

COMMENTAIRES DU GOUVERNEMENT CONCERNANT LE RAPPORT SUR « L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE »

ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en « ex-République yougoslave de Macédoine ».

Conformément à la procédure pays-par-pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de « l'ex-République yougoslave de Macédoine » sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui selon la pratique habituelle de l'ECRI ne pouvait tenir compte que de développements jusqu'au 18 décembre 2009, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

Comments of the Government of the Republic of Macedonia on the ECRI's Fourth Report on the Republic of Macedonia

The Government of the Republic of Macedonia highly values the activities of ECRI in combating racism and discrimination and attaches great importance to the overall cooperation with the European Commission against Racism and Intolerance. The Republic of Macedonia will take due account of the recommendations contained in the Fourth Report in its ongoing and future policy settings.

The comments on the specific parts of the report are as follows:

Comments to the Summary of the Fourth Report

The Government of the Republic of Macedonia appreciates the acknowledgments noted in the Fourth report for the progress made in the Republic of Macedonia since the previous ECRI's Report in 2005.

The Government cannot accept the remarks and observations related to the state of affairs in the field of Inter-ethnic relations and more specifically about the "segregation" and "interethnic intolerance", as well as "...the dissemination of stereotypes and incidents of ethnic hostility in the media...". We consider the findings not validly verified, especially about the alleged "segregation in school system".

Regarding the recommendation consisted in the first paragraph on page 9 of the Report, ECRI should take into account that the Ministry of Education and Science is working closely with the Office of the High Commissioner on National Minorities on integrated education and considers this project as particularly relevant. The issue of integrated education should be tackled with greater attention especially in a limited number of schools. In this regard the Republic of Macedonia has been

investing a lot of efforts to address this issue and has undertaken a number of concrete measures, in cooperation with the HCNM.

As ECRI has noted in its Report, that the Law on the Use of Languages in the Republic of Macedonia establishes the principle that the language of teaching shall be Macedonian but also recognises the right of persons belonging to minorities to teaching of and in their language at all levels of education.

In this context it is valuable noting that there is no doubt that the language is and should be one of the main instruments for fostering the integration and ensuring the wide inclusiveness in every society. Therefore, the knowledge and the use of the official, Macedonian language is essential for maintaining the cohesion and the inclusiveness of the Macedonian society. The use and the teaching of the community languages in Macedonia (in the primary, secondary and university education) are widely practised, as proscribed by the Constitution and the relevant Laws in Macedonia.

The concept of plurilingual education is certainly an advanced one and therefore one should bear in mind the context in which it can be implemented and whether there are sufficient human and financial resources for its application in practice. The application of the theoretical solutions that are at our disposal should be always checked against the existing practice and the situation on the ground. ECRI should have a realistic approach on the issue of implementing "plurilingual teaching at all levels of the education system" in the Republic of Macedonia. There are no necessary conditions for its implementation, taking into account the Macedonian actual circumstances and capacities (financial, social, professional, legal etc.).

It is worth noting that the term "common school" does not reflect the existing regulations, since all schools- primary, secondary are of a common character, meaning that there is a free access to and enrollment in all schools throughout the territory of the Republic of Macedonia and no limitations exist in the legislation in this regard.

I Existence and implementation of legal provisions

International legal instruments

The Ministry of Foreign Affairs of the Republic of Macedonia would like to inform about the ratification of the International Legal Instruments that are relevant or might have importance to the monitoring mandate of the ECRI.

The Government started the ratification of the UN Convention on the Rights of Persons with Disabilities and the UN Convention for Enforced Disappearances and the International Convention for the Protection of All Persons from Enforced Disappearance (not yet into force). The ratification of the Conventions is planned to end by the August 2010.

Criminal Law provisions to combat racism and racial discrimination

1. With regard to the recommendations given in Paragraph 10 and 11 we would like to point out that the Law on Citizenship as a whole and in particular Paragraph 14 is in compliance with the European Convention on Nationality. The Law on Citizenship has been approved by the Council of Europe and the UN High

Commissioner for Refugees. The experts from the Council of Europe and UNHCR were fully involved during the drafting process of the Law on Citizenship and their proposals have been incorporated in the Law. The principal of non-discrimination is fully guaranteed by the Law in the requirements for obtaining the citizenship, regardless of the ethnicity, social position, raise or colour.

