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UNDER ARTICLE 40 OF THE COVENANT**

**Second periodic report**

**The former Yugoslav Republic of Macedonia\***

[6 November 2006]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## **Article 1**

### **Right of Self-Determination of Peoples**

1. The same issues indicated in the initial report are reiterated herein.

## **Article 2**

### **Human Rights and Their Protection**

2. The improvement of the legal framework concerning the enjoyment and protection of human rights has been a general characteristic of the Republic of Macedonia in the reporting period from 2000 until 2006.
3. In the exercise of individual rights before the courts in the Republic of Macedonia, certain weaknesses were identified, which were accompanied by insufficient expeditiousness of the judiciary, lengthy proceedings for fulfilment of citizens' rights, and lack of trust and confidence in the judiciary by the public at large. These shortcomings were mainly due to several factors, including delays in court proceedings, a heavy caseload with which the courts have been overburdened, insufficient transparency in the work of the courts, and insufficient training of judges. The analysis of the existing weaknesses and shortcomings within the judiciary showed the need for substantial and outreaching reforms aimed at establishing legal and institutional preconditions for efficient functioning of the judiciary, which undoubtedly is one of the principal prerequisites for the enjoyment and protection of human rights.
4. In November 2004, the Government adopted a Strategy for the Reform of the Judicial System, with the main objective being: to ensure a functional and efficient judicial system capable of ensuring observance and protection of individual human rights and fundamental freedoms, based on European legal standards. The reform efforts and activities in this area were particularly intensified in 2004 with the ratification of the Stabilization and Association Agreement between the Republic of Macedonia and the European Union, wherein cooperation in the area of justice and home affairs has been highlighted by the commitment of both sides to pay particular attention to the independence of the judiciary, the improvement of its efficiency and the training of legal professionals.
5. Structural reforms and reforms of the procedural legislation are also integral parts of this Strategy. In December 2005, for instance, the Assembly enacted amendments to the Constitution, whose principal goal is to strengthen judicial independence. Primarily, these amendments introduced a new system and procedure for the appointment and dismissal of judges, relying exclusively on objective and merit based criteria. Significant changes were also made to the status, composition and competencies of the Republic's Judicial Council.
6. The reform of procedural legislation will guarantee prompt access to justice, and more efficient exercise of the rights and interests of individual citizens and legal entities, by providing procedural safeguards for their protection through various mechanisms of the judicial system.
7. Accordingly, the new legislative solutions and safeguards incorporated in the amendments and supplements to the Criminal Procedure Code adopted in 2004 and in the new Civil Procedure Code enacted in 2005 will ensure acceleration of court proceedings and give full

effect to the right to a trial within a reasonable time, thus providing efficient judicial protection of the rights of individuals and legal entities in the proceedings before courts. These legislative changes concern and provide for improvements and increased efficiency in the service of process; they eliminate possibilities for potential abuse of procedural rights by the parties to the proceedings causing unnecessary delays; the statutory terms required for undertaking procedural actions have been shortened; a revision of recourse to certain legal remedies and decision-making thereupon has been made (For more information about independence and autonomy of the judiciary, and the right to a trial within reasonable time, see under article 14 of the current report).

8. With regard to the so-called out-of-court i.e. alternative dispute resolution, the departing point in the reform have been the experiences in the use of mediation, which apparently has the most direct effect on reducing the number of court cases, and on releasing the judiciary from the burden of handling a significant number of cases that could be resolved by mediation. Therefore, the Strategy envisions enactment of a Law on Mediation, which would govern the cases and different types of mediation and reconciliation, as well as the legal effects of decisions and individual acts rendered in such out-of-court procedures.

9. Within the framework of the overall judicial reform, a new Law on Enforcement was enacted in May 2005. The Law introduces an efficient legal system for the enforcement of court decisions and judgments brought in the area of civil law. (To read more about the novelties introduced with this law, see article 11 of the current report).

10. With respect to the criminal justice system and its protection of human rights and freedoms, the statistical data demonstrate that over the course of the reporting period from 2000 up until 2004, in the total number of convicted persons, the number of those convicted for criminal offences against individual rights and freedoms amounted to 0.9%. Thus, in the total number of 308 convicted persons for these types of criminal offences, the prevailing ones were the endangerment of public security per article 144 and unlawful deprivation of liberty per article 145 of the Criminal Code.

11. An integral part of the existing corpus of constitutional safeguards for the enjoyment and protection of human rights and freedoms is the right to file individual petitions or communications before the competent United Nations authorities for an alleged violation of the rights guaranteed in the ratified international conventions.

12. The Republic of Macedonia has submitted a declaration recognizing the competence of the following:

- Human Rights Committee, to receive and consider communications from individuals who claim to be victims of a violation of their rights set forth in the International Covenant on Civil and Political Rights;
- Committee on the Elimination of Discrimination Against Women, to consider and decide upon individual petitions or communications submitted based on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women;

- Committee against Racial Discrimination, to receive and consider petitions or communications for violations of the rights enshrined in the Convention on the Elimination of All Forms of Racial Discrimination;
- Committee against Torture, to consider individual petitions or communications filed based on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

13. Furthermore, at the moment of ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Republic of Macedonia submitted a declaration accepting the jurisdiction of the European Court of Human Rights.

14. Inclusive as of 26 December 2005, the European Court of Human Rights completed 17 cases against the Republic of Macedonia, whereas 30 cases are still pending. Out of the completed cases, inadmissibility decision was rendered in 8 cases (the applications were rejected as inadmissible); in 2 cases, the applications were withdrawn by the applicants; in 1 case, the Court held that there was no violation of the rights at stake; in 2 cases, the Court held that there was a violation of the right to property by the Republic of Macedonia; in 1 case, a friendly settlement was reached; and in 4 cases, a violation of the right to a trial within reasonable time was found.

15. There has been an increase of the number of individual citizens addressing their concerns before the Ombudsman, who is responsible for protecting the constitutional and legal rights of citizens in cases when they are violated by bodies of the State administration or by other bodies and institutions performing public authorizations or public mandate. The Ombudsman's findings of human rights violations are, more or less, based on identical grounds; however, there is a positive trend in terms of compliance with the Ombudsman's decisions. Namely, during the period 2000-2004, out of the total number of 7,132 complaints received by the Ombudsman, a violation of the constitutional and legal rights of citizens was found in 1,616 cases or in 22.5% of the total number of cases. The competent State administration bodies followed and complied with the Ombudsman's recommendations in 59.4% of the cases. The following table shows the situation per year:

Year	Total number of complaints received	Total number of cases where a violation of human rights was established	Actions taken following the Ombudsman's recommendations
2001	1 107	318 (28.7%)	186 (58.4%)
2002	1 878	552 (29.3%)	329 (59.6%)
2003	2 605	550 (21.1%)	356 (64.7%)
2004	1 542	196 (12.7%)	89 (45.5%)

*Source:* Ombudsman.

16. A significant novelty to the Law on Ombudsman was made in 2003, by which new competencies were added under its realm, including:

- The Ombudsman undertakes activities and measures for safeguarding against undue postponement or delay of court proceedings, as well as against non-diligent and

unaccountable performance by court services, thus not impairing the principles of autonomy and independence of the judicial branch of the government (article 11 of the aforementioned law);

- The Ombudsman monitors the current situation regarding the observance and protection of the constitutional and legal rights of apprehended and detained persons, as well as of persons serving the imprisonment sentence or the educational and correctional measure in penitentiaries or correctional institutions (article 31).

17. In the course of 2004, the largest number of complaints received and recorded by the Ombudsman pertained to the area of the judiciary. The outcome of the recourse pursued by the Ombudsman pointed to the same weaknesses in the judiciary, and has reaffirmed the need for implementing the Strategy for the Reform of the Judicial System aimed at ensuring legal certainty for all individuals.

18. During the reporting period, i.e. from 2003 to 2004, the Standing Pool Committee for the Protection of Individual Rights and Freedoms, created within the Assembly, processed 74 complaints, out of which 30 were group complaints, whereas 44 were individual complaints. In the majority of these cases, the Committee held interviews with the complainants. In 33 cases, the Committee furnished the complainants with instructions on how to pursue their cases; in 32 cases, it requested additional information from the competent authority; in 26 cases, it advised to await for the response or actions to be undertaken by the competent authority or by the Ombudsman; in 23 instances, assistance was provided in drafting the complaint to be submitted to the Committee; responses were received in 17 cases; and in 12 cases, expert assistance was rendered to the complainants in drafting their complaints or other types of submissions later filed with other competent authorities. The Committee concluded that it had a good communication and correspondence with almost all competent authorities; namely, they replied to and furnished the Committee with information, as requested.

### **Article 3**

#### **Equality between Men and Women**

##### **(With regard to the Recommendations under items 13 and 14)**

19. The Beijing Declaration and Platform for Action, adopted at the Fourth World Conference on Women, unequivocally calls for equal rights and irrevocable human dignity of women and men, as enshrined in the Charter of the United Nations.

20. Being committed to materialize and give full effect to the Beijing documents, the Government of the Republic of Macedonia in 1999 adopted a National Plan on Gender Equality. This plan is deemed as an instrument for the implementation of the strategic goals set forth in the following areas:

- Human rights and women;
- Women in politics and in decision-making;

- Women and the economy;
- Women and social policy;
- Women and health;
- Women and education;
- Violence against women;
- Women and peace;
- Women and environment;
- Women and information.

21. All these objectives reflect the fundamental strategy of the Government to ensure full enjoyment of all human rights and fundamental freedoms by women, as well as to create appropriate protection mechanisms for these rights, and for the elimination of all forms of discrimination.

#### **Women in Politics and in the Decision-Making**

22. A priority activity within the National Plan for Ensuring Equal Access for Women in Politics and in Other Areas of Policy and Decision-Making is to improve the current legal framework. To this effect, amendments and supplements to the Law on Election of Representatives in the Assembly of the Republic of Macedonia were enacted in 2002. Article 37 of this law stipulates the following: “In the proposed list of candidates, each sex shall be represented with at least 30%.” This statutory provision resulted in an increase in the number of women representatives in the fourth multiparty Parliament, which was constituted subsequent to the parliamentary elections in 2002. Accordingly, out of the total number of 120 representatives in Parliament, 22 or 18.3% are women.

23. In 2004, the Law on Local Elections was also amended. According to its article 15-a: “In the proposed list of candidates for members of municipal council and the Council of the City of Skopje, each sex shall be represented with at least 30%, in the upper and lower half of that list”. The results of the local elections held in 2004 showed that out of the total of 85 mayors countrywide, 3 or 3.5% are women. On the other hand, out of the total of 1,391 members of municipal councils, 309 or 22.2% are women, an increase of 13% since the local elections held in 2000.

24. With the aim of incorporating the concept of gender equality into local politics and of improving the position of women at local level, gender equality commissions were created and became fully operational in 10 towns in the country. The commissions were established under the provisions of the statutes of municipal councils, and are composed of men and women representing different political parties in municipal councils. Their main task is to make a positive impact on local politics in the light of the principle of equality between men and women,

and to overcome particular problems that women experience at local level. The commissions developed local action plans, which identified objectives and needs specific to each municipality. These plans will be implemented in the upcoming period.

25. As of 1 November 2004, the Public Administration Reform Unit of the Organization for Security and Cooperation in Europe (OSCE) Spillover Monitor Mission to Skopje, in close cooperation with the Department for Gender Equality and the NGO "Union of Women Organizations" have been implementing an ambitious project entitled "Promotion of Gender Equality at Local Level". The expected results of this project include: capacity-building of the existing gender equality commissions; creating internal and inter-municipal networks between all commissions for the purposes of sharing of information, experiences, and training; and advancing the inclusion of women in local government.

26. Furthermore, the Draft Law on Equal Opportunities for Men and Women is a constituent part of the ongoing affirmative action being undertaken at national level, which is aimed at the advancement of gender equality. This Draft Law governs issues such as: common grounds for improvement and enhancement of the status of women, and creation of equal opportunities for men and women in political, economic, social, and educational areas, as well as in other fields of social life. To achieve the overall objectives set forth in this Law, general and specific measures and activities are foreseen for creating equal gender opportunities, by making a clear delineation between the competencies, tasks and responsibilities of various stakeholders. The Government approved the text of the Draft Law on Equal Opportunities for Men and Women at its session of 12 January 2006; and the Draft Law is currently pending before the Assembly.

27. Another important development in this area is the so-called "Macedonian Women Lobby", which was created in March 2002 under the auspices of the Stability Pact's Working Table on Gender Equality, a lobby group aimed at influencing various institutions, media, and the public at large. It is an open structure i.e. a broad coalition of women coming from non-governmental organizations, political parties, government institutions, local government, trade unions, and media.

28. A priority objective of this group is to achieve gender equality through:

- Improvement and implementation of the legislation that will ensure the rights of women;
- Creation and implementation of a development strategy for national gender equality machinery;
- Encouragement and organization of campaigns and activities for the protection of women's rights in a variety of areas.

29. The Ministry of Labour and Social Policy has enabled the opening of a special Office responsible for realization of the programmatic activities and strategic goals of the Macedonian Women Lobby.

30. The available data for the period 2000-2004 show that women have been represented with more than half in the total number of employees in the executive and judicial branches of the Government.

31. Out of 192 civil servants employed within the Government, 105 or 54.7% are women. In the current Government coalition there are 19 ministers, 3 of whom are women. They cover the sectors for foreign affairs and justice, and one is a Vice Prime-Minister, who at the same time is responsible for European integration affairs.

32. In the total number of 5,040 civil servants employed within State administration bodies i.e. ministries, 2,291 or 45.5% are women. Out of the total number of managerial civil servants, 385 or 7.6% are women. In the Assembly, 106 or 69.3% are women (out of the total number of those who belong to the civil service), and 28 or 18.3% of these hold managerial positions.

33. The participation of women in the judiciary is increasing. Accordingly, in 2000, out of a total of 647 judges, 325 or 50.2% were women; in 2001 out of a total of 631, 327 or 51.8% were women; in 2002 the total number of judges was 642, out of which 338 or 52.6% were women; in 2003 the total number of judges was 628, out of which 330 or 52.5% were women, and in 2004 out of the total number of 648 judges, 339 or 52.3% were women.

34. The distribution of women in different court instances is as follows: out of a total number of 541 judges in basic (first instance) courts, 294 or 54.3% are women; out of a total number of 82 judges in the three appellate courts, 37 or 45.1% are women; and in the Supreme Court, where the total number of judges is 25, eight or 32% are women.

### **Women and Social Policy**

35. One of the major strategic objectives set forth in the National Plan in the social policy sector is to ensure equal treatment between men and women in the area of employment, remuneration and promotion.

36. A priority activity in this area is the harmonization of the national labour legislation with that of the European Union. To this effect, and within the framework of the labour legislation reform in June 2005, a new Law on Labour Relations was enacted, to which was incorporated provisions contained in the Council's Directive relating to the application of the principle of equal pay for men and women, the Directive on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, and the Directive on the burden of proof in cases of discrimination based on sex.

37. The prohibition of discrimination is promoted in article 6 of the Law on Labour Relations, wherein it is stipulated that "The employer cannot put the person seeking employment or the employee in an unequal legal position on the grounds of race, colour of skin, sex, age, health or disability, religious, political or other convictions, membership in a trade union, national or social origin, family status, property or financial situation or other personal circumstances. Women and men must be provided with equal opportunities and equal treatment with regard to employment, promotion, vocational training and education, retraining, salaries and benefits, absence from work, insurance at work, working conditions, working hours and termination or

cancellation of employment contracts.” The Law also provides for annulment of the provisions contained in collective bargaining agreements and employment contracts in cases when they discriminate on the grounds set forth in article 6 of the Law.

38. Furthermore, the Law makes a clear distinction between direct and indirect discrimination, and enumerates the exemptions from the prohibition of discrimination. The notion of harassment and sexual harassment are defined therein as well.

39. According to article 7 of the Law, “direct discrimination” denotes any act or behaviour that is subject to some of the grounds set forth in article 6 of this Law by which the person concerned was or is placed or could have been placed in a less favourable position vis-à-vis other persons in comparable situations.

40. In terms of this Law, “indirect discrimination” occurs when an ostensibly neutral provision, criterion or practice places a candidate seeking employment or the employee in a more unfavourable position compared to other persons on the grounds of any of the features, status, affiliation or convictions set forth in article 6.

41. Discrimination is prohibited with regard to:

- Employment requirements, including criteria and conditions for the selection of candidates for carrying out certain type of work in any business activity and at all levels of professional hierarchy;
- Career development;
- Access to all levels and types of professional training, vocational re-training, and additional skills development;
- Working conditions and working environment, as well as all rights deriving from and related to the employment relation, including equality of salaries received;
- Cancellation or withdrawal from the employment contract;
- Right to form and be active in the associations of employees and employers or in any other professional organization, including the enjoyment of privileges deriving from such membership.

42. Article 8 of the Law enumerates the exemptions from the principle of prohibition of discrimination. Accordingly, the following is not considered as discrimination: making distinction, exclusion or giving priority with respect to the performance of a certain type of work as required by its nature, or in cases when the work at stake is to be carried out under such conditions that the features related to some of the cases referred to in article 6 of this Law represent a real and decisive requirement for the performance of the work provided that the objective to be achieved is a legitimate one and the condition imposed is proportionate.

43. All measures prescribed in this or other laws, as well as the provisions of other laws, collective bargaining agreements and employment contracts with respect to special protection

and provision of assistance to a particular category of employees, especially the provisions regarding protection of handicapped persons, elderly employees, pregnant women, women exercising their maternity leave rights, as well as the provisions concerning special rights of parents, adoptive parents and foster parents are not considered as discrimination, nor could be deemed as grounds of discrimination.

44. Article 9 of the Law on Labour Relations stipulates that harassment and sexual harassment are forms of discrimination in terms of Article 6 of this Law, and therefore have been prohibited. "Harassment" is any undesirable behaviour resulting from some of the cases referred to in article 6 of the Law, which is aimed at or represents a violation of the dignity of the candidates seeking employment or employees, and which causes fear or creates a hostile, humiliating or insulting behaviour. Sexual harassment, in terms of this Law, is any verbal, nonverbal or physical behaviour of a sexual nature, which is aimed at or which represents a violation of the dignity of the candidate seeking employment or the employee, and which causes fear or creates a hostile, humiliating or insulting environment.

45. In the cases of discrimination referred to in article 6 of the Law, the applicant, the candidate seeking employment or the employee is entitled to recourse and damage compensation in an amount of five average salaries received in the Republic of Macedonia.

46. Should candidates seeking employment or employees during litigation present facts that their employers were acting or behaving contrary to articles 6 and 9 of the Law, the burden of proof that there was no discrimination lies with the employers. Employers are required to prove that they were acting in compliance with the aforementioned articles, unless they can prove that such different treatment was justified based on the exclusions set forth in article 8 of the Law.

47. Article 107 of that Law imposes an obligation upon employers to pay equal salaries to the male and female employees for the same type of work being carried out under the same requirements for a given position.

48. Based on the data collected during the Work Force Survey conducted in 2004, according to their economic status, women represent 31.1% of the employed in the country; they represent 1.3% of employers; 1.6% are self-employed; and 4.6% are unpaid household workers. On the other hand, in the overall number of employees, men represent 44.3% of the employed; there are 4.6% men employers; 8.6% are self-employed, and 3.9% are unpaid household workers.

49. There are considerable variations in the representation of women within the work force depending on their level of education, compared to the situation of men. In percentages, women are mostly represented in the group of employees having four years secondary (high) school education, and this figure is 17.4%, whereas in the group of employees holding a university diploma, women represent 7.2%.

50. The women's unemployment rate is 37.8%, whereas men's is 36.7%.

### **Women in the Educational Process**

51. Evidently, the programmes for reform and transformation of the educational system are targeted at ensuring gender equality among the student population. The statistical data suggest

that there is equal representation of both sexes in the overall student population in the country. This applies not only to the student admission policy, but also to the education process itself and the acquisition of diplomas and degrees. Primarily, minor differences between the percentages representing both sexes are a result of fluctuation in the natural birth rates of men and women in the different generations.

52. In the reporting period from 1998 until 2004, female students represented with 48.4% of the high school population, which shows their equal participation in secondary schooling.

53. The number of female university graduates, during this period of time, on average amounted to 61.6%. The percentage of women holding master's degrees in this period on average amounted to 47.1%, whereas the average percentage of women holding doctorate degree, for the same period of time, was 43.1%.

54. According to the official data of the State Statistical Bureau, there is a slight increase of the number of female teachers in elementary schools. Namely, in the course of the school year 1997/98, there were 54.4% female teachers in elementary schools, whereas in the school year 2002/03, this percentage increased to 57.3%.

55. In the course of the academic year 2004/2005, within the total number of professors and other teaching staff at universities, women represented 44.2%. This is a slight increase over 1997/98, when they represented 41%.

56. Moreover, the issues concerning gender equality have been incorporated in the curricula and teaching syllabus in the educational system. For instance, as of school year 1999, issues about the role of both sexes and the differences between men and women in society at large have been incorporated into the subject of sociology taught in the first year of general high school education.

57. As of 2002, sociology has been introduced as an optional subject in the third year of general high school education, wherein the following are some of the issues related to equality between men and women:

- Factors for gender socialization;
- Raising awareness about societal construction of gender and sex;
- Developing opinions about different perspectives on gender inequality;
- Identification and recognition of sex-oriented norms in the society.

58. The curriculum of other subjects, such as economy, education and differentiation according to age and sex, are aimed at explaining the position of women in the economic system, women's participation in different areas of social life; the influence of education on women's societal position; identification of consequences of differentiation based on age and sex; and developing one's own attitude towards gender differentiation.

59. Equality between men and women, being a segment of the study programme, focuses on elaborating the reasons for gender inequality and describing situations where such inequality may occur.

60. "Civic education" is taught in professional-oriented high schools twice a week as a mandatory subject in fourth year. It also includes issues related to gender equality.

61. The Ministry of Education and Science is involved in many activities under the UNESCO worldwide programme "Education for All". To this effect, and with the aim of ensuring equal educational opportunities for all children, or more precisely, to expand the scope of inclusion of children coming from vulnerable groups in the elementary and secondary school education in the Republic of Macedonia, particularly girls, the Ministry of Education and Science, in close cooperation with UNICEF, is implementing a project whose principle goal is to expand the scope of inclusion of pupils from rural areas in the system and process of education.

### **Violence against Women**

62. The National Plan envisions the following priority objectives in this area: determination of the dimensions and seriousness of this phenomenon and creation of legal and institutional preconditions for the prevention and elimination of violence against women. In 2000 the Institute for Sociological, Political and Legal Research was commissioned by the non-governmental organization "Emancipation, Solidarity and Equality of Women" (hereinafter referred to as "ESE") to conduct research on violence against women in the Republic of Macedonia, as one segment of the overall phenomenon of domestic violence. This research covered a representative sample of 850 female adult respondents, which is more than 1% of the total female population in the country.

63. Findings revealed that the occurrence of violence against women is high. Accordingly, 61.5% of the respondents indicated that they have experienced some form of psychological violence; 23.9% confirmed to have been subjected to physical violence and the smallest percentage (5.0%) responded that their sexual integrity has been infringed.

64. The above-mentioned figures and other findings of the non-governmental sector in the Republic of Macedonia represent a solid argument for the need to promptly alter and change the society's attitude towards this phenomenon by developing appropriate legal and institutional preconditions for the prevention and elimination of violence against women.

65. In response to this need, an important segment of the criminal legislation reform was the criminalisation of domestic violence. According to article 122, item 19 of the Law on Amending and Supplementing the Criminal Code, which was adapted in March 2004, domestic violence encompasses acts of ill-treatment, cruel insulting, endangering of security, inflicting bodily injuries, sexual or other types of physiological or physical violence that could cause a sense of insecurity, endangerment or fear on the part of a spouse, parents or children, as well as other persons living together in a marriage or cohabitation or in a common household; domestic violence also subsumes such acts committed against a former spouse, or between persons who have a child in common or persons who are in close intimate relation.

66. The act of domestic violence may also occur by commission of acts of other criminal offences, including: murder per article 123; momentary murder per article 125; bodily injury per article 130; grave bodily injury per article 131; coercion per article 139; unlawful deprivation of liberty per article 140; endangering of security per article 144; mediation in prostitution per article 191; and sexual assault against a child per article 188.

67. The statistical data reveal that in the course of 2004 and 2005, a total of 448 cases of domestic violence were registered, 149 in 2004, and 299 in 2005.

68. The amendments and supplements to the Family Law, which were enacted in June 2004, provided for a civil law recourse to the phenomenon of domestic violence.

69. The provisions of this Law, inter alia, stipulate that the Republic shall ensure protection of the marriage and family from any impairment of their inner relations and from occurrences of violence therein. Any form of violence within the marriage and family is prohibited by law.

70. In terms of this Law, domestic violence or violence within the marriage and family denotes any behaviour by a family member, who by use of force, treat or intimidation, commits bodily injuries, emotional or sexual abuse or material, sexual or labour exploitation against another member of the family. The notion of domestic violence subsumes such behaviour of one spouse against the other, of persons who are living or used to live together in marriage or cohabitation or in any other type of family community, or persons who have a child in common; such behaviour may also occur between siblings and half-siblings; such behaviour may appear against a child, elderly members of the family, and against family members whose capacity is partially limited or entirely revoked.

71. A victim of domestic violence can be any member of the family regardless of sex and age. A perpetrator of an act of domestic violence could be a former or current spouse or cohabitation partner; a person who used to live or lives together with the victim; a person with whom the victim has a child in common; a person in blood-kinship up to the fourth degree and a person in kinship based on marriage up to the second degree; or a person who is married or is a cohabitating partner to the victim, or a person with whom the victim lives together in any other way.

72. Furthermore, the Law provides for protection measures against domestic violence. Accordingly, whenever the Social Affairs Centre has information that violence of any kind has occurred in the family and the life or health of a family member is in danger, it may undertake the following protection measures:

- Provision of shelter to the victim of domestic violence for up to a maximum of six months, with the possibility of an additional six-month extension;
- Provision of adequate health care and psycho-sociological intervention and treatment;
- Reference to suitable counselling services;
- If there is a child who ought to attend regular schooling, it will help the child to continue regular education;

- Reporting of the crime to the competent prosecution authority;
- Provision of any kind of legal assistance and representation as needed;
- Initiation of proceedings before the competent court;
- If needed, submitting a motion for temporary protection measure i.e. temporary restraining order;
- Undertaking other measures as deemed necessary to address the problem at stake.

73. The Social Affairs Centre has a statutory responsibility to follow up with protection measures in cases where the victim of domestic violence is a minor or a person whose capacity is limited or entirely revoked. The Centre may receive information about the occurrence of an act of domestic violence from individual citizens, officials and legal entities, all of which are obliged to report such incidents without undue delay.

74. With the aim of ensuring full implementation of the Law, the Ministry of Labour and Social Policy established four daily shelters for domestic violence victims, which are organizational units within social affairs centres. In the Ministry's Development Programme regarding this type of protection, it is envisaged to further expand this network of shelters.

75. The Family Law further governs the issue of initiating civil law proceedings before courts, notwithstanding criminal charges having been brought and criminal proceedings having been initiated against the perpetrator. In this respect, the Social Affairs Centre is responsible for submitting a motion before the competent court seeking a temporary measure i.e. restraining order or other type of protection measure to be issued against the perpetrator. Moreover, the Social Affairs Centre is obliged under the Law to submit such a motion whenever the victim is a minor or a person with limited capacity. Such a motion concerning adults and persons who enjoy full legal capacity could be submitted only with the consent of the domestic violence victim.

76. The Social Affairs Centre encloses with the motion, the minutes and the report of all activities already undertaken, and may propose a specific temporary protection measure to be issued by the court.

77. A proposal to initiate court proceedings may be filed with the Social Affairs Centre by the spouse, parents or children or other persons living in marriage or cohabitation or in a common household, as well as by a former spouse or persons who are in close intimate relation, and who were subjected to domestic violence irrespective of whether or not a criminal complaint had been lodged. A parent, guardian or legal representative may file such a proposal on behalf of a minor or a person whose capacity is entirely revoked, as well as on behalf of a person who is under extended parental care.

78. The Law prescribes a plethora of temporary protection measures that could be imposed on the perpetrator of domestic violence, including:

- A ban from threatening to commit a crime of domestic violence;

- A ban from ill-treating, harassing, telephoning or contacting, or in other way communicating with the family member concerned, either directly or indirectly;
- A restraining order not to approach the proximity of home, school, working place, or other specifically determined place which the family member concerned frequently visits;
- Order to vacate the home regardless of its property title until the court makes a final decision;
- A ban from possessing firearms or other types of weapon, and their seizure;
- An order to return the necessities needed for day-to-day life of the family;
- Mandatory payment of alimony as family support;
- An order to attend appropriate counselling or to undergo mandatory treatment in cases when the perpetrator suffers from addiction to alcohol, narcotics or other psychotropic substances, or is suffers from other diseases;
- An order to compensate medical and other expenses incurred in consequence of the acts of domestic violence;
- Any other measure which the court deems to be necessary to ensure the security and well-being of other family members.

79. These temporary protection measures in cases of domestic violence may last one year at the most. If the violence persists even after the duration of protection measure has elapsed, the Social Affairs Centre may submit a motion seeking further extension of some of these measures.

80. The court may accept, overrule or alter its initial decision concerning protection measures following the proposal submitted by the Social Affairs Centre.

81. The Social Affairs Centre shall monitor the course and the extent of application of temporary protection measures, i.e. restraining orders, imposed by a court decision:

- It may submit a motion before the competent court seeking withdrawal of a given measure even before the time period set for its implementation has expired, provided that it is satisfied that the given measure has accomplished its objective;
- It may submit a motion seeking alternation of the initial measure imposed or extension of such measure, provided that it deems that the measure at stake is unsuitable or that the anticipated results will be achieved only if applied for a longer period of time.

82. The Law also governs the procedure following which temporary protection measures can be issued and applied in cases of domestic violence, the composition of the court when dealing with this type of case, the course of the court hearing, and the legal remedies available against court decisions and court orders.

83. During the enforcement of protection measures, the Social Affairs Centre cooperates closely with individual citizens, legal entities and various organizations. Moreover, penalties are prescribed for entities failing to comply with their legal duty to report cases of domestic violence to the competent social affairs centre. As of the time when these legislative changes entered into force, the basic (first instance) courts had issued 19 protection measures against perpetrators of domestic violence.

84. In 2005, thanks to well-organized and coordinated activities of social affairs centres and experts coming from different sectors, 834 interventions were registered in the territory of the Republic of Macedonia, in which counselling services, shelter and other measures to assist domestic violence victims were supplied.

85. The above-mentioned figures demonstrate that social affairs centres have made significant efforts towards the practical application of measures for the protection of victims of domestic violence in accordance with statutory provisions, and in line with the instructions given by experts from the Social Activities Bureau. The positive results from the work of social affairs centres, which are primarily aimed at ensuring the well-being of victims of domestic violence, have been confirmed by the victims themselves in testimonies given during field visits and interviews held with them.

