applicant. The Government considers that the applicant should have been aware that the pursued remedy is ineffective at latest upon receiving the notification from the HPPO of 27 April 2016 that it will not take over the processing of the case from the BPPO (Evidence 4g), and, taking into account the state of investigation on 27 April 2016, when 1 year and 2 months have lapsed from rendering the decision of the HPPO of 18.02.2015 upholding the first applicant's appeal (document 19, already submitted by the applicant). In such circumstances the Government holds that none of the subsequent activities cannot be considered as constituting new development which could revive the State's procedural obligation under the Convention and bring accordingly the application within the six-months time limit. Therefore, **the Government invites the Court to declare the application inadmissible on the ground of non-compliance with the six-months time limit.**

## IV. MERITS

IV.1. Alternatively, if the Court does not accept the above inadmissibility objections to the present case, the Government maintains that the applicant's claims are ill-founded and unsubstantiated.

### A) ALLEGED VIOLATION OF ARTICLE 3 IN CONJUNCTION WITH ARTICLE 14, OR OF ARTICLE 1 OF PROTOCOL NO. 12

IV.2. The Government submits that, although it is apparent (from Evidence 3) that the applicant was injured at the time of his admission at the police station in Kisela Voda, it is not quite obvious who has caused the injury in the particular circumstances of the case. In particular, the applicant was placed in police custody after unrest involving participation of violent people intentionally preventing the police to catch a fugitive from prison, so it is disputable whether the injuries were intentionally inflicted by the police.

IV.3. With reference to the aforementioned ambiguity, the Government refers to the case of *Pihoni v. Albania* (application no. 74389/13, 13 February 2018, paras. 79–82), in which the Court noted the corroboration of the applicant's account of events by two witnesses and the timely obtained medical report and yet, in the light of the fact that "all the police officers in question claim the opposite" (similarly to the present case at hand), it was "not sufficient for the Court to conclude, certainly not beyond reasonable doubt, that he was indeed ill-treated in breach of Article 3 of the Convention", thus, "in such circumstances, given all the information in its possession and in the light of the principles established by the Court", the Court found that "there has been no violation of the substantive aspect of Article 3 of the Convention".

IV.4. Turning back to the present case, the Government concludes that the applicant's allegations of being ill-treated by the police have not been proved to the requisite degree, and moreover, there is no *prima facie* proof of violation of Article 3. Having said that, the Government concludes that the applicant does not have an arguable claim under Article 3, thus the complaint

of alleged violation of Article 14 in conjunction with Article 3, or of Article 1 of Protocol no. 12 is ill-founded and unsubstantiated.

IV.5. Even assuming that the Court accepts that the claim under Article 3 is arguable, the Government disputes the applicant's allegation that he has been subjected to discriminatory remark on the ground of his ethnic belonging. The Government concludes that there is no sufficient proof that the applicant was subjected to discriminatory treatment in the exercise of his right under Article 3 of the Convention. In this connection the Government emphasize the inconstancy between the complaint from the applicant's lawyer filed to the Sector for Internal Control on 10 September 2013 (document 13 submitted by the applicant) and the criminal complaint prepared and filed by his lawyer on 28 March 2014 (document 15 submitted by the applicant) in terms of the allegations with respect to Article 14 and Article 1 of Protocol no. 12. While the criminal complaint refers to alleged racist statement, there is absence of similar allegations in the complaint to the Sector for Internal Control. Consequently, the Government concludes by stating that the applicant's claim of alleged discrimination in the context of the police action gives no rise to finding a **violation of Article 14 in conjunction with Article 3, or of Article 1 of Protocol no. *12*.**

**B) ALLEGED FAILURE OF CONDUCTING EFFECTIVE INVESTIGATION FOR THE APPLICANT'S COMPLAINT OF VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 3 IN ITS PROCEDURAL ASPECT, OR OF ARTICLE 1 OF PROTOCOL NO. 12**

IV.6. The Government considers that the investigation by the BPPO-Skopje into the applicant's investigation, including the potentially racist motifs of the alleged incident, is in principle capable of establishing the relevant facts of the case. However, in context of the effectiveness of the investigation, the Government considers that the the investigation was hindered by the combination of the following factors:

- The applicant has left the country few months after filing the criminal complaint before the BPPO, claiming that he has done so on account of alleged harassment (this statement of facts relating to the reason for departure from the country is disputed by

the Government in absence of any evidence submitted by the applicant) and ever since then he was not available to the domestic authorities which prevented them to hear him in person, as well as to confront him with the police officers involved in the event of 5 May 2013, or to eventually organize identification parade in the applicant's presence.