2. In connection with the conclusion cited in Paragraph 12 in the Preliminary Report which reads: 'ECRI regrets that the legislators have not expressly stipulated that a racist motivation constitutes an aggravating circumstances for all offences', the Ministry of Justice of the Republic of Macedonia refer to the amendments of the Criminal Code adopted in September 2009; These amendments, inter alia, include the recommendation made by ECRI.

Namely, the amendments to Art. 39 of the Criminal Code, which stipulate the general principles to be used in meting out a penalty, enshrine a new paragraph (No. 5) and so expand the circumstances (aggravating) for meting out a penalty, among which is also the said racist motivation.

Likewise, the very fact, that the provision of Art. 39 is enshrined in the general part of the Criminal Code, refers, that this provision relates to meting out a penalty for criminal offences without exception, whereby the trial court is obliged to take in due consideration all motives in perpetration of a given crime, including also the racist motivation.

Based on the aforementioned, the Ministry of Justice is of the opinion that, contrary to the conclusion in Point 12 of the ECRI Preliminary Report, the racist motivation, pursuant to the cited amendments to the Criminal Code, represent aggravating circumstance in the process of meting out a penalty for all offences mentioned in the Criminal Code.

1. In connection to the very conclusion contained in Point 14 which reads: 'there is apparently no general legislation penalizing insults or public defamation of a racist nature, the public dissemination or distribution of racist materials, and their production and storage for such purposes, the creation and leadership of racist movements or support for such groups or participation in their activities,' we would like to point out, that the perpetration of offences of public defamation and insult as mentioned in Art. 172 and 173, in correlation with the above cited provisions in Art. 39, paragraph 5, refer – contrary to the lines mentioned in Point 14 of the Report – that insult and public defamation of racist motivation are, equally, incriminated in accordance with the Criminal Code.
2. The offences of public dissemination and distribution of racist material are incriminated by the newly added Art. 394-d.
3. Further to the mention that there is no incrimination of: 'the creation and leadership of racist movements or support for such groups or participation in their activities', we would like to refer to Art. 416-a of the Criminal Code. This Article incriminates the following activities: 'One who will organize a group with an intention to commit crimes stipulated in the Articles 403 through 416, one who will become a member of the group, one that calls on or urges for commitment of the crimes stipulated in the Articles 403 through 416,' on political, racial, national, ethnic, cultural, religious, or gender grounds. These

offences are contained in the Chapter 34 'Crimes against Humanity and International Law'.

Civil and administrative law provisions to combat racism and racial discrimination

In reference to the Paras 20 through 22, the Government would like to inform that the Bill on anti-discrimination is in the parliamentary procedure. First reading by the Parliamentary committees was made on 24-25 of February 2010. Most of the Venice Commission recommendations are enshrined in the draft text.

It should be notified that the NGO's were involved into the consultation within the Ministry of Labour and Social prior to the Parliamentary proceedings.

The draft text of the Bill is transparently launched on the Internet site of the respective Ministry.

Training of the judges and prosecutors

Regarding the Para 24 and 25, the Government of the Republic of Macedonia would like to inform that with the OSCE Mission partnership, 27 judges and prosecutors have passed an intensive education courses in the field of HR and anti-discrimination aspects related to the International Conventions that Republic of Macedonia is a state party.

Same instruction is underway with new 17 judges and prosecutors with assistance of experts coming from the OSCE Mission.

II Discrimination in various fields

Employment

With regard to the employment on Para 51, the Government of the Republic of Macedonia would like to mention the "Operative Plan for employment- active programs and measures". This Operative Plan includes for the second consecutive year, i.e., for 2009 and for 2010, a special program for employment of Roma. Likewise, in 2010, the target group of 'registered unemployment Roma' has been included in another Program for employment – the Program 'Self-employment'. Therefore, the Government of the Republic of Macedonia makes efforts to reduce the rate of unemployment of Roma also through other official documents, and not only through the 'Decade of Roma Inclusion'.

In general for the Para from 50 through 52, according the Secretariat for the implementation of the OFA, 800 new public administration jobs were advertised and 360 were offered to ethnic minorities during 2009 (that makes almost 50 % of the offered).

Data from September 2009 showed that ethnic minorities accounted for 23.9% of employees of state institutions.

Access to justice

Concerning the section of the ECRI Preliminary Report relating to access to justice, Para 62 the Ministry of Justice of the Republic of Macedonia would like to inform that the Law on free-of-charge legal aid was adopted on 29 December 2009 ('Official Gazette of the Republic of Macedonia' No. 161/09).