86. Furthermore, one of the strategic commitments and priorities of the Ministry of Labour and Social Policy is the provision of continuing and ongoing training and upgrading the knowledge and skills needed to identify and recognize domestic violence, and the provision of assistance to domestic violence victims.

87. To this effect, and in the framework of the ongoing cooperation with the UNICEF Office in Skopje, in the period from November 2004 until May 2005, multi-sector training sessions on “Community Work with Domestic Violence Victims” were held. During the two cycles of this training, 86 professionals were trained. They came from different areas such as: social welfare protection, police, health services, the judiciary, and the non-governmental sector.

88. Simultaneously, in June 2005 a one-month National Campaign for Combating Domestic Violence was conducted. It was aimed at strengthening the confidence and trust of potential victims in State or government institutions, recognition of the domestic violence phenomenon, and encouraging victims to take action and to seek assistance and aid. This campaign was targeted at the public at large, with a particular emphasis on women and children, as they most often appear as victims of domestic violence, as well as at the media in order to raise their awareness about the existence of domestic violence.

89. In conjunction with a non-governmental organization called “Union of Women of the Republic of Macedonia”, a nationwide SOS telephone line was opened offering assistance to victims. This is a 24-hour service providing information and assistance. On average, this line hosts 120 phone calls per month.

90. With the aim of providing free legal aid and *pro bono* representation of domestic violence victims before judicial authorities, the NGO “ESE”, in June 2002, launched and opened the first Legal Aid Centre in the capital, Skopje. The NGO also provides free legal aid to victims in similar centres opened in Tetovo and Stip, which became operational in December 2003. The one thousand clients seeking legal advice and assistance in the Legal Aid Centre in Skopje is evidence of the need for this centre to continue operating.

### **Trafficking in Women and Children**

#### **(a) Legislative Framework**

91. The Republic of Macedonia is situated in a geographical region through which the route of illicit human trafficking passes and has therefore been identified as both a transit country and a country of final destination.

92. In an effort to build a unique approach for the promotion of human rights in Southeast European countries, as well as to be effective in the fight against human trafficking as a form of transnational organized crime, the Republic of Macedonia on 12 December 2000 signed the United Nations Convention against Transnational Organized Crime in Palermo, Italy, together with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children and the Protocol against the smuggling of migrants by land, sea and air.

93. In parallel and within the Human Trafficking Taskforce Group of the Stability Pact, the Republic of Macedonia signed the following documents:

- Stability Pact Anti-trafficking Declaration of South Eastern Europe on 13 December 2000 in Palermo, Italy;
- Statement on Commitments to further develop a Regional Information Exchange Mechanism concerning Human Trafficking in South Eastern Europe on 27 November 2001 in Zagreb;
- Statement on Commitments to develop Legislation of the Status of Trafficked Persons on 11 November 2002 in Tirana;
- Statement on Commitments on Victim/Witness Protection and Trafficking in Children on 10 December 2003 in Sofia.

94. After the signing in 2001 and the ratification of the Stabilization and Association Agreement with the European Union in 2004, the Republic of Macedonia has undertaken significant commitments and obligations under this Agreement in the area of home and justice affairs, which, inter alia, entail harmonization of the national legislation with the European legislation with the aim of having efficient and effective cooperation in the fight against trafficking in human beings.

95. In 2001 by a decision adopted by the Government of the Republic of Macedonia, a National Commission on the Fight against Trafficking in Human Beings was established, tasked to monitor, analyse, and coordinate all activities and actions carried out by the respective

authorities responsible for the prevention of and combat against trafficking in human beings. The Ministry of the Interior plays the role of Coordinator of the Commission, with representatives of the non-governmental sector, the Ministry of Justice, the Ministry of Labour and Social Policy, the Ministry of Health, and the Customs Administration sitting on the Commission.

96. As a result of the activities of this Commission, in February 2003, the Government adopted a National Programme for the Fight against Trafficking in Human Beings, which sets forth the following steps and actions to be undertaken:

- *Legislative*, which include harmonization of the national legislation with the Convention and the Protocol against human trafficking;
- *Preventive*, which encompass implementation of preventive measures against trafficking in human beings by means of identifying and reducing economical and social factors that contribute women and children to become victims of human trafficking, identification of the level of domestic violence and its economic and social impact on women and children;
- *Assistance and support to trafficked victims*, which entails improvement of the conditions and possibilities for safe and human readmission, through opening shelter centres, supply of psycho-sociological and medical assistance, provision of information about their rights, and provision of legal aid;
- *Readmission and reintegration of victims*, by conclusion of bilateral and multilateral agreements for cooperation in the process of the victim's readmission, and cooperation with non-governmental organizations that are active in this field;
- *International cooperation and coordination between law enforcement* aimed at exchange of information between countries in order to ensure effective prosecution of perpetrators of criminal offences related to trafficking in human beings;
- *Education and training of operational-level officials* in the police, judiciary, prosecution office, custom administration, as well as social and health workers;
- *Coordination of activities* through establishment of a uniform computerized system for collection of data concerning detected cases of human trafficking, data about reports submitted and indictments filed, as well as data about convicted persons;
- *Raising public awareness* for the prevention of future cases of human trafficking by active involvement of the media, and dissemination of information by video clips and documentary films.

97. In March 2006, the Government adopted a Strategy for Fight against Trafficking in Human Beings and Illegal Migration, with an Action Plan for its implementation as an annex.

98. Since the Palermo Convention and its Protocols underline the need for a joint, consistent and efficient legal framework as a precondition for effectuating the instruments set forth therein,

one of the strategic objectives of the Government over the past period was to implement the National Programme, by focusing on further strengthening of the criminal legal framework for more efficient prevention and suppression of offences related to human trafficking.

99. To this end, in 2002 in conjunction with the United Nations on the one hand and representatives of relevant line ministries, judges and prosecutors from the Republic of Macedonia on the other, a pre-ratification analysis was completed, the result of which was the publication entitled "The United Nations Convention against Transnational Organized Crime and the Protocols thereto". The conclusions and recommendations contained in this publication were a meaningful contribution to the criminal legislation reform. In addition, this publication was distributed to every single judge and public prosecutor in the Republic of Macedonia.

100. In parallel to these activities, in February 2004 amendments and supplements to the substantive criminal law were enacted, whereby a new criminal offence - trafficking in human beings - was introduced in article 418-a of the Criminal Code.

101. The main form of this crime, as defined in paragraph 1 of this article, incriminates acts of a person who by use of force, serious threat, or by other forms of coercion, abduction, fraud, abuse of his/her own position or pregnancy condition, weakness, physical or mental disability of another person, or by giving or receiving money or other benefits in order to obtain the consent of a person having control over another person, recruits, transports, transfers, buys, sells, harbours or accepts persons for the purposes of exploitation through prostitution or other forms of sexual exploitation, pornography, forced labour or servitude, slavery, forced marriages, forced fertilization, illegal adoption or a similar relationship, or illicit transplantation of parts of a human body. A punishment of at least four years imprisonment is prescribed for this type of criminal offence.

102. Paragraph 2 of the aforementioned article imposes sanctions on acts of any person who recruits, transports, transfers, buys, sells, harbours or receives children or minors for the purposes of their exploitation. In this case the penalty prescribed by law is eight years of imprisonment.

103. Imprisonment of at least four years, according to paragraph 3 of this article, has been prescribed for acts of a person who withholds or destroys another person's identity card, passport or other official personal documents, with the aim of committing the crimes defined under paragraphs 1 and 2.

104. Paragraph 4 incriminates acts of a person who uses or procures another person to use sexual services of persons, knowing that the persons concerned are victims of trafficking in human beings. For this type of crime, the punishment prescribed by law is six months to five years of imprisonment. If the crime is committed against a child or a minor, the sentenced is of at least 8 years imprisonment. In paragraph 6 of this article, criminal liability of legal entities is envisaged for the crime defined under paragraph 1, provided that it is committed by a legal entity.

105. In addition, the amendments and supplements to the Criminal Code, enacted in March 2004, introduced two new criminal offences: one under article 418-b, which is smuggling of migrants, and the second under article 418-c, which is organizing and inciting commission of the criminal offences “trafficking in human beings” and “smuggling of migrants”.

106. Paragraph 1 of article 418-b encompasses the acts that constitute the criminal offence - smuggling of migrants:

- A person who by use of force or serious threat that will attack the life or body, by means of abduction, fraud, out of greediness, abuse of his/her official position or abusing another person’s weakness, illegally transfers migrants across the State border, as well as a person who makes, supplies or possesses false travel documents for that particular purpose.

The punishment for this type of criminal offence is at least four years of imprisonment.

107. Paragraph 2 of this article incriminates acts of a person who recruits, transports, transfers, buys, sells, harbours or accepts migrants, whereby an imprisonment sentence of one to five years shall be imposed.

108. If during the commission of the criminal offences defined in paragraphs 1 and 2, the migrant’s life or health are endangered, or the migrant is subjected to a particularly degrading or cruel treatment, or the migrant is prevented from using his/her rights under international law, the perpetrator shall be punished with imprisonment of at least eight years. If the criminal offence, as defined under paragraphs 1 and 2 is committed against a minor, the perpetrator shall be sentenced to imprisonment of at least eight years.

109. By the inclusion of human trafficking incriminations into the substantive criminal legislation of the Republic of Macedonia, the courts and prosecution offices were able to process successfully a large number of reported cases of trafficking in human beings. According to the statistical data available for 2002 up until 2004, 29 persons were indicted, whereas 14 persons were convicted for the criminal offence of trafficking in human beings as defined under article 418-a.

110. With the amendments and supplements to the Criminal Procedure Code enacted in October 2004, substantial novelties were introduced in respect of international legal cooperation and mutual legal assistance, which are also of relevance for efficiently combating trafficking in human beings.

111. In parallel to the completion of the criminal legislation reform, on 27 September 2004 the Assembly adopted the Law on Ratification of the Palermo Convention and the Protocols thereto, whereby these legally binding United Nations documents, according to the Constitution of the Republic, became an integral part of its legal system and source of law, and have ever since been instrumental in contributing towards the commitments and efforts to prevent and suppress these types of crime.

112. In the activities undertaken at national level against trafficking in human beings, particular emphasis was placed on providing training for judges and public prosecutors. For instance,

during 2003, the Centre for Continuing Education of the Macedonian Judges Association, in cooperation and with financial support the OSCE Spillover Monitor Mission to Skopje and the Embassy of the United States to the Republic of Macedonia, organized three pilot training seminars on the implementation of the Regional Manual for Training of Judges and Prosecutors, focusing on the fight against trafficking in human beings.

113. In 2004, the International Organization for Migration (IOM) implemented a project entitled: “Capacity Building in the Fight against Human Trafficking”. The national legislation and international standards in the fight against trafficking in human beings were the main issues of the training, which was given to 31 participants coming from the police, prosecution offices, judiciary and lawyers, as well to 40 students at the Law Faculty in Skopje. The project was finalized by publishing a manual on the fight against trafficking in human beings and illegal migration. Through the extensive application of the guidelines contained in this manual, two fundamental values are expected to be accomplished: increased professionalism and ethics among those responsible for law enforcement, and strengthened belief in according proper treatment to victims of trafficking in human beings.

114. In 2003, the National Commission, in cooperation with the International Organization for Migration, conducted a nation-wide campaign entitled: “Humans are trafficked”. There was media coverage of this campaign, and flyers and posters were disseminated to border-crossing points, police stations, and local self-government units.

115. In 2005 the NGO “Semper” produced a CD-ROM under the motto: “Human trafficking is a reality and can happen to you, too”. The CD-ROM contains a brief overview of the phenomenon of human trafficking and the activities undertaken for its suppression.

116. The Project “Fight against Trafficking in Human Beings in the Republic of Macedonia” is a project implemented during 2005 by an NGO called “Open Gate – La Strada”, under which a short film was made entitled “You are alive”.

#### **(b) Assistance and Protection of Victims of Trafficking in Human Beings**

117. The establishment of a system for assistance and protection of victims of human trafficking represents an integral part of extensive national activities in the fight against trafficking in human beings. In this respect, the provisions contained in the Convention and its Protocol against trafficking in persons with regard to the rights of trafficked victims have been of tremendous importance.

118. In line with this is 2001 Council Framework Decision on the Standing of Victims in Criminal Proceedings (particularly important for victims of trafficking), and the Statement on Commitments on Victim/Witness Protection and Trafficking in Children signed on 10 December 2003 in Sofia. These govern the rights of trafficked victims to legal aid, to be informed of the relevant court and other legal proceedings, to receive medical, health and psychological assistance, protection of their privacy and identity, and the right to be rightfully compensated as victims of trafficking in human beings.

119. The criminal procedural legislation of the Republic of Macedonia corresponds to these provisions. Accordingly, the right to indemnification or compensation for damages suffered by victims of trafficking in human beings is guaranteed with the provisions of the Criminal Procedure Code, wherein the rights of victims of any crime are also regulated.

120. The right to legal aid is granted by the provisions of the Criminal Procedure Code, particularly with the provisions governing the rights and duties of witnesses and victims in criminal proceedings.

121. To ensure full implementation of the protection of identity and privacy of victims of human trafficking, the most recent amendments and supplements to the Criminal Procedure Code enacted in October 2004 introduced new mechanisms for the protection of witnesses, collaborators of justice, and victims. According to these provisions, a distinction has been made between the judicial or in-court measures vis-à-vis the non-judicial or out-of-court measures for the protection of witnesses, collaborators of justice, and victims.

122. The in-court measures are regulated by the Criminal Procedure Code. The out-of-court witness protection measures shall be applied in accordance with article 294, namely by inclusion into the so-called witness protection programme. For the implementation of this particular provision, the Assembly enacted a new Law on Witness Protection in May 2005.

123. Article 1 of this Law determines who is entitled to protection, including witnesses, victims and collaborators of justice as well as their close relatives who appear as witnesses. Furthermore, article 26 specifies different types of protection measures, which include: confidentiality of identity, provision of personal protection, change of place of residence, and change of identity. The Law entrusts the Witness Protection Department within the Ministry of the Interior to be the responsible authority for the application of these measures; whereas the Witness Protection Council has the competence to decide about inclusion in the witness protection programme.

124. In cooperation with many international organizations, the Republic of Macedonia has carried out many activities aimed at ensuring the right of victims of trafficking in human beings to assistance and support, according to article 6 of the Palermo Protocol. As of 2001, the Ministry of the Interior has a Foreigners Transit Centre, where every person who has been identified as a victim of human trafficking receives medical care and control by a competent medical team of IOM. Moreover, with mediation of and financial support by this Organization, trafficked victims are provided with professional posttraumatic therapy; social reintegration and psychological treatment and counselling provided by the non-governmental organization "Happy Childhood"; they also receive free legal aid and representation.

125. In the course of the reporting period from 2000 until 2005, the Ministry of the Interior, in close cooperation with IOM, extended assistance and protection to 542 victims of trafficking in human beings. Persons identified as trafficked victims are accommodated at the Foreigners Transit Centre until the moment of their voluntary repatriation. The figures show that 60.97% of the total number of identified victims are aged 18-24; 21.2% are aged 25-30; 11.9% aged 14-17; and 0.13% under the age of 14.

**(c) Institutional Structure for the Fight against Trafficking in Human Beings**

126. A special Department for fight against tacking in human beings and other types of violent crime was established within the Ministry of the Interior. The Department carries out actions and measures for detecting perpetrators of this type of criminality, and coordinates the work and operations of the regional branch offices of the Ministry. In addition, in April 2003, a Task Force Unit for the Fight against Trafficking in Human Beings was formed, tasked to act in the territory of the entire country. This Unit is of mixed ethnic composition, and has 45 officers.

127. One of the key institutions that have competence in the fight against trafficking in human beings is the public prosecution office. The Law on Public Prosecution Office as of 2004, provided for the establishment of a special Department for Prosecution of Perpetrators of Criminal Offences in the Area of Organized Crime and Corruption. In January 2004, a subgroup for the fight against trafficking in human beings was formed, which developed a National Plan for the Fight against Trafficking in Children.

(For more information about the priorities of the National Plan, see article 23: Rights of the Child).

**Women and Health**

128. In the area of women and health, the National Plan identifies the following strategic objectives:

- To improve women’s access in the course of their entire life to adequate, easily accessible and good quality – health, protective, informative and other services;
- To strengthen prevention programmes aimed at advancement of women’s health;
- To undertake initiatives that are gender sensitive, initiatives that deal with sexually transmissible diseases and HIV/AIDS, as well as initiatives concerning sexual and reproductive health;
- To enhance research and ensure wide distribution of information related to women’s health;
- To increase funding and monitor future activities regarding women’s health.

129. For the purposes of implementing these strategic objectives, in 2005 the Government adopted the following documents: Programme for the Protection of the Population from HIV/AIDS, and Programme for the Early Discovery and Prevention of Women’s Reproductive Organs Diseases in the Republic of Macedonia.

130. The AIDS Protection Programme affirms the recommendations of the United Nations for prevention and suppression of HIV/AIDS, and enshrines the following measures and activities:

- Establishing a system for programme and epidemiological research and supervision;
- Laboratory research;

- Education and training of health workers;
- Health and educational activities targeted at the overall population, especially vulnerable groups.

131. The resources for this Programme were earmarked in the 2005 National Budget, to the amount of €111,000.

132. The aims of the Programme for the Early Discovery and Prevention of Women's Reproductive Organs Diseases are: reduction of incidents of diseases and the mortality rate among women as a result of *cervix uterus*, and screening for the purposes of early detection of pre-cancer condition of *cervix uterus*, which was targeted at around 640,000 women. During 2005, screening was provided for 20% of the total female population from ages 19 to 65. This Programme also envisages development and distribution of health-oriented propaganda materials for the promotion of the Programme's activities. The financial resources needed for the Programme, €130,000, were secured from the National Budget.

133. As of 2004, the NGO "ESE" launched women's health information centres, which are operating in Skopje, Tetovo and Stip. These centres are staffed with medical doctors and specialists in gynaecology and obstetrics, and provide equally accessible and free health information to women regardless of age, financial situation and ethnic background.

134. On 22 and 23 January 2003, the Republic of Macedonia hosted the Fifth European Ministerial Conference on Equality between Men and Women. On that occasion, ministers of 46 member States of the Council of Europe adopted a Declaration and Programme of Action, whereby they agreed that the activities of the Council of Europe aimed at the protection and promotion of fundamental human rights and freedoms of women should focus on the following principal goals: promotion of equal opportunities, rights, freedoms, and responsibilities of women and men; and prevention and fight against violence against women, and trafficking in human beings. A resolution was also adopted at this Conference concerning the role of women and men in conflict prevention, peace building and post-conflict democratic processes – a gender perspective.

135. On 25 January 2006, a state official delegation of the Republic of Macedonia presented and defended the Initial, Second and Third Periodic Report of the Republic of Macedonia concerning the United Nations Convention on the Elimination of all Forms of Discrimination against Women before the Committee on the Elimination of Discrimination against Women.

#### **Articles 4 and 5**

#### **Restriction upon and Derogation from Freedoms and Rights**

136. This part reiterates what has been stated in the initial report.

## Article 6

### Right to Life

137. The amendments and supplements to the Criminal Code of 2004 substantially improved the criminal law protection of the right to life through:

- Aggravating the penal repression by proscribing more serious forms of the following criminal offences against life and body in cases when they are committed in the context of domestic violence: article 123 - murder; article 125 – momentary murder; article 130 - bodily injury; and article 131 - grave bodily injury;
- Introducing new criminal offences under article 403-a - crime against humanity, and under article 407-a - approving or justifying genocide, crimes against humanity or war crimes.

138. The criminal offence, as defined in article 403-a, incriminates acts of a person who, with the intention of systematic destruction of the civil population, orders any of the following:

- Murders;
- Grave bodily injuries;
- Physical extermination;
- Slavery;
- Deportation or forced displacement of the population;
- Imprisonment or other type of deprivation of liberty contrary to international law;
- Torture;
- Rape;
- Sexual exploitation or slavery;
- Forced prostitution;
- Forced pregnancy;
- Forced sterilization or any other type of severe sexual violence;
- Persecution of any group or community based on political, racial, national, ethnic, cultural, religious or gender grounds;
- Forced taking away and disappearance of persons;

- Discrimination and segregation based on racial, national, ethnic, political, cultural or other grounds;
- Any other inhuman acts deliberately inflicting physical or psychological suffering.

139. A person who shall commit some of the above crimes, with the same intention, shall be sentenced to imprisonment of at least ten years or to life imprisonment.

140. The criminal offence approving or justifying genocide, crimes against humanity or war crimes per article 407-a, prescribes that a person who will publicly negate, roughly minimize, approve and justify the crimes stipulated in the articles 403 through 407, through an information system, shall be sentenced to between one and five years of imprisonment; if the act of negation, minimizing, approval or justification is performed with the intention of inciting hatred, discrimination or violence against a person or group of persons due to their national, ethnic or racial affiliation or their religion conviction, the perpetrator shall be punished with at least four years of imprisonment.

141. The statistical data for 2000 suggest that in the total number of convictions of adults, the criminal offences against life and body amounted to 11.1%. In 2001 and 2002 this figure was 8.9%, in 2003 it was 9%, and in 2004 it amounted to 8.3%.

142. The data for 2000 show that in the total number of convictions of juveniles, the criminal offences against life and body amounted to 4.1%. In 2001, this figure was 5.1%, in 2002 it was 6.7%, in 2003 it was 6.1%, and in 2004, it amounted to 5.7%.

### **Code of Police Ethics**

143. With the aim of complying with the basic principles and recommendations contained in the European Code of Police Ethics, adopted by the Council of Europe's Committee of Ministers on 19 September 2001, in 2004 the Minister of Interior of the Republic of Macedonia adopted and promulgated a Code of Police Ethics.

144. The Code of Police Ethics proclaims the key objectives of the police service, which in accordance with the principle of rule of law include:

- Protection and observance of fundamental human rights and freedoms guaranteed under the Constitution;
- Observance of the rights and freedoms enshrined in the European Convention on Human Rights;
- Maintenance of public order;
- Prevention and fight against all forms of criminality;
- Detection of criminal offences;
- Provision of assistance and services to the public.

145. The basic principles of police intervention are the principle of legality and that of observance of human rights in the performance of police tasks and duties. According to article 36 of the Code of Police Ethics, the police and its members, in their actions, are obliged to respect and observe the right to life of every individual. In addition, the police officers, in the performance of their tasks and duties, shall respect the fundamental rights of individuals, including: the right to life, freedom of conviction, consciousness and thought and public expression of thought, freedom of expression, public appearance, public information and free establishment of institutions for public information, freedom of religious conviction, freedom of association for the purposes of enjoyment and protection of political, economic, social, cultural, and other rights and beliefs of citizens, right to religious confession, right to peaceful assembly, freedom of movement, right to ownership, and other rights guaranteed by the Constitution.

146. According to article 38, the police may use force or restraint only if necessary and to the extent necessary to achieve a legitimate goal. Police members shall not use firearms, unless necessary and in accordance with the law.

147. The statistical data available for the period from 1998 until 2005 show that out of a total number of 1,191 cases where means of restraint were used, firearms were used in 6.4% or in 76 cases. In the cases where firearms were used, 10 persons lost their lives. Following internal investigations, it was determined that in all of these cases, the Ministry of the Interior's officials had legitimate reasons to use firearms.

148. As regards the use of other means of restraint (e.g. truncheons and physical force), in five cases it was determined that there had been no legitimate reasons for use of such means, and therefore disciplinary proceedings were instituted against seven officials.

149. In 2000, five families of Roma ethnic background, who were refugees from Kosovo, had been conditionally sentenced to six months imprisonment for forgery of travel documents and were awaiting the security measure deportation from the country imposed against them to be executed. They submitted an application against the Republic of Macedonia before the European Court of Human Rights for alleged violation of their right to life and right to humane treatment under article 2 and 3 of the European Convention on Human Rights. In reviewing the application's admissibility, the European Court decided to impose an interim measure against the Republic of Macedonia, requesting it not to expel the applicants. In the meantime, two of these families voluntarily returned to Kosovo.

150. In 2004, the Assembly of the Republic of Macedonia ratified Protocol 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances. In the framework of the ongoing police reform, a new Law on the Police is pending before the Assembly.

## Article 7

### Prohibition of Torture and Cruel, Inhuman or Degrading Treatment or Punishment

#### (In respect of the Recommendation under item 11)

#### Prohibition of Torture in the Light of the Legal Reform

151. In the process of harmonization of Macedonian criminal legislation, particular emphasis was placed on strengthening the existing legal framework for the prevention and sanctioning of torture, and inhuman and degrading treatment or punishment. Hence, in formulating appropriate legislative solutions, the recommendations of the United Nations Committee against Torture were incorporated therein, as well as the requirements contained in ratified international conventions and recommendations developed during cooperation with the European Committee on Prevention of Torture.

152. One of the distinctive features of the amendments to the Criminal Code enacted in March 2004 is the introduction of more severe penalties for acts of torture, inhuman and degrading treatment or punishment, through:

- Introduction of the criminal offence as per article 142 - torture or other cruel, inhuman and degrading treatment or punishment, whereby the scope of punishable acts has been expanded;
- Introduction of criminal liability of a person who, being induced by an official or based on an official's consent, commits the acts set out in article 142.

153. The criminal offence, prescribed in article 142, in its principal form as defined under paragraph 1, corresponds with the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and reads: "A person who while performing his duty as well as a person, who being induced by an official person or based on the official person's consent, shall apply force, threat or some other illicit instrument or an illicit manner, with the intention of forcing a confession or some other statement from a defendant, a witness, an expert witness or from some other person, or shall inflict on another person grave bodily or mental suffering in order to punish that person for a crime which he/she has committed or for which he/she or some other person is under suspicion, or to intimidate him/her or to force him/her to waive some of his/her rights, or shall cause such suffering due to any kind of discrimination." The penalty for this type of offence is imprisonment of between one and five years.

154. The qualified i.e. more severe form of this offence, as specified in paragraph 2 of the article, incriminates "the occurrence of grave bodily injury or other especially severe consequences to the damaged party as a result of the offence under paragraph 1."

155. This is in line with the Law on Public Prosecutors' Office adopted in 2004. Accordingly, article 4 of this Law stipulates that the public prosecutor, in carrying out its function to prosecute perpetrators of criminal offences and of other punishable acts as determined by law, is responsible for taking care for the rights of the persons who are under remand detention.

156. Furthermore, the amendments and supplements to the criminal procedure legislation of 2004, new provisions have been introduced, whose principal aim is to prevent occurrences of torture. In this regard, article 204, paragraphs 7 and 8 of the Criminal Procedure Code, which governs the treatment of apprehended persons or persons who have been deprived of their liberty, stipulates that the officer on duty is required to keep special minutes, i.e. to record, the following information:

- The day and hour the person has been deprived of liberty;
- The reasons for his/her deprivation of liberty, or the reasons for his/her apprehension;
- The time when the person is informed about his/her rights;
- Any signs of visible injuries, illness, mental disorder, and the like;
- The time when was the family, the attorney, doctor, embassies, consulates, etc were contacted;
- Information concerning the time when the person was interviewed;
- If the person had been transferred to another police station;
- Time and date of release and taking the person before the court.

157. The person deprived of liberty must sign the minutes, or record, regarding the hour and the date of his/her apprehension, the hour and the date of his/her release and of being informed of his/her rights to have an attorney, as well as the entire minutes. Should the apprehended person not sign, the officer on duty must explain the reason why. The apprehended person shall be given a copy of the minutes at the moment of his/her release or at the time when taken before the investigative judge.

158. In accordance with the amendments and supplements to the Criminal Procedure Code, following approval by the investigative judge, detained persons, may be visited and interviewed by representatives of the European Committee for the Prevention of Torture. The investigative judge is obliged, upon request of this Committee, to permit visits to detained persons and to allow interviews with them.

159. Within the framework of the ongoing cooperation between the Government of the Republic of Macedonia and the European Committee for the Prevention of Torture, there were three regular visits in 1998, 2001 and 2002, as well as three ad hoc visits in July 2001, 2002 and 2004.

160. The provision contained in article 568, paragraph 3 of the Criminal Procedure Code is a new one, according to which it is prohibited to extradite a foreigner, if there are serious grounds to believe that he/she may be subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment or to execution of death penalty, upon the return to his/her country of origin.

161. Furthermore, provisions prohibiting torture, inhuman and degrading treatment or punishment are also incorporated into the Code of Police Ethics. Thus, article 41 stipulates that members of the police shall carry out orders issued by their superiors, and shall refrain from enforcing unlawful orders and shall inform their direct superior about all given and executed orders. A member of the police force, without prejudice and fear from being subjected to sanction, shall refrain from execution of an unlawful order that constitutes commission of a criminal offence.

162. The police cannot cause, induce or tolerate any act of torture, inhuman or degrading treatment or punishment (article 37).

163. Similar provisions are contained in the Law on Asylum and Temporary Protection, which was enacted in 2003. Article 7 of this Law provides that an asylum seeker, a person who has the status of recognized refugee or a person who is under humanitarian protection cannot be expelled nor in any other way be returned at the borders of the country where his/her life or freedom could be endangered due to his/her race, religion, nationality, affiliation to a certain social group or political convictions, and where he/she might be subjected to torture, inhuman and degrading treatment or punishment.

164. The above-mentioned prohibition of expulsion does not apply to a foreign national who represents a danger for the security of the Republic of Macedonia or who has been convicted by a final court decision for a crime or extremely serious criminal offence and is considered to be dangerous for the people the Republic of Macedonia.

165. Article 5 of this Law, provides for the granting and recognition of the right to asylum on the grounds of humanitarian protection to a foreigner or a person without citizenship, if in the country of his/her origin or in the country where he/she usual resides, he/she might be subjected to torture, inhuman and degrading treatment or punishment.

#### **Cases of Alleged Torture Inflicted by the Police and by Security Guards in Penitentiaries and Correctional Institutions (2002 – 2005)**

166. The Sector for Internal Control and Professional Standards (SIC) established within the Ministry of the Interior has the competence to process cases of alleged torture, inhuman and degrading treatment or punishment committed by police officers.

167. In the period from 2002 to 2005, SIC processed 185 complaints filed by individual citizens against police officials for alleged use of physical force. Out of this number, and upon completion of internal investigations, it was established that 100 complaints were ill-founded, in 43 cases there was a lack of evidence in support of the complainants' allegations for use of physical force, but in 42 cases it was found that the complaints were well founded. Appropriate measures were imposed against those officials who had used physical force without legitimate reasons.

168. In 2002, SIC processed 15 complaints received from individual citizens alleging to have suffered from use of physical force by police officers. After required measures and investigations were completed, it was established that 9 complaints were manifestly ill-founded i.e. there was no use of physical restraint whatsoever, or such use was necessary and legitimate; in 3 cases

there was no sufficient evidence to support or to deny the allegations raised in the complaints; whereas in 3 cases an excessive use of force was found, and as a result in one case a misdemeanour procedure was proposed to be initiated, and in the other two cases disciplinary measures were proposed to be imposed against police officials.

169. In 2003, SIC processed 30 complaints against police officials for alleged use of physical force, out of which in 8 cases the complaints were ill-founded, and the allegations in 6 cases were considered well founded, and in the remaining 16 cases there was insufficient evidence in support of the complainant's allegations for use of physical force. In those cases where use of force was established, appropriate disciplinary measures were proposed against the perpetrators.

