



ЦЕНТАР ЗА ПРАВНИ
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DO ROMA ENJOY THE GUARANTEED RIGHTS ?

Need to Establish Equality in Proceedings
of Law Enforcement Authorities

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TABLE OF CONTENTS

Executive Summary	3
Introduction	5
Background	6
Problem Description	9
Conclusions and Recommendations	16
Bibliography	18
Appendices	20

Executive Summary

This policy paper analyses state-of-affairs concerning Roma rights in pretrial and trial proceedings and identifies key problems in access to justice for Roma in the Republic of Macedonia. Findings on inequality and discrimination of Roma indicated in various reports define their position as exceptionally worrying and indicate the fact that Roma are on the margins of the society. Even though political representation of Roma in the Parliament, within the executive branch of government and at the level of local governments creates an alleged image of Roma enjoying their political rights, Macedonian society is insufficiently inclusive, tolerant and equitable when it comes to exercise of fundamental human rights by Roma. Equality is enshrined in both, domestic and international, general legal acts (laws, bylaws, treaties, conventions), however administrators of justice (courts, prosecution offices, the police, social work centres) still operate with elements of prejudice and unequal treatment, instilling certain extent of insecurity for Roma.

Key recommendations enlisted in this policy paper are equally important for all stakeholders and are aimed at ensuring access to justice. In particular, they are profoundly important for law-makers, as well as law enforcement authorities. There is an essential need to improve the status of Roma, thus enabling them to feel equal and safe.

DO ROMA ENJOY THE GUARANTEED RIGHTS?

-policy paper-

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-policy paper-

I represented a Roma defendant in court proceedings and was utterly shocked by discriminatory and humiliating behaviour of the judge against the defendant only because he was Roma.

- attorney from Skopje

Introduction

This policy paper is developed on the basis of findings from the “Analysis of the Status of Roma as Defendants in Criminal Proceedings in the Republic of Macedonia”,¹ conducted by the Centre for Legal Research and Analyses and the Roma Lawyers Association as part of the project “Equal before Court, Safe in Life”.

The purpose of this document is to present and analyse the status of Roma in pretrial and trial proceedings where they appear as suspects, defendants or convicted persons. Special emphasis is put on discrimination and unequal treatment in these proceedings and disrespect of procedural assumptions that are of importance for exercise of their rights. Moreover, the policy paper sets forth practical recommendations arising from research findings and aimed to inform future policies on improving the status of Roma in Macedonian society, as general guidelines for all key actors to take actions to address discrimination of Roma.

Methods used for collection of data and insights included design and distribution of questionnaire for attorneys and legal practitioners providing legal aid to members of the Roma community. Moreover, we relied on data from our analysis and from reports published by relevant international and domestic organizations and institutions.

¹ <http://cpia.mk/media/files/%D0%90naliza-za-polozbata-na-romite-kakoobvini-neti-vo-krivichna-postapka-vo-republika-makedonija.pdf>

Background

Societal and institutional discrimination, marginalization, unequal treatment, unequal access to justice and violation of fundamental human rights are still acute issues in Macedonia, especially when it comes to members of the Roma community. In the Republic of Macedonia, Roma are still facing problems such as: lack of personal documents/citizenship, limited access to goods and services, education² and employment, health care and housing, as well as early marriages or forced marriages.³ Main reason behind their difficult access to education and exercise of their health, social protection and other rights and entitlements implies the fact that some Roma families do not comply with law-stipulated deadlines for registration of newborns, thus leaving them without adequate personal documents.⁴ Roma children are often exploited in terms of forced labour in the form of panhandling⁵ and human trafficking. The poverty rate among this population is around 2.5 times higher compared to the national poverty rate.⁶

2_ Roma children are overrepresented in segregated "special" schools for students with intellectual disabilities. Source: US Department of State, 2016 Country Report on Human Rights Practices for Macedonia, available at: <https://www.state.gov/documents/organization/265658.pdf>

3_ Ibid. Early and forced marriage occurred in the Roma community and, to a much lesser extent, in some Albanian communities. It is difficult to estimate the number of early and forced marriages because they are rarely registered.

4_ Ibid.

5_ Ibid. The most common examples include using children to beg, clean windshields and sell cigarettes and other small items in open markets, on the streets, or in bars and restaurants at night.

