

# Monthly report – November 2017

## JUDICIARY

### **The session for determining unprofessional and unethical conduct of judges held behind closed doors**

Over the course of November, the Judicial Council of the Republic of Macedonia held several sessions during which the election of judges and presidents of courts was carried out.

Thus, at the 266th session, a decision was made for the election of Judge Ivan Dzolev as new President of the Basic Court Skopje 1 Skopje, while on the next, 267th session, the Council adopted decisions on the election of new presidents of the Appellate Court in Shtip (Nake Georgiev), as well as the basic courts in Kumanovo (Snezana Manev), Tetovo (Hasan Asani) and Resen (Emelj Kranli Ali), while the candidate for the new president of the Basic Court Debar did not receive the required majority of votes from the Council. Judge Afrim Fidani, who on November 25, 2017 ruled on whether the Internet footage from the cabinet of the mayor of Strumica, Zoran Zaev, could be used as evidence in the "Bribe" Case, was elected as a judge in the Supreme Court.

At the session, the members of the Council elected Judge Tanja Mileva as a judge in a criminal area at the Skopje Court of Appeal, while for civil cases they supported the candidacies of Zoran Gerasimovski and Alija Elezi. Aleksandar Kambovski is a new judge in the Bitola Court of Appeal, and additional announcements will be announced for the positions that remained vacant for judges in the Skopje Court of Appeal and the Supreme Court. According to President Karadzovski, the vacant positions are due to the fact that the candidates did not fulfill the necessary conditions.

Otherwise, as many as two out of 56 judges in the Skopje Criminal Court applied for the four positions announced at the Skopje Court of Appeal, while the former acting President of this court, Tatjana Mihajlova, who rules in the case of the Ex-Prime Minister Gruevski for the incident in the Municipality of Centar, applied to be a judge at the Bitola Court of Appeal, as well as the President of the Resen court, but over the course of the sessions she withdrew both candidacies.

The Judicial Council also held its 268th session, the agenda of which consisted of the procedures to determine responsibility for unprofessional and unethical conduct, filed against five judges. However, when deciding on these complaints, the members of the Council stayed behind closed doors.

**Recommendations:** The Helsinki Committee recommends that the Judicial Council increase the transparency of their work when it comes to selecting, allocating or determining responsibility for unprofessional and unethical work and conduct. It is of utmost importance that the public is well aware of these processes, because their transparency is the first step towards restoring the citizens lost trust in the judiciary. This is particularly important when it comes to procedures for determining liability for unprofessional and unethical conduct. The Judicial Council cannot afford to hold these sessions behind closed doors in a situation where many judges are mentioned in the wiretapped conversations and are subject to sharp criticism by the expert and general public. Only through openness and transparency in its proceedings can the Judicial Council restore the credibility of this institution in front of the public and ensure that the procedures for determining the possible liability of the judges are conducted fairly, in full compliance with the principles and standards of the European Court of Human Rights, and that none of them will be challenged in Strasbourg.

## DISCRIMINATION

### **Discrimination of a student with autism in secondary education**

The Helsinki Committee received a complaint about a case of discrimination of a pupil in secondary education on grounds of disability. Namely, it is a student with autism enrolled in the first year of secondary school in a regular secondary school and who had previously attended regular primary education. Just two months after the start of the school year, the student's parent was invited to school for a conversation with one of the professors. At the meeting, the parent was told that his son was making trouble in the school with his behavior and that he could pose a danger to the other students. Additionally, the parent was informed that he may have to remove his son from the school precisely because of the reasons given. A representative of the Helsinki Committee, along with representatives of two other associations, together with the parent, held a meeting with the school principal and the inclusion team, where they discussed the student's situation and the next steps for his better integration in the classes and the school in general. During the meeting the will of the inclusion team to work with the student was evident, as well as the incompetence of the inclusion team and inexperience in the preparation of an individual educational plan for work with the student and his education (IEP), along with the general inexperience of the school to work with people with any kind of disabilities.