170. In 2004, SIC processed 54 complaints against officials for alleged use of physical force, out of which 27 were ill-founded; 22 were well founded, and in 5 cases there was lack of sufficient evidence to support or to deny the allegations about use of force. From all cases where it was established that there was illegitimate use of force, in one case SIC proposed criminal charges to be brought against the perpetrator, whereas disciplinary sanctions were proposed in the remaining cases.

171. In 2005, SIC processed 86 complaints against police officials for alleged use of force. Out of this total number, the results of the investigations led to the conclusion that 11 complaints were well founded, in 19 cases there was lack of evidence to support or to deny the allegations about use of force, and subsequently these cases were dismissed, whereas 56 complaints were ill-founded. Out of the total number of cases where the Sector for Internal Control and Professional Standards determined that there was illegitimate use of force, in three cases criminal charges were brought against the officials who had overstepped their official duties; in two cases misdemeanour sanctions were proposed against two perpetrators; and in the remaining cases, disciplinary measures were proposed to be imposed against the perpetrators.

172. The Administration, i. e. the Directorate for Execution of Criminal Sanctions, based on the data available for penitentiaries and correctional institutions in the Republic of Macedonia, including the Juvenile Education and Correctional Home in Tetovo, reported that in 2001, 2002 and 2003 there were no records about disciplinary proceedings instituted against prison staff on the grounds of overstepping their official duties, which would have amounted to inhuman, degrading treatment or torture inflicted on convicted or detained persons.

173. We stress that even in the reports of the delegations of the European Committee for the Prevention of Torture (3 regular visits and 3 ad hoc visits), it was stated that no forms of physical ill-treatment of convicted and detained persons by prison staff had been determined.

#### **Protection of Victims of Torture and Other Forms of Inhuman and Degrading Treatment or Punishment before the Ombudsman**

174. In the performance of its statutory competencies and in the course of the period from 1 January 2002 until 30 September 2004, the Ombudsman submitted to the Ministry of the Interior one motion requesting disciplinary proceedings to be instituted against one person due to overstepping official duties. The Ombudsman was informed by the Ministry of the Interior that a criminal report was submitted to the competent public prosecutor against the officer concerned.

175. In addition, the Ombudsman, within the same period of time, filed four criminal reports against nine officials of the Ministry of the Interior, as there were reasonable grounds to believe that they had committed criminal offences per article 142 - torture, per article 143 - ill-treatment in the performance of duty, and per article 386 - violence. Based on these criminal reports, one person was convicted by the Basic Court Skopje II in Skopje, criminal investigations against two officers are under way; court proceedings against five officials are also under way; and against one person, the public prosecutor is conducting a pre-trial procedure.

176. One distinctive case where the Ombudsman intervened in order to protect the constitutional and legal rights of citizens was the case of an individual who belonged to the Roma ethnic community, and who requested the Ombudsman's assistance in establishing liability of an official of the Ministry of the Interior, based in Skopje. In the complaint, it was alleged that the official concerned used physical force on the complainant, thus causing him bodily injuries, which were recorded by several health organizations in Skopje, where he was sent for medical treatment.

177. Acting upon this complaint, the Ombudsman initiated a proceeding, over the course of which it established that the allegations of the complainant and the material evidence attached thereto collaborated the allegations that his rights were violated. Therefore, the Ombudsman submitted a motion before the public prosecutor for criminal prosecution of the officer concerned, as there were reasonable grounds to believe that he committed a criminal offence against freedoms and rights of the individual and citizen.

178. The competent prosecutors' office reported back to the Ombudsman that indictment was brought against the Ministry of the Interior's official for the criminal offence torture or other cruel, inhuman, degrading treatment or punishment under article 142 of the Criminal Code. The proceeding before the public prosecutors' office is still under way, even though the Ombudsman had intervened in 2004.

## **Human Rights Training**

### **(a) Police**

179. The Police Academy was established in 2003 following the Law on Police Academy, which defines it as university level educational institution in the area of security. Through the process of regular and continuing education of students and of other attendees at initial, specialized and management training courses, as well as of members of the police services of the Ministry of the Interior, they are continuously trained in the observance of human rights and freedoms, with a particular emphasis on issues related to the prohibition of torture in the performance of police tasks and duties.

180. The education and training programmes are also conducted in cooperation with representatives of international missions of OSCE and ICITAL, both in initial and in-service or continuing training through organization of various courses; train-the-trainers seminars; specialized courses for forensic police and border police; and management training.

181. In addition, in the course of the past period, the Council of Europe and the Ministry of the Interior organized several training seminars on the following topics: Human Rights and Police,

Management of Police Structures and Relations, and Protection of Citizens' Rights and Liberties, all aimed at the prevention of torture and abuse of police powers. At these training seminars and courses, special attention was devoted to adherence to proper procedures for the use of means of restraint, deprivation of liberty, length of remand detention, observance of human rights and respect for individual human dignity, as well as to the principles of legality, objectivity, fairness and non-discrimination.

**(b) Courts and Public Prosecutors' Offices**

182. The process of continuing education and professional training of judges is entrusted to and carried out by the Centre for Continuing Education, which was established in 1999 under the umbrella of the Macedonian Judges Association. The Curriculum and the overall activities of this Centre are aimed at enhancement of the competence, professionalism and ethical behaviour of judges, as well as promotion and strengthening of judicial independence, and public trust and confidence in the judiciary. The Centre for Continuing Education (hereinafter referred to as CCE) is managed by a Board composed of nine members, five of whom are representatives of the Macedonian Judges Association, whose president sits on the Board as *ex officio* member. The other three Board members are representing the Ministry of Justice, Supreme Court of the Republic of Macedonia and the Republic Judicial Council. On the CCE Board, there is one representative of the Foundation Open Society Institute - Macedonia and Constitutional and Legal Policy Institute, as well as one representative of the American Bar Association/Central and East European Law Initiative (ABA/CEELI). The Law on Court Budget, enacted in 2003, provides that at least 2% of the overall budget designated for the courts in the country will be used for professional training of judges, civil servants, court police, and other administrative personnel employed within the judiciary.

183. In its annual training curricula, CCE gives a special place to training of judges in several areas, including human rights, commercial law, computer training, financial crimes, and corruption.

184. On human rights training, over the course of the period from 2000 until 2004, seven seminars were organized, which were targeted at judges, legal assistants and prosecutors, focusing on the implementation of selected articles of the European Convention on Human Rights, particularly in the context of national law.

185. On 25-27 April 2004, the Centre for Continuing Education of the Macedonian Judges Association, in conjunction with the OSCE Spillover Monitor Mission to Skopje, the Council of Europe, and the Office of the United Nations High Commissioner for Human Rights, organized a Conference on "International and National Obligations for Treatment of Detained and Convicted Persons". The Conference was attended by representatives of the judiciary, public prosecution office, as well as of relevant domestic and international institutions and organizations.

186. Considering the principles for the protection of human rights, humanity, rule of law, as well as cooperation with the relevant international bodies, the confirmed international standards that assure the right to mental and physical integrity, the right to dignity and personal security and prohibition of torture and inhuman or degrading treatment or punishment, the participants of this Conference adopted the following conclusions:

- For each piece of information that reaches a judge from whichever source that indicates torture and inhuman or degrading treatment or punishments, he/she is obliged to verify, note in the minutes, and immediately inform in writing the competent public prosecutor and order a prompt forensic examination;
- The judges are also called upon to use other mechanisms such as visits to the detainees and convicted persons, and to monitor their treatment;
- For every piece of information that reaches the public prosecutor and deputy public prosecutor from whichever source indicating torture and inhuman or degrading treatment or punishments, he/she is obliged without delay, impartially and completely to verify all allegations, to collect evidence, and without any delay to act in accordance with the authorizations set forth in the law, and in the case h/she finds any injuries to institute a prompt and efficient procedure;
- For the effective fulfilment of authorizations and obligations of judges and public prosecutors, their deputies and responsible Ministry of Justice officials, it is essential to continue with their education in this field.

**(c) Penitentiaries and Correctional Institutions**

187. In order to enhance the knowledge and skills of security guards and other professional staff in penitentiaries and educational and correctional institutions, the Administration for Execution of Criminal Sanctions, which is established and functions within the Ministry of Justice, together with the OSCE Spillover Monitor Mission, are working on a pilot project aimed at the creation of a training centre, as an organized and institutionalized form for training and education of penitentiary staff.

188. Within the framework of this project, in the course of 2002, 2003 and 2004, ten days training was organized and provided for penitentiary staff.

189. In the theoretical component of this training, national experts were drawing up the provisions contained in the Law on Execution of Criminal Sanctions, which pertain to fundamental principles and management in the execution of sanctions, legal aid to convicted persons, health care of convicted persons, treatment, transfers and advantages awarded to convicted persons, use of physical force and restraint, chemical means, and firearms. In addition, relevant provisions from the Macedonian Criminal Code and Criminal Procedure Code, the European Prison Rules and the United Nations Minimum Standards for Treatment of Convicted Persons, as well as other international norms and rules were presented and discussed.

190. The practical component of this training programme included: a visit to and learning about the functioning of Skopje Prison, practical work in Maximum Security Department and solitary confinement cells in that prison, and the application of Skopje Prison's house rules. Another important component of this training was the workshop devoted to conflict resolution, targeted at education staff and instruction staff in the prison, which was conducted by the NGO "ESE".

191. All these training activities not only have improved the application of international standards and rules but have also provided practical tools that could be applied on a daily basis in the work of prison staff, which have ultimately contributed towards the development of an efficient and modern prison administration.

192. The Police Academy, in close cooperation with the Ministry of Justice, the Macedonian Association of Penology and the Ministry of the Interior, each year organizes courses, seminars and roundtable discussions for efficient and lawful performance of the security function in penitentiaries.

193. At the time of preparation of the current report, a reform of the penitentiary system is under way. To this effect, in December 2005, a new Law on Execution of Criminal Sanctions was enacted. The Law, inter alia, provides for education and training of prison staff. According to article 67: "The staff has a right and duty to continuing training, education, and assessment of their knowledge. The training and education shall be provided by the Training Centre within the Administration for Execution of Criminal Sanctions. The legal act for the establishment and organization of the Training Centre shall be issued by the Minister of Justice, and the training curriculum shall be adopted by the Director of the Administration, with the consent of the Minister of Justice".

#### **Article 8**

##### **Prohibition of Slavery**

194. This part reiterates what was presented in the initial report.

#### **Article 9**

##### **Right to Liberty and Security of Person**

##### **Grounds for Deprivation of Liberty**

195. One of the most significant novelties in the substantive part of the Criminal Code of 2004 concerns the reform of the system of criminal sanctions. Accordingly, a new system of criminal sanctions was put in place, whose main feature is the bipolarization between penalties and alternative measures. The system of penalties has been expanded, and apart from imprisonment and monetary fines, it now includes: a ban to perform a profession, activity or duty, a ban to use a motor vehicle, and expulsion of a foreigner. The actual renaming of certain security measures has a twofold purpose: to establish the principle of fairness and proportionality of the punishment, and to expand the authorizations of the court and judges in the selection of appropriate punishment, especially the opportunity to impose a single penalty.

196. The maximum length of imprisonment for those criminal offences where lifetime imprisonment is prescribed by law has been increased to 20 years of imprisonment (article 35, paragraph 1 of the Criminal Code).

197. The amendments and supplements to the Criminal Code, enacted in 2005, provide for a substitution of a monetary fine for the imprisonment sentence. Accordingly, the higher court may, upon request of the person who has been convicted to one year of imprisonment, substitute

it with a monetary fine, thus taking into consideration his/her personal situation and his/her behaviour after the criminal offence was committed, the degree of his/her criminal liability, the motives for the criminal offence at stake, and his/her financial situation, giving consideration to his/her other sources of income, property, and family obligations.

198. In substituting a monetary fine for the imprisonment sentence, the court shall substitute a daily fine for each day of imprisonment, whereby the number of daily fines for every day of imprisonment cannot be less than 50. The monetary fine, which is a substitute for the imprisonment sentence of up to one year, cannot be further substituted with another type of penalty. A monetary fine cannot substitute for the sentence if the perpetrator is a recidivist.

199. However, the Constitutional Court, acting upon the initiative to assess the constitutionality of this provision of the Criminal Code, at its session in April 2006, repealed this provision holding that the impugned provision differentiates individuals on the grounds of their financial situation, which is contrary to the constitutional principle of equality of citizens before the law, and it found to be in contradiction to the principle of rule of law.

200. There is a new ground for releasing from sentence for a criminal offence for which a monetary fine or imprisonment of three years is prescribed by law, and which has been committed under significantly mitigating circumstances. In addition, there has to be a consent by the damaged person or victim for the court to release the perpetrator from the sentence imposed, provided that by the end of the criminal proceedings he/she will return the gain to the damaged party, or will compensate the damages caused or in other way will rectify the harmful consequences arising from the criminal offence at stake.

201. The goal of alternative measures is not to sentence the perpetrator who was found guilty for less serious criminal offences, when it is not necessary and when it could be reasonably expected that the purpose of the punishment will be achieved by warning with a threat of punishment (conditional sentence), only by a warning (court reprimand), or by measures of assistance and supervision of the perpetrator's behaviour, who remains in freedom.

202. There are several types of alternative measures, including: conditional sentence, conditional sentence with protective supervision, conditional suspension of criminal proceedings, community work, court reprimand, and home custody.

203. The conditional sentence (probation), as an alternative measure, may be imposed by the court in cases when the perpetrator is sentenced to imprisonment, and simultaneously, the court holds that the imprisonment sentence shall not be executed provided that the convicted person will not commit a new crime during the probation period of between one and five years. The conditional sentence may be imposed for a criminal offence for which imprisonment of up to two years or a monetary fine can be imposed. If during the probation period, the convicted person commits a new criminal offence, his/her conditional sentence shall be revoked.

204. The conditional sentence with protective supervision denotes that the convicted person is required to fulfil certain duties and obligations: these could include, for instance, to undergo medical treatment, to refrain from using narcotic drugs or alcohol, to meet his/her family obligation, to accept employment. If the convicted person fails to meet these obligations, the court may prolong the probation period for his/her conditional sentence or may entirely revoke it.

205. The court reprimand may be imposed for a criminal offence for which a penalty of up to one year of imprisonment is prescribed by the law. In court practice, this para-penal sanction is mainly imposed for criminal offences such as defamation, insult, expressing personal and family circumstances and other offences, which contain elements less dangerous for the society.

206. The conditional (probationary) suspension of criminal proceedings may be imposed against the perpetrator of a criminal offence for which a monetary fine or imprisonment of up to one year is prescribed by the law. After the interrogation and questioning of the defendant and with the consent of the damaged person, the court may decide to suspend the criminal proceedings, provided that the defendant commits no new criminal offence within the time period of suspension of the procedure (probation period). The proceedings may be suspended for one year at the most, and within this period of time the statute of limitations for criminal prosecution does not run. If during the probation period, the perpetrator will not commit a new criminal offence, the court will permanently dismiss the proceedings.

207. Community work may be imposed for criminal offences for which a monetary fine or imprisonment of up to three years is prescribed by law, whereby the court may, having obtained the consent of the defendant, to impose this alternative measure if the offence was committed under mitigating circumstances and the defendant had no previous conviction. This measure shall be applied for a set time period, ranging from 40 to 240 hours, during which the defendant must work without any compensation within a State authority, public enterprise, public institution or humanitarian organization.

208. The community work is organized during national holidays, Saturdays or Sundays, but for not less than five hours per week during a period of 12 months at the most. If the convicted person fails to meet his/her work obligations, the court shall reprimand or warn him/her in writing, and if such behaviour persists, the court has the possibility of increasing the hours of i.e., substitute for the remaining portion of this measure a monetary fine or imprisonment, so that every three hours of community work shall be computed as one day of imprisonment or one daily fine or as 20 euro payable in local currency equivalent.

209. The alternative measure referred as home custody (home confinement) may be imposed if the perpetrator of a criminal offence, for which a monetary fine or imprisonment of up to one year is prescribed by the law, is old and exhausted, or seriously ill, or a pregnant woman. The prior consent of the perpetrator is required for the court to decide that the sentence should be served in home custody.

210. The court may substitute home custody for the imprisonment sentence if there are new electronic and telecommunication devices that would enable it to monitor the execution of home custody, which means a court order imposed on the convicted person not to leave his/her home. If the convicted person violates such court order not to leave his/her home, the court may decide that the home custody, as a substitute for the imprisonment sentence, should be served entirely in a penitentiary.

211. In the period from 2000-2003, the imprisonment sentence was imposed (as conditional and unconditional sentence) in 70% of all cases, whereas the monetary fine was imposed in 30%.

212. The Law on Execution of Criminal Sanctions, enacted in December 2005, sets forth the competencies of the authority responsible for executing alternative measures and conducting proceedings for the execution of alternative measures.

213. Hence, according to Article 226 of this Law, after the court decision with which alternative measures are imposed becomes final, these measures shall be executed by the Department for Execution of Alternative Measures (hereinafter "the Department") of the competent Social Affairs Centre, depending of the convicted person's place of residence or his/her temporary place of residence. This Department is composed of professional staff that have a licence to execute alternative measures. This licence is issued by the Administration for Execution of Criminal Sanctions.

214. The Law sets forth a duty upon the Department to develop an individual treatment plan and a programme for serving alternative measures suitable to the type of criminal offence at stake, the perpetrator's personality, his/her family condition, financial situation, and to fulfilment of other obligations of the convicted person, if such exist. The Department maintains personal records and a separate file for every convicted person, and keeps the Administration for Execution of Criminal Sanctions informed thereon. At least once in three months or upon the court's request, it will inform the court about the results of the execution of alternative measures and of the fulfilment of obligations incumbent upon the convicted person, if such are determined.

215. If the convicted person does not accept the alternative measure imposed, the Department shall inform the court thereof, within a maximum of eight days.

216. The court, which imposes a given alternative measure, is responsible for supervising the lawfulness of its execution. On the other hand, the Administration for Execution of Criminal Sanctions has the competence to carry out professional and instructional supervision over the execution of alternative measures.

217. The protective supervision imposed, together with a conditional sentence, is also carried out by this Department, which is obliged in the individual plan for execution of protective supervision to specify the type, the duration, and the manner in which the supervision shall be carried out in respect of the fulfilment of certain obligations incumbent upon the convicted person. The Department, upon its own initiative, may propose to the court to substitute the initial measure imposed with some other alternative measure; it may also ask the court to extend the duration protective supervision within the framework of the probation period, or it may propose to the court to revoke the conditional sentence.

218. If the Department deems that the objective of this measure has been achieved, it shall inform the court that imposed the respective measure thereof, and it may suggest to the court to terminate further execution of such protective supervision.

219. For the purposes of carrying out community work, the Administration for Execution of Criminal Sanctions shall enter and conclude agreements with a State authority, public enterprise, public institution, local self-government unit, or a humanitarian organization where the convicted persons is expected to perform his/her working duties. The work shall be carried out without any remuneration or compensation.

220. If the convicted person fails to fulfil his/her working duties or he/she is not diligent in the performance of community work, the Department shall issue an oral reprimand, and shall immediately inform the competent court thereof. The Department may propose to the court to increase the number of working hours or to extend the duration of this measure for an additional three months at the most, provided that there are reasonable grounds for doing so; or it may propose to the court to substitute a monetary fine or imprisonment for the remaining portion of this measure, whereby every three hours of community work will be computed as one daily fine or as one day of imprisonment. This substitution may occur in cases when the convicted person even after the written warning continues his/her ill-behaviour.

221. If the convicted person fails to carry out the community work, which was pronounced as a substitute measure for the monetary fine or imprisonment, the Department may propose to the court to make a decision ordering that the initial penalty be executed.

222. Home custody shall also be executed by this Department, whereby an official will be appointed to supervise its execution. During the execution of home custody, the Department shall provide assistance and shall extend protection to the convicted person in accordance with the individual treatment plan for implementation of this measure.

223. If the convicted person continues to violate the order not to leave the home where he/she is held in custody, the Department may propose to the court to order the substituted penalty of imprisonment to be entirely served in a penitentiary institution. As regards misdemeanours, the intention of the legislator is for a portion of these minor offences (which are of a typical administrative nature) to be excluded from court jurisdiction. Accordingly, the legal foundations for this were already created by the enactment of the Constitutional Amendments in December 2005. Hence, Amendment XX stipulates that for misdemeanours determined by law, a sanction can be imposed by a State administration body or an organization or authority performing public authorizations. Against any decision rendered, a right to judicial review is guaranteed under the conditions and within a procedure specified in the law. The misdemeanours that would be exempted from court jurisdiction and for which the competence to impose and pronounce sanctions would be entrusted to State administration bodies are primarily misdemeanours of an administrative nature (for example, traffic offences) for which a monetary fine is prescribed by law. The forthcoming stages of the reform in this area will bring enactment of a new law on misdemeanours, and other legislation as needed.

### **Length of Pre-trial or Remand Detention**

224. In 1998, amendment III replaced paragraph 5 of article 12 of the Constitution with a text that reads as follows: "The pre-trial detention ordered by a court decision, prior to filing the criminal indictment, may last not more than 180 days from the day of apprehension. After the indictment is filed, the detention may be extended or determined by the competent court in a case and procedure prescribed by law".

225. These constitutional provisions have been fully implemented in the Criminal Procedure Code. Namely, according to article 205, paragraphs 4 and 5:

"The duration of pre-trial detention during the investigation, counting also the duration of the deprivation of liberty before the decision for pre-trial detention was brought, cannot

last more than 180 days, and with the expiration of that term, the detained person shall be immediately released. Before raising the accusation proposal in summary proceedings, the pre-trial detention can last as much as it is necessary for undertaking investigative measures, but not more than 8 days.”

226. The amendments and supplements to the Criminal Procedure Code of 2004 embodied the so-called “absolute” statutory time limits concerning the length of remand detention, after filing of the indictment until the end of the criminal trial. According to article 207:

“After filing the indictment, the pre-trial detention can last up to 1 year at the most for criminal offences for which a penalty of imprisonment up to 15 years may be imposed; and it can last up to 2 years for criminal offences for which a lifetime imprisonment may be imposed.”

227. In addition, mandatory detention has been introduced for cases when there are reasonable grounds for suspicion that the person concerned committed a criminal offence for which a lifetime imprisonment can be imposed as a penalty.

228. An important novelty is the enlargement of the corpus of measures aimed at securing the defendant’s appearance before the court, thus enabling successful conduct of the criminal proceedings by introduction of the following measures: home custody, and short-term detention of 48 and 24 hours.

229. According to article 197, if there are reasonable grounds for suspicion that a person committed a criminal offence and the requirements for his/her detention have been fulfilled as specified in article 199, the court may impose the measure “home custody” and order that person not to leave his/her home for a specific time period. Exceptionally, the court may permit the person held in home custody to leave his/her home or apartment for a certain period of time, provided that: (a) it is necessary for his/her medical treatment; and (b) it is required under the specific circumstances threatening to endanger the life, health and property of his/her close relatives.

230. While imposing the measure home custody, in addition to banning the person concerned from leaving his/her home or some other area, the court may decide to ban his/her communication with other persons or to restraint the use of communication means i.e., the court may impose a duty to comply with the measures of video and electronic surveillance.

231. The investigative judge, upon a motion filed by the public prosecutor and with a written and reasoned decision, may order the person deprived of his/her liberty to be held in short-term detention for 48 hours in cases where the court finds that reasonable grounds for suspecting that the person committed the criminal offence he/she has been charged with, provided that the statutory requirements for detention in his/her case have been met, and at the same time the public prosecutor has not yet filed a motion for instituting investigation procedure nor brought direct charges against the person concerned. If the public prosecutor fails to submit a motion for detention of the defendant within 48 hours, the court shall order the defendant to be released.

232. The investigative judge, upon a motion filed by the public prosecutor and with a written and reasoned decision, may order the apprehended person to be held in short-term detention

for 24 hours, if the court finds reasonable grounds for suspecting that the apprehended person committed the criminal offence, provided that the statutory requirements for detention in his/her case have been met, and such measure is necessary in order to determine the identity and to check his/her alibi. The court may extend the duration of this short-term detention for an additional 24 hours.

233. Furthermore, there is a right to appeal against the aforementioned decisions within five hours of their receipt. The appeal is lodged with the criminal appeals panel of the first instance court, which is required to decide upon the appeal within three hours.

234. The average length of detention in 2001 was 39 days; in 2002 it was 41 days; in 2003 - 44 days; and in the first six months of 2004, the average duration of detention was 46 hours.

### **Reviewing the lawfulness of deprivation of liberty and summoning**

235. A significant novelty introduced by the amendments and supplements to the Criminal Procedure Code of 2004 is the introduction of the remedy called “reviewing the lawfulness of summoning and deprivation of liberty”.

236. At the outset, article 144 of the amendments and supplements to the Criminal Procedure Code, governing the authorizations and powers of the competent authorities during pre-investigative procedure, stipulates a duty upon the Ministry of the Interior to undertake all necessary measures in order to disclose the perpetrators of criminal offences, to discover and secure the traces of criminal offences and objects or items that may serve as evidence, in cases when there are reasonable grounds for suspicion that a crime has been committed which is prosecuted *ex officio*.

237. While performing these tasks, the Ministry of the Interior may:

- Demand necessary information from the citizens;
- Stop and ask for verification of the identity and perform a necessary inspection or search of persons, motor vehicles and luggage when there are grounds for suspicion that traces of a criminal act or objects/items which can be used as evidence could be found (the Ministry can use a reasonable amount of force only as a last resort if this is necessary to carry out an inspection or a search of the person, vehicle or luggage);
- By issuing an order, redirect, direct or limit the movement of persons and vehicles in a certain area during the necessary time;
- Undertake the measures that may be necessary to determine the identity of persons and objects or items;
- Conduct searches and issue search warrants for persons, or for property and criminal proceeds or other objects that are being traced;

- In the presence of an official or responsible person, carry out an inspection or a search within certain objects and premises of State authorities, institutions performing public authorizations and other legal entities, and to make inspection in their files and documentation;
- Undertake other necessary measures and actions prescribed by the law.

238. In addition, in order to gather necessary information, the Ministry of the Interior may call upon individual citizens by sending written summons. The written summons has to indicate the reasons for summoning and provide advice as to the rights granted under the Criminal Procedure Code.

239. A person against whom any of the above-mentioned measures or actions have been undertaken, according to article 144 of the Law, within 30 days from the day when they were undertaken, can ask the investigative judge of the competent court to examine their lawfulness, and eventually any violation of his/her rights, and where the court is obliged to certify it with a decision. An appeal against the investigative judge's decision can be lodged to the criminal appeals panel of the first instance court, within 48 hours. This panel is required to decide upon the appeal within three days.

240. When a person deprived of liberty is brought before the investigative judge, the investigative judge shall *ex officio* examine the lawfulness of his/her deprivation of liberty, and is obliged to confirm it with a decision. A person deprived of liberty, who has not been brought before the investigative judge, can within 30 days from the day he/she was set free, ask the investigative judge to examine the lawfulness of his/her deprivation of liberty, which the judge shall confirm it with a separate decision. Against this decision, an appeal can be submitted within 48 hours to the criminal appeals panel of the first instance court, which is required to decide within three days. Such appeal suspends the execution of the impugned decision (article 204, paragraph 8, of the Criminal Procedure Code).

## **Article 10**

### **Human Treatment of Persons Deprived of Liberty**

241. In this part of the report, the statements regarding the legal framework made in the initial report are reiterated herein, with the following additional comments.

242. The enactment of the Law on Ombudsman in 2003, was a big step forward in the country's commitment to ensure prevention and more comprehensive protection of apprehended and detained persons, as well as of convicted persons who are serving their imprisonment sentences or educational and correctional measures in penitentiaries or educational-correctional institutions.

243. Namely, in accordance with article 31 of the aforementioned law, the Ombudsman shall monitor the situation with regard to the observance and protection of the constitutional and legal rights of persons in the bodies, organizations and institutions where the freedom of movement is

restricted, particularly the rights of apprehended and detained persons and the rights of persons who are serving an imprisonment sentence or educational and correctional measure in penitentiaries and educational-correctional facilities.

244. Paragraph 3 of this Law stipulates that Ombudsman may visit and have insight in the aforementioned institutions and facilities, at any time, without prior notice or approval, as well as may talk and interview the persons held therein without the presence of official persons. Furthermore, the written communication between the persons deprived of their liberty and the Ombudsman shall not be subjected to control or checking by official persons of the body, organization or institution where they are held.

245. The Ombudsman, from the early stages of its functioning and activities, and according to its statutory competence, but even more so due to its enlarged competencies under the new Law, continues to closely monitor the situation concerning the observance and respect of the rights of persons deprived of their liberty, by means of considering complaints and visiting penitentiaries and educational and correctional institutions.

246. The main aim of these visits was for the Ombudsman to have direct and first-hand insight into the conditions under which detained and convicted persons are held and serving their sentence, including:

- Personal hygiene;
- Hygiene in the facilities, food, clothing and shoes;
- Correspondence;
- Receipt of packages;
- Visits;
- Sports or exercise activities;
- Work engagement of convicted persons in the institutions;
- Health services and education;
- Use of advantages and leave;
- Relationships between convicted persons and penitentiary staff, particularly between them and the staff responsible for security;
- Opportunities for re-socialization.

247. The Ombudsman's general assessment and view of the current situation is that there is a pressing need to improve the accommodation conditions in penitentiaries. In recent years, in the largest penitentiary in the country - Idrizovo Prison in Skopje, after its refurbishing and

adaptation, certain improvements were made in the living area of that prison. In the Ombudsman's opinion the most satisfactory are the conditions in Stip Prison and in the open department of Bitola Prison, which is stationed in Prilep.

248. The Ombudsman also stresses the need for further advancement of opportunities for re-socialization of convicted persons.

249. The Administration of Execution of Criminal Sanctions within the Ministry of Justice, in the performance of its statutory competencies, also recognized and noted the need for further improvement of accommodation capacities and conditions for convicted and detained persons in penitentiaries all over the country.

250. As of 2001, there have been ongoing activities for renovation of the facilities where detained and convicted persons are held and accommodated, including: Penitentiary Idrizovo, Skopje Prison, Tetovo Prison, Bitola Prison, and the open department of Stip Prison, located in Strumica.

251. In parallel with these activities, and to provide timely and good quality health services to convicted persons, stationary units and first aid/ambulance units were completed and equipped in Bitola Prison and in Idrizovo.

252. As regards overstepping of official duties by penitentiary staff, the Ombudsman concluded that in 2003 and 2004 there were fewer complaints received from apprehended, detained and convicted persons concerning their ill-treatment by the security staff of these institutions.

253. Furthermore, during the period from April to June 2001, an interesting project was carried out by the NGO "ESE", in close cooperation with the Administration for Execution of Criminal Sanctions within the Ministry of Justice, and it was supported by the professional expertise and assistance of the Social Affairs Centre. The main objective of this project was to increase the level of observance and compliance with the minimum standards and rules for treatment of convicted persons, by carrying out informal educational activities, and re-formulating and re-designing the working activities within the women's department. As part of this project, 23 workshops were held, which were targeted at women inmates with the aim of increasing their self-control and self-esteem, and to strengthen their ability to rationally and better plan the future after their release.