6_ European Commission against Racism and Intolerance Report on the Republic of Macedonia (fifth monitoring cycle), adopted on 18 March 2016, published on 7 June 2016, available at: https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/former_yugoslav_republic_macedonia/MKD-CbC-V-2016-021-MAC.pdf

In 2011, border police officers in the Republic of Macedonia initiated the practice on denying nationals of the Republic of Macedonia to leave the state. In several individual cases people reported that they had been orally and directly notified they would not be allowed to leave the state on the grounds of suspicions that they will seek asylum in countries from the Schengen Area.⁷ Indications about final destination of their travel and unavoidable circumstances of having to transit countries from the Schengen Area were of no importance for border police officers, which is confirmed by the fact that some of them travelled to the Republic of Serbia, with which the Republic of Macedonia has signed an agreement that allows nationals from both states to cross the borders with ID cards. Such actions on the part of border police officers are disproportionately more common in cases of Roma citizens. Members of the Roma ethnic community are more likely to be subjected to detailed border checks. This is confirmed with findings of relevant institutions, indicating that vast majority of persons returned from border crossings are Roma.⁸

7_ "Legal opinion on constitutionality and lawfulness of denial to leave territory of the Republic of Macedonia to nationals of the Republic of Macedonia due to existence of suspicion for abuse of visa-free regime between the Republic of Macedonia and countries from the Schengen Area: Right to leave a country", MYLA, available at: <https://goo.gl/shpu56>

8_ Ibid.

Furthermore, Roma are facing unequal treatment in litigation and criminal proceedings, especially when they appear as victims of criminal offences, suspects or convicted persons. The situation in the case of victims of domestic violence is no better. It was found that domestic violence is unreported and there is no database that would allow monitoring of effects created by various campaigns, whether sanctioned perpetrators are repeating same or similar offences, whether the number of victims is decreased, etc.⁹ Use of mediation and alternatives to criminal proceedings in cases of juvenile offenders is insufficiently effective.¹⁰ Premises at the juvenile educational and correctional facility are inadequate and there was insufficient progress in provision of basic education to juvenile and other re-socialization services. No police stations have child-friendly detention facilities. Regular training for juvenile justice profession professionals has not been introduced.¹¹

Rights of prisoners and conditions at prison facilities are below any minimum standards and below human dignity, further enhancing the dramatically bad image of the correctional and penitentiary system in Macedonia. High rate of overcrowding, poor hygiene conditions, lack of sufficient medical staff, accommodation of minors in same premises with adult prisoners, as well as torture of prisoners at the hands of prison guards are just few from an

9_ Implementation of the European Court of Human Rights' Judgements in the Period 2013-2016, Foundation Open Society – Macedonia, available at: <http://www.fosm.mk/CMS/Files/Documents/ANALIZA-3-MK.pdf>
10_2016 Report for the Republic of Macedonia, European Commission, available at: <https://goo.gl/Qmy9pK>
11_ Ibid.

array of problems at these facilities.¹² Complaints lodged against ill-treatment by the police continue to raise concerns and give rise to the need to establish independent oversight mechanism for the Ministry of Interior. In turn, there is serious problem with police impunity and inhumane conditions at prisons (especially in Idrizovo and Skopje), police stations, social care and psychiatric facilities.¹³ As regards ethnicity breakdown of complaints lodged before the Ombudsman, only 4.54% of all complainants were lodged by members of the Roma community: three complaints lodged by Roma concern excessive use of police powers, sixteen Roma lodged complaints against judiciary authorities, four Roma lodged complaints related to conditions at penitentiary and correctional facilities, and one Roma lodged a complaint on other matters.¹⁴

Concerns are also raised in relation to prison mortality rates, in particular because majority of deceased prisoners are Roma people.

12_ Implementation of the European Court of Human Rights' Judgements in the Period 2013-2016, Foundation Open Society – Macedonia, available at: <http://www.fosm.mk/CMS/Files/Documents/ANALIZA-3-MK.pdf>

13_ 2016 Report for the Republic of Macedonia, European Commission, available at: <https://goo.gl/Qmy9pK>

14_ 2016 Annual Report on Provision, Respect, Promotion and Protection of Human Rights and Freedom, Ombudsman Office of the Republic of Macedonia, available at <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf>

Another matter that necessitates additional analysis and is indirectly related to unequal treatment of Roma in pretrial proceedings concerns application of the principle of adequate and equitable representation at the level of total number of employees and at the level of high management within institutions acting as law enforcement agencies engaged in prosecution of criminal perpetrators.

all basic courts across the country employ 24 Roma at non-managerial positions



and one Roma is employed as judge, social work centres have total of twenty four Roma employees none of which holds managerial position,

