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**DH-DD(2024)670**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1501<sup>st</sup> meeting (June 2024) (DH)

Communication from an NGO (European Roma Rights Center) (03/06/2024) concerning the case of KITANOVSKI v. "the former Yugoslav Republic of Macedonia" (Application No. 15191/12) (appendices in Macedonian are available at the Secretariat upon request).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1501<sup>e</sup> réunion (juin 2024) (DH)

Communication d'une ONG (European Roma Rights Center) (03/06/2024) relative à l'affaire KITANOVSKI c. « l'ex-République yougoslave de Macédoine » (requête n° 15191/12) (des annexes en macédonien sont disponibles auprès du Secrétariat sur demande) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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DGI

03 JUIN 2024

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03 June 2024

## **RULE 9 SUBMISSION**

**with regard to the execution of:**

**Group of cases KITANOVSKI v. “the former Yugoslav Republic of Macedonia” (Application no. 15191/12, judgment of 22 January 2015)**

### **I INTRODUCTION**

1. This submission concerns two cases, *X AND Y v North Macedonia* (application No. 173/17, judgment of 5 November 2020) and *MEMEDOV v North Macedonia* (application no. 31016/17, judgment of 26 June 2021) which constitute part of the larger group of cases lead by the *KITANOVSKI v. “the former Yugoslav Republic of Macedonia”* case (application no. 15191/12). The European Roma Rights Centre (“the ERRC”) is a Roma-led organization whose vision is for Romani women and men to overcome antigypsyism and its legacy, to achieve dignity, equality and full respect for their human rights, and to use their experience to contribute to a more just and sustainable world. In accordance with Rule 9.1 and 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments, as representative of the applicants in both *X and Y* and *Memedov* and as an organisation dedicated to combating human rights violations of Roma across Europe, with a particularly long presence in North Macedonia, the ERRC submits following comments with respect to individual and general

measures proposed by the Government in *the Action Plan Kitanovski group of cases v. Republic of North Macedonia* (DH-DD(2024)343; “Action Plan”) from March 2024<sup>1</sup>.

## II CASE DESCRIPTION

2. The group of cases lead by the *Kitanovski* concern the applicants’ torture and other forms of ill-treatment by police agents over the decade long period between 2004-2014 during their arrest, questioning, transfer to a psychiatric hospital, incommunicado detention or pursuit, as well as ineffective investigations into the applicants’ allegations of their ill-treatment.
3. In the case of *X and Y*, the applicants, who were sixteen and thirteen years old at the time of the incident, complained of police brutality, discrimination on grounds of their Roma ethnicity and subsequent failure of the authorities to carry out an effective investigation. The applicants asserted that they were intercepted on the street and beaten by the agents of the “Alfa” police unit following an alert issued to all police patrols with regards to the previously reported mugging incident. The European Court of Human Rights (“the Court”) found that more than six years after the critical events, the investigation into the applicants’ allegations of police brutality is still pending and that passage of unreasonable time for the investigation of claims of police brutality suggests that the authorities did not submit the applicants’ case to careful scrutiny. The Court found that there has been a violation of Article 3 of the Convention under its procedural limb.
4. Similarly, in *Memedov*, the applicant complained of racially motivated police ill-treatment during a police intervention involving the special “Alfa” unit in the Roma neighborhood of Topana in Skopje. The applicant also alleged lack of an effective investigation into the possible racist bias. The Court established failure of the authorities of the respondent State to investigate the applicant’s allegations of racially motivated police

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<sup>1</sup> Communication from North Macedonia: Action Plan Kitanovski group of cases v. Republic of North Macedonia, Leading application no. 15191/12, Judgment of 22 January 2015, final on 22 April 2015, Committee of Ministers, DH-DD(2024)343, 28 March 2024, available at: [https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD\(2024\)343E%22%5D%7D](https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22DH-DD(2024)343E%22%5D%7D)

brutality. As pointed out by the Court, the authorities gave no explanation to the allegations of racial slurs which the applicant consistently raised before the public prosecutor, and which were confirmed by witnesses in a different set of domestic proceedings concerning the same incident.

### III INDIVIDUAL MEASURES (IM)

#### X AND Y v. North Macedonia

5. With regards to the *X and Y* case, the Action Plan for the implementation of Kitanovski group of cases from March 2024 states that, following the Court's judgment, the first-instance public prosecutor in Skopje reopened the investigation, heard the suspects and the applicants in the first half of 2021. It is further stated that the public prosecutor had unsuccessful attempts to reach the applicants' representative for the purpose of obtaining information about the witnesses who were initially proposed by the applicants in domestic criminal proceedings. Allegedly, the public prosecutor attempted on four occasions (May and June 2021, December 2022 and March 2023) to get hold of the applicants' representative by sending the letters, but to no success.
6. ERRC could not ascertain the reasons behind the public prosecutor's unproductive attempts. As representative of the applicants in procedure before the Court, the ERRC asserts that it is a Belgium-based organisation, as indicated in the judgment, registered at the same address since 29 March 2020. Up-to-date contact information are available at the organisation's website<sup>2</sup> at all times. In addition, having in mind several recent judgments of the Court (*ELMAZOVA AND OTHERS v North Macedonia*, applications nos. 11811/20 and 13550/20, judgment of 13 December 2022 and *MEMEDOVA AND OTHERS v North Macedonia*, applications nos. 4249/16, 8934/18 and 9886/18, judgment of 24 October 2023 ) and friendly settlements (*Asanovski v. North Macedonia*, application no.19137/18, decision from 8 July 2021, *Sulimanov v. North Macedonia*, application no. 20189/18, decision from 8 July 2021, *Salim and Bekir v. North Macedonia*, application no.25782/19, decision from 02 March 2023) against North Macedonia where the ERRC

