



CPT/Inf (2003) 4

**Response of the Government of
"the former Yugoslav Republic of Macedonia"
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to "the former Yugoslav Republic
of Macedonia"**

from 21 to 26 October 2001

The Government of "the former Yugoslav Republic of Macedonia" has requested the publication of the CPT's report on the visit to "the former Yugoslav Republic of Macedonia" in October 2001 (see CPT/Inf (2003) 3) and of its response. The Government's response is set out in this document.

Strasbourg, 16 January 2003

**Comments of the Government of the Republic of Macedonia
on the Report on the Visit to the Republic of Macedonia carried out by
the European Committee for the Prevention of Torture and Inhuman or Degrading
Treatment or Punishment (21 to 26 October 2001)**

Comments by the Ministry of Interior

The Ministry of the Interior makes further efforts to observe and implement the recommendations and comments given by the Committee for the Prevention of Torture (CPT), although, as we have previously informed, during last year there were no conditions for full implementation of the planned activities, above all, due to the re-allocation of some of the financial resources that were planned for the rehabilitation of the establishments in direction of complying with the standards recommended by the CPT.

- With reference to the requested information relating to the part "Non-standard items in police offices", specifically to paragraph 36, we hereby enclose copies of the instructive cables sent to the organizational units of the Ministry referring the visit of the CPT. These are instructions for removal of all non standard items from the investigation and detention premises. Furthermore, the rights and competences of the CPT regarding visits to police offices are again elaborated.

Following the CPT delegation visit, the instruction was sent again to all organizational units of the Ministry. The instruction, in accordance with the CPT recommendations, once again underlines the necessity to respect the persons brought in, detained or deprived of their liberty in the police procedure, with obligatory advise on their rights in their mother tongue. The cable also deals with chronological entries in the daily diaries of events and the Register of brought in or detained persons, as well as with the professional and official conduct, with the clear instruction not to use non -standard items. The instructive cables also contain the order of the Interior Minister that all cases of improper conduct or ill-treatment of persons in police procedure, shall be penalized. (See Appendix 1)

- With regard to the part "Training of police officers" (paragraphs 42-46), we would like to inform you that for the sake of establishing rigid and ethical criteria in recruiting new police officers, in the course of July and August 2002, a decision made by the Interior Minister established an administrative body, i.e., Commission for recruiting new police officers in the security forces of the Republic of Macedonia for the year 2003. This Commission includes, in addition to representatives of the Police Department of the Interior Ministry and members of the Police Reforms group, also representatives of the EU and OSCE missions, on permanent basis, in selecting new staff. The EU and OSCE representatives will be involved in the entire process - from the very start of the selection until the very enrollment of the applicants in the Police Academy. Most of the recommendations offered by the EU and OSCE missions on the manner how to run this process have been accepted.

The aim of this Commission is to remove the omissions made during the previous selection process of applicants. Special emphasis would be paid to the principles: **timely procedure** - quick and efficient implementation of all planned points, i.e., quick and timely processing of the applications, from their receipt until calling the applicants, etc.; **transparency** - openness when announcing the advertisement in the printed media, besides in the Macedonian, in the Albanian and Turkish languages, information on the reasons why an applicant has been rejected by the Interior Ministry, transparency on the selection made, etc.; **fairness** - recruitment would be made according to the results achieved by the applicants, without discrimination on gender, racial, ethnic or any other grounds.

The selection of applicants to the Police Academy will be made pursuant to Macedonian laws, the Interior Law, the Labor Law, the Collective Agreement in the Interior Ministry and the Articles of the Framework Agreement.

- With regard to organized seminars, lectures and other type of education of police officers in the field of human rights, we would like to inform that during this year, under auspices of representatives of the Geneva-based Office of the High Commissioner for Human Rights, three working meetings were held between representatives of the uniformed police and those of the civil society. The Office of the Ombudsman was present as well. The aim was to improve the cooperation between the NGOs and police from the aspect of respect for human rights in police procedures.

In March (25 and 26) 2002, in Ohrid, the Macedonian Helsinki Committee for Human Rights organized a two-day seminar entitled: "Police powers to stop and search persons, vehicles and premises". Deputy prosecutors of the Skopje Prosecutor's Office and domestic and foreign experts on criminal procedure took part as well. At the seminar, the trainers presented the problems and omissions in the Macedonian laws relating to this topic, as well as amendments to the present Law on Criminal Procedure (Art. 142). Furthermore, the role of police in the former political system in this area, transition of the Macedonian police organization and decreasing the opportunities for abuse of police powers and banning the use of unlawful means were debated as well.