In that, the Public Prosecution Office of the Republic of Macedonia employs one Roma at non-managerial position for the entire institution,



no Roma are employed at the Council of Public Prosecutors,



Mol employs a total of 78 Roma only two of which are employed at managerial positions,



the Higher Public Prosecution Office does not employ any Roma,

all basic prosecution offices across the country employ only two Roma at non-managerial positions,



while penitentiary and correctional facilities at the level of Macedonia employ four Roma at non-managerial positions.¹⁵

15_2016 Annual Report on Provision, Respect, Promotion and Protection of Human Rights and Freedom. Ombudsman Office of the Republic of Macedonia, available at <http://ombudsman.mk/upload/Godisni%20izvestai/GI-2016/GI-2016.pdf>

Problem Description

For the purpose of this policy paper, we designed the questionnaire sent to attorneys and legal practitioners who work on protection of human rights of Roma in the Republic of Macedonia. Based on answers received, we analysed the most common problems and challenges faced by Roma in pretrial and trial proceedings.

1. Pretrial Proceeding

A. Police Proceedings. Findings we obtained on the basis of questionnaires answered by attorneys and legal practitioners are indicative of inadequate police proceedings in regard to Roma. Cases were reported in which, during police interrogation, police inspectors have attempted to force admission of guilt for criminal offence, indicating that admission of guilt would result in less serious consequences for them. This specific testimony concerns proceedings taken by police inspectors in East Macedonia, although attorneys from Skopje shared similar experiences. Cases were also reported of police officers planting blank forms to suspects and persuading them to sign these forms, including use of excessive force to persuade suspects into admission of guilt for criminal offences which often they have not even committed.

B. Excessive Use of Force. There are frequent cases in which Roma are subjected to use of excessive force in pretrial proceedings that are followed-up by mainly ineffective investigations.

In May 2004, a Roma man reported ill-treatment of his 17 year-old son and his 12 year-old cousin. Ill-treatment of these children happened at the hands of four police officers, all members of the special police unit “Alpha”. In particular, police officers suspected one boy of having stolen the handbag from a woman passing by. After having intercepted the boys, police officers started beating them without giving them any prior warning.

Afterwards, the 17 year-old Roma was taken to the police station “Bit Pazar” (Old Bazaar) for interrogation. During the interrogation, the police allegedly attempted to force the boy into admitting the crime by using physical force, i.e. slapping him in the face. After they concluded that the minor did not commit the crime, he was released from police custody.¹⁶

16_Source: <https://goo.gl/tPVGAN>

In April 2014, 15 year-old member of the Roma community¹⁷ was physically attacked by police officer in Kumanovo. Said boy was in the company of his sister when the police officer, without any explanation, started battering him and continued until he lost consciousness. Later, the boy was taken to the police station where physical and psychological ill-treatment continued. When his parent arrived at the police station, the boy was released.

Previously, in May 2013, two police officers, later reinforced with 50-60 other policemen including members of the special police unit "Alpha", arrived to the Roma settlement "Topaana" in Skopje. Reason for this police raid implied previous report that member of the Roma community who was released from prison for family visit had wounded another man with a knife. The police raided this settlement and forcibly entered Roma houses without providing any explanation. Ten Roma men and three Roma women were physically attacked. Press-release issued by the police indicated that local residents resisted and attacked police officers during their action to apprehend the perpetrator.¹⁸

In February 2013, prior to this case, 18 year-old Roma reported ill-treatment by two police officers, members of the special police unit "Alpha". He was selling perfumes in Skopje downtown when two ununiformed police officers approached him and asked for his identification card, asking him to follow them to the police station "Bit Pazar" (Old Bazaar). At the station, they started interrogating him under suspicion of being a thief because of his Roma ethnicity. Later, three other police officers joined the interrogation. One of them attempted to force him into admission of guilt for having broken a car window. When he refused to admit the crime, the interrogator started yelling and humiliating him, saying: "You Gypsies! Admit that you are thieves", while hitting him. The detained person did not motion lawsuit/complaint against the police officers due to fear of reprisals.¹⁹

17_ Source: <http://www.errc.org/artide/police-abuse-romani-youth-in-macedonia/1969>

18_ Ibid.

19_ Ibid.