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<sup>2</sup> [www.errc.org](http://www.errc.org)

also appeared as representative of the applicants, the Office of the State Agent would have access to the ERRC's contact information. Therefore, we consider that the minimum level of investigative curiosity would have prompted the prosecuting authorities to get hold of the applicants' representative. Most importantly, as an organization that provides legal representation exclusively at the international fora in the two concerned cases, the ERRC lacks authorization to represent applicants X and Y in communications with domestic authorities for the purpose of conducting domestic criminal proceedings.

7. However, the applicants have their legal representative in domestic proceedings that is attorney-in-law Keti Jandrijeska Jovanova; the same attorney who has been representing X and Y throughout the criminal proceedings following their complaint of police brutality since September 2014. Her law office has been registered at the current address in Skopje since 2016 and is enlisted with the North Macedonia Bar Association. The attorney's address and phone number were included in all previous submissions and communications with Skopje prosecuting authorities. On one occasion, in 2022, she was contacted by phone by an agent of the Skopje Basic Public Prosecutor's Office when she explained that due to the time elapsed since the criminal complaint was filed in 2014, she no longer had contact information for the proposed witnesses. After becoming aware<sup>3</sup> of the Government's claims that the applicants' representative was unreachable, the attorney contacted the Skopje Basic Public Prosecutor's Office in November 2023 (Annex 1). To date, she has not received any notification from the respective office about the ongoing investigation into the applicants' complaint of police brutality.
8. Lastly, in both *X and Y* and *Memedov*, the applicants have been represented by the same domestic attorney in the ongoing criminal proceedings before the same prosecuting authority – Skopje Basic Public Prosecutor's Office. Therefore, it appears virtually impossible that the office of the prosecutor could not reach the X and Y's representative.
9. Considering that it has been three years since the prosecuting authorities reopened the case with no progress or conclusion to this end, the ERRC

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<sup>3</sup> It was stated in §34 of the Government Action Plan of 17 March 2023 (DH-DD(2023)342), available at: [https://hudoc.exec.coe.int/eng#f{%22execidentifier%22:\[%22DH-DD\(2023\)342E%22\]}](https://hudoc.exec.coe.int/eng#f{%22execidentifier%22:[%22DH-DD(2023)342E%22]})

holds that the ongoing investigation has not yet erased the consequences of the violations established by the Court and it, again, fails to meet the standard of an effective investigation of police brutality contrary to the requirements under Article 3 of the Convention.

### **MEMEDOV v. North Macedonia**

10. With regards to *Memedov*, in its judgment of 21 June 2021, the Court found that the prosecuting authorities failed to unmask whether discriminatory attitudes of police agents might have played a role in the events the applicant complained of, as well as to examine any of the witnesses suggested by the applicant who could have provided first-hand information about the events.

11. In response to these findings, the first-instance public prosecutor in Skopje examined the witnesses proposed by the applicant, other witnesses, and the accused police agents (§20 of the Action Plan). However, the applicant's attorney was not informed of these interviews which restricted her from taking an active part in questioning of the witnesses and accused officers. This is contrary to positive obligations arising from the procedural limb of Article 3 which requires prosecuting authorities to ensure effective participation of the victim in order to safeguard his legitimate interests; a requirement also contained in domestic criminal procedural legislation. The applicant's attorney formally raised, *inter alia*, these complaints in her appeal of 18 January 2023 (Annex 3) to the second-instance prosecutor following rejection of the criminal complaint in the first instance (Annex 2). By being denied the opportunity to pose questions to the police officers who were involved, either as the accused or witnesses, or to take part in interviewing Roma witnesses who were to provide evidence of racial abuse, the applicant was stripped of his chance to contribute to establishing full facts of the case, resolve any contradictory information and challenge the official version of the events. Secondly, for the purpose of establishing alleged racial slurs, during the interview with public prosecutor, Roma F.B., a witness who had himself been brutalized by the police on the same occasion, told that he did not recall hearing racial slurs during the events that occurred nearly 10 years earlier. This statement differed from the one he had given in front of the civil court in the proceedings П4-476/16,

where he explicitly mentioned that police officers used discriminatory and offensive language. However, the public prosecutor failed to thoroughly examine these contradictions and seek explanations for conflicting statements. Lastly, the applicant's attorney highlighted that the public prosecutor neglected to request from the police a video with sound from the shop where the events complained of occurred.