The aim of this law is to provide equal access for citizens and other persons as determined by this law to the institutions of the system, in order to get informed, to have and to be enabled to receive effective legal aid, in accordance with the principle of equal access to justice.

The right to free-of-charge legal aid is enjoyed by those persons who, pursuant to Art. 12, paragraphs 1 and 2, of this law, and because of their own financial position, would not be able to realize their rights guaranteed by the Constitution and law, without endangering their own means of support and that of the members of their family living with them in joint household.

Likewise, the right to free-of-charge legal aid, in accordance with this law, is provided to nationals of the Republic of Macedonia with their permanent domicile in the Republic of Macedonia, such as: beneficiaries of social assistance, beneficiaries of the right to disability allowance who have no other income as salary or rent, then beneficiaries of the lowest pensions living in joint household together with two or more persons supported by such pensioner, and finally, families or single parents with one or several minors that are eligible to receive child allowance.

It is to be noted that such free-of-charge legal aid is provided in capacity as initial or preliminary legal aid and in capacity as legal aid in all court and administrative proceedings; and, pursuant to this law, this free-of-charge legal aid is realized by the Ministry of Justice, attorneys-at-law, and by authorized NGOs.

Finally, the funds intended for the free-of-charge legal aid are provided from the very budget of the Ministry of Justice, in capacity as special program endorsed by the Minister of Justice, endorsed by the Government of the Republic of Macedonia, as well as by means of donations and other revenues in accordance with law.

According aforementioned, it proves that recommendation in the Para 62 of ECRI's Fourth reports is already implemented.

Racism in public discourse

- Opinion leaders and media

The Broadcasting Council (BC) has made due consideration of the report by the ECRI. The basic law providing for the formation of the BC – the Broadcasting Law – of November 2005 contains legal provisions that prohibit proliferation of intolerance, based on ethnic affiliation, race or religion. Furthermore, Art. 69 of this law provides for rigorous penalties which go as far as revoking the working license of the broadcaster in question, provided the program content of the broadcaster publicly calls for violent overthrow of the constitutional order, including also the case when the program content also publicly induces or calls for military aggression or for stirring up of national, racial, gender or religious hatred and intolerance.

Thus far, the BC has reacted twice on grounds of Art. 69 of the Broadcasting Law, such as:

- on 11 June 2007 against the public service broadcaster, MTV 1, by means of the measure of public written reprimand, and
- on 11 March 2009, against the commercial broadcaster – local TV in Stip – TV Iris, by means of formal advice.

With the aim of improving the inter-ethnic cohesion, the BC also places special accent on the development of the media outlets that broadcast in the languages of the minority ethnic groups; hence, the BC granted in 2009 a broadcasting license to a non-profit radio station based in the city of Stip, i.e., to a broadcaster in Turkish language, intended for the Yörük local people of Turkish descent. Also, the BC has granted in early 2010 broadcasting license to a national and satellite TV channel in Albanian language, which in turn would significantly contribute to the development of media pluralism in the field of informing in Albanian language. Overall, in the country there are registered 26 broadcasters in Albanian language, 4 broadcasters in Turkish language, 4 broadcasters in Roma language, 2 broadcasters in Bosnian language, and 1 broadcaster in Serbian/Croatian language.

In its permanent contacts with the media outlets, the BC has continually underlined the need to promote the cultural and social diversity in the programs of the broadcasters and respect of the program standards that are established by Art. 68 of the Broadcasting Law.

The BC intends to seriously undertake actions in reducing the possibility of proliferation of intolerance and hate speech by the media.

An overall comment concerning this section, in particularly the observations made in paragraph 70, refers to the fact that the emphasis on the division of the media along ethno-linguistic lines does not reflect the real situation. Here, an attention should be drawn to the fact that, especially the printed media in Macedonian language publish articles from intellectuals, journalists, politicians from all communities. An effort is made to extend such an approach by other media which publish and broadcast in other languages than the Macedonian. There is one bilingual electronic media ("Alsat" TV).

- Internet

With regard to the computer crime, i.e., with combating racism and xenophobia on the Internet, the Unit for combating computer crime in the Ministry of the Interior has undertaken concrete measures to fulfil the recommendation by increasing the number of officers who will be signed to monitor the websites having improper content in this field.