In several cases the European Court of Human Rights has established that the Republic of Macedonia violated the right guaranteed under Article 3 of the European Convention on Human Rights, i.e. prohibition of torture. These cases include: *Jasar v. Republic of Macedonia*²⁰ as the first case against Macedonia in which the Court found violation of Article 3 of the European Convention on Human Rights. The applicant complained that he had been subjected to acts of police brutality, which had caused him great physical and mental suffering amounting to torture, inhuman and/or degrading treatment.²¹ Furthermore, in the case of *Dzeladinov and others v. Republic of Macedonia*,²² the applicants complained that they had been assaulted and ill-treated by police officers and that there had been no effective investigation into their complaints.²³ Same is the case of *Suljemanov v. Republic of Macedonia*,²⁴ in which the applicant complained that he had been subjected to acts of police brutality and that no investigation

20_The case of JASAR v. The Former Yugoslav Republic of Macedonia, application no. 69908/01, available at: [https://hudoc.echr.coe.int/eng#{"fulltext":\["jasar"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-79411"\]}](https://hudoc.echr.coe.int/eng#{)

21_Source: <http://cpia.mk/analiza-za-polozbata-na-romite-kako-obvini-vo-krivichna-postapka-vo-republika-makedonija>, p. 26

22_The case of Dzeladinov and others v. The Former Yugoslav Republic of Macedonia, application no. 13252/02, available at: [https://hudoc.echr.coe.int/eng#{"fulltext":\["CASE OF DZELADINOV AND OTHERS v. "\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-85828"\]}](https://hudoc.echr.coe.int/eng#{)

23_ Ibid., p. 28

24_The case of Sulejmanov v. The Former Yugoslav Republic of Macedonia, application no. 69875/01, available at: [https://hudoc.echr.coe.int/eng#{"fulltext":\["sulejmanov"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-86022"\]}](https://hudoc.echr.coe.int/eng#{)

had been conducted into his allegations. In the case of *Asllani v. Republic of Macedonia*,²⁵ the applicant complained that he had suffered inhuman and degrading treatment at the hands of the police during his interrogation at police station. Half from the total of eight judgments of the European Court of Human Rights related to violations under Article 3 concern Roma people in similar or identical legal circumstances. This means that, in spite of ECtHR judgements taken in the period 2007-2015, the issue of police brutality against Roma is still broadly present. That was further confirmed with experiences shared by interviewees, which reported knowledge of cases in which excessive police force has been used by members of special police units against Roma minors. Excessive use of force was also observed on the part of police officers against Roma, which resulted in severe physical injuries. On that account, criminal charges have been filed and resulted in finding the police officers responsible for these violations and awarding compensation to victims. Nevertheless, the fact that there are cases in which police officers are taken to court on the grounds of police brutality and are sentenced implies certain step forward, but does not guarantee that effective investigation is conducted in all cases reported.

C. Ineffective Proceedings (Investigation) into Police Brutality. In all cases indicated above and led before the European Court of Human Rights, the Court has clearly found failure to conduct effective investigation into police brutality.

25_The case of Asllani v. The Former Yugoslav Republic of Macedonia, application no. 24058/13, available at: [https://hudoc.echr.coe.int/eng#{"fulltext":\["asllani"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-159060"\]}](https://hudoc.echr.coe.int/eng#{)

The public prosecution offices have failed to conduct effective or any investigation to identify police officers and to sanction perpetrators of said offences.²⁶ In the case of *Jasar v. Republic of Macedonia*, the Court found that the public prosecutor had failed to take any investigation measure after receipt of criminal complaint lodged by the applicant's attorney. Furthermore, the Court found that 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 application, were questioned about the applicant's injuries. The public prosecutor took no steps to find any evidence confirming or contradicting the account given by the applicant about the alleged ill-treatment. Inactivity of the public prosecutor prevented the applicant from taking over the investigation as subsidiary complainant and denied him access to subsequent proceedings before the court of competent jurisdiction. The applicant is still barred from talking over the investigation as the public prosecutor has not yet taken decision to dismiss the complaint.²⁷ In the case of *Dzeladinov v. Republic of Macedonia* it was underlined that the state has general duty to conduct effective and expedite investigation when an individual makes credible assertion that he has suffered treatment infringing Article 3 of the Convention. In this case as well, competent authorities had failed to conduct effective investigation. In the case of *Sulejmanov v. Republic of Macedonia* most prominent is the responsibility located with the public prosecutor, who

²⁶ *Ibid.*, p. 26

²⁷ *Ibid.*, p. 27

took no investigation measures upon the criminal complaint, apart from requesting additional inquiries from the Ministry of Interior, but that does not change the fact that the Court found the investigation did not satisfy requirements under Article 3 of the Convention. In the case of *Asllani v. Republic of Macedonia* the Court reiterated that in cases of doubts about police brutality and similar circumstances it could be assumed that the burden of proof rests with the authorities. More specifically, the government had not provided satisfactory and convincing explanation about injuries inflicted on the applicant and therefore the Court found violation of Article 3 of the Convention.