254. As a supplementary activity to the workshops in the women's department, sewing courses were offered for inmates having capable of working. By attending the courses, these inmates acquired practical skills and knowledge that will enable their future inclusion in the workforce. At the same time, it will make it easier for them to become re-socialized.

255. The lectures and experiences presented at these workshops were published in a practical booklet entitled "Psychological Basis for Prison Treatment". This practicum contains a manual on how to organize and conduct educational and practical workshops targeted at prison staff, as well as a manual on conducting workshops targeted at convicted persons.

## Article 11

### **Prohibition of deprivation of liberty on the grounds of inability to fulfil a contractual obligation**

256. The Law on Enforcement, enacted in May 2005, implicitly has reaffirmed the prohibition of deprivation of liberty of a person on the grounds of his/her inability to fulfil a contractual obligation, which is granted under article 11 of the International Covenant; namely, article 5 of the aforementioned Law, which provides safeguards for the protection of the debtor, reads as follows:

“The enforcement for the purposes of collection of a monetary claim cannot be carried over items or rights which are essential and indispensable for elementary subsistence of the debtor and other persons for whom he/she is legally responsible to provide support, or which are necessary for the performance of his/her own business activity being the main source of subsistence. During the enforcement due account shall be paid to the dignity of the debtor’s personality, ensuring the enforcement to be less unfavorable for the debtor as possible.”

257. The experiences in the application of the former Law on Enforcement Procedure, showed that the proceedings for enforcement of court judgments and decisions were extremely slow, lengthy and time-consuming, thus impairing the enjoyment and exercise of the rights of individuals determined in years-long civil court or administrative proceeding. The jurisprudence of the European Court of Human Rights stresses that the enforcement of court decisions is an integral part of the fundamental human right to a fair trial within reasonable time, and this right does not only encompass the length of time needed for the court to render a decision by which individual civil rights and obligations are determined, but it also includes the time needed for enforcement of such decision.

258. The new Law on Enforcement completely abandoned the so-called permission of enforcement by the courts. After a court judgment or an administrative decision becomes final, and the statutory time-line for voluntary enforcement of the obligations set forth therein expires, such decision becomes an enforceable document, which the creditor forwards to the bailiff of his/her choosing, who then shall enforce it in a way he/she finds to be the most appropriate and suitable.

259. The Law on Enforcement introduces a bailiffs system, which for many years exists and functions in Western European countries. Bailiffs are persons that perform public authorizations or mandates, and are outside of the courts system. They perform the function of enforcement as their only profession. One of the most important novelties is the possibility of the bailiff’s being engaged in the service of processing court documents and submissions, and to seek identification of parties and other participants during the enforcement.

260. Simultaneously, this Law completely eliminates the possibility for delays in the enforcement due to the objections and appeals submitted by the debtor; however, the debtor should not be left without any protection in cases of occurrence of irregularities during the enforcement. To this end, the debtor is entitled to lodge an objection within three days from the day on which the irregularity occurred or from the day on which he/she found out about such

irregularity. This objection is lodged before the president of the basic (first instance) court who, on the other side, is required to reach a decision within the following three days. The enforcement may be postponed for a certain time period, but again a decision to this effect has to be rendered by the president of the court, who may decide to condition such postponement on the depositing of a guarantee with the court.

## **Article 12**

### **Right to liberty of movement and freedom to choose residence**

261. This part of the report reiterates what has already been stated in the initial report.

262. In respect of the General Comment 15(27) paragraph 8, concerning the status of foreigners with respect to article 12 of the International Covenant, it is worthwhile to present some additional information as follows.

263. The process of harmonization of Macedonian national legislation with European Union law, and the strengthening of regional cooperation in the area of asylum, migration, repatriation and border management, are the top priorities set forth in the National Plan for Asylum and Migration, adopted in 2002.

264. The activities undertaken to achieve these priority objectives led to the enactment of a new Law on Asylum and Temporary Protection in 2003. The right to asylum, according to the provisions of this Law, shall be granted to persons who are recognized refugees, as well as to persons who are under humanitarian protection.

265. A recognized refugee, pursuant to article 4 of this Law, is a foreign national or a person without citizenship for whom, upon consideration of his/her asylum application, it is established that he/she meets the criteria enshrined in the Geneva Convention on the Status of Refugees of 1951 and the Protocol on the Status of Refugees of 1967.

266. A person under humanitarian protection is a foreign national or a person without citizenship, who is granted the status of refugee in the Republic of Macedonia on humanitarian grounds and is permitted to remain within its territory, because if returned to the country of origin or to the country where he/she usually resides, he/she might be subjected to torture, inhuman and degrading treatment or punishment.

267. A foreigner may not enjoy the right to asylum in the Republic of Macedonia, if there are reasonable grounds for suspicion that he/she committed a criminal offence against peace and humanity, or a war crime, according to international documents where these criminal acts are proscribed; or he/she committed a serious criminal offence (apolitical one) beyond the territory of the Republic of Macedonia before he/she was accepted as a refugee, and was found guilty for acts contrary to the goals and principles of the United Nations.

268. The Asylum Department within the Ministry of the Interior is the competent authority to conduct first instance procedure and to render decisions concerning recognition of the right to asylum. The appeal procedure is conducted before the Second Instance Commission within the Government of the Republic of Macedonia. An administrative dispute for judicial review of the

decision rendered by the Second Instance Government Commission may be instituted before the Supreme Court, pursuant to the provisions of the Law on Administrative Disputes.

269. At the end of 2000, in the Republic of Macedonia there were 5,416 refugees who had been granted temporary protection, whereas in 2002 the number was 2,750. In 2003, the Government made a decision enabling those persons whose return was considered unsafe to file individual applications for recognition of the right to asylum in the Republic of Macedonia, according to the Law on Asylum and Temporary Protection of 2003.

270. This right was exercised by 2,311 persons. The Ministry of the Interior's Asylum Department, acting upon and considering these applications, granted refugee status to 17 asylum seekers; it also granted asylum on humanitarian grounds to 1,191 persons; the asylum applications of 468 persons were rejected; whereas the asylum proceedings for 420 persons were terminated for various reasons (inaccessibility or failure of the asylum seeker to appear at the interview, or his/her residence was regulated according to the Law on Movement and Residence of Foreigners, etc). The asylum proceedings for 89 applicants are still under way.

271. Furthermore, the Draft Law on Foreigners is also an important segment of the legislative reform efforts set forth in the aforementioned National Plan, and it is fully in line with the European standards. At the moment of preparation of this report, this Draft Law was pending before the Assembly of the Republic of Macedonia.

### **Article 13**

#### **Expulsion of a foreigner**

272. Pursuant to the Law on Amending and Supplementing the Criminal Code, which was enacted in March 2004, the security measure "expulsion of a foreigner" has been transformed into a criminal penalty, which may be imposed for criminal offences against the perpetrators who are found guilty as charged.

273. Namely, article 33, paragraph 7, of the Criminal Code reads as follows: "The penalty expulsion of a foreigner out of the country may be imposed if the perpetrator is sentenced to imprisonment or monetary fine, conditional sentence or court reprimand".

274. The court may impose the penalty of expulsion against a perpetrator who is not a national of the Republic of Macedonia when it deems that the nature and gravity of the criminal offence committed, the perpetrator's motive, and the circumstances under which the offence was committed suggest that a further stay of the perpetrator in the country is not desirable. The duration of this penalty may range from one to ten years, or forever, and it commences from the day of actual expulsion of the foreigner from the territory of the Republic of Macedonia. However, the Criminal Code contains a provision that prohibits expulsion a foreigner from the country in cases when he/she is entitled to and enjoys protection according to a ratified international treaty.

275. The foreigner may appeal the court decision for his/her expulsion before the higher instance court on all grounds on which any first instance court decision may be rebutted, in accordance with the provisions of the Criminal Procedure Code and the provisions of the Misdemeanors Law.

276. According to statistical data, expulsion accounted for the following percentage of the total number of security measures imposed on convicted persons as follows:

Year	Percentage
1999	2.7
2000	10.8
2001	9.5
2002	4.7
2003	4.3
2004	4

#### **Article 14**

### **Equality before the Courts and Right to a Fair and Public Hearing by a Competent, Independent and Impartial Tribunal Established by Law**

#### **Independence and Autonomy of the Judicial Branch of the Government**

277. One of the key priorities set forth in the Strategy for the Reform of the Judicial System, adopted by the Government in 2004, is the strengthening of judicial independence. This was a result of the shortcomings and weaknesses identified in the justice and judicial system. Decisive action and measures needed to be taken in the three major areas of relevance to the independence of the judiciary: appointment and dismissal of judges, their education and training, and financing of the judiciary.

#### **(a) Election and dismissal of judges**

278. In accordance with the Action Plan for Implementation of the Strategy for the Reform of the Judicial System, the Assembly in December 2005 adopted amendments XX to XXX to the Constitution, pertaining to the area of the judiciary. The principal objective of these amendments is to strengthen the independence of the judiciary.

279. The amendments place particular emphasis on the system of election of judges, which in the past was burdened with certain weaknesses. Hence, the amendments provide for the selection and appointment of judges to be made by a special body, the Judicial Council. In the past it was the Assembly that used to be responsible for the election and dismissal of judges. According to Amendment XXVIII, the Judicial Council is defined as an independent and autonomous body of the judiciary. It ensures and guarantees the judicial independence and autonomy.

280. More importantly, the composition and structure of this body has been redefined. The Judicial Council is now composed of 15 members. The President (Chief Justice) of the Supreme Court and the Minister of Justice are ex officio members of this Council. The most significant novelty is that eight members of this Council are to be elected from the ranks of judges and by the judges themselves. Out of them, three members have to belong to communities that are not in the majority in the Republic of Macedonia, whereby the principle of equitable and adequate representation of all communities has to be observed.

281. However, to achieve a proper balance with the other two branches of the Government, three members of the Judicial Council are elected by the Assembly. During their election in the Assembly, a majority vote of the total number of its representatives has to be ensured, within which there must be a majority of the votes of the total number of representatives who belong to the communities that are not in the majority in the Republic of Macedonia.

282. In addition, the President of the Republic has the competence to nominate two members of the Judicial Council. Their final approval and appointment is in the hands of the Assembly. One of the candidates nominated by the President has to belong to a non-majority community.

283. It is further stipulated that the members of the Judicial Council who are elected by the Assembly and those who are nominated by the President of the Republic shall come from the ranks of university law professors, attorneys at law, and other distinguished lawyers.

284. The term of office of the Judicial Council members is six years, with a right to be re-elected. The amendment also stipulates that this function is incompatible with the performance of any other public function or professions defined by law.

285. According to amendment XXIX, the Judicial Council has the following competencies:

- To elect and dismiss the judges and the lay judges;
- To establish termination of the judicial office;
- To elect and dismiss presidents (chief judges) of the courts;
- To monitor and evaluate the work of judges;
- To decide on the disciplinary responsibility of judges;
- To decide on removal of immunity of judges;
- To nominate two judges for the Constitutional Court from the ranks of the judges;
- To perform other tasks determined by law.

286. In the process of election i.e. appointment of judges, lay judges and presidents of the courts, the principle of adequate and equitable representation of citizens who belong to all communities shall be maintained.

287. Amendment XXVI specifies the grounds for termination of the judicial office as well as the grounds for dismissal of judges. Hence, the judicial office of a judge is terminated:

- Upon his/her own request;
- If the judge permanently loses the capability to perform the judicial office, as determined by the Judicial Council;
- If the judge fulfils the conditions for old-age retirement;

- If he/she is sentenced, with a final judgement to unconditional imprisonment of at least six months;
- If he/she is elected or appointed to another public function, except when his/her judicial office is put on hold and held inactive under the conditions established by law.

288. The grounds for dismissal of a judge pursuant to this Constitutional Amendment are: a severe disciplinary offence, which makes the judge unworthy to carry out the duties of the judicial office; and unprofessional and non-diligent performance of the judicial office, under conditions prescribed by law.

289. These constitutional provisions are to be further elaborated and at length. Related legislation is to be drafted and subsequently enacted - such as a Law on the Courts, a Law on the Judicial Council, and the Law on the Academy for Training of Judges and Public Prosecutors.

290. According to the latter Law, basic introductory training will be provided for judges and public prosecutors. The actual enactment of the Law and the establishment of the Academy should accomplish two main objectives of the Reform Strategy: to strengthen judicial independence, and improve the professionalism and competence of judges and prosecutors. Strengthening of judicial independence will be assured by the introduction of a system for basic training for candidates as judges and prosecutors. This should to a large extent eliminate undue political influence and pressure in the process of their election in favour of objective and merit-based criteria in assessing their competence, professionalism, and adherence to moral and ethical values and qualities.

291. At the same time, the establishment of the Academy will enable the system of continuing or in-service training of judges and prosecutors to be institutionalized, upgraded and further developed. At the moment of drafting this report, the Law on the Academy for Training of Judges and Prosecutors is pending before the Assembly of the Republic of Macedonia.

#### **(b) Immunity of Judges**

292. The immunity of judges is governed by amendment XXVII to the Constitution, which stipulates that judges cannot be held criminally liable for their opinions presented, or for their adjudication when rendering judicial decisions.

293. Also, paragraph 2 of this amendment stipulates that a judge cannot be detained without prior approval of the Judicial Council, unless he/she is found in flagrante in perpetrating a criminal offence for which imprisonment of at least 5 years is prescribed by law.

#### **(c) Financing of the Judiciary**

294. An important novelty in the area of the financing of the judiciary is the enactment of the Law on Courts' Budget in 2003. This Law introduced many changes. It redefined the procedure for the preparation and enactment of the portion of the National Budget of the Republic of Macedonia designated for the judicial branch of the Government, and introduced a system of

independent disbursement of budgetary resources allocated to the courts. Given the material situation in the judiciary, a priority in the near future will be to develop objective and realistic criteria and parameters for financing of judicial branch.

### **Minimum Safeguards for the Defendant in Criminal Proceedings**

#### **(a) Legislative Framework**

295. The legislative framework presented in the initial report is repeated in respect of the following issues:

- Right of the defendant to be informed promptly and in details, in the language he/she understands, about the nature and grounds of the indictment or charges brought against him/her;
- Right to be provided with a sufficient time and opportunity to prepare his/her defence, and to communicate with the defence attorney of his/her choosing;
- Right to appear at trial and trial in absentia;
- Right of the defendant not to be compelled to testify against him/herself or to make a confession;
- Procedure against juveniles;
- Right to appeal;
- Right to indemnification for an unlawful conviction.

#### **(b) Right to a Trial within a Reasonable Time**

296. From the analyses of the courts' work and operations, it could be concluded that court proceedings are relatively long. Major shortcomings have been identified in the proceedings before the basic (first instance) courts. On the other hand, the appellate courts are actually efficient in handling cases as second instance jurisdiction. If the structure of current backlog of cases is analysed, one may distinguish three typical "bottlenecks" in the court system: cases relating to misdemeanours, enforcement of civil law judgments, and administrative disputes.

297. The reasons for the delays in court proceedings are numerous and complex. Some are objective, others subjective. The most distinctive and common ones are include problems with the service of process, abuse of procedural rights by parties to the proceedings, certain weaknesses of the procedural laws, and the organizational structure of the courts. A large number of cases derive from the privatization process, the laying-off of workers as a result of the ongoing economic reforms, and the appearance of specific forms of organized crime.

## **New legislation**

298. The improvement of court efficiency is considered a short-term priority of the judicial reform, which is to be accomplished by different actions. To this end, the procedural laws have been changed, the most notable changes being the solutions enshrined in the new Criminal Procedure Code and Civil Procedure Code, and the Law on Enforcement.

### **Criminal Procedure Code**

299. One of the major interventions made with the amendments and supplements to the Criminal Procedure Code, enacted in October 2004, is the provision of the defendant with the right to a trial within a reasonable time.

300. Foremost, the new provisions embodied in this Code regarding the service of process, i.e. service of court documents and submissions, will prevent unnecessary delays of court proceedings due to improper service of process, which used to frequently occur in the past.

301. Furthermore, these legislative changes eliminate the possibility for any abuse of the recusal of judges. According to article 36, paragraph 2, in addition to the grounds specified in this Code, a judge or a lay judge may be recused from the performance of judicial duties in a given case, provided that evidence is submitted that gives rise to his/her impartiality. This provision eliminates the possibility of the parties' seeking recusal of a judge due to circumstances that might give rise to the judge's impartiality, without furnishing collaborating evidence in support of such allegations. Another important novelty is the solution that the recusal decision shall be made within three days from the day of submission of such a motion.

302. Another procedural law reform concerns the issues related to cancellation and withdrawal of the power of attorney during the proceedings. These are regulated in the chapter of the Criminal Procedure Code that governs issues of preparation, commencement and the course of main hearings, which in the past gave rise to delays. Pursuant to article 71 of the Code, the rights and responsibilities of the defence attorney terminate when the defendant withdraws his/her power of attorney.

303. In cases where the defendant withdraws the power of attorney, he/she is obliged to inform the court thereof immediately or within three days. If the defendant fails to inform the court that he/she authorized a new defence attorney, the court itself shall within three days appoint a new defence attorney. The defence attorney whose power of attorney has been withdrawn is responsible for continuing to undertake all procedural actions in the proceedings on behalf of and in favour of the defendant until he/she receives a notice that another defence attorney has been assigned, but no longer than 15 days from the day when his/her power of attorney was withdrawn.

304. In cases where the defence attorney is the one who cancels the power of attorney to represent the defendant, the defendant is required immediately, but no later than three days to inform the court thereof. If the defendant has not assigned a new defence attorney, then the court shall ex officio appoint him/her a new defense attorney within three days.

305. Also, another relevant new aspect is the introduction of the following preventive measures aimed at securing the defendant's appearance before the court:

- A court order against the defendant banning to leave his/her place of residence or a place where he/she temporarily resides;
- A duty upon the defendant to occasionally report before an official or a competent state authority;
- A temporary seizure of the defendant's passport or other document required for crossing state borders, or banning such documents to be issued to the defendant;
- A temporary seizure of the defendant's driving licence, or banning a driving licence to be issued to the defendant.

306. These preventive measures may last as long as they are required; and ultimately up until the court judgement becomes final.

307. For the efficient exercise of the right to indemnification or compensation of damages caused by a criminal offence, a new provision has been incorporated into the Criminal Procedure Code, according to which, the court shall entirely or partially decide upon the motion for indemnification in the same judgment with which the defendant is found guilty and convicted.

308. In respect of the appeal process, there are new duties incumbent upon the second instance court, notably to hold a hearing and to decide on the merits when a second appeal is lodged in the same case, and when there are errors in facts, i.e. the factual situation has been wrongfully or incompletely established by the first instance court on two occasions.

309. Another new aspect is that a criminal proceedings completed with a final judgment may be reopened in favour of the defendant, based on a Judgment of the European Court of Human Rights where a violation of the defendant's rights has been established.

### **Civil Procedure Code**

310. The creation of legal preconditions for speedy and more efficient civil law proceedings is the main objective of the new Civil Procedure Code, enacted in September 2005. The new legislative solutions contained in this Code inter alia provide for the following:

- The burden of proof lies only with the parties to the proceedings, no longer on the court;
- The plaintiff is obliged to submit all evidence in support of the facts at the time of filing the legal action, whereas the defendant is required to submit a response to the plaintiff's action;
- New facts and evidence cannot be presented in the appeal nor during the appellate procedure;

- There are shorter statutory time limits for undertaking procedural actions;
- The service of process has been improved in order to avoid delays in civil proceedings.

311. The Civil Procedure Code also provides that a civil proceedings, which was completed with a final judgement, may be reopened based on the judgement of the European Court of Human Rights.

### **(c) Defendant's Right to Question Witnesses**

312. A significant innovation introduced by the new Criminal Procedure Code is the system for protection of witnesses and collaborators of justice. For the purposes of ensuring procedural protection of witnesses as determined by law, there is an exemption from the principle of direct questioning of witnesses.

313. Thus, article 293, paragraph 1, of the Code stipulates that in the course of the proceedings, the public prosecutor, the investigative judge or the presiding judge of a judicial panel shall undertake measures and actions for ensuring effective protection of witnesses, collaborators of justice and victims should they appear as witnesses in the proceedings, and when there is a danger of their being subjected to intimidation or threat of revenge, or if there is a danger to their life, health or physical integrity, or any need for their protection.

314. Paragraph 2 of the same article specifies the manner in which this protection will be carried out, i.e. through special types of questioning and appearance in the proceedings. The most sensitive provision concerning witness protection is the one contained in paragraph 3, which governs the questioning of the so-called "anonymous witness". Namely, in cases referred to in paragraph 1 of this article, the witness shall be questioned only in the presence of the public prosecutor and the investigative judge, i.e. the presiding judge at a location or place that can guarantee protection of his/her identity.

315. Unless the trial court, with the witness's consent, decides otherwise, the questioning is to be carried out through the court or by use of other technical devices for communication. A copy of the witness testimony record, without his/her signature, shall be forwarded to the defendant and to his/her defence attorney, who are entitled to submit written questions to the witness through the court.

316. The restrictiveness in the use of anonymous witnesses has been highlighted in the jurisprudence of the European Court of Human Rights. Accordingly, in a large number of cases, the Court held that several requirements have to be met when anonymous witnesses are used. For instance, the judgement should not be founded exclusively on the testimony of an anonymous witness; if it is the case where the testimonies of anonymous witnesses given during the investigation are allowed to be used as evidence during the trial and main hearing, then the defence has to be given the right to question these witnesses (either during investigation or at the main hearing). The use of anonymous witnesses is also regulated through many international documents, wherein it is stressed that they should be used in exceptional circumstances only. In this respect, the universally applicable standard is the obligation of the national legislation to ensure and strike a fair balance between the needs of criminal justice to be effective in the fight against organized crime on one hand, and the defendant's right to defence on the other. Having

regard to the extensive jurisprudence of the European Court of Human Rights in the area of use of anonymous witnesses, it is realistic to expect that the courts in the Republic of Macedonia will bear in mind and refer to the standards established by the European Court in this area, when applying the relevant provisions of the Criminal Procedure Code.

**(d) Right to Interpreter (See under article 27: The Rights of Minorities)**

**Article 15**

**Prohibition of Retroactive Effect of Criminal Law**

317. The extension of the corpus of criminal sanctions through the introduction of alternative measures resulted in an alternation of the provision of the Criminal Code, which provides for mandatory application of a more lenient law for the defendant.

318. Article 3, paragraph 3, states as follows: “If this Code prescribes a new alternative measure, security measure or educational measure, such measure may be applied if it corresponds to a previously prescribed measure and if it is not more harmful for the offender.”

**Article 16**

**Right to Recognition as a Person before the Law**

319. This part reiterates the statements made in the initial report.

**Article 17**

**Right to Respect Privacy, Family, Home and Correspondence  
and Protection of Honour and Dignity**

**The right to inviolability of the confidentiality of correspondence and other forms of  
communication according to the Constitutional amendments of 2003**

320. The imperative to develop a consistent and efficient criminal law system that would be capable of coping with transnational organized crime inspired the creation of a proper legal foundation and legislation for the application of special investigative measures.

321. With the enactment of amendment XIX, which was promulgated by the Assembly on 26 December 2003, article 17 was changed so as to provide the necessary legal grounds for non-application of the principle of inviolability of the confidentiality of correspondence and other forms of communication, which can only be authorized by a court decision, under the conditions and in the procedure determined by law. The grounds are as follows: prevention and disclosure of criminal offences, conducting criminal procedure, or when the security interests of the country so require.

322. To precisely determine the conditions and the procedure for interception of communications, the manner in which the disclosed information and data will be processed,

maintained and used, and the mechanisms for control the lawfulness of interception of communications, a new Law on Interception of Communications was drafted. It is currently pending before the Assembly.

323. The aforementioned amendment to article 17 of the Constitution is implemented through articles 146 to 150 of the Law on Amending and Supplementing the Criminal Procedure Code of 2004. Accordingly, article 146 regulates the cases when special investigative measures can be applied:

- Securing information and evidence for the purpose of successful completion and conduct of criminal proceedings which otherwise cannot be gathered or would lead to greater difficulties;
- For criminal offences for which the law prescribes imprisonment of at least four years;
- For criminal offences for which the law prescribes imprisonment of at least five years, and for which there are reasonable grounds for suspicion that these offences are committed by an organized group, gang or other joint criminal association.

324. Furthermore, the Criminal Procedure Code enumerates the special investigative measures that can be applied. Accordingly, based on a written and well-reasoned order issued by the public prosecutor or by the investigative judges during the pre-investigative stage of the procedure, or based on such order issued only by the investigative judges during the investigation stage, the following measures can be applied:

- Monitoring of communication and entrance to home or other premises or a means of transportation for the purposes of creating conditions for monitoring communication, under conditions and in a procedure prescribed by law;
- Searching a computer system, confiscation of computer system or parts thereof, or of the database for storing computer data;
- Secret surveillance, monitoring and video or audio recording of persons and objects with technical equipment;
- Simulating purchase of items, as well as simulating bribery and simulating acceptance of bribe;
- Controlled delivery and transport of persons and objects/items;
- Using people with hidden identity for monitoring and collecting information or data;
- Opening fake (simulated) bank account, where funds or proceeds which originate from the criminal offence committed can be deposited;
- Registration of fake (simulated) companies or usage of the existing companies for collecting data.

325. The application of special investigative measures enumerated under items 2 to 8 may last four months at the most, and shall terminate immediately when the grounds for their application cease to exist. Upon expiration of this statutory time period, the Ministry of the Interior, Customs Administration and Financial Police, as competent law enforcement authorities to apply these measures, are required to file a special report both to the investigative judge and the public prosecutor.

326. The information, notices, documents and items gathered by means of application of special investigative measures may be used as evidence in the criminal proceedings, provide that their application was in compliance with the provisions of the Criminal Procedure Code. Article 149, paragraph 4, on the contrary, explicitly prohibits the use of any evidence gathered through special investigative measures, which were applied contrary to the provisions of this Code.

### **Protection of Personal Data**

327. In the framework of the ongoing process of harmonization of national legislation with the European Union legislation, the Law on the Protection of Personal Data was enacted in September 2005. In particular, this Law incorporates the European Parliament and Council's Directive of 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data No. 108, which was ratified by the Republic of Macedonia in 2005.

328. The Law governs the right to protection of personal data as one of the fundamental rights and freedoms of every individual and citizen, especially the right to privacy with regard to the processing of personal data. In full adherence to the provision contained in article 6 of the aforementioned Directive, the Law stipulates the conditions that need to be met for the processing of personal data to be in compliance with the law. Hence, personal data shall be processed in accordance with the law, shall be collected for specific and clear objectives determined by law, and shall be processed in a manner that corresponds with these objectives. A necessary precondition for processing of any personal data is the written consent of the person concerned.

329. Chapter 4 of this Law regulates the rights of an individual whose personal data are collected and processed, including:

- The right to inspect the personal data records;
- The right to file an application for supplementing, altering or deleting the existing personal data, or an application requesting termination of the use of personal data if such data is incomplete, inaccurate or is not updated, and if the processing of such data is not in accordance with this law;
- The right to seek his/her personal data not to be used for the proposes of advertising.

330. The Law also regulates the cases when these rights can be restricted, in a manner and under conditions determined by law, and the scope necessary to accomplish the objectives of such restrictions.

331. To every individual or physical person who considers that some of his/her rights granted under this Law have been infringed, article 18 of the Law guarantees the right to file an application seeking a violation of the rights to be established. This application is submitted to and considered by a Commission within the Directorate for Personal Data Protection. The individual is also entitled to seek indemnification for damages caused by acts of processing of personal data that have occurred contrary to the provisions of this Law.

332. A court decision containing an evaluation of a person's behaviour cannot be based exclusively on an automated system of data processing whose purpose is to assess certain aspects of the personality of the person concerned (article 22, paragraph 1, of the Law).

333. Chapter 7 of the Law regulates the requirements for transfer of personal data to other countries. Accordingly, article 31 stipulates that such data may be transferred to another country, provided that the receiving country can ensure their appropriate protection. If the receiving country cannot ensure the appropriate level of protection, the Directorate shall not allow such transfer of personal data.

334. These provisions concerning the protection of personal data are further incorporated and implemented in several laws. The Law on Organization and Work and of State Administration Bodies stipulates that the State administration bodies cannot provide information related to national security, official and business secrecy, and personal data about individual citizens, except according to the Law that governs the protection of personal data.

335. In addition, the Law on the Electorate List sets forth that personal data contained in the Electorate List are protected according to the Law on the Protection of Personal Data, and cannot be used for any other purpose except for the enjoyment of the right of suffrage.

336. The personal data about asylum seekers, recognized refugees or persons under humanitarian protection are processed and used by the Asylum Department within the Ministry of the Interior, according to the provisions of the Law on the Protection of Personal Data.

337. The Law on Social Protection and Welfare imposes a duty upon all social protection institutions and their employees to keep confidential any information considered as being professionally or officially secret. The Law provides for the protection of data and facts revealed in the course of the procedure concerning the rights to social and family protection. This also pertains to all facts and information that may be harmful to the reputation, dignity and interests of the individual concerned and his/her family.

338. The Family Law provides that the information and data related to adoption shall be kept confidential, and treated as official secrecy.

339. According to the Code of Police Ethics, members of the police have a duty to respect the right of every person to privacy according to the Constitution and the laws of the country. The collection, maintenance and use of personal data by the police shall be carried out pursuant to the law and ratified international agreements concerning the protection of personal data. However, these activities will be restricted to the extent necessary for the performance of law-enforcement tasks.

340. Following the Law on the Protection of Personal Data, the Directorate on Personal Data Protection was established on 22 June 2005. It is an autonomous and independent State body responsible for supervising the legality and lawfulness of activities undertaken for the purposes of processing of personal data and their protection on the territory of the entire country.

### **Protection by the Criminal Law System**

341. In terms of the criminal law protection of personal data, of particular importance are the following:

- The introduction of criminal liability of legal entities for acts incriminated under paragraph 1 of article 149 - abuse of personal data;
- The possibility for release from sentence of an official who has committed the criminal offence under article 151 - unauthorized tapping in compliance with the order of a superior, and who reported the offence prior to finding out that criminal proceedings have been instituted against him/her.

342. Furthermore, two novelties in respect of the criminal law protection of one's honour and reputation were made with the amendments and supplements to the Criminal Code. The first concerns:

- The criminal offences under article 172 - defamation and under article 174 - expressing one's personal or family circumstances, whereby the defendant can be excluded from criminal liability should he/she proves that his/her allegations are true or proves that he/she had well-founded reasons to believe in the truthfulness of what he/she expressed or disseminated;
- In the criminal offence under article 173 - insult, a new paragraph 3 has been introduced which incriminates acts of exposure to public ridicule of another person by means of an information system because the other person is affiliated with a certain community, ethnic or racial group or a religious conviction.