12. In addition to failing to thoroughly investigate potential bias motives, as previously mentioned, the ERRC underlines that the prosecutorial investigation into allegations of police ill-treatment was ineffective overall. As the applicant's attorney argued in her appeal of 18 January 2023 (as in the subsequent appeal of 2 October 2023), the prosecutor once more failed to establish full facts of the case - identify and interview members of the "Alfa" unit who arrested the applicant; and, identify those responsible for causing physical injuries which were documented in the official arrest records and supported by medical evidence. The subsequent course of investigation was described in §§ 23-26 of the Action Plan. On 7 September 2023, the first-instance public prosecutor, again, dismissed the criminal complaint (Annex 4). This decision was challenged by the applicant's lawyer in her second appeal of 2 October 2023 (Annex 5) which to the attorney's knowledge is still pending before the second-instance public prosecutor.
13. On May 30, 2024, Mr. Memedov informed the ERRC about a visit by several police officers to his parents' home between May 27th and 28th. The officers informed his parents that a trial had been scheduled for June 3rd and that Mr. Memedov was required to attend. However, his parents explained to the officers that Mr. Memedov no longer lives there, having moved to Germany following the police abuse. During the visit, the officers took a copy of his mother's ID and her phone number. At the moment of drafting this report, Mr. Memedov's attorney was neither aware of a trial scheduled for June 3rd, nor has received an official invite.
14. The ERRC would like to comment the fact that, following the last order by its superior to continue the investigation, during the course of six months public prosecutor carried out only one investigative action, even though the applicant's attorney consistently proposed several other evidence that would have led to establishment of complete factual situation. The



ERRC is of view that the prosecutorial decision to reject the criminal complaint was based on ill-founded conclusions. Therefore, it cannot be considered that the recent investigation has met the standard of thoroughness required under Article 3 of the Convention.

15. The ERRC would like to point out that in *Memedov*, the applicant's case has never formally reached the investigative phase. For almost a decade, his complaint of police ill-treatment has been reviewed by the prosecuting authority under the framework of "pre-investigative" procedure (*предистражна постапка*, Articles 272-290, Chapter XX of the Criminal Procedure Law) which confines the victim to the narrower set of procedural rights than the ones guaranteed under "investigative" procedure.
16. Finally, following the Court judgment and reopening of the cases, it appears that in both *X and Y* and *Memedov*, domestic proceedings have not been transferred from regular prosecutor's office to the specialized unit for prosecuting crimes committed by police and prison agents established within the Basic Public Prosecutor's Office for Prosecuting Crime and Corruption (see §84 Action Plan).
17. With this in mind, the ERRC emphasizes that the violations suffered by the applicant have not been remedied. The harm from the violation persists, and the ERRC requests that the Committee of Ministers continue to supervise execution of the judgment.

#### **IV GENERAL MEASURES (GM)**

18. From the onset, the ERRC wishes to remind the Committee of Ministers that North Macedonia has a history of cases before the Court involving complaints from Roma about police ill-treatment. Notably, the cases *JASAR v "the former Yugoslav Republic of Macedonia"* (application no. 69908/01, judgment of 15 February 2007), *SULEJMANOV v "the former Yugoslav Republic of Macedonia"* (application no. 69875/01, judgment of 24 April 2008) and *DZELADINOV AND OTHERS v "the former Yugoslav Republic of Macedonia"* (application no. 13252/02, judgment of 10 April 2008). Similarly as in *X and Y* and *Memedov*, in these preceding cases the Court established that authorities failed to carry out an effective



investigation into Roma's allegations of ill-treatment. This suggests that police violence against Roma is recurring phenomenon for at least more than two decades, while the prosecutorial authorities continuously and systematically fail to address these human rights abuses and hold those responsible to account. In addition, discriminatory practices by North Macedonian police against Roma were established in a recent judgment *MEMEDOVA AND OTHERS v. North Macedonia* (applications nos. 4249/16, 8934/18 and 9886/18, judgment of 24 October 2023), where the Court found discriminatory police practice of preventing Roma from leaving the country and enjoying their freedom of movement. Moreover, several cases of alleged torture and ill-treatment of Romani inmates by prison guards and medical staff have reached the ECtHR and were struck out from the Court's list after being concluded with a friendly settlement, including: *EMINOV* against the former Yugoslav Republic of Macedonia, application no. 31268/14, decision from 15 June 2017, *DJAFER* against North Macedonia, application no. 4378/20, decision from 16 December 2021, *REDJEPOVI* against North Macedonia, application no. 30415/18, decision from 11 February 2021, *JUSINOVA* against North Macedonia, application no. 59492/18, decision from 11 February 2021. All these cases were brought before the ECtHR by the ERRC, after ineffective investigations by domestic criminal authorities.

