



CPT/Inf (2003) 5

**Report to the Government of  
"the former Yugoslav Republic of Macedonia"  
on the visit to "the former Yugoslav Republic of  
Macedonia" carried out by the European Committee  
for the Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment (CPT)**

**from 15 to 29 July 2002**

The Government of "the former Yugoslav Republic of Macedonia" has requested the publication of this report.

Strasbourg, 16 January 2003

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Copy of the letter transmitting the CPT's report

Strasbourg, 13 November 2002

Dear Ambassador,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report to the Government of "the former Yugoslav Republic of Macedonia" drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to "the former Yugoslav Republic of Macedonia" from 15 to 19 July 2002. The report was adopted by the CPT at its 49<sup>th</sup> meeting, held from 5 to 8 November 2002.

The CPT requests the authorities of "the former Yugoslav Republic of Macedonia" to provide **within three months** a response containing an account of action taken by them to implement the Committee's recommendations and setting out their reactions and replies to its comments and requests for information. The recommendations, comments and requests for information are listed in the Appendix to the report.

The CPT would ask, in the event of the above-mentioned response being forwarded in Macedonian, that it be accompanied by an English or French translation. It would also be most helpful if the authorities of "the former Yugoslav Republic of Macedonia" could provide a copy of the response in a computer-readable form.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours faithfully,

Silvia CASALE  
President of the European Committee for the  
Prevention of Torture and Inhuman  
or Degrading Treatment or Punishment

**Mr Zvonimir JANKULOSKI**  
Ambassador Extraordinary and Plenipotentiary  
Permanent Representative of "the former Yugoslav  
Republic of Macedonia"  
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## I. INTRODUCTION

### A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to "the former Yugoslav Republic of Macedonia" from 15 to 19 July 2002.<sup>1</sup> The visit was one which appeared to the CPT "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

The visit was essentially of a follow-up nature, its main purpose being to assess the progress made since the October 2001 visit to "the former Yugoslav Republic of Macedonia" in tackling the serious problem of ill-treatment of persons deprived of their liberty by the law enforcement agencies (Ministry of the Interior). An important related aim was to carry out a detailed evaluation of the action taken by the competent authorities in respect of certain recent cases where ill-treatment had been alleged.

2. The visit was carried out by the following members of the CPT:

- Eugenijus GEFENAS (Head of delegation)
- Mauro PALMA.

They were assisted by:

- Dan DERMENGIU, Associate Professor, Chair of Forensic Medicine Department, Medical Faculty "Carol Davila", Bucharest, Romania (expert)
- Mark KELLY, Director, Human Rights Consultants, Dublin, Ireland (expert)
- Fatmir KOVAČI (interpreter)
- Natalija KUNOVSKA (interpreter)
- Jasna ŠOPTRAJANOVA-VRTEVA (interpreter)

and were accompanied by Fabrice KELLENS, Head of Unit, and Bojana URUMOVA of the CPT's Secretariat.

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<sup>1</sup> This was the CPT's third visit to "the former Yugoslav Republic of Macedonia." The CPT commenced its programme of visits to "the former Yugoslav Republic of Macedonia" with a periodic visit which was carried out from 17 to 27 May 1998. The second was a police-focussed ad hoc visit which took place from 21 to 26 October 2001.

The report on the 1998 periodic visit and the Government's responses were published on 11 October 2001 (CPT/Inf (2001) 20 and 21).

**B. Establishments visited**

3. The delegation visited the following places of detention:

- Bit Pazar Police Station (Skopje)
- Mirkovci Police Station (Skopje area)
- Department for Illegal Trade and Smuggling (NTŠ)<sup>2</sup> (Skopje)
- Tetovo Police Station.

The delegation also went to the remand section of Skopje Prison in order to gather further information relating to deprivation of liberty by the police.

**C. Cooperation between the CPT and the authorities of "the former Yugoslav Republic of Macedonia"**

4. At central level, the delegation met Mitasin BEKIRI, Director of the Prisons Administration, Goran MITEVSKI, Director of the Bureau for Public Security, Igor DŽUNDEV, State Adviser for Multilateral Relations, as well as other senior officials from the Ministries of Justice, the Interior, and Foreign Affairs. The delegation also held talks with Branko NAUMOSKI, the Ombudsman.

The CPT wishes to express its appreciation for the effective coordination provided during the visit by its principal liaison officer, Svetlana GELEVA, Head of Political Affairs Sector (Multilateral Relations), Ministry of Foreign Affairs, and to acknowledge the efforts made by the other liaison officers to assist the delegation.

5. The CPT was pleased to note a considerable improvement in cooperation with the judicial authorities during the visit, as compared to the situation encountered in October 2001. In particular, the officials consulted (the President of Tetovo Basic Court and an investigating judge from the same court) provided all the requested documentation and engaged in open discussions with members of the delegation.

The Public Prosecutor in Tetovo initially refused to discuss the subjects which were raised by the delegation regarding the Ratae incident, a case involving inter alia the alleged ill-treatment of a person deprived of his liberty by law enforcement officials and, as such, falling squarely within the CPT's mandate (cf. paragraphs 19 to 25 below). The matter was eventually resolved through the intervention of Ms Geleva and the Prosecutor-General; nevertheless, it again highlights **the need for State Parties to ensure that all the relevant authorities, including prosecutors and judges at every level, receive detailed information on the CPT's terms of reference and their obligations vis-à-vis the Committee.**

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<sup>2</sup> In Macedonian, this department is called *Nedozvolena Trgovija i Šverc*.

**The CPT recommends that the information circulated to judicial and prosecuting authorities clearly specify that the Committee, a body set up with a view to strengthening the protection of persons deprived of their liberty from torture and other forms of ill-treatment, is empowered to take a direct interest in the activities of the authorities which conduct official investigations and bring criminal charges in cases involving allegations of ill-treatment, and that the provision to the Committee of information on this matter is an obligation under the Convention (cf. Article 8 (2) (d) of the Convention).**

6. On the whole, cooperation was good in the police establishments visited. A notable exception was the 80-minute delay before access was provided to the Skopje City Department of Illegal Trade and Smuggling; this occurred in spite of the Instruction issued to all the organisational units of the Ministry of the Interior by the Minister on 10 July 2002, which directed staff in those units to allow the delegation access "without unnecessary delay".

Having regard to Article 8, paragraph 2, sub-paragraph c, of the Convention, **the CPT trusts that the relevant authorities will take the necessary steps to ensure that such a situation does not recur.**

7. As during previous visits, the cooperation extended by the management, staff and medical team in Skopje Prison was very good.

8. The principle of cooperation set out in the Convention is not limited to steps taken to facilitate the task of a visiting delegation. It also requires that decisive action be taken, including at the highest political level, to improve the situation in the light of the Committee's key recommendations.

At the end of the visit, the delegation informed the national authorities that it was particularly concerned by the persistence of ill-treatment of persons deprived of their liberty by law enforcement officials, a problem to which the response of the relevant authorities has, in certain cases examined by the delegation, been woefully inadequate. Information provided by the Basic Public Prosecutor's Office and Basic Court II (both in Skopje) at the end of the visit only serves to exacerbate the CPT's concerns regarding the problem of impunity.

The CPT must stress that if such a state of affairs were to persist, it would be obliged to consider having resort to Article 10, paragraph 2, of the Convention<sup>3</sup>.