343. The second is a very significant one. It provides for individualization of criminal penalties, i.e. imposition of a monetary fine in daily fines, whereby the number of daily fines cannot be lower than five or larger than 360. Pursuant to the provisions of the Criminal Code, the court shall determine the number of daily fines having regard to the general rules for sentencing. The amount of a fine shall be established by the court, which in doing so, shall take into consideration the financial and personal circumstances of the defendant, departing from the net daily income acquired or that could have been generated by the perpetrator, the family and other obligations incumbent upon the perpetrator, and his/her overall property situation at the time when the judgement is rendered. It is also determined that the lowest amount of a daily fine is the denar equivalent of 1 euro, and the highest amount of one daily rate is the denar equivalent of 5,000 euros.

344. In brief, the imprisonment penalty for the criminal offences "defamation" and "insult" is a period of between three months and three years. In one case, a journalist was sentenced to imprisonment in 2002. The effective penalty was three months of imprisonment, whereas a

conditional sentence of two years for the criminal offence defamation committed by the journalist against a State functionary was pronounced. Following the appellate court's decision, the case was referred back to the first instance court for re-trial.

345. The statistical data on the number of cases involving media representatives demonstrate an increasing trend in private criminal complaints filed for "defamation" and "insult". Accordingly, in 2001 there were 38, out of a total of 63. In the course of 2002, out of the total number of 105 private criminal complaints, 43.8% were filed against journalists. In 2003, out of the total number of 78 different types of private criminal complaints, 52.5% concerned the criminal offences of "defamation" and "insult".

346. In 2003, out of the total number of 377 defendants accused of criminal offences against honour and reputation, 157 were charged with "defamation", whereas 216 were charged with "insult". A total of 134 persons were found guilty as charged and convicted, the criminal proceedings against 163 persons were terminated, 47 persons were acquitted, and the criminal charges against 33 persons were dismissed.

347. The statistical data for 2004 show that out of the total number of 382 defendants accused of criminal offences against honour and reputation, 192 were charged with "defamation", whereas 181 persons were charged with "insult". A total of 157 were found guilty and sentenced, whereas in 174 cases the criminal proceedings were terminated, 25 persons were acquitted, and in 26 cases the criminal charges were dismissed.

## **Article 18**

### **Right to Freedom of Thought, Conscience and Religion**

348. The 2001 amendments to the Constitution awarded a constitutional and legal status (in addition to the Macedonian Orthodox Church) to other religious communities. According to amendment VII: "The Macedonian Orthodox Church, the Islamic Religious Community in Macedonia, the Catholic Church, the Evangelistic-Methodist Church, the Jewish Community and other religious communities and religious groups are separate from the State, equal before the law and free to establish religious schools and social and charitable institutions under the procedure determined by law".

349. In 1998 and 1999, acting upon the initiative lodged by several churches and the NGO "Helsinki Human Rights Committee", the Constitutional Court repealed eight articles (or 21.6%) of the Law on Religious Communities and Religious Groups.

350. In the first case, the Constitutional Court held that the impugned provision contained in the aforementioned Law, which stipulates that religion and religious rites may be practised only by a registered religious community or religious group, is a restrictive one and interferes with the personal feelings and religious convictions of the individual. This violates the freedom of religion confession, and creates a possibility for punishing those individuals who, in the enjoyment of their right to freedom of religion confession and expression of faith, practise their religion and religious rite outside of a registered religious community or religious group.

351. In the second case, the Court held that the impugned provision of the aforementioned law, which requires prior approval of the Ministry of the Interior and an opinion by the body responsible for religious affairs for someone to carry out traditional or non-tradition religious rite or to practise a religion outside of the facilities designated for religious purposes or outside of his/her home i.e. at public places, is contrary to article 19, paragraph 2 of the Constitution which guarantees the right to, freely and publicly, either individually or in community with others, express one's faith.

352. As to the impugned provision of the Law, which requires a high threshold for registration of a religious group of at least 50 adult citizens as well as registration of numerous information about the founders of such group, the Constitutional Court held that it constitutes a restriction of the right to freedom of religion confession and a restriction of the freedom of association for the purposes of exercising and protecting individuals' rights and convictions. At the time that this report was being prepared, the drafting process of a new Law on Religious Communities and Religious Groups was under way, and the recommendations of OSCE/ODIHR will be incorporated therein. The Law is expected to be enacted by the end of 2006.

353. Based on the Law on Organization and Work of State Administration Bodies adopted in 2000, a Commission for Relations with Religious Communities and Religious Groups was established. It is an autonomous State body responsible for the affairs related to the legal status of religious communities and religious groups, as well as the relations between the State, religious communities and religious groups. Its members are elected by the Assembly, among which there are representatives of political parties and religious communities.

354. According to the statistical data available for the period from 2000 to the present, 95 applications have been submitted to the Commission by foreign nationals requesting approval to practise religion and religious rites in legitimate religious facilities that belong to religious communities i.e. religious groups. No single application for approval was denied.

355. However, in 2004, the Commission denied the applications for registration of a religious group calling itself "Orthodox Ohrid Archbishopric" as ill-founded. In the reasoning of its decision, the Commission stated that the application was filed by an unauthorized person i.e. a person who has no legal capacity to file such application according to the Law on Religious Communities and Religious Groups. Simultaneously, the application for registration of the religious group called "Orthodox Ohrid Archbishopric" undoubtedly suggested a pretension for creation of a parallel religious community, embodied in the already registered religious community "Macedonian Orthodox Church". In addition, the Commission established that as the name of this new religious group contained the name of the existing religious community "Macedonian Orthodox Church", it was therefore contrary to the statutory provisions. These stipulate that the name of a new religious group should differ from the names of already registered religious communities i.e. religious groups. Following the appeal, the Second Instance Government Commission confirmed the decision of the first instance body. The applicants in due time initiated an administrative dispute seeking judicial review before the Supreme Court.

356. In the course of the procedure for enactment of the Law on Denationalization, the Commission for Relations with Religious Communities and Religious Groups raised the issue of

returning the nationalized property to religious communities and groups. To this effect, it recommended to the Government to incorporate therein legal grounds that will enable the religious communities and religious groups to claim their right to denationalization.

357. The Law on Denationalization was enacted in 2000, and its article 2 guarantees the right of individual citizens to seek their former property to be restituted i.e. to receive adequate compensation, but also such right is granted in the case of worship houses, monasteries and similar places which were confiscated as of 2 August 1944.

358. It is important to note that the Law on Defence, adopted in 2001 and as amended and supplemented in 2003, regulates the procedure for civilian service of a military duty for reasons of conscience.

359. Accordingly, the conscript who wishes to do military duty without weapons as civilian should submit an application to the Ministry of Defence, not later than the day of receipt of the invitation to serve his military duty, wherein he should state the reasons and the preferred manner of serving it. The first instance commission within the Ministry of Defence shall consider and render a decision upon the conscript's application within 30 days following the day of its submission. The conscript is entitled to lodge an appeal against the first instance commission's decision within 15 days before the Second Instance Commission within the Government.

360. Article 9 of the above Law provides that the civilian term of military duty shall be served in health, humanitarian and social organizations and institutions, and fire-fighting units, which are funded by the Ministry of Defence's budget, and which shall ensure free accommodation and meals for the conscripts. These organizations, institutions and units are obliged to determine the posts, type and scope of work and tasks to be performed by the persons who have decided to serve their military duty as civilians, as well as to supervise them and report back to the Ministry of Defence.

361. Persons who opt to do civilian service in lieu of regular military duty have equal rights to those of the conscripts who serve their military duty in the Army (article 9, paragraph 7 of the Law on Defence). The Law also shortens the duration of civilian service of military duty from the initial 14 months to 10 months.

362. According to the statistical data for the period 2002 to 2005, a total of 2,441 applications for civilian service of military duty were filed, out of which 2,282 or 93.4% were approved; whereas 95 applications were rejected and 64 denied.

## **Article 19**

### **Freedom of Expression**

#### **(With regard to the Recommendation under item 12)**

363. In November 2005, the Assembly adopted the Law on Broadcasting. The main purpose of this Law was the harmonization of Macedonian national legislation in this area with the European standards, particularly with the EC Directive on Television without Borders and the

European Convention on Transfrontier Television, which was ratified by the Republic of Macedonia in 2003, Resolution No. 1 and Recommendation No. R (96) adopted by the Committee of Ministers of the Council of Europe.

364. The new Law, inter alia, is intended to ensure:

- Freedom of expression in broadcasting services in accordance with the Constitution and international treaties ratified by the Republic of Macedonia;
- Encouragement, advancement and protection of cultural identify and educational and scientific development;
- Transparency, independence and nondiscrimination in the regulatory processes and independent and efficient public broadcasting service.

365. The Law stipulates the applicable standards for broadcasting programmes. Programmes aimed at violent withdrawal of the constitutional order of the country or at incitement or calling for military aggression or inflammation of national, racial, sexual or religious hatred or intolerance shall not be permitted in the broadcasting programmes and the programmes transmitted via public communication networks.

366. The broadcasting programmes should not contain pornographic materials, excessive violence or other programmes that might seriously endanger the physical, psychological and moral development of children and youth. The public communication networks may transmit programme services with pornographic content provided it is in a coded fashion.

367. The Law further guarantees the right to have a correction or denial published or broadcasted. Any individual or legal entity is entitled to request the responsible person in the broadcasting company, at no expense, to publish or broadcast a correction i.e. denial of inaccurate or incomplete information that violates his/her legitimate right or interest, especially his/her dignity, honour and reputation.

368. The request to publish or broadcast a correction or denial shall be submitted within 15 days of the day on which the information to which the correction or denial pertains was released.

369. The Law also defines the notions of “correction” and “denial”. The term “correction” denotes a correction of inaccurate assertions or incorrect allegations contained in the information already released, as well as presenting facts and circumstances by which the person concerned rebuts, or intends to refute, substantially adds to the information already released.

370. The term “denial” denotes a text or message of same nature and of same length as the released information, wherein the name of the person seeking denial is mentioned, or the impugned allegations about the facts and information are denied in any other way, or substantially add to the information released.

371. The correction or denial shall be published with no changes or additions at the same or suitable place in the programme, and in the same or similar manner in which the initial information was published. The correction or denial cannot be disproportionately lengthy compared to the initial information i.e. the part thereof to which they pertain.

372. The responsible person in the broadcasting company is obliged to release the correction or denial in the first upcoming radio or television programme of the same kind, but no later than three days from the receipt of the request. If that person fails to broadcast the correction or denial in the manner and within the time limits set forth in this Law, the person concerned has a right to file a legal action before the competent court seeking his/her correction or denial to be broadcasted within 30 days. Should the court render a decision whereby the broadcasting company is ordered to release the correction or denial, than at the time of broadcasting it has to be announced that such broadcasting is done based on a court order. The respective judgement also has to be cited.

373. In addition, the Law governs the right of access to information and confidentiality of the sources of information used in broadcasting programmes. Hence, State administration bodies, bodies of local self-government units, persons who perform public functions, public enterprises, and other physical and legal entities performing public authorizations are obliged to provide accurate, complete and timely information concerning issues under their competence in order to be published or released in the media in accordance with the law.

374. The journalist is entitled not to disclose the source of information i.e. provide any data that may lead to disclosure of his/her source of information.

375. Such right is also entrusted to other persons who due to their professional interaction with the journalist are familiar with some information and data that may lead to disclosure of the source of information.

376. The Law also regulates the competencies of the Broadcasting Council, which is defined as an independent, regulatory and non-for-profit body performing public authorizations in the broadcasting area, and which is also responsible for preparing a strategy for developing broadcasting activities. In carrying out its competencies determined by law, the Broadcasting Council shall monitor the exercise of freedom and pluralism of expression, and the existence of different, independent and autonomous media, the economic and technological development of broadcasting activities, and the protection of citizens' interests in the area of broadcasting.

377. To give effect to the constitutional guarantee of free access to information, being an integral segment of the freedom of expression, in January 2006 the Assembly adopted the Law on Access to Public Information. This Law incorporates the recommendations of the Council of Europe, OSCE and many other international NGOs with regard to protection of freedom of expression and access to information.

378. The principal objective of this Law is to ensure transparency and openness in the work of holders of information, as well as to enable individual citizens and legal entities to fully exercise and enjoy their right to free access to public information. To this end, the Law imposes a duty upon every holder of information to provide public access to information about its work and operations. The following entities fall under the category of holders of information: State

authorities, State administration bodies, municipal bodies, public institutions and public services, public enterprises, legal entities and individuals that perform public authorizations determined by law.

379. Pursuant to article 4 of the aforementioned law, all legal and natural persons have free access to information. Foreign legal and natural persons are also entitled to free access to information in accordance with this and other laws.

380. The Law provides for the establishment of a Commission for Protection of the Right to Free Access to Public Information, which has the competence to:

- Decide upon appeals against the decision of a holder of information denying the request for access to information to the applicant;
- Takes care for the implementation of the provisions of this law;
- Prepares and publishes a list of holders of information.

381. An important novelty made with the amendments and supplements to the Criminal Code of 2004 is the introduction of a new criminal offence under article 149-a: Prevention of access to a public information system.

382. Paragraph 1 of this article incriminates acts of “a person who, without authorization, prevents or restricts another person with regard to access to a public information system”. The Law prescribes a monetary fine or imprisonment of up to one year for this type of offence.

383. If the offence stipulated is committed by an official in the performance of his/her duties or by a person with responsibility within a public information system, he/she shall be fined or sentenced to imprisonment of three months up to three years. The prosecution of this offence shall be pursued on the basis of a private criminal complaint.

384. In 2000, the Government adopted an instruction for state administration bodies on how to deal with foreign publications and other printed materials when entering the borders of the Republic of Macedonia. In particular, this instruction governs the manner in which State administration bodies are required to act in cases when foreign publications and printed materials enter the country. The entrance and dissemination of foreign publications and printed materials is entrusted to legal entities that are registered to perform such activities. Moreover, in the Republic of Macedonia, the entrance and dissemination of foreign publications and foreign printed materials is free, and the State administration bodies cannot require the legal entities registered for such activity to have prior permission from the Ministry of the Interior to do so.

385. The individuals may freely bring into the country several copies of foreign publications or printed materials; however, not more than five copies of each publication, provided that they are intended for personal use.

386. In the Republic of Macedonia, 12 daily newspapers are being published (2 of which are published in Albanian), as well as 21 weekly newspapers (of which 1 is in Albanian),

and 20 monthly magazines. In addition, one periodical publication and 21 magazines for children are also being published. A large number of monthly magazines are published by the NGO sector covering different areas.

387. The total number of commercial broadcasting companies is 137. At national level, programmes are broadcasted by 8 commercial broadcasting companies, out of which 5 are television broadcasters and 3 are radio broadcasters. At local level, programmes are broadcasted by 129 media, out of which 54 are television and 75 radio.

388. The private broadcasting companies are financed through commercial advertising and sponsorships. The public broadcasting service generates a large portion of its revenues from the broadcasting tax but is also partially financed through commercial advertising and sponsorships. The revenues generated from the broadcasting tax, which is paid by all citizens, are used not only for financing of the public broadcasting service but also for implementation of projects of public interest.

389. The Macedonian broadcasting arena is organized according to the European dual model. There is a broadcasting service and a commercial sector. At national level, the function of a public broadcasting service is carried out by the Macedonia Radio and Television, which broadcasts three television and three radio programme services; whereas at local level, there are 29 local public broadcasting enterprises.

## **Article 20**

### **Prohibition of Propaganda for War and Advocacy of National, Racial or Religious Hatred**

#### **(With regard to the Recommendation under item 10)**

390. A distinctive feature of the amendments and supplements to the Criminal Code of 2004 is the extension of the scope of incrimination of acts under the criminal offence defined under article 318 - calling for a violent change of the constitutional order. Namely, in addition to the incriminated acts of “calling out or instigating, publicly or by spreading papers, a direct perpetration of the crimes under articles 307 to 317”, the criminal and penal repression has been expanded towards “acts of supporting the commission of these offences”.

391. According to the official data maintained by the courts, in the course of the period from 1999 to 2004, two persons were convicted for the criminal offence under article 319 - causing national, racial or religious hatred, discord and intolerance.

392. In the first case, the convicted person was a national of the Republic of Macedonia, who belonged to the Albanian ethnic community and who, at the local elections held in 1996, had been elected Mayor of Gostivar Municipality.

393. In February 1997, the Gostivar Municipal Council issued a decision to apply the provisions of this municipality’s Statute, according to which Albanian and Turkish flags should be displayed next to the Macedonian flag in front of the Municipal Council Building.

Simultaneously, the Mayor of Gostivar forwarded a written notification to all public institutions within the municipality, requiring them to also display Albanian and Turkish flags next to Macedonian flag.

394. The Government filed an initiative before the Constitutional Court to assess the constitutionality and legality of the decision rendered by Gostivar Municipality, claiming that the Constitution and its laws do not empower the municipalities to regulate the manner in which the flags are to be used and displayed.

395. In May 1997, the Constitutional Court held that the provisions contained in the Statute of Gostivar Municipality concerning the use and display of flags go beyond the scope of the Law on the Use of Flags. It therefore instituted the procedure for assessing the constitutionality and legality of the impugned municipal decision. Furthermore, it issued an interim measure until a final decision on the merits of the case was rendered in order to prevent irreparable damages to be caused, by which all individual acts and actions undertaken based on the impugned decision were suspended. However, Gostivar Municipal Council decided not to implement the interim measure and decision of the Court.

396. At the beginning of June 1997, the Constitutional Court, with its decision, repealed the impugned provision contained in article 140 of the Statute of Gostivar Municipality and its interim measure, on the grounds that the use of flags does not fall under the competence of the municipality, and the use of State symbols, including flags, is a matter to be governed by law.

397. The Gostivar Municipal Council again did not observe or enforce the decision of the Constitutional Court, giving as grounds that the enforcement of this decision would lead to escalation of interethnic tensions in the municipality.

398. In order to prevent Albanian and Turkish flags from being taken down from the masts placed in front of the Municipal Council Building, the Mayor of Gostivar formed a central crises headquarters with several regional offices.

399. In July 1997, the national police force undertook an action in order to enforce the decision of the Constitutional Court, whereby the flags of Albania and Turkey were taken down from the masts in front of Gostivar Municipal Council building. At that occasion, a direct clash occurred between the police and citizens who had gathered at the building, during which three persons lost their lives, and a large number of citizens and police officers were injured.

400. In September 1997, following a court proceedings, the Gostivar Basic Court found the Mayor of Gostivar Municipality guilty of the following offences:

(a) Inflammation of racial and religious hatred, discord and intolerance, while acting in an official capacity, and therefore he was sentenced to eight years of imprisonment;

(b) Organizing resistance against a lawful decision or action of state institutions, for which he was convicted to four years of imprisonment;

(c) Failure to enforce, while acting in an official capacity, the decision of the Constitutional Court, for which he was sentenced to three years imprisonment.

401. In the subsequent appeal procedure, the Appellate Court confirmed the judgement of the Basic Court but reduced the penalty to 7 years imprisonment. Furthermore, the Court held that the appellant was not convicted for free expression of his opinion, but for causing national, racial and religious intolerance. He was also convicted for calling for a violent withdrawal of the legal order, and had incited others to commit such offence. The Supreme Court, acting upon an extraordinary legal remedy, confirmed the decisions of both of basic and appellate court.

402. Indictments were also filed against the Chairman of Gostivar Municipal Council, and the Mayor and the Chairman of Tetovo Municipal Council. They were also found guilty as charged and convicted for failure to enforce, while acting in an official capacity, the decision of the Constitutional Court. The Chairman of Gostivar Municipal Council was sentenced by the first instance court to three years imprisonment. In the appeal process, the Appellate Court confirmed the first instance judgment, but reduced his punishment to two years.

403. The Appellate Court also confirmed the judgment against the third and the fourth defendant, and reduced their initial imprisonment sentence of two years and six months to two years. The Supreme Court, acting upon the extraordinary legal remedy submitted by them, confirmed the judgements of both basic and appellate Court.

404. In March 1998, the Mayor of Gostivar Municipality submitted a constitutional complaint for alleged violation of his right to freedom of expression. The Constitutional Court rejected his complaint on the grounds that when the complainant was publicly expressing his opinion, he was not expressing his intellectual or political views, nor did his act represent a manifestation of the intellectual or political convictions of the other persons who were attending the gathering. In 1999, the Assembly enacted a Law on Amnesty, whereby the Mayor was released from serving the imprisonment sentence.

405. In July 1998, the four convicted persons filed an application against the Republic of Macedonia before the European Court of Human Rights for alleged violation of the right to a fair trial by an independent and impartial tribunal under article 6, paragraphs 1 and 3, items (b), (c), (d) and (e) of the European Convention on Human Rights. In addition to these allegations, the first convicted person i.e. the Mayor of Gostivar Municipality was also complaining about alleged violations of article 10 - freedom of expression and article 11 - freedom of assembly and association.

406. Regarding the alleged violation of article 6, the European Court held that these complaints of the applicants were manifestly ill-founded according to article 35, paragraph 3 of the Convention, and therefore in this particular regard the application was inadmissible.

407. With respect to the first applicant's complaints about a violation of articles 10 and 11, the Court held: "The applicant's complaints that his rights to freedom of expression and assembly are manifestly ill-founded, and must be rejected according to Article 35, paragraph 4 of the Convention. Therefore, the Court found the whole application inadmissible".

408. Concerning the main issue whether the State interference in this case was in accordance with the law, the Strasbourg Court considered that: "Article 319 of the Criminal Code of the Republic of Macedonia represents a sufficient legal ground for the applicant's conviction. This provision is sufficiently precise and the applicant was able, to a reasonable extent, to

contemplate the consequences of his behaviour and action. Consequently, the interference by the State was prescribed by law. Also, the Court was convinced that the impugned interference was justified by several legitimate goals, such as prevention of riots and crimes, and was in the interest of national security and public safety and the protection of individual rights and freedoms of others. In this case, the State had the right to protect national security, public safety and the rights of other individuals, and to prevent unrest and riots by imposing criminal sanctions against the applicant. National courts had provided sufficient reasons for the applicant's conviction and sentence."

409. In the second case, the convicted person was a priest and metropolitan, and a member of the Holy Synod of Hierarchs of the Macedonian Orthodox Church. Due to irregularities in his work, the Macedonian Orthodox Church dismissed him on 9 March 2003; he was dethroned and returned to the rank of secular believer.

410. Even in the course of the procedure for his dismissal, the convicted priest, with the intention to cause schism within the Macedonian Orthodox Church, formed an alliance with the Serbian Orthodox Church, whereby he managed to have the Serbian Archbishop to appoint him exarch<sup>1</sup> of the non-existent "Ohrid Archbishopric". After his appointment, he also managed to have the Serbian Orthodox Church appoint other two priests belonging to the Macedonian Orthodox Church in episcopates of the non-existent "Ohrid Archbishopric". Afterwards, he commenced activities aimed at non-recognition of the Macedonian Orthodox Church as a church of the Macedonian people, and favouring the non-existent "Ohrid Archbishopric" as the only Orthodox Church in the country. He started to give religious services in his parents' apartment, and later on, in summerhouses.

411. In 2004, he published a calendar book wherein he vulgarly attacked the Macedonian Orthodox Church and its leaders, and referred to the Macedonian people as ignorant and religiously uneducated. He disseminated this calendar book through his followers among the citizens. At the beginning of 2004, it was distributed door-to-door, person-to-person, and reached many orthodox believers.

412. By these acts, the convicted man insulted the religious feelings of other fellow citizens, causing religious hatred, insecurity and revolt amongst the citizens who were insulted by these acts of attacking the holiness of the Macedonian Orthodox Church. On the occasion of the Orthodox religious holiday "Vodici" (the "twelfth day"), the citizens gathered publicly in front of the convicted person's home, where they openly expressed displeasure towards him and his activities, stressing that their religious feelings were insulted.

413. In the subsequent proceedings instituted before the first instance court, and based on the evidence presented, the court established that the aforementioned activities of the defendant constituted the elements of the criminal offence specified under article 319 - causing national, racial and religious hatred, discord and intolerance, and therefore the defendant was convicted to 18 months imprisonment. Following the defendant's appeal, the Appellate Court confirmed the judgment of the first instance court.

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<sup>1</sup> Exarch: (in the Orthodox Church) a bishop lower in rank than the metropolitan of a diocese.

414. The Supreme Court, acting upon the extraordinary legal remedy submitted by the convicted person, partially sustained his request with its judgment rendered on 13 September 2005. Accordingly, the Supreme Court sustained the request concerning the convicted person's freedom to carry out religious service and rites, recalling the constitutional right to freedom of expression of religion. However, the Court confirmed the decisions and findings of the lower courts that the acts of publication and dissemination of the calendar book contain the elements of the criminal offence inflammation of national, racial and religious hatred, discord and intolerance. On this account, the Supreme Court also invoked and took into consideration article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

415. However, the Supreme Court decided to accept the convicted person's request for a more lenient punishment, and reduced his sentence to eight months imprisonment. Given that the convicted person had served eight months of imprisonment, he was released in March 2006.

416. Finally, the statistical data for 2000 and 2001 show that only one criminal report was filed against a person for the criminal offence prescribed in article 319, a report that later on was rejected. In 2002, similar criminal reports were rejected against two persons, and in 2003, the investigation was terminated against one person suspected of an offence under article 319.

## **Article 21**

### **Right to Peaceful Assembly**

417. The issues indicated and raised in the initial report are restated herein.

## **Article 22**

### **Freedom of Association and Right to Form and Join Trade Unions**

#### **Political Parties**

418. In pursuance to the Action Plan for implementation of the recommendations contained in the Stabilization and Association Progress Report of the European Commission for 2003, in October 2004 the Assembly of the Republic of Macedonia adopted the Law on Political Parties and the Law on Financing of Political Parties.

419. The Law on Political Parties promotes the following new solutions:

- Equality between men and women in having access to functions and positions within political parties, and prohibition of discrimination based on membership or lack of membership in a political party (article 4 and 5);
- Prohibition to form and join political parties and to engage in political activities within State bodies (legislative, executive and judicial branch of the Government), as well as within public enterprises, public institutions and other organizations established by the Republic of Macedonia and municipalities (article 7);

- Political parties may join international organizations and may develop cooperation with foreign political parties;
- Activities of political parties registered in other countries are prohibited in the Republic of Macedonia (article 8);
- The programme of every political party should draw up specific provisions concerning its objectives, and the form and methods in which its political activities will be carrying out (article 15);
- The programmes of political parties cannot contain the name and symbols of the Republic of Macedonia, as well as the name and symbols of State bodies, municipalities, and other State and international organizations (article 16);
- When the Constitutional Court of the Republic of Macedonia will establish, by its decision, that the programme and the statute i.e. bylaw of a given political party is not in accordance with the Constitution of the Republic of Macedonia, then the basic court competent for its registration shall render a decision for termination of that political party.

420. The Law on Financing of Political Parties, which was enacted in 2004, governs the manner and the procedure for ensuring financing and resources for political parties, the disposition of resources necessary for the regular operations and activities of political parties, as well as the mechanisms for control over the financing, and the overall financial and material operations of political parties.

### **Citizens' Associations and Foundations**

421. In June 1998, the Assembly adopted the Law on Citizens' Associations and Foundations, which compared to the former laws in this area of 1983 and 1990, incorporates many novelties, including:

- Citizens' associations (NGOs) can be established by five adult individuals, who are nationals of the Republic of Macedonia. Foreign nationals may join and become members of an existing citizens' association, should such possibility is provided for in its statute i.e. bylaw;
- The procedure for registration of citizens' associations and foundations is entrusted to the basic (first instance) courts competent *ratione loci*. According to the provisions of this Law, there are three types of registries: Registry of Citizens' Associations and Foundations; Registry of Foreigners' Associations;
- Registry of Foreign Organizations (these registries are maintained by basic courts, and based on the entries made thereto, a uniform Central Registry of all registered citizens' associations and foundations within the country is maintained);
- Citizens' associations and foundations may cease to exist if they engage in political activities or use their property and assets for achieving political parties' objectives.

**Associations of Foreigners, Foreign and International Non-Governmental Organizations**

422. Foreign nationals, who have a permanent place of residence or who temporarily reside for a period longer than one year on the territory of the Republic, may establish a foreigners' association, provided that the application for its registration is supported by at least five adult foreigners. The establishment of foreigners' associations may be approved only for the advancement of scientific, sport, cultural, humanitarian, and social purposes (article 67 of the Law).

423. Pursuant to article 69 of this Law, foreign organizations and international NGOs may be established and be active on the territory of the Republic. This also applies to foundations, unions or their branch offices provided that their activities are not for profit. The foreign organizations and other above-mentioned organizations shall be inscribed in the Registry of Foreign Organizations, which is maintained by the basic court, upon a prior opinion given by the Ministry of Foreign Affairs.

**Right to Strike and to Form and Join Trade Unions According to the Law on Labour Relations of 2005**

424. The right to strike and the right to form and join trade unions have been reaffirmed in the Law on Labour Relations, which was enacted in July 2005. Accordingly, article 236 of that Law guarantees the right of a trade union and its associations at higher levels to call its members to go on strike, and to organize a strike for the purposes of protecting the economic and social rights of its members in relation to employment.

425. The strike must be announced in writing, whereby in the written notice the reasons, the place and duration of the strike, the exact date and time of its commencement have to be indicated. Furthermore, the strike has to be organized in such a manner so that it does not impede the working process of employees who are not participating in the strike. The Law stipulates that the strike cannot commence before the completion of the so-called "reconciliation procedure" or "procedure for amicable settlement", which shall be governed by an act issued by the Minister of Labour and Social Policy.

426. The provisions of this Law also govern the rights and duties of employers and employees during the time of strike. Namely, pursuant to article 237, the employer may exclude or suspend employees from the working process, only as a response to a strike that has already commenced, whereby the number of excluded or suspended employees cannot exceed two per cent of the employees who are taking part in the strike. The employer may exclude or suspend from work and the working process those employees who with their behaviour encourage violent and non-democratic behaviour, thus impeding the negotiations between the employees and the employer. The employer is obliged to continue to pay the statutory benefits to the employees who have been excluded or suspended from work, and to employees who are participating in the strike.

427. Furthermore, the employer, according to article 242 of the Law on Labour Relations, may file a motion before the competent court seeking the court to ban the organization and holding of

a strike organized contrary to the provisions of this Law. Also, he/she is entitled to indemnification for damages caused by a strike that is not organized or conducted in compliance with the provisions of this Law.

428. Organization of and the participation in a strike, according to the provisions of the Law and collective bargaining agreements, does not constitute a breach of the employment contract. The employee, during the time of strike, cannot be put in an unfavourable position vis-à-vis other employees owing to his/her involvement in the organization of a strike or due to his/her participation in the strike, which is organized in accordance with the provisions of this Law, nor can the employee be forced in any other way to participate in the strike.

429. The trade union may file a motion before the competent court seeking to ban exclusion or suspension of employees from work during the time of strike, and to seek compensation of damages that the trade union or the employees have suffered due to their exclusion or suspension contrary to the provisions of this Law.

430. The Law makes a reference that the strike within armed forces, police, and bodies of state administration, public enterprises and public institutions shall be regulated by a separate law.