Namely, according to the Law on Secondary Education, whenever a student with special educational needs is enrolled in a school, an inclusive team is formed in the school, consisting of the pedagogue, that is, the psychologist in the school, the teacher, the parent, the special education teacher, if there is one in the school, and the school doctor if necessary. The inclusive team prepares an individual education plan for each student. In this particular case, an inclusive team did exist and it consisted of the school psychologist and a social worker. The problem was that the inclusion team did not contact the parent at all, although it is stipulated and the parent knows the pupil's situation best. The team was not familiar with the student's real situation at all and was not trained to work with children with special educational needs. An individual education plan was not been prepared at all, nor did the team know how to start preparing it and what it should include. In spite of all of these obstacles, the will of the team for cooperation with

the parent and future work with the student for his inclusion in the educational process does exist.

The next steps for this particular case are the preparation of an Individual Education Plan (IEP) for the student in close cooperation with the parent, and its implementation step by step so that the student slowly starts to get integrated into the school and receive a quality individualized education according to his needs and possibilities. The team is already taking the first steps and will get training in order to develop such a plan with the help of an association that has experience in developing individual education plans, even though this is the responsibility of the state, which the state has failed to do in this specific case.

**Recommendations:** The recorded case is only one of the many existing instances of non-inclusion of students with various disabilities in the regular education process. The legal regulations exist but are not implemented properly. There are flaws in the entire system, but the students themselves are the only ones who suffer. We urge the Ministry of Education to take urgent measures to train the teams in the schools to work with these students and to develop individual education plans, with the goal of quality education for all according to their needs and possibilities. We also appeal for increased controls on how inclusive education is conducted in schools, how many students are really involved and what progress they are making.

## FREEDOMS AND RIGHTS

### **ECHR JUDGMENT RELATED TO THE FREEDOM OF ASSOCIATION IN THE AREA OF RELIGION**

In a judgment of the European Court of Human Rights from 16 November 2017, a violation of Article 11 (freedom of assembly and association) was found in relation to Article 9 (Freedom of Thought, Conscience and Religion) of the European Convention on Human Rights, which arose from the refusal of the authorities to register the Orthodox Ohrid Archbishopric (OOA) as a separate religious community. For the violation found, the Republic of Macedonia is obliged to pay the applicant EUR 4,500 (for non-pecuniary damage) and 5,000 euros (for incurred expenses).

The Strasbourg procedure was initiated with application no. 3532/07 filed by the Helsinki Committee for Human Rights on behalf of the association-applicant. Both requests for its registration were rejected by domestic courts for formal reasons, as well as on two other grounds - that the association was formed by a foreign church or state, and that his proposed name was problematic from the point that it was very similar with the title of "MOC-Ohrid Archbishopric", which has a historical, religious and moral right to continuously use this name, whereby the association was intended to represent a parallel religious institution. The applicant association also conducted two unsuccessful proceedings before the Constitutional Court, which dismissed the requests for protection of freedoms and rights on strictly formal grounds, without deciding on the merits of its demands.

Recognizing the wide scope for assessing the state in this area from the point of view of relations between religious communities, the ECtHR, in its judgment, nevertheless pointed to the duty of

the state to remain neutral and impartial in the exercise of its regulatory power in its relations with other religions and religious groups, as well as take into account the preservation of the religious pluralism which is crucial for the proper functioning of any democratic society, the resolution of problems through dialogue and the harmonious interaction between the individuals and groups as essential for achieving social cohesion.

The ECtHR emphasized that the public opinion of the state should not be protected to the detriment of minority views, so that even the great importance that the MOC autocephaly has among its believers and supporters can not justify taking measures that would prevent the applicant from comprehensively and unconditionally start with any religious activity. It is on this ground, having in mind the need to maintain religious pluralism, in the situation of any conflict between or within the religious groups themselves, that the Strasbourg Court explicitly condemned the taking of preventive measures that would suppress the freedom of assembly and expression in a democratic society.