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<sup>3</sup> Article 10, paragraph 2 reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. New evidence of torture and other forms of ill-treatment of persons detained by the law enforcement agencies

9. As in October 2001, the delegation collected information from a variety of sources concerning ill-treatment - which, in a number of cases, was of such a severity that it could be considered to amount to torture - allegedly inflicted upon persons deprived of their liberty by security forces under the Ministry of the Interior, including regular police, criminal police (including from the Department of Illegal Trade and Smuggling, or NTŠ), personnel from the Directorate for Security and Counterintelligence (UBK),<sup>4</sup> special police units ("Lions" and "Tigers") and, in some cases, police reservists.

The vast majority of the cases of ill-treatment examined by the delegation involved ordinary criminal suspects. This only serves to confirm one of the points made in the previous visit report,<sup>5</sup> namely that it would be quite wrong to assume that the problem of ill-treatment by law enforcement officials is confined to persons suspected of offences against the State, in connection with the conflict in 2001.

The information gathered included numerous allegations of beatings, some of them severe or sustained enough to induce repeated loss of consciousness and/or lasting sequelae. Apart from allegations of punches and kicks on various parts of the body, there were many allegations of beatings with batons, metal rods, wooden sticks and baseball bats, which involved - in a number of cases - the infliction of repeated blows on the gluteal region, the soles of the feet and/or the palms of the hands. Other types of ill-treatment alleged included sleep deprivation during prolonged periods and mock executions. In other words, the panoply of methods of ill-treatment alleged was much the same as that encountered during previous CPT visits to "the former Yugoslav Republic of Macedonia."

In a significant number of the cases, the delegation's doctors examined medical documentation and/or made direct medical observations which were consistent with the allegations received. In particular, an examination of the records of all remand prisoners held at Skopje Prison at the time of the visit revealed that a number of them had, on their admission to the establishment, displayed injuries and/or alleged that they had been ill-treated by police officers. The following cases are but two illustrative examples (involving persons suspected of ordinary criminal offences) dating from 2002.

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<sup>4</sup> In Macedonian, the Directorate is called *Uprava za bezbednost i kontrarazuznavanje*.

<sup>5</sup> Cf. paragraph 39 of CPT/Inf (2002) 6.

Case 1

10. A prisoner alleged that he was assaulted by police officers at the time of his arrest on 11 February 2002 and whilst detained at Mirkovci and Bit Pazar Police Stations,<sup>6</sup> in order to extract a confession. He claimed that, after he had surrendered to a large group of police officers (with unmuzzled police dogs) who handcuffed him, he was pistol-whipped on the street and in the vehicle in which he was brought to Mirkovci police station. At the station, he was allegedly punched and struck with batons and a baseball bat on various parts of the body by plainclothes police officers, and was made to kneel, handcuffed to a desk, and beaten on the soles of both feet. He claimed that, once he was transferred to Bit Pazar Police Station, he was again beaten in various offices. The beatings had allegedly caused him to lose consciousness on several occasions over the two-day period he spent in police custody.

The delegation was able to verify that the person had been held at Mirkovci and Bit Pazar Police Stations during the two-day period in question, and that he had accurately identified one of the officers who had questioned him.

The person was admitted to Skopje Prison on 13 February 2002. After the initial search, a prison officer recorded the following: "bruises on the body, the right ear and the left eye. According to him, he was beaten in police custody." The prison doctor noted in the person's medical file that on 14 February 2002, he displayed haematomas under the left eye, on both ears, on the lower part of the left arm (diameter 7-8 cm), as well as on each of the palms and soles.

A forensic medical examination was ordered by the relevant investigating judge and carried out on 15 February 2002. The report by the forensic doctor recorded that the person "complains of injuries on the entire body sustained in a police station a few days ago. He feels pain around the left eye, the entire scalp. His palms are painful, especially around the left thumb. He also complains of pain in the soles." The report went on to indicate that "each hand is painfully sensitive. No changes observed on examining the back of the hands, but palms are swollen with diffuse, irregular violet-reddish discolouration with blurry contours. At the base of the left thumb there is a 1 cm peeling with scab beginning to form, surrounded by a 2 x 1 cm area of redness." As for the soles, they were found to display "diffuse violet discolouration on the distal part." The report also recorded a violet discolouration on the outer side of the upper left eyelid, becoming yellowish towards its lower edge; a discrete diffuse haematoma with blurry contours on the lower left eyelid; a painful haematoma covering the upper two-thirds of the right ear; a 4 x 1 cm haematoma on the front of the left shoulder and a 2 x 1 cm haematoma on its back; a violet-yellowish patch measuring 3 x 1.5 cm above the left elbow, with long streaked violet bruises within; a 9 x 5.5 cm area stretching from the right shoulder along the front part of the upper arm, yellowish in its upper half and becoming purple below; a 3 x 3 diffuse yellowish-violet haematoma around the right elbow; and a discrete yellow discolouration on the medial part of the right knee. The forensic doctor concluded that "each of the injuries described above occurred through blows with blunt hard objects [...] one could say that the injuries are a few days to one week old. Each of them individually, and taken together as a whole, constitute physical injuries in the criminal-legal sense."

In the view of the delegation's doctors, the injuries recorded in the above-mentioned forensic report are fully consistent with the person's allegations of ill-treatment by the police.

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<sup>6</sup> Both police stations are under the authority of the Skopje Sector for Internal Affairs.



Case 2

11. A prisoner alleged that he was struck by a police officer at the time of his apprehension on 28 June 2002 and that, after being taken to the Skopje City Department of Illegal Trade and Smuggling (NTŠ),<sup>7</sup> two plainclothes police officers used a metal rod of the approximate thickness of a finger to inflict some 30 blows on the underside of the forearms. Further, he alleged that he had been made to lean forward with his arms stretched towards a wall, while the officers struck him repeatedly on the buttocks using the same instrument.

On his arrival at Skopje Prison on 29 June 2002, the person was searched by prison officers, one of whom recorded that "during the search, bruises were visible on both arms and buttocks. Allegedly he was beaten in the police station." The initial entry in the person's prison medical file recorded that he had sustained "injuries while [in] custody. Haematoma on both lower arms with excoriations and on regio glotalis - over entire region." A further medical examination had taken place on 1 July 2002; it was indicated in the file that "upon a court order, the person has been transferred to a specialist in forensics. The findings were communicated to the court. Prescribed Heparthromin (for bruises), ointment for scratches."

When examined on 17 July 2002 by one of the delegation's doctors, the person displayed multiple pinkish linear bruises on forearms (essentially with a longitudinal disposition, some overlapping, dimensions ranging from 3 x 1 to 11 x 1 cm); on the right gluteal region, a 15 x 1 pink-violet bruise; and on the left gluteal region, 2 pink violet bruises, measuring 3 x 1.5 and 11 x 1 cm respectively.

In the view of the delegation's doctors, all of those injuries are consistent with the person's allegations of having been beaten with a thin blunt instrument in the manner which he described.

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12. On the basis of all of the information obtained by the CPT before and during the July 2002 visit, the Committee can only conclude that the physical ill-treatment of persons deprived of their liberty by the law enforcement agencies in "the former Yugoslav Republic of Macedonia" continues to be a serious problem in 2002, four years after the first periodic visit when similar conclusions were reached (cf. paragraph 16 of CPT/Inf (2001) 20).