431. Also, the Law guarantees the right of employees to form and join trade unions. The employers are also entitled to form and join associations of employers. The Law explicitly prohibits acts aimed at putting somebody in a less favourable position exclusively on the grounds of his/her participation, or membership or non-participation in a trade union or an employers' association.

432. Article 186 of the Law prohibits acts of dissolution or termination of activities of trade unions and employers' associations in administrative fashion, provided that they are established and operating in accordance with the law.

433. The Law also contains provisions concerning the statute or bylaw, the legal capacity, and the registry of trade unions and employers' associations i.e. trade unions or employers' associations organized at higher levels. Namely, their statute or bylaw has to be developed and adopted based on the principles of democratic representation and democratic respect of their members' will.

434. Furthermore, the Law guarantees judicial protection in cases of violation of the rights of a trade union member or the rights of a member of an employers' association.

435. The Law prohibits unequal treatment on the basis of membership in trade unions or involvement in trade unions' activities. Accordingly, the employee cannot be put in an unfavourable position or suffer disadvantages vis-à-vis other employees due to his/her membership in a trade union.

436. It is particularly forbidden to enter into and to conclude employment contracts by conditioning or restricting the employee to join a trade union or withdraw from it; and to dismiss the employment contract or to put the employee, in any other way, in a less favourable position compared to other employees owing to his/her membership or participation in a trade union after working hours.

437. Also, the employer cannot on the grounds of the employee's membership or participation in trade union activities base the decision to enter into an employment contract or to change the work performed by the employee, his/her place of work or his/her entitlement to professional training, promotion, payments, social benefits and rights in cases of termination of the employment contract, and to use coercive means against a trade union.

438. In particular, a trade union representative is entitled to protection according to the provisions of this Law, and he/she cannot be dismissed or fired during the time of his/her term of office and in the course of at least two years following the termination of such office. In addition, the salary of a trade union representative cannot be reduced, nor his/her employment contract cancelled. The Law also stipulates legitimate grounds for terminating and banning the activities of trade unions and employers' associations. Finally, the Law governs the scope and elements of collective bargaining agreements.

### **Article 23**

#### **Protection of Family, Right to Marry and to Found a Family and Equality between Spouses**

439. The issues presented in the initial report are reinstated herein.

### **Article 24**

#### **Rights of the Child**

440. Ever since the submission of its initial report, to date the Republic of Macedonia has demonstrated its firm commitment and undertaken many multidisciplinary and cross-sectoral activities for implementation of its obligations deriving from the following international documents: Statement on commitments adopted at the First Intergovernmental Conference on the Rights of the Child in Europe and Central Asia, held in Berlin in May 2001; the United Nations Millennium Development Goals (2002); the Final Document entitled "A World Fit for Children" adopted at the special session of the General Assembly devoted to children (May 2002); and Statement on commitments adopted at the Second Intergovernmental Conference on making Europe and Central Asia fit for Children, held in Sarajevo in 2004.

441. The main national priorities in this direction were:

- Harmonization of the national legislation with ratified international treaties and documents;
- Institutional capacity building and strengthening;
- Adoption of a National Action Plan for the Rights of the Child and Human Rights Education and Training.

### **Legislative Efforts and Activities**

442. The affirmation and promotion of the rights of the child in the family context in line with the provisions of the Convention on the Rights of the Child is an important novelty incorporated into the amendments and supplements to the Family Law, adopted in 2004.

443. These amendments and supplements:

- Introduce the right of the child to be supported and taken care of by the parents, and that of the child's life and health to be protected;
- The right of the child to be raised so that he/she would be capable of living and working independently and to be provided with optimal conditions and opportunities for upbringing, education and professional training depending on the situation of his/her family, and to be represented by his/her parent or guardian;
- The right of the child to maintain personal relations and direct contacts with the parent with whom the child does not live together. In the determination of these personal relations and direct contacts of the child with his/her parent, the Social Affairs Center shall inform the child and shall take into consideration his/her views and opinions depending of the age and level of development, and shall also inform the child about potential consequences of such decisions.

444. For the purposes of ensuring proper protection of the rights and interests of the child, the Family Law explicitly sets forth which behaviour of the parents constitutes an abuse or cruel negligence of parental rights and duties. According to article 90, paragraph 2: "An abuse or cruel negligence of parental duties occurs when the parent inflicts physical or emotional violence against the child; sexually abuses the child; coerces the child to engage in work that is not suitable to hi/hers age; allows the child to use alcohol, narcotic dugs or other psychotropic substances; induces the child to socially unacceptable behaviours; abandons the child and does not provide care to the child for more than three months; or in any other way severely violates the child's rights".

445. The Law expands the scope and forms of the so-called non-institutional child protection. With respect to this type of protection, in addition to the existing day-care centres for children who suffer from intellectual or physical handicap in their development, the Law also provides for the establishment of day-care centres for street children. By the end of the first half of 2005, 13 day-care centres for children with intellectual or physical handicaps were established, and one day-care centre for street children was opened in Skopje.

446. In the ongoing process of decentralization in the area of social care and protection, this Law laid down the basis for these day-care centres to be transferred to the local level. This will occur soon when the municipalities are ready and will be able to manage and ensure the required resources for their work and operations. Simultaneously, the Law gives an opportunity to citizens' associations (i.e. NGOs) to perform certain activities in the area of social protection, including the above-mentioned centres.

447. The Ministry of Labour and Social Policy, according to its programmes for development of this highly important area, shall grant aid and award resources necessary for to work of these organizations.

448. Another important novelty is the introduction of the right to receive monetary aid by a person who until the age of 18 enjoyed the status of a child without parents or parental care. This right may be exercised until that person reaches 26 years of age.

449. The Law on the Protection of Children, enacted in 2000, governs the system, organization and manner in which the protection to children is ensured. The protection of children, in terms of this Law, encompasses the enjoyment of certain rights and provision of specific types of protection for children. A child, in term of this Law, is any person who has not reached the age of 18, as well as a person who has a physical or mental handicap and who has not reached the age of 26 years.

450. The Law prohibits any form of psychical or physical ill-treatment, punishment or other inhuman treatment or abuse of children. It also prohibits political or religious organization and activities among children, and abuse of children for the purposes of political or religious organization and activities.

451. According to article 4 of the Law, the rights for protection of children include:

- Child allowance;
- Special child supplement;
- Aid in baby necessities awarded to a newly born child;
- Participation in child health care.

452. These rights, under conditions specified in the law, are provided by the State or the central Government, whereas the local self-government unit may expand the scope and extent of these rights.

453. In terms of this Law, the forms of child protection include:

- Care and upbringing of pre-school children;
- Vacation and recreation of children;
- Other forms of protection.

The activities in the area of child protection are considered to be of public interest.

454. The Law on Asylum and Temporary Protection, enacted in 2003, in article 23 stipulates a duty for a guardian to be appointed in cases where the asylum seeker is a minor without escort. Article 34, concerning the so-called urgent procedure, stipulates that such procedure cannot be conducted for an asylum seeker who is a minor without escort.

455. The general intention of the reform of the juvenile justice legislation is to strengthen the system to provide better protection of children from human trafficking and from violence, and to provide for and apply alternative measures against children in conflict with the law.

456. The criminal legislation prescribes as a more serious form of the criminal offence under article 418-a - trafficking in human beings, when committed against a child or a minor. Thus, the following acts are incriminated “recruitment, transportation, buying, selling, harbouring or accepting children or minors for the purposes of exploitation and use, or enabling another person to use sexual services of a child or minor, for whom the perpetrator knew he/she is a victim of human trafficking”. The minimum penalty for these serious criminal acts is eight years of imprisonment.

457. According to the amendments and supplements to the Criminal Code of 2004, acts of domestic violence against a child constitute a crime. In addition to criminal law protection, the Family Law of 2004 stipulates a mandatory duty upon the Social Affairs Centre to take special protection measures in cases when the victim of domestic violence is a minor or a person whose capacity is entirely revoked.

458. Indeed, the introduction of alternative measures of punishment represents the most significant novelty in the amendments and supplements to the Criminal Code. According to article 73, the aim of educational measures, penalties and alternative measures is to provide for the education, correction and proper development of juvenile offenders, by extending protection and assistance to them, by performing supervision over them, by their professional training and by developing their personal responsibility.

459. The amendments and supplements to the Code provide that following two alternative measures can be imposed against juveniles: conditional (probationary) suspension of criminal proceedings and community work.

460. The court may decide to conditionally suspend the criminal proceeding against a juvenile suspected of a criminal offence for which the law prescribes a monetary fine or imprisonment of up to three years:

- If the juvenile regrets the crime committed;
- Removes the consequences from the crime;
- Compensates the damaged party for the incurred damages or makes peace with the damaged party who agrees with the suspension of the proceedings;
- Provided that the juvenile does not commit a similar or more serious criminal offence within a period of 2 years.

461. The court may apply a community-work measure in the range of five hours to 100 working hours, when the purpose of this measure is to influence the juvenile’s personality and behaviour. Should the juvenile fail to perform or inappropriately perform the duties, the court shall replace this measure with another measure, whereby the juvenile will be sent to a juvenile disciplinary center, under the conditions stipulated for this specific measure.

462. In April 2003, the Minister of Justice formed a Committee, which was commissioned to work and draft a new Juvenile Justice Law. This Law will reaffirm the following commitments:

- Assurance for the utmost feasible well-being and protection of the child;
- Recognition of the need for outreaching, in first hand, preventive actions for the prevention of juvenile delinquency;
- Adherence to the principle of legality and that of socialization and development of children;
- Adherence to the principle of priority implementation of preventive, educational and similar measures; restriction of repression;
- Adherence to the principle of accountability of institutions responsible for child development;
- Implementation of measures for protection, care and assistance of children.

463. Integral parts of the legal framework concerning the rights of the child are the following ratified international treaties:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- The Hague Convention on the Civil Aspects of International Child Abduction;
- The European Convention on the Exercise of Children's Rights;
- European Convention on the Legal Status of Children born out of Wedlock;
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;
- European Convention on the Adoption of Children;
- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

### **Institutional Framework**

464. One tangible result of the activities aimed at strengthening and improving institutional structures responsible for protecting the rights of the child was the creation of a Department for Protection of the Rights of Children within the Office of the Ombudsman; a Juvenile Delinquency Department within the Ministry of the Interior, a National Commission for the Rights of the Child, and a Subgroup on the Fight against Trafficking in Children.

465. Taking the constitutional and statutory competencies and powers of the Ombudsman as a point of departure, its Department for the Protection of the Rights of Children considers complaints for the protection of legal rights of children. It may also upon its own initiative institute proceedings, on receiving information that in certain cases the rights of children have been violated. In providing protection for the rights of children, the Ombudsman is governed primarily by the solutions and provisions enshrined in the United Nations Convention on the Rights of the Child, and its fundamental principles: to preserve the best interest of the child, nondiscrimination, and the right of children to participate in all decisions and activities which concern them. Thus far, the recommendations issued by the Ombudsman have contributed to a large extent to the creation of more efficient legal instruments for the protection of the rights of the child.

466. In 2002, the Ministry of the Interior's Juvenile Delinquency Department, conducted a public awareness raising campaign aimed at recognition and reporting of incidents of sexual abuse of children, whereby the following publications were issued:

- Juvenile Delinquency Manual, which contains instructions and recommendations for actions to be undertaken by the police officers dealing with juveniles in conformity with the Law on Internal Affairs and the United Nations Convention on the Rights of the Child, thus at the same time respecting the best interest of the child;
- Instructions on how to prepare and draft a criminal report for physical, emotional and sexual exploitation of children and minors, how to identify these types of offences, possible measures for assistance and support of a child victim, institutions responsible for the protection of children, and educational measures by therapists;
- Sexual Assault against a Child, a publication which developed a set of recommendations about how to converse with a child, and from where and from whom assistance can be expected. The target groups of this campaign were police inspectors for juvenile delinquency, and social workers.

467. The National Commission for the Rights of the Child was established by a decision of the Government in 2002. It has been tasked with coordinating all national actions and activities aimed at the promotion and protection of the rights of children. This Commission, in close cooperation with UNICEF, developed a National Action Plan, where priorities for future action were identified in the following areas:

- Education;
- Judiciary;
- Institutional development;
- Family environment;
- Alternative care;
- Health;

- Exchange of information;
- Cooperation.

468. Simultaneously, within the framework of the National Commission against Trafficking in Human Beings, a Subgroup against Trafficking in Children was formed in 2004, which later on adopted a National Plan for Prevention and Suppression of Trafficking in Children. This Plan is aimed at:

- Advancement of the overall policy against trafficking and exploitation of children as well as improvement of the protection of children victims of human trafficking;
- Setting minimum standards for the protection of different groups of children, potential victims of human trafficking;
- The best interests of the child to be the main focus and of prevailing importance in the protection of the rights of child victims;
- Undertaking preventive measures for reduction of reasons and risks leading to occurrence and increase of trafficking and exploration of children;
- Provision of protection to children victims of human trafficking;
- Consideration and inclusion of children's opinions in decision-making concerning measures of protection against human trafficking;
- Actions and activities to be taken for identification, rehabilitation and reintegration of children victims of human trafficking.

### **Human Rights Education and Training and the Civil Society**

In the course of the school year 1999/2000, within the framework of the project entitled "Civic Education - A Road towards Civil Society", special human rights teaching programmes were offered and implemented, including the programme "Basics of Democracy", which was taught at the level of pre-school and elementary school (I-VI grades), and the programme "We the People - Citizen Project" taught in V and VI grades of elementary school.

469. The programme "Basics of Democracy" focused on four concepts: authority, justice, privacy and responsibility, and they were mainly incorporated and taught within the syllabus of the following regular subjects: nature and society, native language and art.

470. However, the new concept of elementary school education encompasses a teaching cycle of the contents of the subject matter called "Civic Culture" in VII and VIII grades of elementary school.

471. These curricula have been implemented and taught as of the school year 2002/2003, and have been further developed following the model of many European countries having a long-lasting and rich tradition in the development of education and preparation of young people for

life in a modern civil society. More specifically, in VII grade of elementary school, the civic culture curriculum covers topics and issues exclusively related to human rights, including:

- Human rights and values;
- Human rights as universal and irrevocable rights;
- Types of human rights;
- Specific human rights - the rights of the child and woman;
- Diversity and the fight against discrimination;
- Differences and similarities between cultures;
- Prejudices and stereotypes as forms of discrimination;
- Democracy and human rights, civil rights and responsibilities.

472. Within the civic culture curriculum for VIII grade of elementary school, the following issues are taught:

- Information sharing in a democratic society;
- Constitutional democracy;
- The legal system of the Republic of Macedonia;
- Separation of powers;
- The President of the Republic of Macedonia;
- Citizens' participation in the system of governance (the need for political parties, election of people's representatives in the government);
- Civic initiatives;
- Loyalty of citizens;
- Peace and tolerance;
- The World's, European and Macedonian cultural heritage.

473. At the level of secondary school education, many interventions were also made in the teaching curricula for the group of social science and humanities. Accordingly, the syllabuses of subjects such as sociology, philosophy, ethics, and civic culture are being taught with an emphasized civic dimension. Moreover, specific issues and concepts related to democratic values and human rights are taught and included into the syllabus of sociology, in particular:

- Religion;
- People;
- Nation;
- Family;
- Right to be protected from the State and society;
- Societal institutions;
- Economic institutions (the right to property);
- Market;
- Labour;
- Capital;
- Enterprises;
- Social rights (the function and role in the observance and protection of human rights and civil liberties);
- Political system;
- Political parties (the right of any individual and citizen to freely form and join associations and political parties);
- Human sovereignty;
- The individual citizen as a human being, and his/her inevitable rights and freedoms and civic values;
- The right to ownership.

474. Approximately, 40% of the sociology syllabus pertains to civic education with a view to preparing the younger generation to be able to fully exercise their civil rights and responsibilities.

475. Furthermore, the students in the second year of secondary school education have an opportunity to choose the topics and contents of the course on ethics and moral. The objective of this course is to enable the students to develop and foster a positive approach towards life in general, to adjust and become familiar with professional and working ethics, to know and apply health and environmental ethics, to assess and differentiate the behaviour of other people, especially of those who are lacking personal, family, and political moral.

476. Civic education was also introduced in the so-called professional oriented high schools in 1999/2000, under the auspices of the project funded by the Austrian Foundation Culture-Contact. As a result of this project, special civic education curricula were introduced and taught in all professional oriented high schools all over the country.

477. This curriculum encompasses topics and issues devoted to the role and the rights of citizens (political, economic and social rights); enjoyment of these rights (observance of the law, suffrage right or right to vote, right to choose, right to work, right to education, responsibility towards other people, sense of responsibility towards profession and work); the most significant values and principles of democracy; promotion of ethical values in the society; rights to life, freedom, privacy, and religion; rights of national and ethnic minorities; interrelations between democracy and human rights; protection of democracy; expectations from democracy; types of democracy; centralized and non-centralized decision-making; Macedonia in Europe and in the world.

478. The third thematic civic course is devoted to freedoms and rights of the individual and citizen according to the Constitution.

479. At the level of general secondary school education, the students are required to engage in project activities in the areas of civic and urban culture, the culture of peace, tolerance and protection, health education, as well as in programs for inclusion of children with special needs or handicapped children. These activities allow the students to acquire social skills and abilities for teamwork, ethnic tolerance and peaceful resolution of conflicts.

480. As of the school year 2003/2004, sociology, which is taught in IV year of secondary school education, is offered as an optional course. Under the topic entitled "citizenship and civil rights and responsibilities", the following issues are being taught: the human being as a citizen; human rights; international dimension of human rights; personal rights and freedoms; political rights and liberties; social, economic and cultural rights and freedoms; the rights and freedoms vis-à-vis the societal development; human rights as rights and practices.

481. By the instructions in these topics and issues, the students will be able: to identify the main characteristics of the citizen and citizenship; to understand the origin and most recent developments in the area of human rights; to understand the international dimension of human rights; be able to explain the importance of personal rights and liberties; to make a distinction between personal, political, economic, social and cultural rights and freedoms; to comprehend the interconnection between human rights and freedoms and societal development; to understand the necessity to respect and observe human rights in a democratic society.

482. In joint efforts of the Bureau for Education Development and the International Committee of the Red Cross, in the course of the school year 2002/2003, a new pilot project entitled "Research on International Humanitarian Law" was implemented in professional oriented high schools. The main objective of this project was to enable the students to understand the differences between human rights and international humanitarian rights, which apply during the time of war, and whose primary aim is to protect the lives of people in war, reduce their suffering, and ensure respect for their human dignity.

483. To this effect, a special curriculum, textbooks and teaching and instruction manuals for teachers and students in elementary and high schools were developed in Macedonian, Albanian and Turkish.

484. In 2005, the Institute for Social Work and Social Policy, which functions within the University of Philosophy in Skopje, implemented a project whose main goal was the prevention of trafficking in human beings amongst most vulnerable groups by increasing their knowledge about fundamental human rights. The project was targeted at 66 children at the age between 15 to 18 years coming from the Orphanage Home "11 October", the Public Foster Home for children with educational-social problems "25 May", and the Foster Home for children and youth "Ranka Milanovic".

485. The results of the research, which focused on the level of information about children's rights and human rights and their risk and exposure to trafficking in human beings, demonstrated that the target group was not adequately informed about these rights, and lacked sufficient knowledge about the phenomenon of human trafficking. With the aim to increase this level of knowledge, in October 2005, a two-day interactive seminar was organized, at which the rights of the child according to the national legislation of the Republic of Macedonia, the United Nations Convention on the Rights of the Child, and the risks of human trafficking were presented and elaborated for this specific target group.

486. The Council for Prevention of Juvenile Delinquency, which is an NGO active in the country for more than 6 years, with a financial support of UNICEF, World Bank and the Youth and Sports Agency of the Republic of Macedonia, is implementing a project whereby a Centre for Children and Youth called "Vavilon" was established. The principal objectives of this project are: development of youth activities, enrichment of choices and opportunities for inclusion of children in the society, and improvement of the level of trust and confidence between different ethnic groups in the country, starting with children and youth.

487. The programme activities of this Centre are mainly implemented by offering computer courses, English language courses, and courses for acquiring life skills and creativity. On a weekly basis, 850 children of different social backgrounds and different ages ranging from 7 to 18 years visit the Centre. Within the Centre, the following sections are functioning: European Club, Debate Club, Macedonian Model of United Nations Club and Theatre Group "Mosaic".

488. On 20 June 2005, in Skopje, the Government and UNICEF organized a Conference for Children. Four topics were the main challenge of the conference discussion: investments in children; municipalities fit for children; children excluded from the society; and provision of good-quality basic services easily accessible for children.

489. Two events preceded this Conference: Youth Forum and Professional Counseling Forum. The Youth Forum took place in Skopje on 13-14 June, ensuring wide participation of children and youth. The Forum was attended by 50 young people coming from different regions and ethnic groups from all over Macedonia. Ten of them, who were elected by the Forum participants, later on took part in the Conference.

490. The Conference resulted with the adoption of two documents. The first document entitled "Skopje Declaration" was approved by all participants at the final conference session. This

Declaration has reaffirmed the commitments endorsed by the Government to improve the rights of children. The Declaration has drawn a particular attention to the increasing exposure of children to different forms of violence, abuse, discrimination, social exclusion and exploitation.

491. The second document “Agenda for Action” has envisioned short-term and long-term objectives targeted at full observance and implementation of the rights of children nation-wide.

## **Article 25**

### **Right to Take Part in the Conduct of Public Affairs, Suffrage Right and Right to Equal Access to Public Services**

#### **Legislative Framework**

492. The amendments and supplements to the elections legislation made in the period from 1998 to 2003 have reinforced the constitutional commitment to ensure the suffrage right and its full enjoyment. Accordingly, in 2002 a new Law on the Electorate List was enacted, which in identical manner as the previous law of 1998, enshrines the right of every citizens entitled to vote to inspect the Single Electorate List. If the person finds out that he/she or any other citizen is not enlisted therein or that a new entry, supplement or deletion of certain data has to be made, than he/she is entitled to file a motion requesting such inscription, supplement or deletion of data to be made.

493. The Ministry of Justice, no latter than 15 days from the day from the announcement of the elections, shall make the Electorate List available for public insight and inspection, and shall immediately announce, through the media, the place and the time designated for such inspection, indicating that every elector has the right to seek inscription, supplement or deletion of data contained in the Electorate List. Such public inspection shall last 15 days.

494. The 2002 Law on Election of Representatives in the Assembly and the Law on Local Elections of 2003, in an identical fashion, guarantee the freedom of elections and secret ballot. Accordingly, nobody can call the elector to account for his/her voting, or ask to reveal for whom he/she voted or why he/she has not voted. The election campaign shall commence 30 days before the day of holding the elections, and shall not run 24 hours before the day of holding the elections. The public opinion survey (poll) shall be published no latter than five days before the day of holding the elections. Furthermore, the Law on Election of Representatives in the Assembly prescribes a misdemeanour liability and a monetary fine of up to 5000 Euro for the media representative who will publish the public opinion survey prior to five days before the election date.

495. These laws also govern the procedure for proposing and submitting a list of candidates. According to Article 30 of the Law Election of Representatives in the Assembly and Article 21 of the Law on Local Elections, the right to submit a list of candidates is entrusted to registered political parties, which may do so independently or jointly in a coalition of two or more political parties, and a group of electors. In cases when the list of candidates for representatives in the Assembly i.e. Parliament is submitted by a group of electors, such list has to be supported by at least 500 signatures of the electors inscribed into the Electorate List in a given electoral district.

496. The Law on Local Elections sets different thresholds of the electors' signatures required in support of a list of candidates for local council members or municipal mayors, which depends on the number of inhabitants in a given municipality. Thus, for municipalities having 10,000 inhabitants, this threshold of signatures of electors inscribed into the Electorate List for the municipality is 100. Also, these laws, in an identical manner, provide and regulate the right of political candidates to seek judicial protection before the competent basic court in cases of violation of their statutory rights during the elections campaign.

497. With a view to preventing abuses of the suffrage right, i.e. casting one's ballot more than once, the Law on Election of Representatives in the Assembly of 2002 and the Law on Local Elections of 2003, which, inter alia, govern the announcement and the course of elections, introduced a duty upon the election board members to use an ultraviolet lamp in order to detect whether the elector has a non-erasable mark on his/her right hand index finger before he/she approaches to the polling station and casts the ballot.

498. As to the criminal law protection of the elections and suffrage right, under the criminal legislation reform efforts leading to the enactment of amendments and supplements to the Criminal Code of 2004, the criminal offence under Article 158 - prevention of elections and voting, inter alia, incriminates acts of "a person who commits this offence by use of weapons, explosive or other dangerous devices, by inflicting violence against two or more persons or within an organized group, or on the territory of two or more election locations." For this type of offence, the Law prescribes imprisonment penalty of one up to 10 years. The statistical data for the period from 1999 until 2003 show that out of 61 defendants, 30 were found guilty and convicted for the commission of offences against elections and suffrage right. Out of these 30 convicted persons, 19 persons or 63% were specifically convicted for the criminal offence under Article 158 - prevention of elections and voting.

### **Parliamentary, Presidential and Local Elections and Referendum**

499. Parliamentary and local elections, presidential elections and one referendum concerning enactment of a law were held over the course of the period from 2000 until 2005. The Parliamentary Elections held on 15 September 2002, according to OSCE/ODIHR monitoring reports, were assessed to have been conducted, to a large extent, in line with the OSCE commitments and international standards on democratic elections. The Parliamentary Elections in 2002 were characterized with the following most important achievements:

- The new elections legislation enacted in June 2002, was effectively implemented with regard to some irregularities noticed before, and generally speaking, it served as an appropriate legislative basis for the elections;
- The election commissions, in principal, performed their competencies in a neutral and professional manner, and the State Election Commission's work was transparent and collegial;
- The political campaigns were relatively moderated;
- The media presentations were pluralistic, in the broadest sense of the term, and provided the electorate with a variety of information about the activities of political candidates.

500. The turnout of voters at the day of elections was high (73.4%), although there were some isolated incidents of violence, in general, the process of voting was a regular except for frequent cases of a group voting or proxy voting, which appeared in some areas where ethnic minorities live.

501. The measures for protection of the integrity of elections, in a large number of cases were properly applied. Some electors were properly and rightfully refrain from voting in cases when they were unable to show a valid personal identity card, when their names have not been inscribed into the Electorate List or when they refused to be tested against having non-erasable ink on their index finger. Incidents of family voting or proxy voting were detected in 20% of the field visits, in which the privacy of voting was infringed.

502. The Local Elections held on 13 March 2005 were assessed by the OSCE/ODIHR monitoring mission to have been conducted in line with the OSCE Copenhagen Document, and in compliance with other international standards on democratic elections.

503. The voting process has been assessed as good or very good in 90% of the monitored cases, whereas in the remaining 10% of the polling stations visited the voting has been assessed as bad or very bad. The general election atmosphere has been evaluated negatively only in one, out of ten polling stations visited. The “filling in” of ballot boxes has been noticed in 27 cases or in 2% of the polling stations visited.

504. The election monitors were also monitoring the ballots counting in 125 polling stations. Consequently, they have assessed the process of ballots counting as good or very good in 82% of the visited places, and as bad or very bad in 18% of the polling stations visited.

505. On 7 November 2004, a referendum concerning enactment of a law was held in Macedonia. The initiative for this referendum was raised by the NGO called “World Macedonian Congress”, which commenced the process of collection of electorate signatures in support of the referendum proposal in January 2004. As a result, more than 180,000 signatures were collected, and therefore the Assembly was obliged, as prescribed in article 73 of the Constitution,<sup>2</sup> to issue notice of a referendum.

506. This initiative was preceded by many referendums held in the units of local-self government (municipalities), the results of which showed dissatisfaction with the newly proposed municipal boundaries set forth in the Law on Territorial Organization adopted in August 2004. This Law actually defines and draws new boundaries between municipalities by cohesion of several municipalities, which led to reduction of the total number of local-self-government units in the country from 123 to 84.

507. The referendum question was whether the voters agree that there are 123 municipalities as stipulated in the legislation concerning the territorial division of municipalities, which was enacted in 1996.

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<sup>2</sup> The Assembly is obliged to issue notice of a referendum whenever such is proposed by at least 150,000 voters.

508. The referendum voting, according to the OSCE/ODIHR monitoring reports was appraised to have been mainly in compliance with the democratic election standards set forth by OSCE and the Council of Europe. In a limited number of cases, the monitors reported occurrences of procedural and some other irregularities, which however have not affected the integrity of the overall process.

509. According to the current legislation, the referendum is considered successful if more than 50% of the electorate inscribed into the Electorate List voted thereto, and provided that more than 50% voted in favour of the referendum. The referendum outcome showed that only 26.5% of all electors have voted at the referendum, meaning that the minimum threshold required in terms of the referendum turnout was not fulfilled, and therefore the referendum was not successful.

510. A total of 834 polling stations were visited, out of which in 96% of the cases the monitors appraised the voting process to have been good or very good. Their assessment of the general referendum atmosphere, in the largest number of monitored places, has also been viewed as positive. However, the problems observed related again to family voting, in 4%, and voting for other persons in 1% of the monitored places. Otherwise, the voting process was assessed to have been regular in the majority of polling stations visited.

511. More information about these elections is available at the web site of the OSCE Spillover Monitor Mission to Skopje, Republic of Macedonia, at: [www.osce.org.mk](http://www.osce.org.mk)

512. In March 2006, the Assembly adopted a new Electoral Code, whereto the OSCE's recommendations concerning the most recent election cycles were incorporated. The Code has reaffirmed the equal right to suffrage and the right of every national of the Republic of Macedonia to vote and to be elected. According to articles 3 and 6 of this Code: "The President of the Republic of Macedonia, representatives in the Assembly, members of municipal councils and municipal mayors shall be elected at general, direct and free elections, by secret ballot. Nobody can call the elector i.e. the voter to account for his/her voting or to request to reveal for whom he/she voted or why he/she has not voted.

513. Every national of the Republic, who has reached 18 years of age and has a capacity to contract, and who has a permanent place of residence in an electoral district, municipality i.e. the city of Skopje where the elections take place, shall have the right to vote."

514. The Code further guarantees the right to have a public insight and to inspect the Electorate List and to seek inscription, supplement or deletion of data to be made therein, as well as the right to organize elections campaigns. The Code also governs the system and mechanisms safeguarding the suffrage right. It provides that the procedure for protection of suffrage right is of urgent nature.

515. Each person submitting a list of candidates during the process of elections, summing up and establishing the results from the ballot voting for the position of the President of the Republic and for representatives in the Assembly, i.e. Parliament is entitled to lodge a complaint before the State Election Commission. In cases of election of members of municipal councils and

members of the City of Skopje Council, and in cases of elections of municipal mayors and the City of Skopje Mayor, such complaint may be lodged before the municipal election commission or the city election commission.

516. This complaint has to be submitted within 48 hours after the completion of the voting.

517. The State Election Commission and respectively the municipal i.e. city election commission are required to decide within 48 hours following the receipt of the complaint. An appeal against the decision of the State Election Commission or the decision of the municipal i.e. city election commission can be lodged before the Supreme Court of the Republic of Macedonia within 48 hours following the receipt of the impugned decision.