At the same time, we would also to underline that the amendments to the Criminal Code provide for provisions that will penalize racism and xenophobia on the Internet.

Conduct of law enforcement officials

The Sector for internal control and professional standards represents organizational unit in the Ministry of the Interior of the Republic of Macedonia that has the task to detect and document unlawful and unprofessional conduct by the Ministry and police officers, and to monitor the legality and efficient execution of the work and duties done by other organizational units in the Ministry.

As a controlling mechanism of the work in the Ministry, this Sector makes continuous efforts to further increase its efficiency and effectiveness in the work and realization of its activities.

The new Law on Internal Affairs contains provisions that relate to the issue of material liability, i.e., compensation for loss or damage caused and types of disciplinary measures; these disciplinary measures introduce for the first time the measure of conditional termination of the employment contract (if a police officer within a year as of the day of being fined again breaks the working order and discipline or does not fulfil the working duties, then the Interior Minister pronounces him the measure of conditional termination of the employment contract; at the same time the Minister also establishes that such measure will not take effect provided the guilty police officer does not make new breach of the working order and discipline or does not make new failures in his working duties in a period to be set by the Minister and which may not be less than six and longer than 12 months as such).

The new implications established by law and adoption of the bylaws have greatly contributed to reduction of abuse of official duties and powers by the Ministry officers.

The Sector continuously undertakes measures to monitor the situation by conducting regular checks in the Ministry, in order to detect irregularities and giving instructions to eliminate such irregularities, and to hold accountable those police officers who have abused their powers. While conducting such checks, special emphasis is placed on the respect of human rights and freedoms in context of policing.

New changes were made to the Rules on conducting activities for they are fully compatible with the Law on proceeding upon complaints and proposals ("Official Gazette of the Republic of Macedonia" No. 82/08). In this context, all cases reported to the Sector involving mistreatment of citizens by police officers including also infringement of the rights and freedoms of a person summoned, apprehended, or detained in police procedure. The Sector proceeds without any exception whatsoever and examines very professionally all allegations in the complaints filed, without selective approach in its work, with equal treatment for all citizens, without any ethnic, religious, gender or any other type of discrimination; upon making checks, replies are timely given back to the claimants.

With regard to the comments mentioned in the Summary of the ECRI's Forth report (pages 9 and 33) concerning incidents of misbehavior and ill-treatment by the police, Public Prosecutor's Office has pointed out that the problem will be resolved with the adoption of the new Law on criminal procedure. This new Law provides that the public prosecutor should be the official who will conduct the investigation procedure; the new law also provides for the establishment of the justice police to be led by the public prosecutor himself. Furthermore, this new law

also stipulates the formation of investigation centers within the public prosecutor's offices which will then prosecute cases before courts with expanded jurisdiction; finally, it also provides for the establishment of the Basic Public Prosecutor's Office for Organized Crime and Corruption.

The new Law on Internal Affairs and its Art. 39 ('Official Gazette of the Republic of Macedonia' No. 92/09) stipulates the external control of the work of the Ministry of the Interior and hence of the Sector, which is conducted by the Assembly of the Republic of Macedonia and the Office of the Ombudsman.

One of the top priorities of the Sector is further continuation and promotion of its cooperation with the Office of the Ombudsman and the NGO sector. Direct meetings between the Sector and the Office of the Ombudsman and the NGOs are envisaged by the Law and the Code of Conduct on the complaints. All communication coming from the Office of the Ombudsman and the NGOs is given due consideration and processing; timely reply is given to all such communication within the time span necessary to finish the checks. The Law on Ombudsman ('Official Gazette of the Republic of Macedonia' Nos. 60/03 and 114/09) provides for broad competences of the Ombudsman, among other things even his direct involvement in checking the authenticity of the complaints filed by citizens.

In December 2009, officers of the Sector and officials of the Ombudsman Office of the Republic of Macedonia together visited general police stations in order to evaluate the implementation of the recommendations from the Office of the Ombudsman contained in the Information on the situation in police stations (June, 2009).

The commitments of the Sector to have part of the trainings conducted together with representatives of local government, NGOs, the Office of the Ombudsman and police stations was realized by conducting training related to respect of human rights and freedoms mostly for those police officers who have often direct contact with citizens while policing. In early March 2009, the Training Center of the Ministry of the Interior conducted educational training in Skopje for members of the Special mobile police unit for combating crime 'Alphas' followed by presentations that were made by representatives from the Office of the Ombudsman, the Helsinki Committee for Human Rights and NGOs 'Coalition All for Fair Trials' and 'Mesecina'.