It should be added that after the July 2002 visit, the CPT has continued to receive allegations of ill-treatment by law enforcement officials.

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<sup>7</sup> The delegation was able to verify that the person had been held in the establishment concerned on that date.

## **B. Action to combat torture and ill-treatment**

### **1. A statement at the highest political level**

13. In its previous visit report, the CPT recommended that a formal statement at the highest political level be addressed to law enforcement officials, reminding them to respect the rights of persons in their custody and that the ill-treatment of such persons will be the subject of severe sanctions (cf. paragraph 40 of CPT/Inf (2002) 6). In this connection, the Director of the Bureau of Public Security indicated on 19 July 2002 that "competent senior police officers are taking certain measures to point out how persons deprived of their liberty should be treated." However, during the ad hoc visit, the delegation found no evidence that a clear message emanating from the highest political level and unequivocally rejecting ill-treatment had recently been conveyed to police officers. The urgent need for such a message was confirmed by the delegation's findings; while certain police officers met by the delegation indicated that they adhered to basic human rights precepts, others openly displayed a mentality which was entirely at odds with that required for the prevention of ill-treatment. As one such officer opined, "some of those we have to deal with deserve to be killed, not just beaten".

**The CPT calls upon the national authorities to ensure that a formal statement emanating from the highest political level be delivered to law enforcement officials, impressing upon them that the ill-treatment of detained persons is an affront to the values which constitute the very foundations of the State and will not be tolerated. Such a statement should make clear that any law enforcement officials who disregard this principle will be subject to severe sanctions.**

### **2. Combating impunity: test cases for accountability of law enforcement officials**

14. As the CPT has stressed in the reports on its 1998 and 2001 visits,<sup>8</sup> one of the most effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by all competent authorities of all relevant information regarding alleged ill-treatment which may come to their attention, whether or not that information takes the form of a formal complaint; in this connection, investigating judges and prosecutors are in a particularly privileged position.

Under Macedonian law, all persons deprived of their liberty must be brought before an investigating judge within 24 hours of being deprived of their liberty (cf. however paragraph 39). This provides a valuable opportunity for persons deprived of their liberty to indicate whether or not they have been ill-treated by law enforcement officials. Further, even in the absence of an express complaint, the judge is in a position to take action in good time if there are other indications (e.g. visible injuries) that ill-treatment might have occurred.

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<sup>8</sup> Cf. paragraph 21 of CPT/Inf (2001) 20 and paragraph 56 of CPT/Inf (2002) 6.

15. During this visit, the delegation directly pursued the question of the contribution made by judicial and prosecuting authorities to combating impunity. In this connection, the delegation received documents concerning certain specific cases raised in the 2001 report. Further, the delegation examined the extent to which law enforcement officials had been held accountable for their actions during two recent incidents, the first of which occurred near the village of Ratae (Tetovo area) in December 2001 and the second in the eastern town of Vinica in the early hours of 15 July 2002. The findings are set out in the following sub-sections.

a. follow-up of accountability issues raised in the October 2001 visit report

16. In its 2001 visit report, the CPT concluded that there are instances where investigating judges and public prosecutors are not exploiting the possibilities open to them to make an effective contribution to the prevention of ill-treatment by law enforcement officials. One basis for this conclusion was the case file from Basic Court II in Skopje concerning 27 persons who had been remanded in custody following an operation by Government security forces in Ljuboten in August 2001; despite indications - clearly apparent during the initial court appearance<sup>9</sup> - that certain of them may have been ill-treated by the police, Basic Court II stressed that "there has been no decision in respect of instituting court procedure against maltreatment by the law enforcement organs." The CPT requested information on the reasons for the absence of such a decision, given the *prima facie* evidence of ill-treatment,<sup>10</sup> as well as requesting additional information concerning decisions taken by prosecuting authorities in another case involving ill-treatment (that of M. S.).<sup>11</sup> Further, the Committee called upon the national authorities to cause to be carried out a thorough criminal inquiry into the deaths of two persons (A. Q. and N. A.) which directly followed a period in police custody and where there were clear suggestions that the deaths resulted from beatings.<sup>12</sup>

On 19 July 2002, the Ministry of Justice furnished to the delegation certain documents prepared by the Basic Public Prosecutor in Skopje and by the President of Basic Court II in Skopje, in connection with the matters referred to in the previous paragraph.

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<sup>9</sup> The case file from Basic Court II in Skopje recorded allegations of police ill-treatment made by certain of those persons on their initial appearance before an investigating judge on 14 or 15 August 2001, as well as noting injuries which were observed, during the initial court appearance, on the face and body on one of them. The 27 persons were at first charged with terrorism (section 313 of the Criminal Code); a few weeks later (7 September 2001), an indictment was brought against 17 of them for serving in an enemy army (section 322 of the Criminal Code). By 20 December 2001, each of those persons had been amnestied and released.

<sup>10</sup> Cf. paragraph 28 of CPT/Inf (2002) 6.

<sup>11</sup> Cf. paragraph 24 of CPT/Inf (2002) 6.

<sup>12</sup> Cf. paragraphs 30 to 34 of CPT/Inf (2002) 6).

17. The document dated 19 July 2002 from the Basic Public Prosecutor in Skopje indicated that criminal charges have been filed against five officers of the Ministry of the Interior in connection with the case of M. S. (who was severely ill-treated on 8 February 2001); however, due to "missing data", "verification is being carried out via the Ministry of the Interior and the Hospital where [M. S.] was treated [...] Several reminders were made following the requests for information, but a report containing the required data has yet to be received."

As for the death of A. Q. (which occurred on 13 August 2001), the document referred to the exhumation of his body which occurred in April 2002 and indicated that the cause of his death would be made known once the results of this second autopsy ("which involved a foreign forensic doctor") are received. The document made no reference to the autopsy report dated 15 August 2001, prepared by the Institute for Forensic Medicine in Skopje, and which concluded that the cause of his death was "traumatic shock" (cf. paragraph 30 of CPT/Inf (2002) 6).

As regards the inquiry into the death of N. A. (which occurred on 14 August 2001), the document indicated that "there is no data, report, or any other information in immediate connection with his death. For those reasons, the Ministry of the Interior is collecting information on the circumstances of his death [...] An autopsy has been performed [...] though the report] has not been furnished to the Court and the Public Prosecutor."

To sum up, the manner in which the inquiries into the above-mentioned cases are proceeding can hardly be described as expeditious. As regards, more particularly, the inquiry concerning N. A., the CPT was astonished to learn that the autopsy report has not yet been furnished to the Public Prosecutor. This highly informative 12-page document was examined by the CPT's delegation during the October 2001 visit (cf. paragraph 32 of CPT/Inf (2002) 6).

18. The document dated 18 July 2002 from the President of Basic Court II in Skopje is even more troubling.

With reference to action taken in respect of the ill-treatment of M. S., the document limits itself to indicating that "no criminal case has been formed against M. S." The Committee's question regarding the reasons for the absence of a decision to institute a court procedure "against maltreatment" by law enforcement officials of the persons arrested following the Ljuboten operation was not answered; instead, it was indicated that the persons concerned were amnestied and released.