**Recommendations:** The Helsinki Committee for Human Rights welcomes the judgment of Strasbourg, which should contribute to the further promotion of European standards concerning the effective enjoyment of the freedom of religion and religious association in the country. At the same time, the Helsinki Committee for Human Rights reminds that the enforcement of this judgment, in addition to taking those individual measures aimed at defrauding the OOA as an applicant, will inevitably also require other general measures aimed at preventing similar violations in a future, through a fully guaranteed balanced and equal access of the state to all religious communities and religious groups, thus ensuring religious diversity and pluralism.

### **Violation of the right to healthcare and treatment?**

After the news that the 58-year-old Pero Kitanovski, with gangrene on his legs, wanders through Skopje hospitals was aired in the media, the representatives of the Helsinki Committee made a visit to the home of the Kitanovski family, where they inspected the medical documentation and the actual situation.

Pero Kitanovski's health is severely deteriorated with a gangrened left foot and gangrenous changes on the right thumb, and he shares his home with his fifteen-member family. He was sent to be checked by a medical specialist from the City General Hospital "8th September" Skopje for treatment in the clinic for infectious diseases, but his hospitalization was refused on the grounds that there were no conditions. Because he is diagnosed, among other things, with diabetes, the leg was not amputated. His wife, Vaska Kitanovska, said that the doctors were making home visits and giving infusions to Mr. Pero, while the gangrenous wounds were required to be re-bandaged in health dispensaries, but they did not have a suitable vehicle to transport him.

The Helsinki Committee for Human Rights submitted complaints to the Deputy Minister of Health and the State Health and Sanitary Inspectorate with a request for urgent action and undertaking measures aimed at providing adequate hospital treatment and care for Pero Kitanovski.

**Recommendation:** This behavior by doctors and healthcare workers seriously violates the human rights of Pero Kitanovski, as well as his rights as a patient in accordance with the legal provisions of the Law on Protection of Patients' Rights as well as the Law on Healthcare. The explanations of the competent institutions that there are no conditions in the hospitals are unjustified, and such treatment, ie failure to act for effective health protection of the party, fulfills the action of the criminal acts "Unscrupulous treatment of sick people" from Article 207 of the Criminal Code of the Republic of Macedonia, and "Not providing medical assistance" from Article 208 of the said Code.

## HATE SPEECH

### **HATE SPEECH DICTATED by daily affairs!**

During November 2017, there was a reduction in cases of hate speech in the public by public figures that have a particular impact on the public. However, the spreading of hate speech on social networks and internet portals by users/citizens continues. Taking into account the few sociopolitical, important events that stirred the public during the month, such as the publication of the verdict in the case "Divo Naselje" or the draft amendments to the Law on the Use of Languages, the reactions with abusive and discriminatory content, as well as hate speech, mostly on grounds of nationality and ethnicity, were expected on the social networks. Although no explicit hate speech was observed in the public, public figures had speeches that indirectly caused the spread of hate speech.

Homophobic speech on social networks was noted with the sharing of the news of the recognition of the neutral gender in Germany, which includes calls for burning and killing the people with different sexual orientation and gender identity. Such reactions are frequent, which shows that the Republic of Macedonia continues to be a homophobic society. The inaction of the media and Internet portals in removing comments with hate speech, which arise on their social network profiles, is worrying.

**Recommendation:** The Helsinki Committee urges public figures and officials to refrain from using speech that provokes and produces hate speech, and there is danger of it leading to hate crimes. At the same time, we appeal to the electronic media and internet portals to regularly remove comments with hate speech on their posts that are harmful to society and to individual groups if they continue to be shared in the virtual space.