Likewise, in April 2009 the Training Center in Skopje conducted training on the topic: 'Respect for human rights of persons deprived of liberty' organized by NGOs involved in the Project for promoting human rights, supported by the Foundation Open Society Institute-Macedonia and the Fund for torture victims of the UN, and in cooperation with the Sector for internal control and professional standards and the Directorate for execution of sanctions in the Ministry of Justice. The training was attended by officers from the Sector for internal control and professional standards, heads of shift in police stations, and officers of the Directorate for execution of sanctions and its Security Sector in the 'Idrizovo' prison.

Through its activities, the Sector makes further efforts to upgrade its institutional and inter-institutional cooperation with other institutions in charge of combating unlawful action (such as: Organized Crime Unit, public prosecutor's

offices, and courts). The Sector is obliged to make consultations with the competent office of the public prosecutor. This control body in the Ministry of Interior acted in timely and comprehensive manner upon all communication coming from the public prosecutor's offices and courts.

The Ministry of Interior of the Republic of Macedonia also maintains permanent inter-institutional cooperation with other bodies such as: the State Labour Inspectorate, the State Market Inspectorate, the State Transport Inspectorate, as well as with the Unit for Professional Accountability in the Customs Administration of the Republic of Macedonia, with the aim of conducting joint monitoring and controls.

Based on documented unprofessional conduct in course of police duty in 2009, the Sector for internal control and professional standards initiated disciplinary action against 201 Ministry officers before the Ministry Dismissal Commission, while the Sector initiated against another 160 officers the penalty of salary reduction. Likewise, the Sector issued written reprimand to 193 officers. Another 13 officers were punished by being offered a lower paid job, while another 28 Ministry officers were punished by being suspended from their working place. Another 66 officers were directly dismissed without referring their cases to the Dismissal Commission due to the gravity of the cases (58 of these involve criminal charges filed by the Organized Crime Unit that relate to criminal offences of receiving bribe against officers of the Border Police at the Tabanovce and Kafasan border crossings). Misdemeanor charges were filed against one officer; damages claims were filed against 91 officers.

In cases of indications of criminal offences, the Sector for internal control and professional standards has filed 36 criminal charges against 50 officers for the perpetration of 44 criminal offences. In context of the aforementioned, in the course of this year 67 *Special Reports* have been prepared and submitted to the Public Prosecutor's Office in the Republic of Macedonia. Of them, 33 were prepared upon the very request by the Public Prosecutor's Office, while the other 34 are Special Reports Informing the Competent Public Prosecutor for his further legal action.

In order to maintain a transparent manner of operation by the Sector for internal control and professional standards and come closer to the citizens, its Working reports other with annual and periodic statistical indicators, Rules of procedure, Working program, Anticorruption program of the Ministry of the Interior, and all other activities conducted by the Sector are posted on the Ministry website.

Thus far, this Sector in the Ministry of Interior has had meetings with several similar departments and services from other countries, for the purpose of sharing experience and implementation of best practices.

Last year, officers of the Sector attended:

- the Austrian Federal Bureau for Internal Affairs and its Bureau for Internal Investigations;

- 3rd International Anticorruption Summer School in Herrnsstein, Austria; -
the Regional Conference of the Police Internal Control Services of the SEE
Countries, in Budva, Montenegro.

- the 9th EPAC (European Partners Against Corruption, an independent and
informal organization of police internal control bodies and of anticorruption
authorities of the CoE and EU member states) Conference held in the Republic of
Slovenia (the Sector for internal control and professional standards was admitted
as full member of the EPAC).

Representatives of the Sector made study visit to:

- CIVIPOL (November 2009);
- French General Inspection of the National Police;
- the General Inspection of the Prefecture Police Services;
- the General Inspection of the Administration;

Furthermore, exchanges of experiences were conducted between the General
Inspection of the National Police of France and officers of the Sector for internal
control and professional standards (May 2009, in Skopje).

Aiming to timely and effective execution of the tasks and duties of the
Sector, the Ministry of Interior is in progress of purchasing highly sophisticated
equipment that will enable the Sector to independently gather evidence concerning
crime perpetrators from the ranks and files of the police and the Ministry.