The President of Basic Court II also affirmed in the document that "no criminal case has been instituted against N. A." (a person who died on 14 August 2001) and, as regards the (13 August 2001) death of A. Q., he noted: "An investigation has been opened against A. Q. under section 313 of the Criminal Code (terrorism). This case has been completed by the investigating judge and forwarded to the Public Prosecutor on 25 September 2001 [...] We point out that following a verification of the criminal registers it has been concluded that there is no criminal case against A. Q." In other words, the Committee's request that a thorough criminal inquiry be carried out into the deaths of these two persons is not addressed.

The CPT has already made clear (cf. paragraph 34 of CPT/Inf (2002) 6) that such a reply can only cast doubt on the integrity of the system of accountability for law enforcement officials into "the former Yugoslav Republic of Macedonia."

b. the incident at Ratae

19. On 13 December 2001 a fatal shooting incident occurred at around 2.30 pm on a road connecting the villages Džepčište and Ratae near a checkpoint manned by members of the "Lions" Special Police Unit.<sup>13</sup> The victim, S. A., was travelling on the road in a tractor, together with his son N. A., when a shot fired by one of the officers from the checkpoint hit him in the leg; he was dead on arrival at the hospital at 3.30 pm.<sup>14</sup> Meanwhile, the son was detained at the same checkpoint, then taken to the police headquarters in the village of Ratae, where he was apparently placed overnight in a basement or a bunker. On the following day, he was reportedly taken to unknown locations in Tetovo and Skopje. At some point he was handed over to Tetovo Police officers, and remained in detention until 15 December 2001, when he made a statement, in the presence of the investigating judge and the Public Prosecutor, that he was beaten during the time he was in police custody.<sup>15</sup> He was released from the court at approximately 5 pm on that day.

The delegation decided to examine the extent to which law enforcement officials had been held accountable for their actions in the Ratae case. In particular, it sought to assess whether an effective investigation had been carried out into: the fatal shooting of S. A.; the detention of N. A. for at least twice the lawful limit;<sup>16</sup> and the alleged ill-treatment by law enforcement officials of the latter. In order to make its assessment, the delegation interviewed the President of the Basic Court in Tetovo, an investigating judge from the same Court, the Tetovo Public Prosecutor, and officers from the Tetovo Criminal Police; it also examined the relevant files.

20. It was confirmed at the Basic Court in Tetovo that the only "investigative act" (*istražno dejstvo*) undertaken by the investigating judge, following the Public Prosecutor's proposal of 19 December 2001 to investigate the homicide (*ubistvo*) of S. A. by an unknown person, has been to send a letter on 6 March 2002 to the police, requesting information. The police responded to the judge's request within a week by providing certain forensic data which had been available since 18 December 2001.

By mid-July 2002 (some seven months after the incident), no further investigative acts into the homicide had been undertaken by the judge; further, although he was aware of information regarding the alleged ill-treatment and unlawful detention (i.e., in excess of 24 hours) of N. A., the judge had not undertaken any action to investigate those matters, apparently because he had not received a corresponding "proposal for action" (*predlog za prevzemanje na oddelni istražni dejstvija*) from the Public Prosecutor.

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<sup>13</sup> The full name of the Unit is "Special Police Unit for Rapid Intervention" (*Specijalna policajska jedinica za brzi intervencii*).

<sup>14</sup> Cf. Official Note on person injured with firearms, dated 13 December 2001 (Tetovo Criminal Police).

<sup>15</sup> Cf. Registration of the questioning of an eyewitness No. 168/01 (document dated 15 December 2001 furnished by the Basic Court in Tetovo).

<sup>16</sup> Persons may be held by the police for up to 24 hours before being presented to the investigating judge (cf. paragraph 5 of CPT/Inf (2001) 20).

21. As mentioned in the preceding paragraph, the Tetovo Public Prosecutor did issue a "proposal for action" on 19 December 2001 to the investigating judge concerning the homicide of S. A.; at the same time, however, he is recorded as having expressed the following opinion to the Tetovo Criminal Police (apparently, without coming into possession of any additional material facts):

"The opinion of the Public Prosecutor regarding the incident viewed from a criminal-legal perspective is that the security forces acted in accordance with the Regulations of the Ministry of the Interior, the Law on Internal Affairs, applying sections 34, 35 and 37 thereof.<sup>17</sup>

The Prosecutor explained that the reported crime is not in breach of the law, that it was acted according to military rules and regulations, for those reasons a breach of the law is excluded, and [the incident] does not constitute a crime, because one of the elements which make up a crime is missing, i.e. the essence of a crime is not present."<sup>18</sup>

As regards the alleged ill-treatment and unlawful detention of N. A., the Public Prosecutor had taken no action whatsoever, despite being present (on 15 December 2001) when N. A. provided a statement concerning those matters. More particularly, the Public Prosecutor had made no "proposal to take action" to the investigating judge in respect of N. A.

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<sup>17</sup> Section 34:

The authorised official may use means of coercion specified by an act of the Government of the Republic of Macedonia in order to re-establish public order and peace following a major disturbance, to overcome the resistance of a person who disturbs the public order and peace or a person who should be apprehended, detained or deprived of his liberty, to repel an attack against himself, another person or an object which is being protected, to forcibly remove persons from a given area, or against a person who does not act in accordance with an order given by the authorised official.

Section 35:

The authorised official will use firearms, if he cannot, by using other means of coercion:

- 1) protect the life of citizens;
- 2) repel an immediate life-threatening attack against himself;
- 3) repel an attack against an object or a person being protected;
- 4) prevent an escape of a person caught perpetrating a crime punishable by a minimum prison term of five years, or an escape of a person deprived of his liberty or a person against whom an arrest warrant is issued relating to such a crime.

Section 37:

Before means of coercion or firearms are used in cases under sections 34 and 35 of this Law, the authorised official has the duty to warn loudly the person against whom he is to use that means or firearms.

<sup>18</sup> Cf. Official Note dated 21 December 2001 by the Head of the Criminal Police in Tetovo on consultations with the Public Prosecutor regarding the incident in the village of Ratae. Those consultations took place on 17, 20 and 21 December 2001.

22. Discussions with the Tetovo Criminal Police and an examination of the relevant police files revealed that the criminal inspector who was in charge of the investigation had failed to perform a number of reasonable steps available to him to secure the evidence concerning the Ratae incident. In particular, no note had been made of the names of any of the "authorised officials" interviewed regarding the Ratae incident; no interviews had been conducted with any of the "authorised officials" who were present when S. A. was shot (including the officer who fired the fatal shot); no interview had taken place with N. A., the only other eyewitness to the incident identified thus far; and no steps had been taken to seize the firearm used by the perpetrator of the shooting.

23. Senior officials from the Ministry of the Interior have been aware of the circumstances of the incident from an early stage. The Ratae shooting was promptly (by telegram on 13 December 2001) brought to the attention of the Director of the Bureau for Public Security; further, an inspection of the site of the incident on 15 December 2001 in the presence of international monitors (OSCE, NATO's Task Force Fox, European Union Monitoring Mission and ICRC) was attended by the Head of the Police Division.

24. The delegation communicated its concerns regarding the investigation of the Ratae incident at the final talks with the national authorities on 19 July 2002. In this connection, the Director of the Bureau for Public Security remarked that the incident had taken place in a crisis region, where armed activity was taking place, and during a time of difficult winter weather conditions (heavy snowfall, very low temperatures); that the authorities withheld "no secrets" regarding the case from representatives of international organisations; and acknowledged that the length of detention of N. A. had exceeded the legal limit, but that he was released as soon as international organisations raised concerns. However, the Director of the Bureau for Public Security did not address the shortcomings of the police investigation.