Current experiences of attorneys in relation to failure to conduct investigation into police brutality against Roma confirm existence of ill-treatment by police officers in Kumanovo and Skopje, which was not followed-up with effective investigation, resulting in rejection of criminal complaints and indictments filed against Roma about same events that usually end with Roma being found guilty in order to protect the police officers. Moreover, Roma NGOs also identified cases of police brutality against Roma. In some cases, these organizations motioned lawsuit actions.

D. Legal Qualification of Criminal Offences. Attorneys share insights that when certain criminal offences are perpetrated by Roma they imply inadequate legal qualification, for example thefts are qualified as robberies. There were no cases in which, during court proceedings, criminal offences have been requalified into aggravated forms, because they were already inadequately qualified in pretrial proceedings as serious forms of crime. Equally

worrying is the fact that criminal offences are not requalified into less serious forms of crime during court proceedings, in spite of indications that the factual situation is different from the one presented in indictments raised.

Crimes perpetrated by Roma are often qualified by public prosecution offices as “preventing an official to perform their tasks and duties, attack on official when performing their tasks and duties, participation in crowd that prevents an official to perform their duties, violence” and these qualifications are often inadequate.

E. Failure to Report Cases in Which Roma Appear as Damaged Parties/Failure to Conduct Investigation. Due to their poor economic and financial status, Roma refrain from motioning lawsuits, in particular because they are unable to engage an attorney and to secure all evidence (forensic reports). There are frequent cases in which Roma appear as victims of criminal offences, but they do not initiate relevant proceedings due to costs implied therein. However, some attorneys and non-governmental organizations help them in that regard. As for reaction on the part of law enforcement authorities, that depends solely on the persistence of damaged parties.

2. Trial Proceedings: Procedural Complaints

A. Right to Defence Attorney, Appointment of Ex Officio Defence Attorney, Quality of Defence. In compliance with the Law on Free Legal Aid, free legal aid in criminal proceedings is provided to persons in cases where they appear as victims of domestic violence and human trafficking. On the other hand, the Law on Criminal Proceedings²⁸ stipulates cases in which defendants are granted mandatory defence by court-appointed attorneys and the relevant procedure applied in cases where defendants are of poor material and financial situation and request the state to appoint them defence attorney.

According to interviewed attorneys, the system on appointment of ex officio defence attorneys is not functional and does not provide quality protection, because attorneys are not sufficiently financially awarded to provide quality defence.

Another issue that should be analysed in detail concerns the fact whether Roma are informed of their rights or whether they are aware that they can change the attorney during court proceedings. Majority of respondents provided negative answers to these questions. On the contrary, Roma were surprised to learn that they have the right to change their attorney and to complain of inadequate services provided by attorneys. Examples thereof include cases in which attorneys

²⁸Article 74 and Article 75 of the Law on Criminal Proceedings

inform their clients only about timing of scheduled court hearings, but do not organize meetings with them at their law offices or at least outside the court building, to prepare the defence strategy and to indicate all rights enjoyed by defendants or even possible consequences arising from court proceedings. Moreover, many Roma are unaware of the Bar Association and its existence, where they can lodge complaints about unprofessional behaviour on the part of attorneys. The fact that Roma are insufficiently informed about their rights is the main reason why they fall victims to inadequate behaviour, primarily on the part of law enforcement authorities.

One interviewed attorney shared information that in his place of residence there are rare cases in which Roma are suspected of having committed serious criminal offences that qualify for mandatory defence when he has been called by the police and by the court, underlying that the police has summoned him to serve as defence attorney on insistence by detainees or their relatives, and rarely on initiative of the police. Compared to the situation five or six years ago, nowadays pretrial proceedings for more serious offences imply appointment of ex officio defence attorneys and defendants are informed about their rights in the presence of these attorneys.

C. Language Barriers. As regards language barriers in proceedings, respondents shared knowledge of a Roma who, due to non-proficient knowledge of Macedonian language and failure to be provided interpreter, had admitted a criminal offense he did not commit.

Furthermore, it was noted that in one case led before the Basic Court Skopje I, after unwavering insistence, the judge has accepted a Roma interpreter because the parties were not proficient in Macedonian language. An experience shared by an attorney from Shtip was different, i.e. the courts did not reject engagement of interpreters in cases where Roma do not understand the procedure language, i.e. Macedonian language, but such cases had been very rare in that jurisdiction.