- The investigation was further undermined because of the fact that the criminal complaint has been filed quite late after the impugned incidents, which prevented the BPPO-Skopje to order an effective medical expertise regarding the alleged injures, because due to the passage of time possible evidence of alleged use of physical force deteriorate. Under such circumstances, the BPPO took all the necessary and reasonable procedural activities which were possible and feasible. The Government is mindful that the BPPO identified the alleged perpetrators (Evidence 4(i,j)), heard their witness testimonies (Evidence 4(a-f) and 6(a-f)) and did not treat the case in the same manner as a case with no racial overtone.

IV.7. In addition, the BPPO-Skopje established that the police officers involved in the event of 5 May 2013, who were heard by the BPPO–Skopje have no any previous conviction, no criminal proceedings were pending against them and none of them has ever served a prison sentence (Evidence 4(a-f) and 6(a-f)). The case file in the criminal case against the applicant on a reasonable suspicion of having committed *"Preventing official person while performing an official action"* (Article 382 of the Macedonian Criminal Code) was also taken into account. The Government would like to reiterate that it seems that the investigation is pretty much alive. The fact that so far the investigation was unable to establish beyond doubt that the applicant was victim of any violent behavior by the police officers, and it was even less able to establish whether he was a victim of racial discrimination, does not make the investigation ineffective. In the particular circumstance of the present case, the Government considers that the investigation is not too long. And finally, the Government is mindful that the positive obligation to conduct an effective investigation is an obligation of means, not of result and, according to the well-established case law, it is not the task of the Court to assess a criminal responsibility.

IV.8. In relation to the fact that the applicant argues that he was a victim of institutional discrimination, the Government reiterates that it was firstly the Macedonian Ministry of Interior which (following the applicant's release from the Police Station Kisela Voda) submitted in May 2013 criminal charges against the applicant for a reasonable suspicion of having committed the criminal offence "*Preventing official person while performing an official action*" (Article 382 of the Macedonian Criminal Code) and the criminal offence "*Participation in a crowd preventing an official person to perform an official action*" (Article 384 of the Macedonian Criminal Code). This criminal procedure ended on 10 June 2013 by a Decision KI no.484/2013 (document 9 submitted by the applicant) adopted by the investigative judge of the Basic Court Skopje 1 Skopje due to a lack of evidence that the applicant has committed the above crimes. The acquittal of the applicant is credible indication that the applicant was not a victim of alleged institutional racism against Roma in Macedonia.

IV.9. In the light of the aforementioned, the Government considers that **the case at hand does not disclose any violation of Article 14 taken in conjunction with Article 3 in its procedural aspect, or of Article 1 of Protocol no. 12.**

IV.10. If the Court does not declare the application inadmissible, the Government considers that **the circumstances of the case do not disclose any violation of the Convention.**

## LIST OF EVIDENCE

1. (a-k) Official Police notes:
   - no. 1504 by S. Marjan, I. Muzafer and A. Rufat, 05.05.2013
   - no. 1505 by Imeri Muzafer, 05.05.2013
   - no. 1506 by Asani Rufat, 05.05.2013
   - no. 1507 by S. Marjan, 05.05.2013
   - no. 1508 by Ilievski Marko, Naumovski Vasko, 05.05.2013
   - no. 1509 by Kukunovski Jovica, 05.05.2013
   - no. 1510 by Turic Almir, 05.05.2013
   - no. 1511 by Dragi Nikolovski, Sinani Sabaedin, 05.05.2013
   - no. 5857 by Tanevski Blagoj, 06.05.2013
   - no. 27.4.2.1-829 by Zivko Stoimanov, Sedat Ismani, 09.05.2013
   - (no numeration) by Nikolovski Dragi, 17.06.2013
2. (a-c) Ministry of Interior – Internal Control Sector:
   - Report no. 27.1-247 of 7 May 2013
   - Special report no. 27.4.21-710 of 24.06.2013, submitted to the Basic Public Prosecution office – Skopje.
3. Ministry of Interior's Minutes on provisory detention of Mr Fatmir Memedi no. 3989/1450 on 5 May 2013
4. (a-f) BPPO-Skopje's Minutes on the examination of suspect:
   - Sabaedin Sinani, 28.04.2016
   - Dragi Nikolovski, 28.04.2016
   - Trajche Zdravkov, 04.05.2016
   - Rufat Asani, 04.05.2016
   - Zoran Teov, 13.05.2016
   - Isuf Darlishta, 25.05.2016