On the other hand, Ministry of Interior representatives took part, from 15 to 19 June 2002, in Copenhagen, Denmark, in the final workshop of the two-year project on drafting a police manual titled "Human rights and police", supported by the Danish Center for Human Rights. The preparation of this manual involved national police and NGO experts. The Macedonian Helsinki Committee is the coordinator for the Republic of Macedonia. The objective of this police manual is to have a modern training textbook in the field of human rights and policing, intended for education of the basic police staff in the Police Academy, as well as training police officers already working in various police establishments. With the start of this school year, it is planned to initiate the use of this manual in the education process, through formal verification of its use by the Teachers' Council within the Police Academy. This manual has five parts: 1. Policing in democratic communities; 2. Police powers; 3. Police powers and individual freedoms; 4. Search and seizure of objects; 5. Use of firearms and other means of coercion; 6. Civil unrest and police; and 7. Rights and responsibilities of police officers. The compendium titled "Police and human rights" was considered to be used as supplement to this manual. It has eight most important documents used in the policing standards.

In Skopje, 6-7 June 2002, the NGO "Center for Open Communication" organized a two-day seminar, with financial support by the Institute Open Society. A workshop was also part of this titled "Police in multiethnic community". It involved officers of the Ministry of Interior, the Customs Administration of Macedonia, the Criminology Institute, as well as representatives of the EU, OSCE, and the said Institute Open Society. NGO representatives were also included.

At the end of September, in Sofia, Bulgaria, Ministry of Interior officers took part in a four-day seminar titled "Police in multicultural society". Trainers came from the United Kingdom and the Netherlands.

In the 10-12 June and 1-3 July 2002 period, upon order of the Interior Minister, training was organized in the Police Departments in the towns of Debar and Ohrid for 77 police reservists. Presented topics were: 1. Human rights – International system for protection of human rights and standardization in domestic law; 2. Police in democratic society; Policing principles and police setup in multiethnic society, mutual relations and cooperation; 3. Ethical and lawful police conduct in law enforcement; 4. Right to life (use of firearms, taking and detaining persons in police stations); ban of torture and ill-treatment; Right to freedom and safety of the individual; Right to freedom of movement, Right to respect of privacy and family life, home and correspondence; Right to fair trial, etc.

The training was theoretical and practical and the following literature was used: the Universal Declaration on Human Rights; the European Convention on Human Rights; the Macedonian Constitution and its recent Amendments; the Interior Law; the Decree on Use of Means of Coercion and Fire Arms; the Rulebook on Policing in the Interior Ministry; the Criminal Code of the Republic of Macedonia; the Law on Criminal Procedure; the Human Rights and Police Manual; the brochure "The Visit by CPT - What's It About?"; Policing and Human Rights – European Introduction; Human Rights and Their Protection Pursuant to International Law; the Police Code of the Interior Ministry; Code of Conduct for Law Enforcement Officers – the UN; etc. Samples of this literature were also distributed to the police officers.

Having in mind that during the election campaign and on the very election day police officers would have responsibility to create and maintain law and order throughout the whole country, the Interior Ministry undertook measures and actions to enable democratic and fair elections, deprived of incidents. To this end, training was initiated for 4500 police officers that would be engaged during the election process. The OSCE mission organized this training in the period of 5-8 August 2002. The objective of the training was educating police officers on their role in maintaining law and order during election period, on the significance and value of democratic elections, police powers during elections, etc. At the training, police officers were again presented short lectures on human rights and their respect by police officers. The four, previously mentioned, brochures and manuals were again distributed. These handouts were prepared as part of the corresponding Council of Europe Project in the last four years.

- With regard to the mentioned stoppage of police training by ethnic Albanian recruits, taking place several days during last year, due to intimidation made by police reservists, we would like to inform you that immediately after this incident, police reservists were moved out to new premises. Afterwards, the training process continued, without further problems or incidents.
- Acting in accordance with the Framework Agreement, signed in Ohrid on 13 August 2001, which provided that police service generally should reflect the composition and the distribution of population in Macedonia, i.e., that by 2003 it is necessary to train additional 1000 new police officers coming from ethnic communities that are not the majority population in the Republic of Macedonia and later to deploy those police officers in regions inhabited by such communities, three such trainings have been realized thus far, with the OSCE assistance. In this regard, the first training course took place immediately upon signing of the Framework Agreement, commencing on 3 September 2001. 106 new police officers were trained (105 ethnic Albanians and one ethnic Bosnian). The next course started on 27 November 2001, involving 250 new police officers (about 150 ethnic Albanians and 100 Macedonians). The third began on 26 March 2002, involving 250 new police officers (185 ethnic Albanians, 47 Macedonians, 22 ethnic Turks, 15 Roma, 4 Vlachs, two Serbs and 4 other persons from other ethnic groups). We plan to have one or two additional courses during this year.
- Concerning the start of the new Police Academy, planned for the 2002/2003 school year, a law on police academy has been drafted. It was adopted by the Macedonian Government. Presently it waits to be read in Parliament.