19. The ERRC expresses regret that in the present Action Plan, the Government did not explicitly address the issue of antigypsyism<sup>4</sup> in policing, as it has done in the national Strategy for Inclusion of Roma 2022-2030 ("Roma Strategy") where it acknowledged that police brutality against Roma is a form of institutional discrimination and manifestation of antigypsyism. *"Antigypsyism is not just about what is said, but also about what is done and what is not done. An accurate understanding of the meaning of this phenomenon is key to a proper understanding of its*

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<sup>4</sup> According to the ECRI, "anti-Gypsyism" (which they spell with a hyphen) is "a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed, among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination". The Alliance Against Antigypsyism, an NGO coalition which spells the term without a hyphen, defines the concept as follows: *Antigypsyism is a historically constructed, persistent complex of customary racism against social groups identified under the stigma 'gypsy' or other related terms, and incorporates: 1. a homogenizing and essentializing perception and description of these groups; 2. the attribution of specific characteristics to them; 3. discriminating social structures and violent practices that emerge against that background, which have a degrading and ostracizing effect and which reproduce structural disadvantages.*

*impact. Regarding the manifestation of this phenomenon, an intersectional approach is needed from several areas, which include: discrimination, hate speech, police brutality, segregation in schools, segregation in housing, forced eviction, Holocaust recognition [...]*<sup>5</sup>

20. For ease of reference, the ERRC will lay its comments concerning general measures by following the structure of the Action Plan.

# **1. EFFECTIVENESS OF THE MEASURES AIMED AT PREVENTING VIOLATIONS OF ARTICLE 2 AND ARTICLE 3 IN SUBSTANTIVE LIMB AIMED AT POLICE (§§ 31-79)**

21. The Government elaborated on the number of measures it has taken to prevent further instances of police ill-treatment, including legislative changes, institutional capacity building of internal and external control mechanisms, political commitment to zero tolerance of police violence and trainings and awareness raising activities among police officers.

22. Relevant legislative changes to the Criminal Code began in 2004, followed by 2009 amendments and the most recent in 2023, which revised the definition of torture and ill-treatment in the performance of duty, imposed stricter sanctions, abolished the statute of limitations for criminal offences of torture and, as a direct response to *Memedov* judgment<sup>6</sup>, introduced hate as an aggravated circumstance (§ 33 of the Action Plan). In this regard, in its most recent concluding observations on North Macedonia from May 2024, the UN Committee Against Torture ("UN CAT") expressed concern that the definition of torture does not include specific reference to the purpose of intimidating or coercing the victim or a third party or for any reason based on discrimination of any kind. UN CAT called on the Government to ensure that the definition of torture is fully in line with the meaning of this crime contained in the UN Convention against Torture.<sup>7</sup> The ERRC is of view that these legislative changes *theoretically* offer a better framework for protection and combating police ill-treatment. However, it reminds the Committee of

<sup>5</sup> [Strategy for inclusion of Roma 2022-2030 final version.pdf \(mtsp.gov.mk\)](#), p.54.

<sup>6</sup> Government Action Plan on Kitanovski group of cases, §

<sup>7</sup> UN Committee against Torture (UN CAT), *Concluding observations on the fourth periodic report of North Macedonia ADVANCE UNEDITED VERSION*, Committee against Torture, CAT/C/MKD/CO/4, May 2024, §§8-9.

Ministers that, when it comes to police brutality against Roma, only one case has ever reached the criminal trial stage against the involved police agents, ending with a suspended sentence (see §35).

23. In §§35-38 of the Action Plan, the Government noted the creation of a distinct unit within the institution to protect citizens from torture and other cruel, inhuman, and degrading treatment, referred to as the National Preventive Mechanism (NPM), which is reportedly operating at full capacity. The ERRC commends the establishment of the NPM but highlights the 2022 and 2023 Annual Reports of the Ombudsman, which clearly indicate that, despite ongoing activities, the NPM team faces significant challenges. Unfortunately, the National Preventive Mechanism suffers from limited and insufficient staffing and financial resources, hindering its ability to fully, effectively, and efficiently fulfill its mandate.<sup>8</sup> These challenges were also noted in the latest CPT report.<sup>9</sup> Additionally, during 2022 and 2023, the NPM team of the Ombudsman conducted visits to numerous police stations throughout the country, where they identified significant challenges hindering the normal functioning and operations of these facilities. A prevalent concern across almost every police station was that officers were frequently transferred or assigned to roles without adequate experience or training, sometimes driven by personal or political motives rather than professional considerations. The lack of proper training and experience among police officers, especially concerning vulnerable groups, children and victims of domestic violence, led to instances of improvisation and inadequate treatment. The practice of tying individuals to metal chairs in police stations was deemed potentially torturous or inhumane, prompting recommendations against such practices and advocating for the installation of video monitoring in these areas. One glaring deficiency was the absence of dedicated facilities for interviewing of detained children. Instead, these interactions often took place in inadequate office spaces, particularly within the poorly maintained offices of juvenile delinquency inspectors.<sup>10</sup>

<sup>8</sup> Ombudsman Annual Report 2022, page 129-130, available on: <https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2022/GI-2022.pdf> and Ombudsman Annual Report 2023, page 159, available on: <https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2023/GI-2023.pdf>.

<sup>9</sup> Report to the Government of North Macedonia on the visit to North Macedonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 12 October 2023, §10, available at: [1680af95e2 \(coe.int\)](https://www.coe.int/t/Document/CDL/CDL-2023-012.aspx)

<sup>10</sup> Ombudsman Annual Report 2022, page 41-61, available on: <https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2022/GI-2022.pdf>.