## TEXTILE WORKERS

### **A misdemeanor procedure initiated against an employer from Stip**

Upon submission of a complaint by the Helsinki Committee for Human Rights of the Republic of Macedonia, the State Labor Inspectorate – theregional unit in Shtip, noted deficiencies in the field of safety and health at work in DPTU Jagyemezler Ltd Shtip. In fact, while conducting an ad hoc inspection, the authorized state inspector of labor in the field of health and safety at work

stated that the employer should perform a risk assessment review, carry out tests on chemical, biological and physical hazards, microclimate and brightness, humidity, dust and air pollution in the summer and winter period during the working process, to train 11 employees and to provide regular periodic health check-ups for 11 employees as well. Considering the fact that the employer did not act upon the tasks imposed by the State Labor Inspectorate for a longer period of time, the Helsinki Committee requested continuation of the procedure after the inspection was carried out and requested the inspectorate, in accordance with the legal authorizations, to submit a request for initiation of a misdemeanor commission. Upon the submitted request, the State Labor Inspectorate - the regional unit in Shtip informed us that a misdemeanor procedure was initiated in accordance with the Law on Safety and Health at Work.

**Recommendation:** We salute this decision by the State Labor Inspectorate - the regional unit in Shtip and the proactive attitude and commitment of the state inspector who acted in this specific case, and we encourage textile workers to continue reporting the violations of their labor rights.

### **established violations of labor rights in textile factory in Kriva Palanka**

The State Labor Inspectorate branch office Kriva Palanka, found irregularities and violations of several labor rights in DPTU LO-MA SHOES Ltd Kriva Palanka. Following an initiative for an announced inspection by the Helsinki Committee, the competent labour inspector performed an unannounced inspection in the facility and found that the employer does not keep an electronic record of the attendance of the employees; the employer had not paid the annual vacation benefit to three employees for 2016 and identified irregularities and shortcomings in the field of occupational safety and health. For all identified deficiencies, the State Labor Inspectorate – the regional unit from Kriva Palanka adopted decisions obliging the employer to eliminate the identified shortcomings and irregularities. The employer has so far acted upon the decision to eliminate the deficiencies and irregularities in the field of occupational safety and health.

**Recommendation:** The Helsinki Committee saluted these decisions of the State Labor Inspectorate – the regional unit in Kriva Palanka. At the same time, we welcome the taking action on the part of employer pursuant to one of the decisions for removing the identified irregularities and shortcomings, and we urge him/her it to also act in accordance with the other two decisions of the State Labor Inspectorate. The Helsinki Committee will continue to monitor this case and monitor whether the employer will act upon all the decisions to eliminate the irregularities and deficiencies.

### **established violation of labour rights in a textile factory in Makedonska Kamenica**

Upon an initiative for an ad hoc inspection submitted by the Helsinki Committee for Human Rights, the State Labor Inspectorate - its regional unit in Delchevo found violation of the workers' rights in the textile factory DPTU Tekstil M Ltd in Makedonska Kamenica. After the inspection supervision and the statements given by the employees, the state labor inspector issued a decision establishing a violation of the provisions of the Law on Labor Relations in the

process of salary payment by the employer and gave him a deadline to eliminate the established violations.

**Recommendation:** The Helsinki Committee salutes this decision by the State Labor Inspectorate – the regional unit in Delchevo and states that it will continue to monitor this case, ie it will monitor whether the employer will have acted upon the decision of the inspectorate within the given deadline.

### **reported violations of labor rights in a shoe factory in Kumanovo**

The Helsinki Committee received an application for violation of labor rights in a shoemaking factory in Kumanovo. According to the employees' statement, the employer did not issue monthly payroll calculations, so they are unable to see the monthly amount of their salary nor the payment of contributions. Pursuant to the Labor Law, the employer is obliged to issue a salary statement to the employees with each salary payment, and by January 31 in the new calendar year a written calculation of the salary, the contributions of the salary and the compensations to the salary for the payment period, ie for the past year, where they can see amounts and the payment of taxes and contributions.

With regards to this case, the Helsinki Committee filed a request for an unannounced inspection in which it asked the State Labor Inspectorate to investigate whether the employer in the said factory carried out monthly salary calculations, issued monthly salary calculations to the employees and issued annual calculations of salaries to the employees.