25. To sum up, the information gathered by the delegation related to the Ratae case (from judicial, prosecutorial and police files, as well as through discussions with the relevant authorities) has revealed a catalogue of inaction in the face of clear allegations of police misconduct. Judges, prosecutors and police officers have failed to carry out an investigation worthy of the name as regards: a fatal shooting by an - as yet unidentified - police officer; the detention of a person for at least twice the limit for a lawful detention; and unambiguous statements by a detained person that he had been ill-treated.

c. the incident at Vinica

26. On 15 July 2002, reports came to the attention of the delegation that a serious incident had taken place in the eastern town of Vinica, involving a number of officers from the "Tigers" Unit for Special Assignments. According to those reports, one person died after having been severely beaten by officers from the unit, and certain other persons suffered serious injuries. The Head of the CPT's delegation addressed a letter to the liaison officer on 16 July 2002 requesting further information regarding the incident.

The liaison officer provided detailed information on the Vinica incident on 17 July 2002. The information she furnished included: a decision signed by the Director of the Bureau for Public Security to suspend 14 members of the Unit for Special Assignments; his formal proposal to initiate disciplinary proceedings against them; a decision (under cover of the Minister) to form a Commission for the purpose of examining the circumstances under which force was used by the officers, including whether such use was justified and legitimate; criminal charges against each of the officers under section 132, paragraph 1, of the Criminal Code (participation in a fight resulting in loss of life or serious bodily harm); official notes of statements taken from the hospitalised individuals, eyewitnesses, and each of the officers; a sketch of the scene prepared by the Forensics Department; a list of items confiscated from the officers; a memorandum from the Kočani Public Prosecutor indicating that a proposal for action and for remand in custody had been submitted to the Basic Court in Kočani; and a memorandum from the President of the Basic Court in Kočani informing about activities already undertaken by the investigating judge (inspection of the site of the incident, request for an autopsy, remand in custody of the suspected officers).

27. The Committee welcomes the swift initial response delivered by the competent authorities in this case, which demonstrates that where the requisite will exist, Macedonian law can provide a suitable framework for the relevant authorities to react to alleged ill-treatment by police officers. **The CPT would like to receive an update of the relevant proceedings in the Vinica case.**

d. assessment and action proposed

28. Inaction by investigating judges, prosecutors and investigating police officers can foster a climate in which police officers minded to ill-treat persons deprived of the liberty can quickly come to believe - with very good reason - that they can do so with impunity.

The problem which the delegation clearly identified during the July 2002 visit is that, even when detained persons do indicate to an investigating judge and/or a public prosecutor that they have been ill-treated, there is no guarantee that any effective investigation will be set into motion. If this is to change, then investigating judges and prosecutors should be fully sensitised to the important obligations which are incumbent upon them. In every case where investigating judges and public prosecutors become aware of information suggesting that a person may have been ill-treated, they have a duty to act.

29. It should be recalled that the Macedonian legal framework clearly prohibits torture and inhuman or humiliating treatment or punishment;<sup>19</sup> such acts amount to criminal offences (torture and ill-treatment in the performance of a duty) which are prosecuted *ex officio*.<sup>20</sup> Moreover, evidence in criminal cases obtained in an unlawful manner (i.e., through ill-treatment or coercion) may not be used in court.<sup>21</sup>

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<sup>19</sup> This prohibition applies at all times, including during states of war and emergency (cf. Articles 11 and 54 of the Constitution).

<sup>20</sup> Cf. sections 142 and 143 of the Criminal Code.

<sup>21</sup> Cf. sections 10 and 15 (2) of the Code of Criminal Procedure.



30. Under Macedonian law, when there are grounds for suspicion that a criminal offence (which is prosecuted *ex officio*) has been committed, police officers have the duty to take the necessary measures to find the perpetrator, to ensure that the perpetrator or accomplice does not abscond or hide, to find and secure evidence, as well as to collect any information which may be of use for the criminal proceedings.<sup>22</sup>

The Committee considers that, for a criminal investigation into possible ill-treatment by law enforcement officials to be effective:

- the persons responsible for and carrying out the investigation should be independent from those implicated in the events;
- the investigation must be capable of leading to a determination of whether force used was or was not justified under the circumstances and to the identification and, if appropriate, the punishment of those concerned;
- all reasonable steps should be taken to secure evidence concerning the incident, including *inter alia* eyewitness testimony, forensic evidence, and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death;
- the investigation must be conducted in a prompt and reasonably expeditious manner;
- a sufficient element of public scrutiny of the investigation or its results should be required, to secure accountability in practice as well as in theory.<sup>23</sup>

**The CPT recommends that the relevant authorities take the necessary steps to ensure that the foregoing precepts are systematically applied in practice.**

31. The Macedonian Code of Criminal Procedure also obliges prosecutors to pursue the perpetrators of criminal offences. For crimes which are prosecuted *ex officio* (cf. paragraph 29 above), the public prosecutor is competent to take the necessary steps to find the perpetrator of a crime and to request an investigation.<sup>24</sup> In particular, the prosecutor is empowered to make a "formal proposal to take action" ("*predlog za prevzemanje na oddelni istražni dejstvija*") to the investigating judge requesting that specific investigative activities be undertaken (e.g. securing photographic and/or ballistic evidence, posing specific questions at hearings of eyewitnesses, ordering that an autopsy or an exhumation be performed, etc.).<sup>25</sup> There is no need for prosecutors to wait until they receive a formal written complaint before they can make such a proposal.

**The CPT recommends that formal instructions be issued to all public prosecutors emphasising that, in every case where it comes to a prosecutor's attention that a person may have sustained injuries while in the custody of law enforcement officials (and whether or not the person concerned makes a formal complaint), the prosecutor must issue a "formal proposal to take action" ("*predlog za prevzemanje na oddelni istražni dejstvija*") to an investigating judge in order to establish the facts of the case.**

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<sup>22</sup> Cf. sections 140 (1) and 142 (1), *ibid.*

<sup>23</sup> Cf. in this regard the following judgments of the European Court of Human Rights: *Mc Shane v. United Kingdom*, N°43290/98; *Kelly and others v. the United Kingdom*, N°30054/96; *Hugh Jordan v. United Kingdom*, N°24746/94; *McKerr v. United Kingdom*, N° 28883/95; *Sevtap Veznedaroğlu v. Turkey*, N° 32357/96; *Assenov and others v. Bulgaria*, N° 90/1997/874/108. See also Sections 22 and 23 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (7 September 1990).

<sup>24</sup> Cf. section 42, paragraphs (1) and (2)(2), of the Code of Criminal Procedure.