According to this new law, it is provided for the Police Academy to be established as highly professional school providing education in the field of policing, criminology, intelligence and counter intelligence, and other things related to the basic activity of the Academy. To this end, it is planned that the Academy would offer two-year and four-year academic courses, specialization courses, expert courses and elementary police courses (widening of the already acquired knowledge); special education (deepening of knowledge) and security management (application of knowledge in the field of security).

As in our previous replies, we would like to stress again that special attention would be paid to the part relating to respect of human rights by police officers, through a comprehensive education involving the existing laws and international conventions that relate to this topic and their practical application.

- Under the Project of the Council of Europe and the MOI Police and Human Rights - Beyond 2000, the following training materials have been translated:
Human Rights and Their Protection Under International Law, A Pamphlet for Police, prepared by Ralph Crawshaw (2002), Police Practice and Human Rights – A European Introduction, Mark Taylor (2002), A visit by the CPT, What's it all about? (2000).

The Discussion tools for trainers is being prepared for printing and A guide to assist police to combat violence against women and children, including trafficking (VIP Guide) is being translated.

On 25 and 26 September 2002 a seminar on the Code of Police Ethics with a special accent on minority issues was organized by the Ministry of the Interior together with the Council of Europe and Helsinki Committee of Human Rights.

The Code of Police Ethics has been translated into Macedonian and is contained in the publication issued by the Helsinki Committee of Human Rights in Macedonia, Collection of International Instruments.

- With regard to the part "Protection of detained persons from ill-treatment", the Interior Ministry has prepared brochures to advise the persons detained or deprived of liberty in police procedure. These have been translated in seven languages: Macedonian, Albanian, Turkish, Roma, Serbian, Vlach and English. These brochures have been sent to all police establishments, accompanied by instructive cable. This cable again underlines to the police officers their duty and obligation to read their rights to detained persons in language that is understood by the detainee. Thus, persons treated in the police procedure will be advised they have the right to inform a family member (at the expense of the state); that they have the right to have medical exam; right to call a lawyer. In case the detained person does not have his own lawyer, he is entitled to be given the list of local lawyers to be found in police establishments. Concerning the payment of lawyer's fee, at this moment, in accordance with Macedonian laws, i.e., the Law on Criminal Procedure, free legal advice may be given to a certain category of persons charged for serious criminal offences, for which the relevant law provides prison sentence of more than 3 years. This is valid only in the court procedure, i.e., only after having been formally indicted. Concerning the right to call a doctor, if the detained person requires so, the police officers, on their part, will allow this. (2)

- In accordance with the CPT's recommendations, the Interior Ministry has prepared a custody register. This has been distributed to all police establishments on 30 January 2002, accompanied by instructive cable. It deals with the duty of police officers to make entries in the register. In this register, police officers must enter, in addition to the particulars of the detained or brought-in persons, the reasons for such a police action, the hour of being summoned or brought into the police establishment, as well as the hour when reasons ceased for this action, informing the person on the provisions of Art. 3 of the Law on Criminal Procedure, the hour when a family member has been notified (if requested), particulars of the notified or present lawyer, as well as particulars of the physician that examined the person (if this has been requested). (Annex 3)

- With regard to the part “Internal accountability procedures” (paragraphs 59-64), we would like to inform you that since 2001, simultaneously with the ongoing reforms in the police, the Internal Affairs Sector has grown into the Professional Standard Unit (“EPS”), by being involved in the ICITAP project of the US Government. As part of this project, the EPS has started to observe Orders 310 and 311, as provided for by the ICITAP project. However, these two Orders have not been fully applied and come into force, but, at this moment, the “step-by-step” approach is used in order to have account of the affirmative and negative sides in implementing these Orders. One of the reasons for their partial application is that some of their contents collide with present Macedonian laws. So, it is necessary first to amend our legislation. Another reason for additional delay is the fact that there has been too frequent replacement of the ICITAP representatives (three have been replaced thus far; the fourth is expected to arrive soon in our country). This has been causing some difficulties in the project realization, given the fact that a newly arrived representative needs some time to get acquainted with the ongoing stage of the project activities and with our domestic laws.