**Recommendation:** The Helsinki Committee will continue to monitor this case, monitor the decision that the State Labor Inspectorate will issue and whether the employer will abide by it.

### **a shoe-making factory in Stip did not pay holiday allowances and salary supplements**

The State Labor Inspectorate, its regional unit in Shtip found irregularities and violations of the labor rights in the Company for production of shoes Bargala HC Stip. Upon the initiative for an unannounced inspection by the Helsinki Committee, the competent inspector of labor performed unannounced inspection supervision and found that the employer had not paid the holiday allowance for 2016 to his employees, he calculated the overtime hours in the item rewards and penalties in the salary calculations thus acting contrary to the Law on Labor Relations and identified deficiencies in the field of health and safety at work. For all the identified deficiencies, the State Labor Inspectorate, its regional unit in Stip, issued decisions that obliged the employer to eliminate the identified shortcomings and irregularities.

**Recommendation:** We urge the employer to act upon the decisions of the State Labor Inspectorate. The Helsinki Committee will continue to monitor this case and monitor whether the employer will act upon all the decisions to eliminate the irregularities and deficiencies.

## POLICE

### **THE POLICE NOT ACTING ON REPORTS OF DOMESTIC VIOLENCE**

During November, several complaints were submitted to the Helsinki Committee by victims of domestic violence, who had turned to the police stations to report domestic violence over the course of the previous year. From the data available to the Helsinki Committee, the police officers had failed to act and did not protect the victims, and instead tried to talk the victims out of reporting the abusers and tried to convince them to make amends with the perpetrators. Considering the fact that the Ministry of the Interior is one of the key ministries that has broad competencies in the direction of acting upon a report on committed domestic violence, protection of the victim of domestic violence, suppression and obstruction of violence, detection of the perpetrator and initiation of a procedure against him/her, as well as preventive activities, this attitude and failure to act on the part of police officers is a violation of the provisions of the Law on Police, the Rulebook on the manner of performing police affairs, the Code of Police Ethics, as well as the Law on Prevention and Protection against Domestic Violence.

Namely, according to the Law on Police, the police officers are obliged to act for the purpose of protection of the life, personal safety and property of the citizens, prevent future criminal acts and misdemeanors, detect and apprehend the perpetrators, as well as take other legal measures against the perpetrators of those acts.

**Recommendation:** The Helsinki Committee for Human Rights points out that the Law obliges the police officers to provide assistance and protect the citizens in the event of an urgent need.

#### **pressure on victims of police brutality**

The Helsinki Committee for Human Rights in its monthly report for October<sup>[2]</sup> published the case of the victims of police brutality by police officers who, by using excessive force, brought them out of their home. As evidence of this event, the parties submitted medical documentation and photographs where severe consequences of the acquired injuries can be clearly seen.

After this case was published in the monthly report, we were informed that the Sector for Internal Control and Professional Standards at the MOI acted upon the application of the parties and had a conversation with the police officers, and after the checking, they submitted a notification to the competent public prosecutor's office in addition to the minutes from the complaint, medical documentation, photographs as evidence of initiating criminal proceedings against police officers.

After the Internal Control Department acted, a misdemeanor procedure initiated against the parties by the same police officers for allegedly refusing to show their ID cards.

The initiation of a misdemeanor procedure by the police officers is a pressure on the parties that reported their unprofessional, illegal and unethical work to the Sector for Internal Control of the Ministry of Interior. This is not the first time that a criminal offense or criminal procedure will be initiated against the victims of police brutality who have plucked up the courage to report abuse of the powers of the police officers in order to discourage them and intimidate them in the further course of the proceedings against the Police.

**Recommendation:** The Helsinki Committee will continue to provide legal assistance and support to the victims of police brutality and urges the Ministry of Internal Affairs to take all necessary measures to suppress the established practice of intimidating the persons who have dared to seek protection of their rights in the cases of unprofessional, unlawful and unethical work of the police officers.