<sup>25</sup> Cf. section 148 (1), *ibid.*

32. When investigating judges receive a "proposal for action" from a public prosecutor, action must actually follow.<sup>26</sup> In particular, the necessary steps must be taken to ensure that investigating police officers take measures to protect and preserve evidence, including by taking statements, seizing instruments which may have been used in ill-treatment, and promptly informing the judicial authorities about the progress of their investigative work. Investigating judges may also undertake other related investigative activities:

"If necessary, the investigating judge will conduct other investigative activities connected or derived from these."<sup>27</sup>

"If in the course of the investigation it becomes clear that the procedure should be expanded, to include another criminal offence, or against another person, the investigating judge will inform the public prosecutor. In such cases, investigative activities which cannot be delayed may be undertaken, but the public prosecutor must be informed of everything which is undertaken."<sup>28</sup>

**The CPT reiterates its recommendation made in its previous visit report (cf. paragraph 58 of CPT/Inf (2002) 6) that, whenever criminal suspects brought before an investigating judge at the end of police custody allege ill-treatment by the police, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.**

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<sup>26</sup> If the investigating judge disagrees with a particular proposal to take action, the decision is taken by a three-member council of the court of original jurisdiction (cf. section 160 (1), *ibid.*)

<sup>27</sup> Cf. section 157 (1), *ibid.*

<sup>28</sup> Cf. section 158 (2), *ibid.*

### **3. The role of the prison service in the prevention of ill-treatment**

33. An efficient prison service can undoubtedly contribute to the prevention of police ill-treatment, in particular in establishments which represent points of entry into the prison system. In this context, the CPT's delegation examined in detail the procedures followed on admission of newly-arrived prisoners at Skopje Prison and the action taken by the prison management when possible cases of police ill-treatment were brought to light.

34. After verification of the validity of the detention order issued by the judge/court, the prison officer in charge of the reception unit systematically asked the prisoner concerned to undress (in the shower room adjacent to the unit office) and a detailed strip-search was conducted, either by a male or female prisoner officer, depending on the prisoner's gender. On that occasion, every sign of visible injuries was recorded on a special note attached to the prisoner's administrative file. In such cases, the prisoner concerned was also offered to write a statement summarising the origin of the injuries on a separate piece of paper, which was usually accepted without reluctance. Every case of injury was reported to the Director, either immediately by telephone in serious cases, or the next day by transmission of the prisoner's individual file. Following the screening by the reception unit, prisoners were seen at once by the doctor if the latter was present in the prison, or within 24 hours at the latest.

A careful examination of the administrative files of the 107 remand prisoners present in the institution during the July 2002 visit revealed that this procedure was scrupulously followed.

35. Information regarding specific cases of alleged ill-treatment was recorded by the prison doctor and forwarded to the Director on a form entitled "Medical finding and opinion" (Form No. 4). The delegation was informed that previously, copies of that form were sent to the relevant investigating judge; however, since the first half of 2001, the judicial authorities were - at their own behest - no longer being informed of findings relating to possible police ill-treatment.<sup>29</sup> Clearly, this is a matter of serious concern; if observations made on a person's admission to the prison system regarding police ill-treatment are not transmitted to the relevant judicial authorities, an otherwise meritorious system of recording is confined to a vacuum.

36. The CPT considers that the relevant prosecutors/investigating judges should be systematically informed by the Prison Director, in writing, of any findings relating to possible cases of police ill-treatment discovered on a person's admission to the prison system. The information transmitted should contain the detailed description of the injuries taken by the head of the reception unit, the statement made by the prisoner regarding their origin and the certificate prepared by the prison doctor (cf. the following paragraph).

**The CPT recommends that such an information procedure be immediately re-instituted at Skopje Prison. In addition, the CPT invites the authorities to set up a central register at the reception unit, with a view to recording all findings mentioned in paragraph 34 above.**

**More generally, such procedures should be followed throughout the Macedonian prison system.**

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<sup>29</sup> Apparently, certain prosecutors/investigating judges had complained to the Director that prisoners' lawyers were "exploiting" such findings in the court proceedings.

37. As already indicated, the information gathered by the delegation showed that all newly-arrived prisoners were generally subject to a medical examination by a doctor within 24 hours of admission. However, injuries observed during such examinations and allegations made by the prisoners being examined were not always recorded in a sufficiently detailed manner (in some cases, the medical doctor's findings were less detailed than those recorded at the reception unit).

**The CPT recommends that the record drawn up by prison doctors following a medical examination of a newly-arrived prisoner contain:**

- (i) a full account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment);**
- (ii) a full account of objective medical findings based on a thorough examination, and**
- (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings.**

**Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the detained person and his lawyer.**

38. The CPT's delegation also noted with some concern that prison officers were systematically present during all medical consultations at the Skopje Prison Medical Service. The CPT has serious misgivings about this approach. It acknowledges that special measures may be required during medical examinations in a particular case, when a security threat is perceived by the medical staff. However, there can be no justification for prison officers to be *systematically* present during such examinations; their presence is detrimental for the establishment of a proper doctor-patient relationship and usually unnecessary from the security standpoint. Alternative solutions can and should be found to reconcile the principle of medical confidentiality with legitimate security requirements. One possibility might be the installation of a call system, whereby a doctor would be in a position to rapidly alert prison officers in those exceptional cases when a prisoner becomes agitated or threatening during a medical examination.

**The CPT recommends that all medical examinations be conducted out the hearing and - unless the doctor concerned expressly requests otherwise in a particular case - out of sight of non-medical staff.**

#### 4. Safeguards against ill-treatment

39. In its 2001 visit report, the CPT recommended that the relevant authorities take the necessary steps to ensure that the 24-hour police detention limit set by the Constitution, legislative acts and by-laws is strictly complied with in practice (cf. paragraph 55 of CPT/Inf (2002) 6). Regrettably, the July 2002 visit revealed that violations of the limit continued to take place. The CPT would like in particular to highlight the case of a detainee met at Skopje Prison, V. Q., who alleged that he had been detained *incommunicado* for eleven consecutive days by the UBK in several police stations around the country, from 5 to 16 April 2002. The CPT's delegation was able to confirm that the person concerned was in fact held in police custody during the period in question, before being brought before an investigating judge.

During its final talks with the Macedonian authorities, the delegation requested them to provide at the earliest opportunity a copy of the judicial documents (arrest warrant and the like) covering the detention of V. Q. from 5 to 16 April 2002; this was recalled in the letter by the Committee's President addressed on 1 August 2002 to the Macedonian authorities. The request has yet to be honoured.

**The CPT requests the Macedonian authorities to provide this information without further delay and calls upon them to ensure that the above-mentioned recommendation regarding detention time limits - which should be observed by all law enforcement officials under the authority of the Ministry of the Interior - is implemented.**

40. The CPT has repeatedly stressed that, in its experience, the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. Consequently, the possibility for persons taken into police custody to have access to a lawyer during that period is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs. It is also axiomatic that the right of access to a lawyer must include the right to talk to him in private.

The findings made during the July 2002 visit indicate that the situation in this area has scarcely changed. According to many persons interviewed, including those who were or recently had been in police custody, as well as their lawyers, this right - which has a formal basis in the Constitution, the Code of Criminal Procedure, and the Regulations for the Ministry of the Interior - is still not being granted in practice. It was also noted that the new custody registers (cf. paragraph 45) may be read as foreseeing that access to a lawyer can first be allowed only at the stage when a person is questioned.