General conclusion is that Roma face difficulties, but can still understand the court. Nevertheless, it is of great importance for judges to make efforts to be understood by Roma people who appear as parties in court cases, which unfortunately was not practiced by one judge, who seemed not to care whether the defendant understands his questions.

D. Juvenile Recidivists. Main reasons for high share of Roma juveniles appearing as perpetrators of criminal offences include dysfunctional families, poor property status, low level of education, multiple family members. General conclusion inferred on the basis of answers provided by respondents implies that issued sentences do not serve their purpose, because in the practice juveniles repeat their offences.

3. Prison Mortality Rate among Members of Roma Community.

There are frequent cases of deaths among prisoners at penitentiary and correctional facilities in Macedonia, but concerns are raised by the fact that majority of them are Roma. Death of a 19 year-old Roma prisoner, user of methadone therapy, at the prison in Gevelija is an evident example about the status of Roma at prisons. The European Court of Human Rights also stressed police brutality and use of excessive force at prisons. In this specific case, 48 hours after admission to serve his sentence, the prisoner in question was taken to hospital in comatose condition, with visible bruising on his head. The autopsy report enlisted the cause of death as level of methadone present in his bloodstream that is seven times higher than the prescribed daily dosage. The consequently motioned lawsuit resulted in amicable settlement, i.e. the Government of Macedonia agreed to pay indemnity to his family in the amount of 9,000 euros.²⁹ Similar death cases emerged in 2017. Namely, in March 2017, a 21 year-old Roma died at the Skopje prison.³⁰ His family was told that he died as result of combined use of methadone and diazepam, but they were never presented with autopsy report and results, although there is evidence indicating he was subjected to serious police ill-treatment in the hours leading to his death. In the same month,

²⁹_Source: <https://derparia.wordpress.com/2017/06/17/victory-for-roma-macedonia-agrees-to-pay-compensation-for-roma-prison-death>, [https://hudoc.echr.coe.int/eng#{"itemid":\["001-174787"\]}](https://hudoc.echr.coe.int/eng#{)

³⁰_Source: <http://www.errc.org/article/victory-for-roma-macedonia-agrees-to-pay-compensation-for-roma-prison-death/4584>

a 25 year-old member of the Roma community, father of two children, died at the Shtip prison.³¹ According to the media, reports were made of ill-treatment by prison guards and doctors and that he had not been given sufficient food. At the time of death, he took medicines provided by the prison doctor. In June 2017, a 45 year-old Roma woman from Strumica³² was found dead at the Skopje prison "Idrizovo". Family members of the deceased women claim that her death had been a result of torture and battering at the hands of prison guards and of consequently inadequate treatment by prison doctors. Prison authorities denied allegations made by her family, claiming that the woman had suffered serious personal health problems.

³¹_Ibid.

³²_Ibid.

Conclusions and Recommendations

- Number of Roma employed at courts and public prosecution offices in the Republic of Macedonia is very low.

In its own right, specific culture and living style of Roma open the issue and impose the need for greater involvement of members of this community at above-indicated institutions pursuant to the principle of equitable representation of minority communities, which would ultimately lead to increased trust in these institutions among Roma population.

Efforts are needed to stimulate and award scholarships to successful students from the Roma community that would be educated and trained to become judges, public prosecutors and legal practitioners employed at managerial positions.

- Discrimination and stereotyping of Roma in police proceedings, including ill-treatment and abuse of their illiteracy, as well as forcing them to admit guilt, are still present in the Republic of Macedonia. Discrimination is more common in pretrial proceedings compared to trial proceedings.

The police needs to be sensitized for dealing with Roma, especially in terms of their status in society and their right to equality. The system of internal control concerning excessive use of police powers should be strengthened, especially in

cases of excessive use of force against Roma by police officers and members of special police units. These shortfalls could be mitigated with training aimed to increase knowledge, skills and psychological ability of police members, including mandatory human rights training of police officers that should guarantee controlled and lawful use of force.

In that regard, thorough analysis should be conducted to establish the share of criminal complaints made to public prosecution offices that were completed with relevant court rulings.

- Half of the total number of judgements taken by the European Court of Human Rights against Republic of Macedonia under Article 3 of the Convention had been motioned by Roma, one of which included several applicants. Summary conclusion from analysis of ECtHR's judgments implies that in all cases the Court found failure of competent authorities to conduct effective investigation into police brutality allegations.