## LEGISLATION

### **The Government adopted the draft Law on Amnesty**

During the 40th session, the Government reviewed and adopted the Law on Amnesty, which paved the way for its further consideration through the usual judicial procedures.

The draft law pinpoints the significance of the right of pardon on the part of the state to the perpetrators of criminal acts in order not to initiate a criminal prosecution against them or to have the sentence of already punished persons shortened or mitigated. At the same time, it was pointed out that the purpose of the adoption of this law is the re-socialization of the perpetrators in order to prevent them from resorting to future criminal acts, which is connected with the announced beginning of the application of the probation, as well as in preventing **the negative occurrences and the prevention of the criminal infection** that would arise from overcrowding and bad and inhumane conditions in the penitentiary institutions in the way they were assessed by the international organizations, as well as financial unburdening of the Budget of the Republic Macedonia, when it comes to providing for the prison population.

This brief law defines the categories of persons who will be released from serving the sentence of imprisonment, specifying that the convicts sentenced to imprisonment for up to six months are completely released from serving the sentence, the convicted persons to who have been sentenced to a prison sentence exceeding six months are released from serving 30% of the total sentence stated in an effective verdict, while convicted persons who have been sentenced with a single sentence of imprisonment are released from serving 30% of the single sentence and imprisonment in the part of predetermined individual penalties covered by the amnesty. The proposal also specifies that if a prison sentence for a criminal offense not subject to amnesty is established in the single prison sentence, the convict will be released from serving the sentence by 30% only in the part of the previously determined individual penalties covered by the amnesty. Article 3 clearly states that the amnesty does not apply to persons sentenced to life imprisonment and lists the offenses that will be exempted from the process, such as murder

(Article 123 of the Criminal Code); crimes against elections and voting (Article 158-165-c of the Criminal Code), crimes against sexual freedom and sexual morals (Articles 186, 187, 188, 189, 191, 193, 193-a, 193-b and 194 of the CC); crimes against the state (Article 305-327 of the CC); crimes against the public order (Article 394-a-394-г, from the Criminal Code); as well as crimes against humanity and international law (Articles 403-418-a and 418-c to 422 of the Criminal Code).

At the same time, it is envisaged that the procedure for applying this law for convicts who are serving the sentence of imprisonment is initiated ex officio by the penitentiary-correctional institution, and for those persons who have not started serving the sentence of imprisonment - the court which adopted the first-instance verdict initiates the process ex officio, at the request of a public prosecutor or at the request of the convicted person. An appropriate right to appeal against the amnesty decision is also envisaged within 24 hours from the receipt of the decision, which can be submitted by the convicted person and the person who can make a complaint in favor of the convicted person.

According to the estimates, 670 people who were sentenced to imprisonment for up to 6 months will be released, and 3097 persons will have their sentences shortened by 30%.

**Recommendations:** The Helsinki Committee for Human Rights was involved in the preparation of this legal project, whereby it had the opportunity to participate in the public hearing, which was organized and realized at the beginning of the month. We basically agree with the need to adopt such a law, but point to the necessity to make a proper analysis and to show how such legal solutions would contribute to the strengthening of the rehabilitation concept and helping the process of reintegration and social adaptation of convicted persons, indicated by the proposer of the law. At the same time, the Helsinki Committee for Human Rights appeals urgent measures to be undertaken aimed at remedying the most alarming conditions in the penitentiary institutions in the country in anticipation of the forthcoming winter season, as well as the elaboration and implementation of a more long-term concept of modernization of the penitentiary system by providing more humane conditions for the accommodation of the convicted persons, and harmonization with the requirements for elimination of the numerous shortcomings both in terms of the spatial, sanitary and hygienic and other conditions and in order to guarantee certain standards, including those in terms of education and work engagement and the access of prisoners to adequate health care, as well as in terms of staffing of services and prison administrations and dealing with endemic corruption, as indicated in the Report of the Committee for the prevention of torture in the Council of Europe published on October 12, 2017.