4.g. Notification from the Higher Public Prosecution Office to the applicant's lawyer И.РО.бр.55/2016 of 27.04.2016

4.h1. Decision of the Basic Public Prosecution Office Skopje КО4 бр. 175/14, 17.03.2017

4.h2. Decision of the Higher Public Prosecution Office КОЖ БР. 244/17, 31.05.2017

4.i. Order of the Basic Public Prosecution Office to the Ministry of Interior – Sector for Internal Control, КО4 бр.175/14, 04.04.2016

4.j. Order of the Basic Public Prosecution Office to the Ministry of Interior – Sector for Internal Control, КО4 бр.175/14, 23.06.2016

4.k. Notification from the Ministry of Interior's Assistant Minister to the MoI's sector for Internal Control per.бр.22.6.1-3534 of 29.07.2016

4.l. Notification from the Ministry of Interior to the Basic Public prosecution office Skopjee per.бр.14.2.1-635/15, 09.09.2016

4.m. Higher Public Prosecution Office's notification to the applicant's lawyer I PO.бр.55/2016, 01.12.2016.

5. (a) BPPO-Skopje's Order to the Ministry of Interior deliver summonses for КО4 бр.175/14, 06.04.2018

(b-j) BPPO-Skopje's summons (to hearing) of:

- Zoran Taev, 06.04.2018 (scheduled for 14.06.2018)
- Isuf Darishta, 06.04.2018 (scheduled for 14.06.2018)
- Dushan Atanasov, 06.04.2018 (scheduled for 13.06.2018)
- Ajdini Dilaver, 06.04.2018 (scheduled for 13.06.2018)
- Stojche Popovski, 06.04.2018 (scheduled for 13.06.2018)
- Simeon Kralevski, 06.04.2018 (scheduled for 13.06.2018)
- Jovica Kukunovski, 06.04.2018 (scheduled for 14.06.2018)
- Almir Tutic, 06.04.2018 (scheduled for 14.06.2018)
- Sami Kjailovski, 06.04.2018 (scheduled for 14.06.2018)

(k) BPPO-Skopje's Order to the Mnistry of Interior to deliver summonses for КО1 бр.175/14, 27.06.2018

(l-o) BPPO-Skopje's Summons (to hearing) of:

- Sait Nezhdet, 27.06.2018 (scheduled for 29.08.2018)
- Bafti Fahredin, 27.06.2018 (scheduled for 29.08.2018)
- Almir Tutic, 27.06.2018 (scheduled for 30.08.2018)
- Jovica Kukunovski, 27.06.2018 (scheduled for 30.08.2018)

6. (a-f) BPPO-Skopje's Minutes on the examination of suspect:

- Isuf Darishta, 13.06.2018
- Dushan Atanasov, 13.06.2018
- Simeon Kraljevski, 13.06.2018
- Stojche Popovski, 13.06.2018
- Dilaver Ajdini, 13.06.2018
- Zoran Teov, 13.06.2018

7. (a) Response to the applicant's lawsuit by the Ministry of Interior, 09.11.2016
   (b) Minutes on the hearing in the case 11 П4-476/16, 30.05.2018
8. (a) Response to the applicant's lawsuit by the State Attorney Office, 03.04.2017
   (c) Minutes on the hearing in the case П4-424-17, 16.05.2017
9. Letter from the applicant's lawyer to the BPPO-Skopje, 31.03.2016
10. Minutes on the asylum claim in the case 5847289–144, Date of asylum application 12.11.2014