24. Regarding the work of the Mechanism for Civil Control (MCC) mentioned in §87-97 of the Action Plan, the ERRC would like to note the findings of the CPT delegation who examined a total of 37 complaints processed by the MCC concerning allegations of ill-treatment by police and prison staff and found that, in 14 cases (amounting to 40 % of the complaints examined), the MCC had followed and endorsed the actions of the DIC and the PPCC without carrying out any further investigation. In addition, in some cases, the MCC did not appear to have conducted an effective investigation to uncover all the elements of a complaint. For example, in a case of alleged police ill-treatment of a juvenile offender at the Centar Police Station in Skopje on 26 November 2022, consisting of kicks and punches inflicted by two police officers, the case file showed evidence of only a partial investigative action, consisting of an interview with the victim's father. There was no evidence of any additional activities aimed at finding other evidence, such as interviewing the victim, assessing the compatibility of the injuries and interviewing potential witnesses, such as the doctors who had examined him at the health centre. Consequently, the complaint was dismissed as unfounded on 15 February 2023.<sup>11</sup>

25. With regards to other measures aimed at police for the purpose of preventing violations of Article 2 and Article 3 of the Convention, the ERRC views them as relevant, but nevertheless insufficient and still ineffective when it comes to fighting antigypsyism among North Macedonian police. For example, the capacity of the Department for Control and Professional Standards ("the DCPS"), serving as an internal oversight mechanism within the Ministry of Interior, has been enhanced to improve its effectiveness. However, only 6% of complaints filed by Roma to the DCPS regarding police ill-treatment have resulted in disciplinary actions, leading to fines imposed on police officers in just two cases (see below §32).

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[2022.pdf](#) and Ombudsman Annual Report 2023, page 152-153, available on: <https://ombudsman.mk/CMS/Upload/NarodenPravobranitel/upload/Godisni%20izvestai/GI-2023/GI-2023.pdf>.

<sup>11</sup> Report to the Government of North Macedonia on the visit to North Macedonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 2 to 12 October 2023, §24, available at: [1680af95e2 \(coe.int\)](#)

26. Similarly, the zero-tolerance stance against ill-treatment and torture by law enforcement, proclaimed by the highest political officials since 2018, has yielded minimal results. In 2024, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("CPT") acknowledged that while this message of unacceptability of police violence is a "positive development", it must be reiterated consistently and regularly throughout entire police hierarchy to achieve the desired impact.<sup>12</sup>

27. UN CAT recently warned about the continuous use of excessive force, threats and verbal abuse, including during the apprehension and statement-taking.<sup>13</sup> Credible reports listed below indicate that police violence against Roma in North Macedonia persists.

28. In its 2022 Fifth Opinion on North Macedonia, the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) expressed its concern over *"human rights violations by law enforcement officials vis-à-vis Roma, including racial profiling, continue to be frequent and there is still not enough done to prevent and investigate such cases."*<sup>14</sup>

29. In February 2023, the Committee of Ministers called on the North Macedonian Government to take immediate action to intensify efforts to *"prevent cases of human rights violations against Roma by the police."*<sup>15</sup>

30. European Commission reported in 2023 that cases of discrimination and police brutality based on Roma ethnicity were recorded, *"particularly against young Roma, girls and Roma in detention"*.<sup>16</sup>

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<sup>12</sup> Ibid, §16.

<sup>13</sup> UN CAT, §18

<sup>14</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities, Fifth Opinion on North Macedonia, September 2022, §78, available at: <https://rm.coe.int/5th-op-north-macedonia-en/1680a82967>

<sup>15</sup> Resolution CM/ResCMN(2023)2 on the implementation of the Framework Convention for the Protection of National Minorities by North Macedonia (Adopted by the Committee of Ministers on 8 February 2023 at the 1456th meeting of the Ministers' Deputies), available at: [https://search.coe.int/cm/#\[%22CoEObjectId%22:\[%220900001680aa1bac%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]\]](https://search.coe.int/cm/#[%22CoEObjectId%22:[%220900001680aa1bac%22],%22sort%22:[%22CoEValidationDate%20Descending%22]])

<sup>16</sup> European Commission, COMMISSION STAFF WORKING DOCUMENT North Macedonia 2023 Report, p. 39, available at: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_693%20North%20Macedonia%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_693%20North%20Macedonia%20report.pdf)