**The CPT calls upon the Macedonian authorities to take action without delay to ensure that the existing formal right of access to a lawyer for persons deprived of their liberty by the police is rendered fully effective in practice, from the very outset of custody, and is enjoyed by anyone who is under a legal obligation to attend - and stay at - a police establishment. The standardised registers should be modified accordingly.**

41. The principles regarding access to a lawyer are also valid when the persons concerned have been remanded in prison establishments, especially in States such as "the former Yugoslav Republic of Macedonia" where periods of police custody are relatively short. In this context, it may be noted that section 70 of the Code of Criminal Procedure foresees the exceptional possibility for an investigating judge to subject a remand prisoner's right of access to a lawyer to supervision, if remand imprisonment has been imposed under section 184, paragraph 1, subparagraph 2,<sup>30</sup> and there is a suspicion that the accused might abuse the communication with the lawyer. An examination of prisoners' administrative files confirmed that resort was made to section 70.

The CPT considers that in its present wording, section 70 of the Code of Criminal Procedure is contrary to the principle of confidentiality of contacts between remand prisoners and their lawyers;<sup>31</sup> read in conjunction with section 184, paragraph 1, item 2, it allows too much discretionary power to investigating judges as concerns the extent and the modalities of the exercise of the measure of supervising interviews between a remand prisoner and a lawyer. In particular, section 70 does not foresee such basic safeguards as time limits to the supervision measure which can be imposed upon a particular prisoner, or the obligation to inform the prisoner and his lawyer regarding the supervision measure being imposed or regarding the possibility to appeal against it.

**The CPT invites the Macedonian authorities to review Section 70 of the Code of Criminal Procedure, taking into account the above remarks.**

42. Further, discussions with legal practitioners confirmed that supervision of the contacts between a prisoner and his/her lawyer often takes place even though the person and the lawyer concerned have not been informed of any formal decision to that effect.<sup>32</sup> In practice, prison officers frequently supervise conversations between remand prisoners and lawyers from an adjacent room/corridor; depending on the physical setting, this may only involve visual supervision, or both visual and auditory supervision. **The CPT recommends that steps be taken immediately to end such practices.**

43. During each of the previous visits to "the former Yugoslav Republic of Macedonia," CPT delegations have found suspicious unlabelled objects (metal rods, wooden poles, baseball bats, shovels, etc.) in a number of police station offices where persons deprived of their liberty may be present, corresponding to the descriptions given by many of the persons alleging that they had been struck and/or threatened with them. The Committee has repeatedly called upon the relevant authorities to remove all non-standard items which may be used as weapons from detention and investigation premises (cf. paragraphs 15 and 22 of CPT/Inf (2001) 20 and paragraphs 35 to 37 of CPT/Inf (2002) 6).

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<sup>30</sup> The relevant provision in section 184, paragraph 1, sub-paragraph 2, of the Code of Criminal Procedure reads: "If there is justified fear that he will destroy the traces of the crime or if special circumstances indicate that he will disrupt the investigation by influencing witnesses, collaborators or persons who may conceal evidence."

<sup>31</sup> Cf. ECHR jurisprudence on Article 6 (3) (c) of the European Convention on Human Rights (for example, *S. v. Switzerland*, N°12629/87 & 13965/88; *Can v. Austria*, N°9300/81) and the European Prison Rules, Rule 93.

<sup>32</sup> According to lawyers, it is also the case that correspondence between remand prisoners and their lawyers is frequently subject to control by the relevant court; letters are apparently delivered after the court has checked their content.

On 4 March 2002, the Director of the Bureau for Public Security issued a telegram to all of the Sectors and Units for Internal Affairs, ordering inter alia "the removal of all non-standard means of coercion" from police premises. A further telegram informing of the CPT's visit was issued to "all organisational forms of the Ministry of the Interior" by the Minister on 10 July 2002. This telegram (issued five days in advance of the ad hoc visit and two days after the Committee notified the relevant authorities of its intention to carry out the visit) repeated the order that all non-standard means of coercion be removed. Much like the telegram of 4 March 2002, the Minister's telegram of 10 July 2002 warned that disregard of the order would be severely sanctioned.

No objects of the kind described above were found in most of the police establishments visited in July 2002. However, the delegation did find a baseball bat, several shovels and broken wooden flagpoles in one of the offices at Mirkovci Police Station.

**The CPT recommends that the relevant authorities continue their efforts to ensure that all non-standard means of coercion are removed from police premises.**

44. The CPT was pleased to note that information forms setting out the rights of persons in police custody had been prepared and translated in several languages (Macedonian, Albanian, Romany, Turkish, Vlach, English), and were available in the police establishments visited. However, police officers had not yet adopted the practice to ask persons deprived of their liberty to sign a statement attesting that they had been informed of their rights; **the CPT recommends that such a practice be established without delay.**

45. The delegation examined the new standardised custody registers which had been introduced at the beginning of 2002. Those registers contained the following headings: number; date; name of person summoned, deprived of liberty or detained; date of birth, address and personal identification number; reasons for summoning/deprivation of liberty; time of summoning/deprivation of liberty and time of release; the person has/has not been given information in accordance with section 3 of the Code of Criminal Procedure;<sup>33</sup> name of the family member/close person notified of custody; name of the lawyer informed and who was present during questioning (if this was requested) (cf. in this regard paragraph 40); name of the doctor who visited the person (if requested).

The introduction of those registers is a positive step, which has the potential to make a positive contribution as a safeguard against ill-treatment. In order to fulfil that potential, the registers should be used in a more diligent and consistent manner than was the case in July 2002; **the CPT recommends that the relevant authorities take the necessary steps to achieve this goal.**

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<sup>33</sup> The relevant provisions of section 3 of the Code of Criminal Procedure read:

- (1) A person summoned, apprehended or deprived of his liberty must be immediately informed, in a language which he understands, of the reasons for the summoning, apprehension or deprivation of liberty and of any criminal charges against him, as well as of his rights, and he may not be compelled to make a statement.
- (2) The suspect or the person charged must first be clearly informed of the right to remain silent; of the right to consult a lawyer and to have a lawyer of his choice present during questioning, as well as of the right to notify a family member or other close person regarding the apprehension or deprivation of liberty.

## 5. Training and support for police officers

46. The CPT would like to reiterate that the provision of adequate professional training, incorporating human rights principles, is an essential element of any strategy for the prevention of ill-treatment. The Committee welcomes the efforts made by the authorities, in cooperation with international organisations, to train new intakes of police officers at the new Police Academy; such training is essential to achieving the goal of creating a cohesive, unified police force with an ingrained understanding, tolerance and respect of the diverse communities it is to serve (cf. paragraph 42 of CPT/Inf (2002) 6).

Organising ongoing training activities for all police officers already in post in “the former Yugoslav Republic of Macedonia” is another matter of particular importance; in this regard, it is encouraging that there are plans to develop re-qualification and specialist courses, as well as management training. **The CPT would like to receive more information on those plans.**

47. Furthermore, it is positive that there are plans to draw up of a Code of Police Ethics, Guidelines on Professional Standards and a Code of Conduct for Police Interviews; **implementation of those plans should receive a high priority.**

48. The 2001 conflict will undoubtedly have had negative effects on many law enforcement officials. In this connection, the issue of policemen who suffer from post-traumatic stress disorders (PTSD) as a result of their experiences in the conflict was raised on a number of occasions during the July 2002 visit. It was recognised that such officers could be particularly prone to using excessive force. **The CPT would like to be informed of the steps being taken to develop a coherent policy aimed at identifying the extent of the problem and actively encouraging persons suffering from PTSD to seek treatment and support.**



**C. Material conditions of detention**

49. In its previous visit report, the CPT recommended that urgent measures be taken to rectify the shortcomings as regards material conditions of detention in police establishments. In particular, it recommended that police cells be kept clean, that arrangements be made to provide detained persons with access to functioning lavatories, and that immediate steps be taken to ensure that all police cells are adequately monitored (and preferably equipped with call bell systems).

