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RE: The Draft Law on the Public Prosecution Office Calls for Amendments

Honourable Excellencies,

The Civil Society Research Center (CSRC) and the European Roma Rights Centre (ERRC) are writing today to urge amendments to the Draft Law on the Public Prosecution Office in order to eliminate the existing shortcomings with respect to the prompt and effective protection by the Public Prosecutor of citizens who are victims of a criminal offence.

The CSRC is a non-governmental organisation dedicated to promotion and protection of human rights, rule of law and democracy. The ERRC is an international public interest law organisation that combats human rights abuse of Roma.

The existing Law on the Public Prosecution Office and the Draft Law on the Public Prosecution Office, soon to be debated by the Parliament with the aim of replacing the existing law, do not contain provisions that require the Public Prosecution Office (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.

This is especially important in relation to Article 56 para. 1 of the Law on Criminal Procedure (amended text of 2005), which states: "When the Public Prosecutor finds that there is no basis to take prosecution for a criminal offence prosecutable *ex officio*, or when he/she finds that there is no basis to take prosecution against some of the charged accomplices, he/she is bound within 8 days to inform the victim¹ about it, referring him/her to take over the prosecution himself/herself [...]."

Given that the existing Law on the Public Prosecution Office and the draft currently under consideration do 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 due to the statute of limitations applicable to some criminal offences and the loss of the victim's opportunity to bring a subsidiary complaint under the criminal procedure.

Indeed, this very problem has arisen in the past in Macedonia; in particular related to criminal charges filed against employees of governmental bodies. According to CSRC/ERRC experience, Macedonian PPOs often fail to act within a reasonable period of time related to criminal charges against Ministry of Interior employees (i.e. police officers) in relation to Article 142 of the Criminal Code (torture and other cruel, inhuman or degrading treatment or punishment).²

According to information of the CSRC, the ERRC and other domestic and international human rights organisations, the long-lasting inactivity of the PPO results in impunity by public officials in some criminal cases. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has noted this problem in its reports on periodic visits to Macedonia and made recommendations to the Macedonian government for improving this situation.

The CSRC and the ERRC consider that the Macedonian government must 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.

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.³ This obligation is supplemented by Article 13,

¹ For the sake of convenience, the authors of this letter use the word "victim" rather than the literary translation of the phrase used in the referred legislation - "damaged person."

² Inviolability of the physical and moral integrity (guaranteed by Article 11 para. 1 of the Constitution of the Republic of Macedonia) and the prohibition of torture (guaranteed by Article 11 para. 2 of the Constitution and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms - ECHR, ratified by the Republic of Macedonia in 1997) is absolute, meaning that it cannot be derogated in any circumstances whatsoever (according to Article 15 para. 2 of ECHR). In its judgements the European Court of Human Rights (ECtHR) has repeatedly confirmed the absolute character of the right under Article 3, stressing that torture could not be justified even for the purpose of fight against crime or terrorism.

³ *Assenov and Others v Bulgaria*, No. 24760/94.

which requires an effective remedy, entailing effective access for the complainant to the investigating process and the payment of compensation where appropriate.

We note that the European Court of Human Rights (ECtHR) has considered several cases against Macedonia in which the applicants claim violation of these articles. Four months ago, in the case of *Jasar v. the Republic of Macedonia*, represented by ERRC and Mr. Jordan Madzunarov, Local Attorney, the ECtHR established a “procedural” violation of Article 3 due to the lack of effective investigation of the applicant’s claims regarding the police brutality because Macedonian authorities failed to investigate adequately or reach any conclusion on the substance of the criminal charges brought against police officials by the applicant.⁴ In two other cases⁵ currently pending before the ECtHR, the ERRC claims that the lack of effective investigation into allegations of ill-treatment by the police and the lack of effective remedy against the inaction of the prosecutor resulted in the applicants being denied a prosecution, effective access to the criminal procedure and the means of seeking redress through it.

Honourable Excellencies,

The CRSC and the ERRC request that the Macedonian government, most notably the Ministry of Justice and the Parliament of the Republic of Macedonia, revise the Draft Law on the Public Prosecution Office currently under consideration, in order to enable the Macedonian government to meet its international human rights obligations as well as its commitment under Article 5(1) of the same Draft law to “[...] respect and protect the freedoms and rights of the human and the citizen [...]” by providing, *inter alia*, effective legal remedy to individuals affected by the inactivity of the Public Prosecution Office and, in case of the failure to co-operate with the Public Prosecution Office, sanctioning the police.

The CRSC and the ERRC respectfully propose that the following text be included in the Draft Law on the Public Prosecution Office:

"(1) A person claiming to be a victim of a criminal offence or his proxy is entitled to ask for information regarding the activity of the Public Prosecution Office after criminal charges have been brought. The Public Prosecution Office is bound to submit the requested information within 15 days, failing of which the victim can file a complaint to the Head of the Basic PPO, the Higher Prosecutor and the Council of Public Prosecutors of the Republic of Macedonia.

(2) If three months has passed from the date of bringing criminal charges to the Public Prosecution Office, the competent Public Prosecutor is obliged to provide to the Higher Public Prosecutor and to the victim reasons for the failure to submit an indictment before the court or the failure to reject the criminal charges.

(3) The Public Prosecutor is obliged to make a decision regarding submitting an indictment to the court or rejecting the criminal charges within:

- a) six months from the day of submission of the criminal charges to the Public Prosecution Office, unless there are exceptional circumstances;
- b) 1 year in complex cases, where the PPO needs additional time to identify the perpetrators, or where investigation is pending and other exceptional circumstances exist, subject to provision of reasoned request by the competent Public Prosecutor to the Higher Public Prosecutor and its approval by the Higher Public Prosecutor, if it is necessary to identify the perpetrator or to complete the investigation.

⁴ The ECtHR 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.”

⁵ *Dzeladinov and Others v. the Republic of Macedonia, Sulejmanov v. the Republic of Macedonia*.

(4) The decision of the Public Prosecution Office to submit an indictment to the court or to reject the criminal charges must be made in a shorter time period commensurate with absolute statute of limitation considerations if delayed decision-making would make the prosecution impossible.

(5) The Head of the Basic PPO, the Higher Prosecutor or the Council of Public Prosecutors of the Republic of Macedonia, acting upon a complaint of the victim regarding inactivity of the competent Public Prosecutor or on their own motion, are entitled to sanction the inactive Public Prosecutor in accordance with this and other applicable laws."

We would welcome the opportunity to further discuss this matter with you in person.

Sincerely,

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European Roma Rights Centre

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