- On 7 June 2020, during curfew hours, more than 20 members of the “Alfa” police unit were sent to deal with a noise complaint about homeless Roma playing music after curfew beneath the railway station in Skopje where ten Romani families were living together in informal housing. The group is comprised of around 60 people, of which 30 are children. On arrival they started indiscriminately beating the people present, including women, children and the elderly.
- On 20 June 2020, a 25-year-old man named Doan Memishovski was publicly beaten and humiliated by police officers in the informal community called ‘Bair’ in Bitola, before being taken back to the police station and further tortured in police custody. He was accused of stealing some metal. The officers handcuffed him without explanation before beginning to beat him, according to eyewitnesses. They then stripped him to his underwear and were recorded on video dragging him down the street in front of his friends, his neighbours, and his 10-year-old daughter. He was taken to a police station where he was beaten and chained to a metal chair, with no access to doctor or a lawyer, where he was coerced to confess to stealing scrap metal (a crime he claims not to have committed). He was convicted and sentenced to three months imprisonment based on this confession. With the support of the ERRC, Doan filed a criminal complaint against unknown police officers in August 2020. Only a year after, in August 2021, he and his mother were summoned by the public prosecutor to give statements. His complaint of police ill-treatment was dismissed in two instances, despite his lawyer’s efforts to appeal and demonstrate oversights in the investigation. Ultimately, Doan addressed the Court in May 2022 for violation of this Convention rights and his application is now pending.<sup>21</sup>
- On 20 October 2020 an elderly woman and her son were beaten by police officers in the back of a police van after being arrested for not wearing a face mask outdoors (at a time when this was not in fact a requirement). While they were being beaten a police officer shouted at them “Gypsy, why don’t you record this with your camera? You

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<sup>21</sup>Memishovski v. North Macedonia (application no. 24570/22).



can't do anything to me!". The elderly Romani woman had serious health problems as a result and had to be taken away in ambulance.

35. A widely reported case of police abuse was that of Nevzat Jasarovski, a Romani man from the town of Bitola, who was involved in a car accident in September 2020, alongside his son and another relative. Nearby police officers, after witnessing the car crash into a wall, dragged the three injured Romani men from their car and proceeded to beat them in the street. They fractured Nevzat's cheekbone, caused internal bleeding in one of the other two passengers, and left all three unable to stand. The attack was partly caught on camera by a nearby witness who uploaded the video on social media, from where it was widely shared by Macedonian news outlets. The Romani men were later taken back to the local police station where they were racially abused and further beaten until finally being released at around five o'clock in the morning.<sup>22</sup> Disciplinary action was taken against the officers involved and criminal charges were filed.<sup>23</sup> In May 2022, the Basic Criminal Court in Skopje found one officer guilty of a criminal offence *Harassment in the Performance of Duty*, sentencing him to one-year imprisonment for use of excessive force.<sup>24</sup> However, the second instance court replaced the prison sentence to suspended.<sup>25</sup>

36. In November 2022, the Court registered a case of police abuse involving a Romani minor from Shuto Orizari, Skopje. The case concerned two young Roma namely, S.B., born on August 10, 2007, and S.A., born on August 21, 1998.<sup>26</sup> On August 16, 2021, around 4 PM, they were stopped by police while collecting plastic bottles for recycling near the Boris Trajkovski Sports Centre. The officers used racial slurs and physically assaulted them. S.B. was hit with handcuffs, causing a nosebleed, and S.A. was struck on the hand and leg. Their friend, S.Z., fled in fear. After being initially refused treatment, the applicants received medical help, revealing a nasal fracture for S.B. and contusions for S.A.

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<sup>22</sup> European Roma Rights Centre, "North Macedonia's Serious Problem with Police Brutality Against Roma", available at: [North Macedonia's Serious Problem with Police Brutality Against Roma - European Roma Rights Centre \(errc.org\)](https://errc.org/north-macedonia-serious-problem-with-police-brutality-against-roma)

<sup>23</sup> ACFC, §75.

<sup>24</sup> European Roma Rights Centre, "North Macedonia's Serious Problem with Police Brutality Against Roma"

<sup>25</sup> U.S. Department of State, p. 34.

<sup>26</sup> Selmani and Saliji v. North Macedonia (application no. 52082/22).

They reported the incident to the police. During an investigation, the applicants identified one officer, G.J., but the other officers were not identified. A witness, I.R., corroborated their account, but the police officers denied seeing the applicants. A criminal complaint was filed against the officers but was rejected by the Basic Public Prosecutor's Office for organized crime and corruption, citing inconsistencies in the applicants' statements and insufficient evidence. An appeal was also rejected, finding the evidence insufficient to prosecute the officers. The ERRC submitted the case to the Court on October 29, 2022, and it was registered on November 29, 2022, as Selmani and Saliji v. North Macedonia (application no. 52082/22).

37. In July 2023 another case of police abuse against Roma was registered with the Court.<sup>27</sup> Isa Nafi, a Romani man from Bitola, who was 56 at the material time, with severe medical condition, was brutalized by the police in the local center for social work and subsequently at the police station. The incident occurred on 15 September 2016 when, accompanied by his wife, he went to complain about the termination of the social benefits he had been receiving due to his inability to work because of his health condition. When Isa refused to leave, two more officers arrived and used physical force and racial slurs against him. Isa was handcuffed, knocked down, beaten, and taken to the Bitola police station, where he was further abused during interrogation. Released after three hours, Isa sought medical help the same day, documenting injuries, including a head contusion. Following his criminal complaint of police violence, the first-instance prosecutor swiftly rejected his complaint, deeming the police's use of force justified and stating no injuries were caused. This decision was appealed, highlighting procedural errors and insufficient evidence consideration. Despite numerous follow-ups, there was no significant progress in the case for years. In response to the authority's inactivity, the ERRC submitted an application to the Court on Isa's behalf. The case was registered on July 25, 2023, under Isa v. North Macedonia (application no. 25431/23). In November 2023, Isa's attorney received a decision from the first-instance prosecutor's office, again dismissing his criminal complaint against four police officers. The dismissal was based on the conclusion that the reported actions did not

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<sup>27</sup> Isa v. North Macedonia (application no. 25431/23).

constitute criminal offenses prosecutable ex officio. The second-instance prosecutor rejected the appeal and upheld the decision of the lower prosecutor. During this period, Isa's health deteriorated, and he was diagnosed with Alzheimer's disease, preventing him from providing a statement.