518. Every elector who considers that his/her suffrage right has been infringed during the parliamentary elections procedure may submit a complaint to the State Election Commission, whereas if such violation has occurred during the local elections, the complaint may be submitted before the city election commission or municipal election commission within 24 hours.

519. The above, acting as first instance bodies, shall decide within 4 hours following the receipt of the complaint. A subsequent appeal may be lodged against the decision of the first instance bodies i.e. the State Election Commission before the Supreme Court of the Republic of Macedonia, within 24 hours following the receipt of the impugned decision.

520. The Supreme Court of the Republic of Macedonia is obliged to reach a decision within 48 hours following the receipt of the appeal. All decisions made in respect of election complaints and appeals shall be published on the websites of the Supreme Court, the State Election Commission, the city election commission and municipal election commissions, as well as in other appropriate ways.

521. The second instance decisions are final.

522. In 2002, with a view to implementing the strategic commitment of the Government towards decentralization, the Law on Local Self-Government was enacted, which inter alia regulates various forms of direct participation of citizens in the decision-making at local level i.e. in the municipalities. Namely, pursuant to article 25 of this Law, the citizens participate directly in the decision-making concerning issues of local importance through civic initiative, citizens' gathering and referendum, in a manner and procedure determined by law.

523. Having regard to the recommendations of the OSCE and the Council of Europe issued during the referendum held in 2004, especially those aimed at regulating respective forms of direct citizens' participation, in September 2005, a new Law on Referendum and Other Forms of Direct Citizens' Participation was enacted, which elaborates in depth the forms of direct citizens' participation at local level and codifies the existent legislative solutions in this area. The Law particularly details the holding of a referendum and civic initiative at national and local level, and citizens' gatherings. The Law also enumerates the issues for which no referendum can be issued at national or local level.

524. Namely, the referendum at national (and local level) cannot be issued for the issues related to the national budget of the Republic of Macedonia and its annual balance sheet, public procurements and state reserves; election, appointment and dismissal of officials; amnesty; issues for which the Assembly of the Republic of Macedonia and municipal councils are required to decide by a majority vote of their representatives in attendance, within which there must be a majority of the votes of the attending representatives who belong to the communities which are not majority in the Republic of Macedonia.

525. A referendum at national level cannot be issued for questions and issues which affect national defence, proclamation of a state of war or state of emergency, and for secondary legislation that have an effect of a law, which may be adopted during the time of war or state of emergency.

526. In this context, very important instrument aimed at ensuing independence in the performance of public functions and services is the anticorruption legislation. The Law on the Prevention of Corruption, which was enacted in 2002, inter alia prohibits the performance of other functions and activities and the conflict of interests, which are considered to be crucial safeguards for the prevention of corruption in the performance of public authorizations and services. Article 22 of this Law prescribes that an elected or appointed functionary, official or responsible person within a public enterprise, during his/her term of office, cannot perform any other public function or office, duty or activity which is incompatible with his/her current function.

527. In cases of conflict between private and public interests, the elected or appointed functionary, official or responsible person within a public enterprise or other legal entity disposing with state capital, is obliged to act according to the public interest. Such conflicts between private and public interests may occur when the performance of certain official or other duty and activity may affect the financial and other interests of the above-mentioned persons or the interest of their families.

528. Similar provisions about conflict of interests have been incorporated in the Law on Internal Affairs, Law on Customs Administration and other laws. Hence, the Law on Civil Servants of 2000 stipulates that the civil servant has to perform his/her work and duties impartially and free from any influence by the political parties; he/she shall not be guided by personal political convictions or private financial interests, and shall refrain from abusing the official capacity and status of a civil servant. In addition, the Ethical Code of Civil Servants contains provisions aimed at the prevention of conflict of interests. It is stipulated therein that the civil servant, when making decisions, should not be misled in a wrongful, unjustifiable or irrational assessment of the factual situation in a given case, inter alia, on the ground of conflict of interest.

## Article 26

### Prohibition of Discrimination

529. In the course of the period from 1999 to 2005, the Republic of Macedonia has undertaken a significant number of measures and activities in order to upgrade and strengthen its constitutional and legislative framework with regard to nondiscrimination.

530. To this end, the Law on Citizens' Associations and Foundations of 1998 and the Law on Political Parties of 2004 have reaffirmed the principle of nondiscrimination in carrying out the activities and actions of citizens' associations (i.e. NGOs), foundations and political parties.

531. Namely, the aforementioned laws stipulate that the programmes, statutes and bylaws and the overall activities of political parties and citizens' associations and foundations cannot be targeted at: a violent withdrawal of the constitutional order of the Republic of Macedonia, incitement or calling out for a military aggression, and inflammation of national, racial or religious hatred or intolerance. In cases of infringements and non-compliance with this specific provision, the competent basic court shall render a decision, whereby the activities of the political party or citizens' association or foundation concerned shall be banned.

532. The Law on Political Parties prohibits any form of discrimination on the basis of membership in a political party, or a lack thereof. Also the political parties are required to ensure that all positions and functions within the political party are equally accessible to men and women, thus ensuring full adherence to the principle of gender equality.

533. According to the Law on Organization and Work of State Administration Bodies, which was adopted by the Assembly in 2000, all State administration bodies, under the realm of their statutory competence, are obliged to ensure that every citizen enjoys his/her constitutional rights and freedoms in an efficient and legitimate manner, based on the principles of legality, accountability, efficiency, cost-effectiveness, transparency, and equality.

534. The Law on Civil Servants of 2000, inter alia, governs the recruitment and employment in state administration according to the principle of equal access to civil service and a merit-based selection process. The system of salaries and allowances of civil servants determined by this Law is founded on the principles of legality, equality, transparency, predictability and equity.

535. The core focus of the Constitutional Amendments ensuing from the Framework Agreement, which was concluded in 2001, was the principle and measures of nondiscrimination. Pursuant to Amendment VI to Article 8 of the Constitution, a fundamental principle of the constitutional order of the Republic of Macedonia is the principle of adequate and equitable representation of citizens belonging to all communities in state administration bodies and other public institutions at all levels.

536. In item 4 of the Framework Agreement devoted to nondiscrimination and adequate and equitable representation, the commitment of the Government to assure full respect and adherence to the principle of nondiscrimination and the principle of equal treatment of all before the law, is

enshrined. In particular, these principles shall apply with respect to the employment in public administration and public enterprises, and access to public financing of relevance for business development.

537. With the aim of giving full effect to the Framework Agreement and Amendment VI to Article 8 of the Constitution, in 2002 the Law on Civil Servants was amended and supplemented, whereby the constitutional principle of adequate and equitable representation of citizens who belong to the communities in the Republic of Macedonia in the State administration was implemented to the fullest possible extent. Furthermore, the principle of nondiscrimination in the process of election and appointment of judges and public prosecutors was also enshrined in the amendments and supplements to the Law on the Courts and the Law on Public Prosecutors' Office, enacted in 2003 and 2004 respectively, whereby the Framework Agreement provisions were implemented and brought into effect in the area of the judiciary. (For more information about the principle of adequate and equitable representation of persons belonging to the communities in public administration, courts and prosecution offices, see under article 27).

538. In parallel and following the Framework Agreement and the Constitutional Amendments of 2001, the competencies of the Ombudsman have been substantially enlarged with respect to the principle of nondiscrimination. Accordingly, pursuant to Amendment XI to the Constitution: "The Ombudsman shall pay a particular attention to safeguarding the principles of nondiscrimination and adequate and equitable representation of persons belonging to the communities in State administration bodies, bodies of local self-government units and public services."

539. With a view to giving full effect to the above constitutional provision, in 2003 a new Law on Ombudsman was enacted. According to article 2 of this Law: "The Ombudsman is a body of the Republic of Macedonia empowered to protect the constitutional and legal rights of citizens and other persons in cases when they are violated by acts, actions or omissions of state administration bodies and other bodies or organizations performing public authorizations, and to undertake measures and activities for safeguarding the principles of nondiscrimination and adequate and equitable representation of persons belonging to the communities in state administration bodies, bodies of local self-government units, and public institutions and services. (For more information about the safeguards and protection of the principles of nondiscrimination and adequate and equitable representation in the proceedings before the Ombudsman, see under Article 27).

540. A novelty in the criminal repression system is the offence criminalising acts of discrimination committed through an information system, which was introduced with the amendments and supplements to the Criminal Code of 2004. Accordingly, under the criminal offence per Article 144 - endangering security, a new paragraph was added that sanctions acts of "a person, who by way of an information system, threatens to commit a crime, for which a sanction of five years imprisonment or a more severe sanction has been prescribed, against another person due to his/her affiliation with a certain national, ethnic or racial group or his/her religious conviction". For this type of offence, the penalty of one to five years of imprisonment is prescribed by law.

541. In July 2005, the Republic of Macedonia ratified the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racial and xenophobic nature committed through computer systems.

## **Article 27**

### **Rights of Minorities**

#### **(With respect to the Recommendations under item: 16)**

542. The Framework Agreement signed on 13 August 2001 in Ohrid promotes a peaceful and harmonic development of the civil society, and at the same time, it promotes the respect for the ethnic identity and interests of all Macedonian citizens. The perseverance of the multiethnic character of Macedonian society and its implications on public life is one of the underlying principles of the Framework Agreement.

543. The amendments IV to XVIII to the Constitution, which were adopted in 2001, have been inspired by and derived from the political commitments embodied in the Framework Agreement. Namely, the Preamble of the Constitution, inter alia, sets forth: "The Republic of Macedonia is constituted as an independent and sovereign state where all citizens of the Republic of Macedonia, the Macedonian people, as well as citizens living within its boundaries who are part of the Albanian people, the Turkish people, the Serbian People, the Roma people, the Bosnian people, and others take the responsibility for the present and the future of their homeland."

544. The Republic of Macedonia ratified the Framework Convention for the Protection of National Minorities on 10 April 1997, which entered into force on 1 February 1998. The First Report on the implementation of the Framework Convention was submitted in May 2004.

#### **Adequate and Equable Representation of the Communities in:**

##### **(a) Public Administration**

545. According to the Amendment VI to Article 8 of the Constitution, one of the fundamental principles of the constitutional order of the Republic of Macedonia is the principle of adequate and equitable representation of persons belonging to the communities in state bodies and other public bodies and institutions at all levels.

546. The commitment of the Government towards full adherence to the principle of nondiscrimination and the principle of equal treatment of all people before the law is reflected and enshrined in item 4 of the Framework Agreement, which item is specifically devoted to nondiscrimination and equitable representation. In particular, these principles apply with respect to the recruitment and employment in public administration and public enterprises, and access to public financing of relevance for business development.

547. With the aim to give full effect to the Framework Agreement and Amendment VI to Article 8 of the Constitution of the Republic of Macedonia, in 2002 the Law on Civil Servants was amended and supplemented, whereby the constitutional principle of adequate and equitable representation of persons belonging to the communities in the Republic of Macedonia was fully implemented in the area of civil service employment.

548. Namely, pursuant to article 3-a of this Law: during the recruitment and employment in State administration bodies (line ministries), expert services of the Assembly, the Cabinet of the President, the Government, the Constitutional Court, Supreme Court of the Republic of Macedonia, the courts, Republic Judicial Council, Public Attorney's Office, Public Prosecutor's Office, the National Bank, and the State Audit Office, as well as in the bodies of local self-government units, the principle of adequate and equitable representation of citizens belonging to all communities shall be applied in respect of all titles set forth in this Law, by full observance of the criteria for professionalism and competence.

549. For the purposes of ensuring full application of the constitutional principle of adequate and equitable representation, the Civil Servants Agency shall develop a policy for recruitment and employment, adequate and equitable representation of communities, selection and termination of employment in civil service.

550. The amendments and supplements to the Law on Civil Servants, which were enacted in 2003, introduced a duty upon the functionaries who manage with state administration bodies referred to in Article 3 of the Law, to develop and adopt an annual plan for adequate and equitable representation of communities.

551. In parallel to these legislative initiatives, and primarily with the aim to improve the current situation of adequate and equitable representation of persons belonging to the communities, the Government, with the support of the European Agency for Reconstruction, in 2004 implemented a special project entitled "Equitable Representation of Ethnic Communities in Public Administration of the Republic of Macedonia - Public Administration Certificate" - PACE Training Programme. Within the framework of this project, appropriate civil service training was offered, followed by employment of expert-administrative officers. This project enabled 600 members of ethnic communities to be trained and employed in the civil service.

552. Actually, the statistical data about the ethnic structure of public administration available for the reporting period from December 2002 until December 2004 demonstrates and corresponds to the above-mentioned activities of the Government of the Republic of Macedonia.

553. Accordingly, in June 2002, out of the total number of 58,927 employees; 8,644 or 14.7% were Albanians; 847 or 1.4% were Turks; 329 or 0.5% were Vlachs; 1220 or 2.1% were Serbs; 365 or 0.6% were Roma; 165 or 0.3% were Bosnians; and 753 or 1.3% belonged to other communities.

554. In December 2004, out of the total number of 56,871 employees; 10294 or 18.1% are Albanians; 928 or 1.6% are Turks; 330 or 0.6% are Vlachs; 1,172 or 2.1% are Serbs; 376 or 0.7% are Roma; 181 or 0.3% are Bosnians; and the remaining 660 or 1.2% belong to other communities.

555. In this context, very indicative are the data concerning the ethnic structure of the Ministry of the Interior's employees covering the period 2001 to 2004, where the situation was the following: out of the total number of 8,805 employees in 2001, 92.1% were Macedonians; 3.6% were Albanians; 0.36% were Turks; 1.9% were Serbs; 0.36% were Roma; and others were 1.48%. In 2004, there was an evident increase and improvement of the representation of ethnic

communities in the total number of employees. Namely, out of the total of 11,354 employees in 2004, 82.28% are Macedonians, 13.31% are Albanians, 0.59% are Turks, 1.74% are Serbs, and 0.65 % are Roma.

556. Very similar is the situation in the Army, where in 2001, out of the total number of 5,215 employees, 91% were Macedonians, 2.25% were Albanians, 0.49% were Turks, 3.20% were Serbs, 0.31% were Roma, 0.09 were Bosnians, and 0.17% were Vlachs.

557. In 2004, out of 8,395 employees in the Macedonian Army, 84% are Macedonians, 10.18% are Albanians, 0.72% are Turks, 2.43% are Serbs, 0.35% are Roma, 0.31% are Bosnians, and 0.33% are Vlachs.

558. In summary, these figures show that the representation of non-majority communities in public administration amounted to 17.7% at the end of 2002, 19.7% in December 2004, and 21.3% at the end of 2005. The representation of Albanian ethnic community was 11.6% in 2002, 14.5% in December 2004, and 16.1% at the end of 2005.

559. The statistical data about the ethnic structure of municipal administration show that out of the total number of 1117 employees, 79.7% are Macedonians, 15.14% are Albanians, 1.79% are Turks, 0.79% are Roma, 0.43% are Vlachs, 1.50% are Serbs, 0.14% are Bosnians, and the rest of 0.43% belong to other communities.

#### **(b) Legislative Branch of the Government**

560. At the parliamentary elections held in 1998, out of 1,209 candidates for representatives in the Assembly i.e. Parliament, 245 or 20.2% belonged to the nationalities. Out of the total of 120 elected representatives in the Assembly, 27 or 22.5% belonged to ethnic communities (Albanians: 24 or 20%; Roma: 1 or 0.8%; and others: 2 or 1.7 %).

561. At the parliamentary elections held in September 2002, evidently there was an increase of the communities' representation among the elected members of Parliament i.e. the Assembly. Accordingly, out of 120 elected representatives, 35 or 29.1% belonged to the communities, out of which 26 were Albanians, 2 were Turks, there was one representative of Roma and Vlach communities, two representatives of Serbian and Bosnian communities, and one belonged to others.

562. The Commission for Inter-Ethnic Relations has a president, ten members elected from the rank of representatives in the Assembly of the Republic of Macedonia, and four members elected from the rank of scholars and other professionals.

563. The Commission reviews and considers issues related to the rights of communities which are governed by law, particularly the right of the communities to use their language and alphabet; the right to have instructions in their language in the process of child upbringing and education; the right of the communities to enjoy protection of their ethnic, cultural and religious identity; and other issues of relevance for the enjoyment of the rights of communities enshrined in the Constitution.

564. The Amendment XII to the Constitution of 2001 provides for the establishment of a Committee for Inter-Community Relations. According to article 78 of the Constitution, this

Committee is composed of 19 members of whom seven members each are from the rank of representatives in the Assembly who are Macedonians and Albanians, and one member each from among the Assembly representatives who are Turks, Vlachs, Serbs and Bosnians. If some of the communities do not have their own representative in the Assembly, the Ombudsman, upon consultations with relevant representatives of these communities, shall propose the remaining members of the Committee. The Assembly elects the Committee members. The Committee considers issues regarding to the inter-community relations in the country, and makes opinions i.e. appraisals and proposals for their solution. The Assembly is obliged to take the Committee's appraisals and proposals into consideration, and to make decision thereupon.

**(c) Local Self-Government**

565. At the local elections held in 1990, out of 5546 nominated candidates, 953 or 17.1% belonged to the communities, which at that time were referred to as nationalities.

566. At that occasion, 1,510 members were elected in municipal legislative bodies, out of which 321 or 21.2% belonged to nationalities (Albanians: 221 or 15%; Muslims: 25 or 1.6%; Turks: 22 or 1.4%; Serbs: 16 or 1%; Roma: 15 or 1%; Vlachs: 12 or 0.8%; Yugoslavs: 6 or 0.3%; and other nationalities: 2 or 0.1%).

567. At the local elections held in 1996, out of 12,724 candidates for members of municipal councils, 3,579 or 28.1% belonged to the nationalities.

568. In the municipal councils, out of the total number of 1,720 elected members, 467 or 27.1% belonged to the nationalities (Albanians: 342 or 20%; Turks: 54 or 3.1%; Vlachs: 5 or 0.3%; Roma: 13 or 0.7 %; Serbs 20 or 1.1%; Muslims: 12 or 0.7 %; and other nationalities: 21 or 1.2%).

569. Out of 118 elected mayors of the municipalities, 28 or 23.7% were from the ranks of nationalities (Albanians: 22 or 18.6%; Turks 4 or 3.4%, and Serbs 2 or 1.7%).

570. At the Local Elections held in 2000, out of 9791 candidates for members of municipal councils, 3588 or 36.6% belonged to nationalities.

571. Out of 1906 elected members of municipal councils, 573 or 30.1% belonged to the nationalities (Albanians: 423 or 22.2 %; Turks: 56 or 3%; Vlachs: 6 or 0.3 %; Roma: 16 or 0.8%; Serbs: 24 or 1.3%; others 33 or 1.7%; unknown 15 or 0.8%).

572. Out of 123 elected mayors of the municipalities in the Republic of Macedonia, 32 or 26% belonged to the communities (Albanians: 26 or 21.2%; Turks: 2 or 1.6%; Roma: 1 or 0.8%; Serbs 2 or 1.6%; others: 1 or 0.8%).

573. At the Local Elections held in 2004, out of the total number of 1391 elected members of municipal or local self-government units councils, 64.1% are Macedonians, 25.2% are Albanians, 2.30% are Turks, 0.8% are Vlachs, 1.3% are Roma, 1.9% are Serbs, 0.4% are Bosnians, and 1.1% are others.

574. Out of the total of 85 elected mayors of the municipalities, 71.8% are Macedonians, 18.8% are Albanians, 2.3% are Turks, 1.2% are Roma, 2.4% are Serbs, and 3.5% belong to other communities.

**(d) Executive Branch of the Government**

575. When it comes to the executive branch of the government, all former governments elected by the Assembly of the Republic of Macedonia were coalition governments, where at least one of the political parties of Albanian ethnic community was participating as a coalition partner.

576. Currently, out of the total number of 18 ministers in the Government, 5 belong to Albanian community and one of them is a Deputy Prime-Minister.

**(e) Judicial Branch of the Government**

577. Article 40 of the Law on the Courts enacted in 2003 provides that there shall be no discrimination in the process of election of judges and lay-judges on the grounds of sex, race, color of skin, national and social origin, political or religious conviction, financial or social status. In the election of judges and lay-judges, without infringement of the principles prescribed by this law, the principle of adequate and equitable representation of citizens belonging to all communities shall be ensured.

578. A similar provision is incorporated in the Law on Public Prosecutors' Office, which was enacted in June 2004. According to Article 43 of this Law: "In the appointment of public prosecutors and deputy public prosecutors, without any infringement of the principles prescribes by this law, the principle of adequate and equitable representation of citizens belonging to all communities in the Republic of Macedonia shall be applied".

579. The most recent statistical data about representation of the communities in the public prosecutors' offices and in the courts demonstrates the following:

580. In the General Public Prosecutor' Office, 7 deputy public prosecutors are Macedonian, whereas three are Albanians.

581. In the higher (second instance) public prosecutors' offices, two public prosecutors are Macedonians, and one is Albanian; 19 deputy public prosecutors are Macedonians and two are Serbs; and amongst the other employees in these offices, 25 are Macedonians and two are Albanians.

582. In the basic (first instance) public prosecutors' offices in the Republic of Macedonia, 16 basic public prosecutors are Macedonians, three are Albanians, one is Turk, and one is Vlach. 121 deputy public prosecutors are Macedonians, 6 are Albanians, and one is Turk; and amongst the other employees in these offices, 123 are Macedonians, 13 are Albanians, one is a member of Turkish and one of Vlach community.

583. Out of the total number of 631 judges in the Republic of Macedonia, 73 or 11.5% are members of non-majority communities (Albanians: 39 or 6.2%; Turks: 5 or 0.8%; Vlachs: 12 or 1.9%; Macedonians of Muslim religion: 2 or 0.3%; Serbs 7 or 1.1%; Montenegrins: 3 or 0.5%; Croats: 1 or 0.1%; and Bulgarians: 1 or 0.1%).

584. The ethnic structure in respective courts is the following:

585. At the level of basic (first instance) courts there are 530 judges, out of which 58 or 10.9% belong to non-majority communities (Albanians: 29 or 5.5%; Turks: 3 or 0.5%; Serbs: 6 or 1.1%; Vlachs: 11 or 2.1 %; Muslims: 3 or 0.5%; Macedonians of Muslim religion: 2 or 0.4%; Montenegrins: 2 or 0.4%; Croats: 1 or 0.2%; Bulgarians: 1 or 0.2%);

586. At the level of appellate courts, 82 judges are elected, out of which 11 or 13.4% belong to the communities (Albanians: 7 or 8.6%; Turks: 1 or 1.2%; Serbs: 1 or 1.2%; Vlachs: 1 or 1.2%; and Montenegrins: 1 or 1.2%).

587. In the Supreme Court, 19 judges are elected, out of which 4 or 21% belong to the non-majority communities (Albanians: 3 or 15.8%; and Turks: 1 or 5.2%).

588. With a view to improving the current situation with respect to the communities' representation in the judiciary, the Government implemented a variety of measures and activities. To mention a few, within the framework of the PACE Project in the judiciary, 81 persons belonging to non-majority communities have been employed, out of which 24 in the Ministry of Justice, 42 in the courts, 10 in the public prosecutors' offices, and five in the penitentiaries. This process was intensified during 2005, for which the national budget provided necessary financial resources. Furthermore, it is expected to employ interpreters, typists and record keepers, who belong to non-majority communities in the country. This derives from amendment V to the Constitution, which guarantees the right of the communities to use their own language and alphabet during court proceedings, as well as from the ensuing amendments and supplements to the Civil Procedure Code, Criminal Procedure Code, Law on Enforcement, and Law on Administrative Disputes.

#### **(f) Republic Judicial Council and Constitutional Court**

589. The Republic's Judicial Council is composed of 7 members, who are elected by the Assembly from the rank of distinguished lawyers for a six years term of office, with the right to be re-elected. According to Amendment XIV that complements article 104, paragraph 2 of the Constitution: "Three members of the Council shall be elected by a majority vote of the total number of representatives in the Assembly, within which there must be a majority of the votes of the total number of representatives belonging to the communities which are not majority in the Republic of Macedonia". Based on this constitutional provision, the current Republic Judicial Council, whose members were elected in 2003, has the following composition: two of its members belong to the Albanian community, one belongs to the Turkish community, and another one belongs to Serbian community. The remaining three are Macedonians.

590. The Constitutional Court is a body that the Republic empowered to protect constitutionality and legality. This independent body is not part of the judiciary. It has 9 judges, two of whom currently belong to non-majority communities.

591. Pursuant to amendment XV of the Constitution: "The Assembly elects the judges of the Constitutional Court. The Assembly elects six judges of the Constitutional Court by a majority vote of the total number of its representatives, within which there must be a majority of the votes

of the total number of representatives belonging to non-majority communities in the Republic of Macedonia. The judges of the Constitutional Court have a term of office of nine years, without right to be re-elected.”

### **Use of Languages of the Communities in the Following Areas:**

#### **(a) Issuance of Personal Documents**

592. The Amendment V to the Constitution stipulates that any official personal documents of citizens who speak an official language other than Macedonian, shall be issued in Macedonian language and its Cyrillic alphabet as well as in that language and its corresponding alphabet, in accordance with the law.

593. In order to implement and give full effect to this constitutional provision, the Law on Personal Identity Card was amended and supplemented twice, in 2002 and 2005. In pursuance to the provisions of this Law, with regard to citizens who speak an official language other than Macedonian, the form of their personal identity card shall be printed out and the information inscribed therein shall be written in the official language and its corresponding alphabet used by the individual concerned. On 15 May 2003, the Ministry of the Interior started to issue personal identity cards to citizens, which were printed out in the language and corresponding alphabet of citizens speaking an official language other than Macedonian. As of 15 May 2003 until 8 March 2006, total of 355,855 personal identity cards were issued, out of which 25,7209 were issued in Macedonian, whereas 98,646 were issued both in Macedonian and Albanian.

594. The Law on Amending and Supplementing the Law on Travel Documents of 2004 ensures the same standard. Accordingly, with regard to citizens who speak an official language other than Macedonian, upon their personal request, the information to be inscribed in their passports or other travel authorization papers shall be written in Macedonian language and its Cyrillic alphabet as well as in the official language and its corresponding alphabet used by the person concerned.

595. With regard to the citizens who speak a language other than the official language, upon their personal request, the information concerning their personal name to be inscribed in the passport shall be written in Macedonian language and its Cyrillic alphabet as well as in the language and its corresponding alphabet used by the person concerned. As of 6 December 2004 until 8 March 2006, total of 30,5505 passports were issued, out of which 87,587 were issued in both Macedonian and Albanian.

596. The Law on Amending and Supplementing the Law on Traffic and Road Safety of 2002 also guarantees the issuance of official documents in this area in an official language spoken by the person concerned other than Macedonian language, including: motor vehicle driving license, registration license and tractor driving license.

597. Finally, the Law on Amending and Supplementing the Law on Maintenance of Personal Records of 2002 stipulates that in municipalities or local self-government units where at least 20% of the citizens speak an official language other than Macedonian, the format of personal records books shall be printed out and the information to be inscribed therein shall be written in the official language and its corresponding alphabet used by the person concerned.

Moreover, various certificates issued based on the personal records kept for the citizens, shall be printed out and written in Macedonian and its Cyrillic alphabet as well as in the official language and its corresponding alphabet used by the person concerned.

**(b) Communication with Competent Ministries and Units of Local-Self Government**

598. Amendment V to the Constitution stipulates that any person living in a unit of local self-government in which at least 20% of the citizens or population speak an official language other than Macedonian may use any official language and its corresponding alphabet to communicate with regional offices of the central government. The regional offices that have jurisdiction over these units of local self-government shall reply in Macedonian language and its Cyrillic alphabet as well as in the official language and its corresponding alphabet used by the individual concerned. Every person in his/her communication with a main office of the central government i.e. ministries, is entitled to use any official language and its corresponding alphabet.

599. In the units of local self-government units where at least 20% of the population speaks a particular language, that language and its corresponding alphabet shall be used as an official language in addition to Macedonian language and its Cyrillic alphabet. With respect of languages spoken by less than 20% of the citizens living on a unit of local self-government, the local authorities have the competence to decide about their use.

600. This constitutional provision has been put into effect, in the very same manner, by the Law on Local Self-Government of 2002.

601. In the State authorities, an official language other than Macedonian may be used in accordance with the law.

602. With the aim to ensure implementation of this constitutional provision, the Law on Amending and Supplementing the Law on General Administrative Procedure of 2002 and the new Law on General Administrative Procedure enacted in 2005, stipulate that the official language in the administrative procedure is the Macedonian language and its Cyrillic alphabet. However, in the course of administrative proceedings conducted by bodies of State administration, other State bodies, bodies of local self-government units, legal and other entities entrusted by law to perform public authorizations and mandate, other language spoken by at least 20% of the citizens and its corresponding alphabet shall be used in accordance with the law.

603. Furthermore, the parties to the proceedings and others who take part in the administrative proceedings, who are not nationals and do not understand Macedonian and its Cyrillic alphabet, have the right to be assisted by an interpreter.

604. This right may also be used by any person living in a unit of local self-government where at least 20% of the citizens speak an official language other than Macedonian, i.e. he/she may use any of the official languages and their corresponding alphabet in the course of their communication with regional offices of the ministries.

605. The ministries' regional offices having jurisdiction over these units of local self-government shall reply in Macedonian language and its Cyrillic alphabet as well as in the official language and its corresponding alphabet used by the individual concerned. Every person in

his/her communication with a main office of the ministries may use one of the official languages and its corresponding alphabet, whereas the ministries shall reply in Macedonian language and its Cyrillic alphabet as well as in the official language and its corresponding alphabet used by the individual concerned.

606. The parties to the proceedings, who speak an official language other than Macedonian, may file their submissions in that official language and its corresponding alphabet. The administrative authorities in charge of the proceedings shall provide translation of these submissions and shall act thereupon.

607. The competent authorities to conduct proceedings related to administrative matters shall respond in the official (Macedonian] language and its Cyrillic alphabet as well as in other/the official language and its corresponding alphabet used by the party to the proceedings.

608. In order to ensure practical implementation of these statutory provisions, the process of printing out bilingual forms to be used by the ministries' regional offices is under way.

**(c) Elections and Census**

609. In compliance with amendment V to the Constitution, the right to use the languages of the communities in the area of elections has been fully incorporated in the Law on Election of Representatives in the Assembly of the Republic of Macedonia of 2002 and the Law on Amending and Supplementing the Law on Local Elections of 2003.

610. Namely, the respective provisions enshrined in the above-mentioned laws, which pertain to the contents of a ballot sheet for members of non-majority communities, foresee that the name of the person submitting a list of candidates and the last and first name of the list submitter shall be written in Macedonian language and its Cyrillic alphabet as well as in the language and corresponding alphabet of the communities to which they belong. Moreover, the voting instructions shall be printed out in Macedonian language and its Cyrillic alphabet as well as in the languages and corresponding alphabets of other communities mentioned in the Preamble of the Constitution of the Republic of Macedonia.