The reply by the authorities (forwarded to the CPT on 14 February 2002) to the immediate observations made at the end of the October 2001 visit made reference to a "gradual reconstruction" of detention premises, dependent on "available funds" (cf. paragraph 68 of CPT/Inf (2002) 6); a Committee had been set up to assess the needs and priorities in this regard. Moreover, the telegrams issued by the Director of the Bureau for Public Security on 4 March 2002 and by the Minister for the Interior on 10 July 2002 (five days in advance of the ad hoc visit, cf. also paragraph 43 above) ordered that "special attention be paid to the hygiene of detention premises, i.e. the same should be at a satisfactory level."

50. The delegation which carried out the July 2002 visit found that, despite the above-mentioned measures, there remained a considerable room for improvement. Although the state of hygiene in police cells was somewhat better on this occasion, basic amenities such as lighting and ventilation either left much to be desired or were totally deficient (e.g., there were no light bulbs in the cells in Tetovo).

**The CPT recommends that the relevant authorities rapidly devise and vigorously pursue a properly-resourced strategy to improve conditions of detention in police establishments throughout "the former Yugoslav Republic of Macedonia"; regular independent inspections of police premises should form an integral part of that strategy.**

## APPENDIX

### **LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION**

#### **Cooperation between the CPT and the authorities of "the former Yugoslav Republic of Macedonia**

##### recommendations

- information circulated to judicial and prosecuting authorities to clearly specify that the Committee, a body set up with a view to strengthening the protection of persons deprived of their liberty from torture and other forms of ill-treatment, is empowered to take a direct interest in the activities of the authorities which conduct official investigations and bring criminal charges in cases involving allegations of ill-treatment, and that the provision to the Committee of information on this matter is an obligation under the Convention (cf. Article 8 (2) (d) of the Convention) (paragraph 5).

##### comments

- State Parties must ensure that all the relevant authorities, including prosecutors and judges at every level, receive detailed information on the CPT's terms of reference and their obligations vis-à-vis the Committee (paragraph 5);
- the necessary steps to be taken to ensure that the situation described in paragraph 6 (80-minute delay before providing the delegation access to a police establishment) does not recur (paragraph 6).

#### **Action to combat torture and ill-treatment**

- **A statement at the highest political level**

##### recommendations

- the national authorities to ensure that a formal statement emanating from the highest political level be delivered to law enforcement officials, impressing upon them that the ill-treatment of detained persons is an affront to the values which constitute the very foundations of the State and will not be tolerated. Such a statement should make clear that any law enforcement officials who disregard this principle will be subject to severe sanctions (paragraph 13).

- **Combating impunity: test cases for accountability of law enforcement officials**

recommendations

- the relevant authorities to take the necessary steps to ensure that the precepts set out in paragraph 30, regarding an effective criminal investigation into possible ill-treatment by law enforcement officials, are systematically applied in practice (paragraph 30);
- formal instructions to be issued to all public prosecutors emphasising that, in every case where it comes to a prosecutor's attention that a person may have sustained injuries while in the custody of law enforcement officials (and whether or not the person concerned makes a formal complaint), the prosecutor must issue a "formal proposal to take action" ("*predlog za prevzemanje na oddelni istražni dejstviya*") to an investigating judge in order to establish the facts of the case (paragraph 31);
- whenever criminal suspects brought before an investigating judge at the end of police custody allege ill-treatment by the police, the judge to record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. Such an approach should be followed whether or not the person concerned bears visible external injuries. Further, even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment (paragraph 32).

requests for information

- an update of the relevant proceedings in the Vinica case (paragraph 27).

- **The role of the prison service in the prevention of ill-treatment**

recommendations

- the procedure of transmitting to relevant prosecutors/investigating judges any findings relating to possible cases of police ill-treatment discovered on a person's admission to the prison system, to be immediately re-instituted at Skopje Prison. More generally, such a procedure should be followed throughout the Macedonian prison system (paragraph 36);
- the record drawn up by prison doctors following a medical examination of a newly-arrived prisoner to contain:
  - (i) a full account of statements made by the person concerned which are relevant to the medical examination (including his description of his state of health and any allegations of ill-treatment);
  - (ii) a full account of objective medical findings based on a thorough examination, and
  - (iii) the doctor's conclusions in the light of (i) and (ii), indicating the degree of consistency between any allegations made and the objective medical findings.

Further, the results of every examination, including the above-mentioned statements and the doctor's conclusions, should be made available to the detained person and his lawyer (paragraph 37);

- all medical examinations to be conducted out the hearing and - unless the doctor concerned expressly requests otherwise in a particular case - out of sight of non-medical staff (paragraph 38).

#### comments

- the authorities to set up a central register at the reception unit at Skopje Prison, with a view to recording all findings mentioned in paragraph 34. More generally, such a procedure should be followed throughout the Macedonian prison system (paragraph 36).

#### • **Safeguards against ill-treatment**

#### recommendations

- the relevant authorities to ensure that all law enforcement officials under the authority of the Ministry of the Interior strictly observe in practice the 24-hour police detention limit set by the Constitution, legislative acts and by-laws (paragraph 39);
- action to be taken without delay by the Macedonian authorities, to ensure that the existing formal right of access to a lawyer for persons deprived of their liberty by the police is rendered fully effective in practice, from the very outset of custody, and is enjoyed by anyone who is under a legal obligation to attend - and stay at - a police establishment. The standardised registers should be modified accordingly (paragraph 40);
- steps to be taken immediately to end the practices of supervising, without any formal decision to that effect, conversations between remand prisoners and lawyers (paragraph 42);
- the relevant authorities to continue their efforts to ensure that all non-standard means of coercion are removed from police premises (paragraph 43);
- to establish without delay the practice of asking persons deprived of their liberty to sign a statement attesting that they have been informed of their rights (paragraph 44);
- the relevant authorities to take the necessary steps to ensure that the new standardised custody registers are used in a diligent and consistent manner (paragraph 45).

#### comments

- the Macedonian authorities to review Section 70 of the Code of Criminal Procedure, taking into account the remarks in paragraph 41 (paragraph 41).

#### requests for information

- a copy of the judicial documents (arrest warrant and the like) covering the detention of V. Q. from 5 to 16 April 2002 to be provided without further delay (paragraph 39).

- **Training and support for police officers**

comments

- implementation of plans to draw up of a Code of Police Ethics, Guidelines on Professional Standards and a Code of Conduct for Police Interviews, should receive a high priority (paragraph 47).

requests for information

- more information on plans to develop re-qualification and specialist courses, as well as management training for all police officers already in post (paragraph 46);
- the steps being taken to develop a coherent policy aimed at identifying the extent of the problem of post-traumatic stress disorders among police officers and actively encouraging persons suffering from PTSD to seek treatment and support (paragraph 48).

**Material conditions of detention**

recommendations

- the relevant authorities to rapidly devise and vigorously pursue a properly-resourced strategy to improve conditions of detention in police establishments throughout "the former Yugoslav Republic of Macedonia"; regular independent inspections of police premises should form an integral part of that strategy (paragraph 50).