38. With regards to measures aimed at securing fundamental safeguards for the prevention of ill-treatment (§§ 71-79 Action Plan), the UN CAT stated concern about deficiencies in effective access to a lawyer, initial medical examinations, and the legal aid system.<sup>28</sup> Similar findings were reported by the CPT in 2023.<sup>29</sup>

39. The ERRC, in partnership with Fair Trials, published research<sup>30</sup> in 2023, on anti-Roma racism in the criminal justice system in North Macedonia which confirmed that Romani defendants encounter discriminatory attitudes and biases at every stage of criminal proceedings, from arrest until sentencing, leading to unjust outcomes and reinforcing widespread mistrust in the criminal justice system among Roma. With regards to **police bias**, majority of interviewed Roma reported witnessing the police making discriminatory anti-Roma remarks. Reports of police brutality were also alarmingly common, with a number recalling instances of excessive and arbitrary force on Romani communities. One interviewee described how her son was reportedly fatally beaten by prison police while serving a prison sentence. While few of the Romani respondents were personally targeted by police stops, they knew many other Roma who had been. One of the interviewees, who was regularly stopped for ID checks, said that he was never given a reason why he was being stopped. The defence lawyers interviewed confirmed that police treat Romani suspects differently from the general population, mostly due to prejudicial attitudes and stereotypes. The majority of them also believed that police used ethnic profiling against Roma. Eight interviewed judges expressed the possibility that stereotypes about "Roma criminality" may play a role in police decisions to stop and arrest an individual. In their

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<sup>28</sup> UN CAT, §§10-11.

<sup>29</sup> CPT, §§28-33.

<sup>30</sup> European Roma Rights Centre, *Justice Denied: Roma in the Criminal Justice System in North Macedonia*, February 2023, available at: [5459\\_file1\\_justice-denied-roma-in-the-criminal-justice-system-of-north-macedonia.pdf](https://errc.org/5459_file1_justice-denied-roma-in-the-criminal-justice-system-of-north-macedonia.pdf) (errc.org)

view, Roma were more likely to be accused of a crime than non-Roma due to stereotypes and prejudices. Among interviewed police officers, there were notable differences in opinion between Romani and non-Romani police officers. While Romani police officers confirmed of regularly hearing their colleagues make derogatory remarks about Roma and generally corroborated accounts of discriminatory attitudes and policing practices, non-Romani police officers tended to deny the existence of discrimination. All three of the Romani officers agreed that police in North Macedonia exhibited anti-Roma prejudices which influenced policing decisions, including arrests and stop and searches. An individual's physical appearance was taken into account when deciding to use police powers, and that ethnic profiling played a role in decisions to arrest Roma.

## **2. MEASURES AIMED AT PREVENTING VIOLATIONS OF ARTICLE 2 AND 3 IN PROCEDURAL LIMB (§§80-149 AP)**

40. Despite numerous actions listed in the Action Plan aimed at public prosecutors or external monitoring mechanisms for the purpose of securing effective investigation into allegations of police ill-treatment (§§80-107 of the Action Plan), in its May 2024 report, the CPT observed that often investigations carried out by the specialized prosecutorial unit appear *“to be ineffective in terms of slower action, and excessive reliance on police statements and official notes without carrying out cross-checks and ordering more important investigative measures (such as forensic examinations of the alleged victims or securing CCTV footage). In these cases, criminal complaints were dismissed without a rigorous examination of the origin of the injuries that the victims allegedly attributed to police ill-treatment.”*<sup>31</sup>

41. The UN CAT, in its most recent observations on North Macedonia, expressed concern over the low number of disciplinary proceedings and criminal prosecutions of police officers in comparison with the number of complaints received. Concern was also stated over the fact that even when proceedings are launched, they are often closed due to lack of evidence or being unfounded. Those few cases where police ill-treatment

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<sup>31</sup> CPT, p.19

is established and criminal conviction rendered, sentences in majority of those cases are either suspended or probationary.<sup>32</sup>