- Orders 310 and 311, as well as the EPS Operating Instructions, are fully open to complaints relating to policing, that may be filed by all citizens of the Republic of Macedonia, including also foreign nationals staying in the country.

- Due to the current legislation, the EPS still works via the Criminal Police Department i.e., upon checking a concrete case, the obtained information is transmitted to the Criminal Police Department for taking further action concerning criminal prosecution. However, if the legislation is amended and the ICITAP project is fully implemented, we cannot exclude the possibility for the EPS to carry out the investigation thoroughly and independently.

This EPS, when suspecting that a criminal offence has been committed by a police officer, either independently or together with the Criminal Police Department, if necessary, makes consultations with the competent office of the public prosecutor about gathering material evidence for valid court proceedings and about the appropriate formulation of the committed criminal offence.

The recommendations by CPT will be fully considered by EPS. Pursuant to the legal provisions in force, all what means improvement of the quality and efficiency of this EPS police unit, will be implemented in the general orders and the EPS Operating Instructions, with the whole intention of making the police a service to the citizens.

Comments by the Ministry of Justice

On several occasions the Ministry of Justice informed the Office of the Public Prosecutor of the Republic of Macedonia and other offices of the public prosecutor, the President of the Supreme Court of the Republic of Macedonia and the presidents of other courts, as well as the President of the Republican Judiciary Council, which present, in a detailed and exhaustive manner, the role of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), its competences and special powers, in accordance with the European Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- It has been agreed with the President of the Supreme Court of the Republic of Macedonia to organize a seminar with all representatives of the judiciary bodies and the Ministry of Interior on the role and competences of the CPT and on the implementation of the Convention and its Protocols.

- The Government of the Republic of Macedonia adopted, at its session of 3 September 2002, the Information on the need to establish a Commission for implementation of the Convention provisions in the justice field and the CPT recommendations. The Government made a decision to form this Commission, as independent and impartial working group, to be made up of experts with the commanding good knowledge on the Convention subject matter.

The task of the Commission would be to prepare expert opinion for the implementation of the recommendations and suggestions of the CPT, to seek information to be able to fulfill its duties, to draft comments, notes and information for the CPT.

Information requested in the Report

- The State Judicial Council

The Republican Judicial Council has not yet received any requests and petitions that would relate to treatment of detained persons, referring to torture and other unlawful treatment. (We expect additional information by the State Judicial Council as final result of the ongoing inquiry and check of the cases mentioned in the CPT Report).

Torture and other forms of ill-treatment

- The case of M. S. (Item 24)

1. The First-Instance Office of the Public Prosecutor for Skopje has enclosed the following communication:

- In the case of M. S., criminal charges have been filed against five officers of the Ministry of Interior.

The document does not contain information on the action of committing the crime and on its consequences. Therefore further inquiries are being made via the Ministry of Interior and the Clinical Center, where wounded M. S. was given medical treatment. Several urgent appeals have been made on previous sent inquiries; however no report has been provided on requested information yet.

2. The First-Instance Court Skopje II - Skopje has informed us, after checking the Court registers that criminal charges case have not been filed against this person.

- Cases related to LJUBOTEN (Item 28)

The First-Instance Court Skopje II - Skopje has informed us as follows:

The criminal case has been opened in this Court on the Ljuboten events registered under No. K 983/2001, against the accused: A. R., K. R., F. S., A. E., M. I., E. S., A. R., A. H., F. M., M. M., S. Z., B. Z., Lj. A., A. I., S. Z., B. M., and minor Z. R., all accused of criminal act: "Service in enemy army", as covered by Art. 322, paragraph 1, of the Criminal Code of the Republic of Macedonia.

The Criminal Chamber of the Court rendered Decision No. KS 360/01 dated 10 December 2001, whereby **criminal procedure had been stopped** against minor Z. R. of village Ljuboten, near Skopje, for the criminal offence: "Service in enemy army", **because of dropping criminal charges, in accordance with Decision No. 07-1713, dated 5 December 2001, of President of the Republic of Macedonia on granting pardon to persons who were members of the so-called NLA ("ONA") and detained, on granting criminal immunity, ("Official Gazette of the RM" No. 96/01).**

This presidential decree terminated the detention of minor Z. R. and he **was immediately set free.**