Public prosecution offices must seriously take into consideration conclusions made by ECtHR, especially those related to importance of prohibition of torture, which is present even in most complicated circumstances, such as fight against terrorism and organized crime. Conducting investigation is the main precondition for protection of this right that enshrines one of fundamental values of democracy.

- Roma have difficult access to proceedings from two aspects: when they appear as victims of criminal offences which are not covered by free legal aid and when they appear as perpetrators of criminal offences for which they could be appointed ex officio defence attorneys. Large share of perpetrators, i.e. 58%, have not had attorney representation in the course of court proceedings, while ex officio defence attorneys were appointed to 30% of offenders. Defence attorneys acting in these cases are demotivated due to the fact that they are not reimbursed all costs related to defence services provided.

The state should guarantee access to procedure and defence equality to its citizens. Mechanisms need to be designed for provision of legal aid to socially underprivileged people in criminal proceedings.

- Conditions at prisons are below any minimum required standards. Overcrowding, poor hygiene conditions, lack of medical staff, accommodation of juveniles at same premises with adult prisoners, as well as torture suffered by prisoners at the hands of prison guards, are just few of the many perpetuated problems at these facilities.

There is a need to design professional programs and to strengthen existing programs on training and evaluation with mandatory inclusion of human rights modules intended for employees at institutions where the biggest shortfalls are identified. In order to apply proportionate and necessary police force, when they

are recruited and throughout their public service employees must be trained on relevant techniques. International and domestic organizations have the capacity to develop programs and to train educators, but that necessitates establishment of proactive partnerships between authorities and private/civil society sector. On the other hand, prisoners/convicted persons need to have more information about possibilities and manners in which they can lodge motions/appeals/complaints. That could be achieved with adoption of written guidelines on dealing with prisoners from vulnerable groups, including clear written policies on accommodation of individuals that are at greater risk of becoming victims of violence among prison populations. In order to reduce cases of ill-treatment, it is of great importance to establish and maintain adequate protocols. Moreover, there is an urgent need for nation-wide analysis of all cases that imply ill-treatment and excessive use of force in the last three years, as known or reported to authorities, in order to establish whether court sentences issued in these cases correspond to the weight of infringements/criminal offences perpetrated.

- The principle of impartial assessment of evidence has been brought under question because prosecution offices and the police are not obliged to engage in specific procedures on evidence collection aimed to secure successful outcome of relevant proceedings, given that their evidence (even the most simple testimonies) are accepted as valid, unlike evidence provided by parties in these cases which are denied on a priori basis.

Law on the Police needs to be amended with a view to establish quality of proceedings taken by courts in same or similar cases, and especially in terms of adequacy review of pre-investigation and investigation measures, care for elements of torture and other restrictions on human rights.

BIBLIOGRAPHY:

-domestic legislation

Law on Criminal Proceedings

Law on the Police

Law on Setting Type and Amount/Duration of Court Sentences/
Fines

Law on Free Legal Aid

-reports of international and domestic organizations and institutions

2015 Annual Report on the Efficiency of Legal Protection of Human Rights in the Republic of Macedonia, Macedonian Young Lawyers Associations

Report on the Legal Protection against Discrimination in the Republic of Macedonia, Macedonian Young Lawyers Association, 2009

Case Study: N.N. v. Ministry of Interior of the Republic of Macedonia: Court protection of human rights in the Republic of Macedonia in the practice; Why does the Appeal Court confirm first-instance rulings when decisive facts therein indicate that the Republic of Macedonia is signatory to the Schengen Agreement?; Macedonian Young Lawyers Association

Legal opinion on constitutionality and lawfulness of denial to leave territory of the Republic of Macedonia for nationals of the Republic of Macedonia due to existence of suspicions for abuse of visa-free regime between the Republic of Macedonia and countries from the Schengen Area: Right to leave a country; Macedonian Young Lawyers Association

Analysis of Strategic Litigation Cases on Discrimination; author: Centre for Legal Research and Analyses; publisher: Macedonian Young Lawyers Association

Analysis of Strategic Litigation Cases, project: Protection of Human Rights of Marginalized Groups in the Republic of Macedonia, 2016, Macedonian Young Lawyers Association

No Data - No Progress: Data Collection in Countries Participating in the Decade of Roma Inclusion 2005-2015, August 2010, Open Society Institute

Statistical Yearbook of the Republic of Macedonia, State Statistical Office, 2013

US Department of State Country Report on Human Rights Practices for Macedonia, 2016