42. With regards to prevention and effective investigation of *hate crimes*, Government listed three sets of measures (§§115-138 of the Action Plan): adoption of national policies on Roma inclusion and equality and non-discrimination, trainings and awareness raising of judiciary and law enforcement, and work of the Department for Control and Professional Standards ("the DCPS") within the Ministry of Interior on complaints of Roma ill-treatment by police agents.
43. While it is commendable that the Roma Strategy acknowledges police brutality against Roma as a form of institutional discrimination, the Government has only introduced a single measure – providing legal assistance to Roma who complained of police ill-treatment, which is hardly sufficient to effectively combat harmful discriminatory police practices. There are no measures in the Roma Strategy targeting law enforcement agents or the judiciary to prevent the overt or covert bias against Roma which clearly exists within North Macedonian government structures. In addition, it appears that measures addressing discriminatory police ill-treatment are not included in other government strategies that deal with police, security, judicial or prison reform as the Government Action Plan for execution of judgments does not mention them.
44. With regards to the work of DCPS within the Ministry of Interior, it has been mentioned above (§21) that 94% of complaints of ill-treatment submitted by Roma were rejected or dismissed as unfounded over the course of six years. During their visit to North Macedonia, the CPT found that investigations carried out by the DCPS do not meet the required standard. Their methodology often relies "*solely on the content of reports of the use of restraint, without exploring additional investigative measures (such as ordering forensic examination, immediately securing CCTV and other evidence), and preventing coordinated statements by*

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<sup>32</sup> UN CAT, §18(b)

*police officers*", fully trusting police reports on the use of force which can sometimes be misleading.<sup>33</sup>

45. With regards to investigating hate crimes, international<sup>34</sup> and regional<sup>35</sup> human right bodies reiterate failure of the authorities to properly investigate discriminatory motives in the context of alleged ill-treatment and excessive use of force, in particularly against Roma community. As a result, ineffective investigation of police violence, including ethnic bias, deepens the distrust Roma community holds towards the police and justice system.

46. Inadequacy of prosecutorial and judicial protection in instances of hate crimes is illustrative in the case of Ersan Idrizi, a 25-year-old Romani man from Tetovo, who was verbally and physically assaulted at the workplace by his colleague on 13 November 2020.<sup>36</sup> Ersan was being subjected to racist derogatory language and physical violence, including death threats, leaving him with contusions on his body as diagnosed by medical professionals. Additionally, the traumatic experience led him to seek psychiatric help with a diagnosis of acute stress reaction. Ersan pursued legal action against his attacker, initiating misdemeanour proceedings, followed by a private criminal lawsuit and a criminal complaint, all seeking redress for physical assault. Despite repeated requests filed by his lawyer for termination of misdemeanour proceedings due to overlapping criminal lawsuits, those were ignored by the competent first and second-instance courts, citing the principle of *ne bis in idem*. Efforts of the Basic Public Prosecutors Office Tetovo to indict a perpetrator for violence were thwarted by a decision of the lower court relying on the principle of *res judicata*. The decision was upheld by the second instance court, effectively concluding Ersan's legal battle. The racial motive behind the violence has not been taken into account by either prosecuting authority or courts. The ERRC submitted the case to the Court and it was registered on 13 April 2023 under the name Idrizi v. North Macedonia (application no. 13020/23).

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<sup>33</sup> Ibid, §23, p.20.

<sup>34</sup> UN CAT, §18(c).

<sup>35</sup> ACFC, §77-79. ECRI, §§86,88.

<sup>36</sup> Idrizi v. North Macedonia (application no. 13020/23).



## V CONCLUDING REMARKS

47. For the reasons above, the ERRC respectfully request the Committee of Ministers to continue examining the execution of the judgments in the *X and Y* and *Memedov* cases under the enhanced procedure.

48. Further, considering the continuation of discriminatory police practices against Roma and failure of the prosecutorial authorities to carry out an effective investigation into allegations of ill-treatment, we respectfully call on the Committee of Ministers to:

- Schedule the cases for a next examination at the Committee's earliest convenience.
- Call upon the Government to take measures to ensure prompt, thorough and impartial investigations into allegations of torture and ill-treatment by law enforcement officials leading to the prosecution and punishment of those responsible with penalties that are consistent with the gravity of the act committed.
- Request the Government to undertake measures to enhance the effectiveness of the National Preventive Mechanism (NPM) and the Mechanism for Civil Control (MCC), including by allocating increased budgetary resources to these entities. Moreover, it is crucial to actively involve Roma NGOs in the MCC.
- Call upon the Government to combat and prevent discriminatory police misconduct by ensuring that all alleged cases of excessive use of force by law enforcement officials against members of the Romani community are promptly and effectively recorded and investigated and, as appropriate, prosecuted and punished, ensuring that the victims are provided with an opportunity to seek redress, including as full a rehabilitation as possible.
- Call upon the Government to ensure that motives relating to discrimination are sufficiently investigated and taken into account when prosecuting and sentencing.
- Request the Government to put in place a comprehensive data collection system on complaints, investigations, prosecutions and convictions of crimes committed by law enforcement and hate-



motivated crimes, desegregated by various protected grounds, including ethnicity.

- Call upon the Government to evaluate and improve the training on human rights of law enforcement officials, particularly police officers, regarding the rights of all citizens and minorities, including Roma, to be free from arbitrary force and ill-treatment;
- Request the Government to provide training programmes for all officials involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment that focus on the State party's obligations under the Convention.
- Call upon the Government to ensure that all the relevant personnel, including medical personnel, receive specific training on how to identify signs of torture and ill-treatment.

The European Roma Rights Centre

03 June 2024