Also, the Criminal Chamber made Decision No. KS 363/01, dated 17 December 2001, **whereby criminal procedure was stopped** in this Court entered under No. K 983/01 against accused: A. R., K. R., F. S., A. E., M. I., E. S., A. R., A. H., F. M., M. M. and B. M., all of village Ljuboten, near Skopje, for the criminal offence: "Service in enemy army", **since the aforementioned persons are no more criminally prosecuted, in accordance with Decision No. 07-1754, dated 14 December 2001, of President of the Republic of Macedonia on granting pardon to persons who were members of the so-called NLA ("ONA") and detained, on granting criminal immunity, ("Official Gazette of the RM" No. 98/01).**

The court detention of all aforementioned accused persons was terminated with the cited presidential decree and **they were immediately set free.**

The Criminal Chamber of the First-Instance Court Skopje II - Skopje delivered verdict No. KS 373/01, dated 20 December 2001, whereby **the criminal procedure before this Court was stopped** also against accused S. Z., B. Z., Lj. A., A. I. and S. Z., all inhabitants of the said village of Ljuboten, near Skopje, initiated originally for the criminal offence: "Service in enemy army", pursuant to Art. 322, paragraph 1, of the Criminal Code, due to exemption of criminal prosecution, **in accordance with Decision No. 07-1761, dated 18 December 2001, of President of the Republic of Macedonia on granting pardon to persons who were members of the so-called NLA ("ONA") and detained, on granting criminal immunity, ("Official Gazette of the RM" No. 99/01).**

The court detention of all aforementioned accused persons was terminated with the cited presidential decree and **they were immediately set free.**

- Cases of N. A. AND A. Q. (Item 34)

- The case of N. A.

1. The First-Instance Office of the Public Prosecutor for Skopje has enclosed the following communication:

This Office has no data whatsoever on the N. A. case, or any other information that relates directly to the death of this person.

The Ministry of Interior has been collecting information on the circumstances of his death and whether, by what persons, and by what action it had been caused.

Post mortem forensic examination was conducted. However, the findings and opinions on his death until now have not been delivered to the competent court or to the competent office of public prosecution.

2. The First-Instance Court Skopje II - Skopje has informed us that no criminal case had been brought against said N. A.

- Case of A. Q.

1. The First-Instance Office of the Public Prosecutor for Skopje has enclosed the following communication:

This Office was given information on the A. Q. case on 13 August 2001 while processing the criminal charges against several persons, all inhabitants of village Ljuboten near Skopje, for the criminal offense: "Association for enemy activity", as provided for by Art. 342, paragraph 1, of the Criminal Code of the Republic of Macedonia. The said A. Q. was among the suspects. This person was not brought before the investigative judge, because at that time he was in a hospital, where he later died.

By order of the investigative judge, a post mortem forensic examination was conducted.

The Dissection Protocol of this procedure was not obtained, because the competent court failed to pay for the conducted post mortem.

A. Q. is one of the persons, inhabitants of the said village of Ljuboten, near Skopje, who were buried together, as a group, on 14 August 2001. Upon order of the investigative judge of the First-Instance Court Skopje II - Skopje, exhumation was conducted in April 2002.

The reasons of death will be disclosed upon receipt of the results of the said exhumation that also involved the participation of a foreign forensic expert.

II. The Court Chamber of the International Crime Tribunal for former Yugoslavia, upon request of the Prosecutor in this Court, made decision on 4 October 2002. By this decision, the Court has assumed the jurisdiction on the investigation and criminal prosecution with regard to following five cases:

- the Case of the NLA Leaders;
- the Case of the Construction Workers of the Mavrovo Company;
- the Case of the Lipkovo Dam;
- the Case of v. Neprosten; and
- the Case of v. Ljuboten.

The decision made by this Court Chamber requires the Government of the Republic of Macedonia to submit to the Prosecutor of the Hague Tribunal also all results of the conducted investigation and copy of the court files and of the verdicts of the national courts, relating to the five mentioned cases.

III. As part of the accelerated process of harmonization of the national legislation with that of the EU and with the highest European standards and as part of conducting through reforms of the legal system on the whole, changes are under way of the penal legislation, inter alia, in order to incorporate in the Criminal Code of the Republic of Macedonia, additional Articles on the prevention of torture. These Articles will prevent any unlawful action by authorized officials in the pre-trial and in the trial procedure.

Comments by the Ministry of Health

- The Ministry of Health has established a Commission for the implementation of the European Convention against Torture and inhuman or Degrading Treatment and Punishment in the health sector. The Ministry of Health will continue to undertake measures to provide for full implementation of the Convention in health care institution in the Republic of Macedonia .

- The Ministry of Health took note of the comment contained in item 18 of the Report and took necessary steps to avoid any complications during future CPT visits to health care establishments.