ECRI Report on the Republic of Macedonia (fifth monitoring cycle), European Commission against Racism and Intolerance, adopted on 18 March 2016, published on 7 June 2016

Implementation of the European Court of Human Rights' Judgements

in the Period 2013- 2016, Foundation Open Society – Macedonia

2016 Annual Report for the Republic of Macedonia, European Commission

National Strategy on Development of the Penitentiary System 2015-2019, December 2014

2016 Annual Report on Provision, Respect, Promotion and Protection of Human Rights and Freedoms, Ombudsman Office of the Republic of Macedonia

-ECtHR judgments

Case of JASAR v. the former Yugoslav Republic of Macedonia, application no. 69908/01

Case of Dzeladinov and others v. the former Yugoslav Republic of Macedonia, application no. 13252/02

Case of Sulejmanov v. the former Yugoslav Republic of Macedonia, application no. 69875/01

Case of Asllani v. the former Yugoslav Republic of Macedonia, application no. 24058/13

Annex 1

QUESTIONNAIRE

FOR ATTORNEYS AND LEGAL PRACTITIONERS FROM THE
NON-GOVERNMENTAL SECTOR

“DISCRIMINATION OF ROMA IN PRETRIAL AND CRIMINAL
PROCEEDINGS”

-working title-

SECTION 1:

Name and surname: _____

- Please limit your comments under individual questions to 300 characters per comment.
- Additional comments should be made when needed and should concern the overall issue.

SECTION 2:

Discrimination of Roma in pretrial proceedings

1. In your practice, did you notice discrimination (stereotyping, humiliation, imposition/admission of criminal offence, planting of documents for signature, etc.) in police proceedings with Roma and how was discrimination pursued?

-other sources

<https://goo.gl/tPVGAN>

<http://www.errc.org/article/police-abuse-romani-youth-in-macedonia/1969>

<https://derparia.wordpress.com/2017/06/17/victory-for-roma-macedonia-agrees-to-pay-compensation-for-roma-prison-death>

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-174787%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-174787%22]})

<http://www.errc.org/article/victory-for-roma-macedonia-agrees-to-pay-compensation-for-roma-prison-death/4584>

<https://www.hrw.org/legacy/wr2k1/europe/macedonia.html>

<https://www.civilrightsdefenders.org/country-reports/human-rights-in-macedonia/>

Appendices

2. Did you work on case of excessive use of force on the part of police officer/special police units against Roma and to what extent? What follow-up actions were taken?

3. Some Roma complain of failure to conduct effective investigation into police brutality they have reported. This is confirmed by ECtHR case-law. What is your experience in this regard?

4. What is the most common qualification of criminal offences (perpetrated by Roma) used by public prosecution offices and did you note cases in which qualification of offences is inadequate? Did you have cases in which the offence was re-qualified during court proceedings?

ADDITIONAL COMMENT:

SECTION 3:

Discrimination of Roma in court proceedings

1. What is court's behaviour/treatment (judges, jurors, typewriters, court police, and court administration) in criminal proceedings already raised against Roma? In your practice, did you notice discriminatory actions in these proceedings? If the answer is yes, who has most frequently acted in discriminatory manner?

2. In your experience, how often were you appointed ex officio defence attorney in cases where suspects are Roma compared to your engagement by Roma on their individual request? Do you have any knowledge whether Roma receive adequate defence in pretrial proceedings and whether they are sufficiently aware of their rights in this stage of proceedings?

3. Is the existing system on appointment of ex officio defence attorneys in cases where Roma appear as defendants functional and does it provide quality defence? Do you believe that Roma are sufficiently aware that they could request change of attorney if they are unsatisfied and where they could address these requests?

4. Do you have knowledge of Roma sentenced in court proceedings who insufficiently understood the language used in court proceedings? How do the courts proceed in such cases?

ADDITIONAL COMMENT:

SECTION 4:

Roma as damaged parties of criminal offences

1. Are there frequent cases in which Roma address you as damaged parties of criminal offences, but they do not have funds to initiate lawsuit (pay for attorneys) and therefore decline further proceedings? On the other hand, do you have knowledge about reactions on the part of law enforcement authorities in such situations?

ADDITIONAL COMMENT:

SECTION 5:

Roma juvenile recidivists

1. What is the main problem with Roma juvenile recidivists? Do you think that institutions take adequate actions to defer them from repeating offences and whether sanctions achieve their purpose?

ADDITIONAL COMMENT:

www.cpia.mk