611. The Law on Census of Population, Dwellings and Apartments in the Republic of Macedonia of 2002 also contains specific provisions giving effect to the Constitutional Amendment concerning the use of languages. Article 36 of this Law reads as follows: "The census record keeper is obliged to inform the persons who are subjected to the census that they have the right to freely choose to supply information in the official Macedonian language and its Cyrillic alphabet or in other official language and its corresponding alphabet used by at least 20% of the citizens in the Republic of Macedonia; or in the official Macedonian language and its Cyrillic alphabet as well as in other official language and its corresponding alphabet used by at least 20% of the citizens living in the units of local self-government; or in the official Macedonian language and its Cyrillic alphabet as well as in the language and its corresponding alphabet used by the community to which persons subjected to the census belong (Turkish, Vlach, Roma or Serbian language).

612. The census is conducted in the official Macedonian language and its Cyrillic alphabet.

613. In cases when the census is conducted in the official language spoken by at least 20% of the citizens of the Republic of Macedonia, the census form shall be filled in that language and its corresponding alphabet, and additionally in Macedonian language and its Cyrillic alphabet.

614. In cases when the census is conducted in Turkish, Vlach, Roma or Serbian language, the census form shall be filled in the language chosen by the person concerned, and additionally this form shall be filled in Macedonian language and its Cyrillic alphabet.

615. The census forms shall be printed out in the official Macedonian language and its Cyrillic alphabet; in the language and its corresponding alphabet used by at least 20% of the citizens in the Republic of Macedonia and in Macedonian language and its Cyrillic alphabet; in Turkish, Vlach, Roma or Serbian language and their corresponding alphabets and in Macedonian language and its Cyrillic alphabet.”

616. According to the above-mentioned statutory provisions, in 2002 a general census of the population in the Republic of Macedonia was conducted. The data collected show the percentages and number of different nationalities within the entire population (2, 022, 547):

- 64.18% Macedonians (1,297,891);
- 25.17% Albanians (509,083);
- 3.85% Turks (77,959);
- 2.66% Roma (53,879);
- 0.48% Vlachs (9,695);
- 1.78% Serbs (35, 939);
- 0.84% Bosnians (17,018);
- 1.04% Others (20,993).

**(d) Court Proceedings**

617. According to item 6.7 of the Ohrid Framework Agreement: “In criminal and civil judicial proceedings at any level, an accused person or any party thereto shall have the right to interpretation/translation at state expense of all proceedings and submissions, in accordance with relevant Council of Europe documents”. In addition, paragraph 5 of Amendment V to the Constitution of the Republic of Macedonia stipulates that in state authorities of the Republic of Macedonia, an official language other than Macedonian may be used in accordance with the law.

618. In this context, the Law on Amending and Supplementing the Criminal Procedure Code of 2002 prescribes that the official language in criminal proceedings is Macedonian language and its Cyrillic alphabet. Other official language spoken by at least 20% of the citizens and its corresponding alphabet shall also be used in the criminal proceedings in accordance with this Code.

619. The defendant, the damaged party, the private criminal complainant, witnesses and other persons who take part in the criminal proceedings, who speak an official language other than Macedonian, have the right to use their own language and alphabet during pre-investigative and investigative stages of the proceeding and during trial hearings, as well as in the course of the appellate procedure. The court shall ensure oral interpretation of the presentations made by the parties and others during the proceedings, as well as of documents and other written materials serving as evidence. The court shall ensure translation in writing of any written material of relevance for the proceedings or of importance for the defendant's defense.

620. Other parties, witnesses and persons who take part in the proceeding before the court have the right to be assisted by an interpreter, free of charge, if they do not understand the language in which the proceeding is conducted. The court shall instruct the aforementioned persons of their right to be assisted by an interpreter. The court instructions and the corresponding statement made by the person concerned shall be entered into the official court record. Such interpretation services shall be provided by a court certified interpreter.

621. The complaints, appeals, writs and other types of submissions shall be forwarded to the court in the language in which the proceeding is conducted.

622. The citizens who speak an official language other than Macedonian may file submissions in their own language and the corresponding alphabet, whereby the court shall ensure translation of such submissions, and thereafter shall forward them to other parties to the proceedings.

623. Other persons, who do not speak or understand Macedonian language and its Cyrillic alphabet, may file their submissions to the court in their own language and corresponding alphabet.

624. The accused person who does not understand the language of the proceedings shall be served with the indictment translated into the language he/she uses in the course of the proceedings.

625. A foreign national deprived of liberty or detained may file written submissions in his/her own language; whereas in other cases, this right is conditioned by the principle of reciprocity.

626. The court shall serve and forward the summons, decisions and other submissions written in the language in which the proceeding is conducted. The citizens speaking an official language other than Macedonian shall be served with court summons, decisions and other submissions in their own language as well.

627. The defendant who is held in remand detention or is serving imprisonment sentence or is under s mandatory psychiatric treatment and held in health institution, shall be served with submissions translated into the language he/she used in the course of the proceedings.

628. Any infringement of the provisions concerning the use of languages in the proceedings by the court shall be deemed as a substantive procedural violation of the provisions of this Code.

629. The civil court proceedings, pursuant to the provisions of the Law on Amending and Supplementing the Civil Procedure Code of 2002, and the new Civil Procedure Code enacted in 2005, are conducted in Macedonian and its Cyrillic alphabet.

630. In the course of civil proceedings, another official language and its corresponding alphabet used by at least 20% of the citizens shall be used in accordance with this Code.

631. A person belonging to the communities, who is a party to the proceedings or takes part in the proceedings in another capacity and who does not understand and speak Macedonian language and its Cyrillic alphabet, shall have the right to be assisted by an interpreter. The interpretation expenses shall be covered by the court.

632. The court has a statutory obligation to instruct the party i.e. other person who takes part in the proceedings about his/her legal right to be assisted by an interpreter, as provided by the law. The presiding judge of the judicial panel or the single judge is required to enter into the official court record the instructions given as well as the corresponding statement given by the party or other person taking part in the proceedings.

633. The parties to the proceedings and other persons taking part in the proceedings, who speak other language, which is also an official language in the Republic of Macedonia, have the right to use their own language at hearings and while undertaking oral procedural actions before the court.

634. The parties to the proceedings and other persons who take part in the proceedings shall be provided with oral interpretation in their own language of whatever is being stated or submitted at the hearing, as well as with oral and written translation of written documents used as evidence at the hearing. These interpretation and translation services shall be provided by court certified interpreters.

635. The court shall serve and forward the summons, decisions and other submissions related to the civil proceedings in Macedonian language and its Cyrillic alphabet. The parties and other persons taking part in the proceedings, who are nationals of the Republic of Macedonia and whose language is an official language other than Macedonian, shall be served with court summons, decisions and other types of submissions in their own language.

636. The parties and other persons taking part in the proceedings shall file complaints, appeals and other submissions to the court in Macedonian language and its Cyrillic alphabet. The parties and other persons taking part in the proceedings, who are nationals of the Republic of Macedonia and whose native language is an official language other than Macedonian language and its Cyrillic alphabet, may file their complaints, appeals and other submissions to the court in their own language and corresponding alphabet. The court shall ensure translation of these submissions into the Macedonian language, and thereupon it shall forward them to other parties and persons taking part in the proceedings.

637. The parties and other persons taking part in the proceedings, who are nationals of the Republic of Macedonia and whose native language is not Macedonian language and its Cyrillic alphabet nor an official language other than Macedonian, have the right to use their own language at hearings and while undertaking oral procedural actions before the court during the proceedings. The parties and other persons taking part in the proceedings shall be provided with oral interpretation in their own language of whatever is being stated or submitted at the hearing, as well as with oral interpretation of documents used as evidence at the hearing.

638. The parties and other persons who take part in the proceedings shall be instructed about their right to follow the court proceedings in their own language with the assistance of an interpreter. They may waive the right to an interpretation by indicating that they do know the language in which the proceeding is conducted. The instructions given to this effect shall be entered into the official court record as well as the statement given in reply by the parties or other participants.

639. The interpretation expenses made on behalf of the parties or other persons taking part in the proceedings, who are nationals of the Republic of Macedonia, which are incurred in the application of the aforementioned provisions concerning the use of languages in the proceedings, shall be covered by the court.

640. Whenever the court infringes the provisions concerning the use of languages in the proceedings, it shall constitute a substantive procedural violation of the provisions of the Civil Procedure Code.

641. To fully implement these statutory provisions, the Ministry of Justice in 2004 also revised the existent Courts' Rules of Procedure. More specifically, alternations and supplements to several court forms were made (such as service of process proof; receipt; notification to the party that the appeal i.e. extraordinary legal remedy called revision has been forwarded together with the case file to the higher court; warrant to escort the convicted person to serve the imprisonment sentence; and personal identification warrant) in Albanian as well. The court is obliged to forward all these forms to the parties or other persons taking part in the proceedings, who are nationals of the Republic of Macedonia and who speak an official language other than Macedonia, in their own language as well. These forms were translated and distributed to all courts around the country. In order to make the citizens aware of these new forms and the process of implementation of the Framework Agreement, they were also published in the daily newspaper in Albanian called "Fakti" and the daily newspaper in Macedonian called "Utrinski Vesnik".

642. Furthermore, on 6 January 2005, the Government of the Republic of Macedonia decided to commission a special training for interpreters/translators targeted at members of non-majority communities in the Republic of Macedonia, who after the training will be employed in the state administration and the courts. According to the Government's decision, the training of interpreters will include persons having a university diploma in the area of law, economy, philology, political science or public administration. It is envisioned the training to last for 10 months and to encompass 100 candidates; the contents of the training curriculum and its dynamics are to be determined by the Civil Servants Agency. After the training, the candidates will be required to conclude a contract committing themselves to work for the state administration and the courts for a period of two years from the day of completion of their training.

643. Pursuant to Article 8, paragraph 2 of the Law on Amending and Supplementing the Law on Publication of Laws and other Secondary Legislation in the "Official Gazette of the Republic of Macedonia" of 2002, all laws shall be published in other official language and its corresponding alphabet used by at least 20% of the citizens belonging to the communities in the Republic of Macedonia.

**(e) Plenary Sessions of the Assembly of the Republic of Macedonia and Meetings of its Working Bodies**

644. In 2005, new Rules of Procedure of the Assembly were adopted, whereby amendment V to the Constitution with regard to the use of languages of the communities became fully operational. Namely, article 3 of these Rules of Procedure reads as follows: “The official language in the work of the Assembly is the Macedonian language and its Cyrillic alphabet. A member i.e. representative in the Assembly who speaks a language other than Macedonian, which is spoken by at least 20% of the citizens of the Republic, may use that language during plenary sessions of the Assembly and meetings of its working bodies. Nationals of other countries, who are invited to attend and participate in the work of the Assembly, are entitled to use their own language. A speech or address given in a language other than Macedonian shall be interpreted into Macedonian at all times.

**(f) Municipalities**

645. According to article 89 of the Law on Local Self-Government, the official language in municipalities is the Macedonian language and its Cyrillic alphabet.

646. In municipalities, in addition to the Macedonian language and its Cyrillic alphabet, an official language is the language and its corresponding alphabet used by at least 20% of their inhabitants. The municipal council is responsible to decide about the use of languages and alphabets spoken by less than 20% of the inhabitants of that particular municipality.

647. Out of the country’s 84 municipalities, in 33 municipalities (39.2%) the languages of non-majority communities are being used. Namely: in 27 municipalities, Macedonian and Albanian are being used; in one municipality, Macedonian, Albanian and Roma are being used; in one municipality, Macedonian, Albanian and Serbian are in use; whereas in 4 municipalities, Macedonian and Turkish are in use.

**(g) Proceedings before the Ombudsman**

648. Pursuant to article 13 of the Law on Ombudsman: “Every person may submit a complaint before the Ombudsman when he/she believes that his/her constitutional and legal rights have been violated, or in cases of infringement of the principle of nondiscrimination and the principle of adequate and equitable representation of persons belonging to the communities in bodies of state administration or other bodies and organizations performing public authorizations or mandate”.

649. In the proceedings before the Ombudsman, the official language is the Macedonian language and its Cyrillic alphabet. Furthermore, in the proceedings before the Ombudsman, an official language is also the language and its corresponding alphabet spoken by at least 20% of the citizens. In the communication with the Ombudsman, every person may use one of the official languages and its corresponding alphabet, whereas the Ombudsman shall reply in Macedonian language and its Cyrillic alphabet as well as in the official language and the corresponding alphabet used by the complainant.

650. In any matter brought to its attention, the Ombudsman may give its opinion with respect to the protection of the citizens' constitutional and legal rights and the principles of nondiscrimination and adequate and equitable representation of persons belonging to the communities, regardless of the type and instance of the ensuing procedure before bodies of state administration or other bodies and organizations performing public authorizations.

651. Following its statutory competencies, the Ombudsman is also empowered to monitor the current situation with regard to the observance and protection of the constitutional and legal rights of citizens, and the adherence of the principles of nondiscrimination and adequate and equitable representation of persons belonging to the communities. To this effect, the Ombudsman shall visit and inspect bodies of state administration and other bodies and organizations performing public authorizations.

652. During 2002, the Ombudsman received 5 complaints about alleged violations of the rights of persons belonging to the communities. Except in one case, no violation of the complainants' rights was found by the Ombudsman in the remaining four cases.

653. The complaint, which the Ombudsman considered to be well-founded, was submitted by a person belonging to Turkish community. It concerned a vacancy notice published following the decision of the Assembly of the Republic of Macedonia for appointment of a deputy public prosecutor. More specifically, the complainant filed his application to the Assembly of the Republic of Macedonia for the vacancy in the Basic Public Prosecutors' Office in Bitola.

654. The complainant, who has worked for many years as legal assistant in the same Basic Public Prosecutors' Office, alleged that not only he fulfilled the general requirements set forth in the Law on Employment in State Administration Bodies, but that he also convoked the body responsible for the appointment of deputy public prosecutors to have regard to the constitutional obligation to ensure adequate and equitable representation of persons belonging to the communities, in this particular case, the Turkish community, to which the complainant belonged.

655. The recommendation issued by the Ombudsman in this case was welcomed and fully observed, and the Prosecutor General gave a positive opinion about the complainant's application, and consequently, in a lawful and legitimate procedure the complainant was appointed as deputy public prosecutor in the Basic Public Prosecutors' Office in Bitola.

656. In 2003, five complainants addressed the Ombudsman seeking protection of their rights on the grounds of infringement of the principles of nondiscrimination and adequate and equitable representation of persons belonging to the communities, out of which three were Albanians, one was Roma, and one was Macedonian of Muslim religion. One of these cases was opened upon the Ombudsman's initiative, however following a thorough investigation, no violation of the rights was found and the case was closed. As to the remaining four cases, following the procedures and the establishment of factual situation by the Ombudsman, the complaints were rejected as ill-founded.

657. In recent years, there was a slight increase in the number of complaints submitted on the grounds of an alleged discrimination i.e. violation of the principle of adequate and equitable

representation. In 2004, 10 complaints on these grounds were filed. After a thorough consideration of these complaints, the Ombudsman closed these cases concluding that there was no violation of the complainants' rights.

658. In 2004, with the aim to obtain a general understanding and overview of the representation of persons belonging to the communities in bodies of state administration, bodies of local-self-government units, public institutions and services all over the Republic of Macedonia, the Ombudsman started the process of collection of relevant data. Based on the data gathered and information transmitted to the Ombudsman, it was concluded that the adequate and equitable representation is swiftly advancing in the sectors of internal affairs and defence, where significant contribution and support was provided by the international community.

659. In order to ensure full protection of the right of citizens, especially the rights of persons belonging to non-majority communities, in the second half of 2004 six regional offices of the Ombudsman were opened and became operational, which are situated in the largest towns all over the country. These regional offices are managed by Ombudsman's deputies, who are also elected by the Assembly.

### **Education in the Languages of the Communities**

#### *Elementary and Secondary School Education*

660. The right of persons belonging to non-majority communities to education in their own language at all levels within the framework of the education system, as guaranteed under article 12 of the Framework Convention for the Protection of National Minorities, has been reaffirmed and embodied in relevant laws concerning elementary and secondary school education as of 2002, which were subsequently amended and supplemented in 2004 and 2005.

661. According to the provisions of the aforementioned laws, the instructions for persons belonging to the communities in public schools shall be provided in their own language and alphabet, under conditions determined by law. Students belonging to the communities, who attend and receive instructions in a language other than Macedonian, shall use textbooks written in the language of their respective community. The pedagogical records and documentations for students who belong to the communities and who attend and receive instructions in a language other than Macedonian, shall be maintained and issued in Macedonian language and its Cyrillic alphabet, as well as in the language and its corresponding alphabet in which the instructions are provided.

662. Namely, the instructions in the overall system for upbringing and education in the Republic of Macedonia are held in four teaching languages (Macedonian, Albanian, Turkish and Serbian).

663. According to the curriculum for elementary school education, other languages of the communities are being taught as optional languages (Vlach and Roma).

664. During the last years, reforms of elementary and secondary school education have been undertaken, leading primarily towards preparation of new textbooks for elementary and high schools in four teaching languages. According to the information of the Pedagogical Service, only in the last two years, 175 textbooks have been approved for a variety of subject matters for

the students in V to VII grade of elementary school. Also, a large number of textbooks have been prepared for the students in high schools, and for several textbooks designated for III and IV year students, the approval procedure is still underway.

665. These textbooks, according to the law and public procurement rules, must be printed out in all languages in which the instructions are held in the Republic of Macedonia (Macedonian, Albanian, Turkish and Serbian language), whereas for the optional instructions in native languages, these languages are Roma and Vlach languages. The publisher, who will win the public tender for publication of a certain textbook, has to ensure that the textbook will be printed out in all languages in which the instructions are provided in schools.

666. The procedure for approval of textbooks is specified in the Law on Elementary School Education (Articles 83-93), and the Law on Secondary School Education (Articles 32-42).

667. In pursuance to the above-mentioned laws, all ethnic communities shall use textbooks in their own language.

668. At the end of the school year 2002/2003, depending on the language of instructions, the elementary school education was completed by 15,3665 students in Macedonian language, 75,543 students in Albanian language, 5,825 in Turkish language, and 483 in Serbian language.

669. At the end of the school year 2002/2003, depending on the language in which the instructions were held, the secondary school education was completed by 74,742 students in Macedonian language, 17,135 students in Albanian language, 762 students in Turkish language, and 887 students in English language.

670. In this context it is important to mention that the schools where Albanian language is the language of instruction, in particular urban schools, function under extremely difficult conditions caused primarily by a lack of space, and therefore the instructions are carried out in three school shifts. There is also a lack of adequate teaching staff, but recently tremendous efforts have been made to overcome the existing situation and difficulties in the area of education. Especially, positive developments have been witnessed after the crises in 2001, in consequence of the implementation of the Framework Agreement.

671. During this period, substantial improvements were made towards overcoming the pressing problems. Namely, almost all schools in the country have been involved in different projects aimed at reforming and advancing the process of upbringing and education of children; teaching staff is attending numerous seminars enabling them to cope with the complexity of environment and process of education; new school facilities are under construction; some school facilities have been substantially improved; the official recognition of Tetovo University contributed towards lessening the problem of inadequate Albanian teaching staff; professional programmes for functioning of schools and teaching staff have been developed; efforts have been made to ensure sufficient and adequate staff in some educational institutions for example, Education Development Bureau, which is tasked to monitor the ongoing process of upbringing and education in the languages of national minorities and to supply assistance to overcome the existing problems and difficulties.

672. In particular, the Ministry of Education and Science and the Education Development Bureau undertook many measures and have made great strives to remedy and improve the situation with which the Turkish minority is confronted. In addition to the general endeavours of the Ministry of Education and Science for improvement of the overall process of education in the country, it is important to stress its efforts to open new classes in Turkish as a language of instruction through ensuring funding for publication of textbooks and other reference literature for these classes. Moreover, in the process of developing new curricula for Turkish language and history, the Education Development Bureau involved directly teachers who belong to the Turkish community. Later on, it organized seminars on these two and other subject matters for teachers in these classes to be better prepared and more successful in giving instructions.

673. However, the lack of adequate teaching staff is still a problem amongst Turkish minority. The Ministry of Education and Science continues to make efforts to remedy the situation. Thanks to several factors, including the instructions provided at the Philological Faculty in Skopje, the opening of new universities in the country and the study visits and exchange programs established with Turkey, the lack of certain profiles of teaching staff for some subject matters is being gradually resolved.

674. Furthermore, the Education Development Bureau continuously implements various project activities with the view to overcome and improve the conditions in some schools, especially those in mixed ethnic communities. The ongoing project "Education for All" has the very same goal that is to increase the quality of education for all students in the Republic of Macedonia regardless of their ethnic, religious and cultural background.

675. Given the available data which suggest that the percentage of withdrawals from elementary and high schools is the highest amongst students who belong to Roma and Albanian community, this Project is primarily aimed to reduce school withdrawal rates and to create conditions for their reintegration in the regular system of education. Until now, seminars targeted at school principals, teachers and representatives of school expert services (such as pedagogues, sociologists and psychologists) were held, thus providing them with necessary skills to undertake concrete measures and actions for reduction of school withdrawal rate of these students. In addition, professional and propaganda materials were developed and distributed; a survey amongst school teams was conducted in order to detect the most pressing reasons for school withdrawals; and a strategy on how to prevent this phenomenon in future was developed. These project activities were implemented in conjunction with UNICEF Office in Skopje, which also provides financial support for realization of the Project "Education for All".

676. The objectives of one of the subcomponents of this project are the following: to expand the scope of inclusion of vulnerable groups in elementary and secondary school education; to reduce school withdrawal rates amongst students; to improve the conditions for education of Roma students, with a particular emphasis on female student population; to ensure and improve the conditions for education of children in rural communities, etc.

677. These objectives are expected to be accomplished by improving the teaching environment in schools where there is a large number of Roma children, especially girls, by providing better conditions for education of the Roma community, by raising awareness about the responsibilities of the community, parents and other social stakeholders, and by increasing the number of

students who will continue their formal education, particularly by working with those classes where the school withdrawal rate is the highest and by encouraging the students to continue their high school education.

678. The project activities are implemented in schools and municipalities in which there is a great concentration of Roma population, high unemployment rate and low level of education. The involvement in this project of a large number of non-governmental organizations and citizens' associations, competent institutions and local stakeholders, adds in value and contributes towards its successful implementation.

679. In high schools attended by Roma children, another project has been implemented by the Foundation Open Society Institute - Macedonia entitled "Scholarship and Mentoring Program for Roma Students in High Schools". In these schools, mentoring teams are created, including teachers of general and professional oriented subject matters, who are tasked to offer assistance and support depending on the personal needs of students. Mainly, this mentoring system has an individual approach; these mentoring teams work individually with every student after the school hours.

680. The objectives of this mentoring system is to offer and provide assistance and support to each student in order to be able to overcome the problems and impediments encountered during his/her schooling and education, to achieve better grades, to improve behavior marks, to reduce absence from school, to raise personal awareness about the necessity of education, to increase the capacity for self-education, to continue the education at higher university level, to ensure socialization and acquisition of working habits, etc.

681. The AESSEK project "Building Bridges" is targeted at achieving a greater social cohesion amongst young people. This project is implemented in high schools, involving students of different ethnic backgrounds.

682. Furthermore, the objective of the European Movement Project is to increase the knowledge of high school students about institutions, functions and role of the European Union and other European organizations and institutions.

683. The OSCE Spillover Monitor Mission to Skopje has been implementing another project concerning the rights of children in elementary schools, involving pupils who attend instructions in V and VI grade in the subject matters history and Macedonian language. Through this project, the pupils are exposed to and learning about children's rights, and the necessity to respect these rights.

684. In the framework of the project implemented by the Council of Europe, in close cooperation with the Bureau for Education Development, many multicultural clubs have been created in a large number of schools throughout the country, with the principal aim to increase the awareness of students about the need for intercultural understanding and tolerance.

#### *Higher Education*

685. The Law on Higher Education of 2000 has affirmed the right of communities to establish private institutions for higher i.e. university level education, which is specifically guaranteed

under article 13 of the Framework Convention for the Protection of National Minorities. Accordingly, article 34 of this Law enshrines the right to establish institutions for higher i.e. university level education.

686. In this respect, in 2001 the first private university in the Republic of Macedonia - South Eastern European University (SEEU) in Tetovo was established with support of the international community. The instructions at this University are provided in Albanian, Macedonian and English. The number of students enrolled at this University is constantly increasing, and including the academic year 2003/2004, it amounts to 10.4% of all students who have enrolled at different universities all over the country that year.

687. In July 2003, the Assembly of the Republic of Macedonia enacted the Law on Amending and Supplementing the Law on Higher Education. The law foresees that persons belonging to the communities, for the purposes of expressing, fostering and developing their own identify and community attributes, shall have the right to hold and receive instructions at state universities, following adequate curricula and academic programs, in their own language other than Macedonian, in accordance with this Law and the statute of the university at stake. The State shall provide funding for higher education in the language spoken by at least 20% of the citizens in the Republic of Macedonia.

688. Moreover, these amendments and supplements provide for the instructions at state pedagogical universities, which provide training of teachers in pre-school and elementary school education, as well as the instructions in didactical and methodological subject matters for teachers in secondary school education, to be held in the language of non-majority communities in the Republic of Macedonia. This also implies a duty upon the state to ensure proper funding for these instructions.

689. In 2004, with the aim to give full effect to these statutory provisions, the Law on the State University in Tetovo was enacted. The University in Tetovo commenced its operations on 1 October 2004. Within this University, there are five faculties: Natural Science and Mathematics, Humanities and Art, Economic Faculty, Law Faculty, and Centre for Polytechnic Studies, as a higher level and professionally oriented school. The instructions at this University for persons belonging to the Albanian community, which compose more than 90% of its students, are held in Albanian. After the opening of the State University in Tetovo, which have had a total of 2,350 students in the two accredited academic years during 2004/2005, the total number of Albanian students amounts to more than 15.5% of the entire student population in all universities in the country.

690. To encourage the use of languages of other communities, the Ministry of Education issued a decision ensuring Vlach language and literature to be studied at the Pedagogy Faculty in Stip. It is also planned to implement a special project to study Roma language and literature as an optional subject matter at one of the departments within the Philological Faculty.

#### *Special Parliamentary Procedures*

691. Pursuant to amendment X to the Constitution: "When enacting laws, which directly affect culture, use of languages, education, personal documents, and use of symbols, the Assembly of the Republic of Macedonia shall decide with a majority vote of the representatives in attendance,

within which there must be a majority of the votes of the representatives attending who belong to the communities which are not majority in the Republic of Macedonia. Any dispute arising from the application of this provision shall be resolved by the Committee for Inter-Community Relations.”

*Culture and Right to Use Symbols of the Communities*

692. Amendment VII, which altered article 48 of the Constitution, sets forth that: “Persons belonging to the communities have a right to freely express, foster and develop their identity and community attitudes, and to use their community symbols.”

693. The Framework Agreement, in its Annex C entitled “Implementation and Confidence-Building Measures”, in item 6 devoted to “Culture, Education and Use of Languages” stresses the need for an increased assistance for projects in the area of media with the aim to further strengthen radio, television and printed media, including Albanian language and multiethnic media, as well as to increase professional media training programs for members belonging to non-majority communities in the Republic of Macedonia.

694. In order to fully implement these constitutional provisions, the Law on Culture was appropriately subsequently amended and supplemented, and the Law on the Use of Flags of Communities was adopted.

695. The Law on Amending and Supplementing the Law on Culture, enacted in 2003, has articulated and reaffirmed the commitment of the Republic of Macedonia to encourage and aid the culture, especially by ensuring equal opportunities and conditions for expression, fostering and affirming the cultural identity of all communities in the country. This Law also guarantees the enjoyment of cultural rights of all communities by ensuring equal conditions for their exercise, in accordance with this Law. Furthermore, these amendments laid down a proper legal foundation for an effective decentralization process in the area of culture, which will ultimately enable some cultural institutions to be transferred under the competencies of local government i.e. municipalities.

696. In this context, it should be mentioned that the Macedonian Radio and Television, as a public service, on its third channel (MTV3), broadcasts weekly 65 hours program in Albanian language, 17 hours and 30 minutes program in Turkish language, and 1 hour and 30 minutes program each in Serbian, Roma, Vlach and Bosnian language. Also, a 60 minutes program is broadcasted once a month in these four languages, most often being an entertaining and documentary program. The most frequent programs in the communities’ languages are the news and information programs, as well as documentary, entertainment and children programs.

697. On a daily basis, the Macedonian Radio broadcasts 8 hours and 30 minutes program in Albanian language, 5 hours program in Turkish language, and 30 minutes each have been devoted to the programs in Roma, Vlach, Serbian and Bosnian languages.

698. The program scheme among local public broadcasting companies is the following: programmes in Albanian and Turkish language are broadcasted also by Radio Tetovo,

Radio Gostivar and Radio Debar. Radio Struga broadcasts programs in Albanian, Turkish and Vlach languages. Radio Kumanovo broadcasts programmes in Albanian, Roma and Vlach languages, and Radio Krusevo broadcasts programmes in Macedonian and Vlach languages.

699. In 2004, a portion of the commercial radio and television-broadcasting sector called “ALSAT-M” became a national television, which broadcasts programs in Albanian language.

700. The Law on the Use of Flags of Communities, enacted in 2005, guarantees the right of all communities in the Republic of Macedonia to use a flag for the purposes of expressing their identity and community attributes. The notion of flag, in terms of this Law, denotes a flag chosen by the communities themselves, which is used for expression of their identity.

701. The Law governs the manner in which the flags of the communities shall be used in public, official and private life.

702. Accordingly, in the units of local self-government in which citizens belonging to the communities live and where they are in majority, the flag of the Republic of Macedonia and the flag of that particular community shall be displayed in front and within municipal buildings, at all times.

703. In the units of local self-government in which citizens belonging to the communities live and where they are in majority, in addition to the official flag of the Republic of Macedonia, the flag of that particular community shall be displayed within the buildings of state bodies, public services and legal entities established by the State or the municipality, as well as on streets, squares and other infrastructure facilities.

704. The flags of the communities shall also be used in addition to the official flag of the Republic of Macedonia in the following circumstances: during days designated by law as national holidays and other holidays of the Republic of Macedonia; during days designated as holidays of the communities; during days of municipal holidays and other holidays designated as such by a decision of the municipal council; during arrival and departure ceremonies for the President, the Prime-Minister and members of the Government; during official visits of presidents or prime-ministers of foreign countries; and during official visits of a sovereign or high representative of the international community.

705. The Law further requires the compulsory use of the official flag of the Republic of Macedonia, in addition to the flag of the community, during international meetings, matches and other types of gatherings where the local self-government unit appears as organizer and in which it participates or is being presented; during festivities, ceremonial events, and other political, cultural, sports or similar events of importance for the local self-government unit.

706. The persons belonging to the communities in the Republic of Macedonia are also entitled to use the flag through which they express their identity and community attributes in private life and during cultural, sports and other events organized by members of the communities in the Republic of Macedonia (Article 7 of the Law on the Use of Flag of Communities).

*Institutions for Advancement and Protection of the Rights of Communities*

707. Special bodies for the advancement of culture and education of persons belonging to the communities have been established within the Government and bodies of the State administration.

708. Namely, a Directorate for Affirmation and Advancement of Culture of Persons Belonging to the Communities was established within the Ministry of Culture in 2003. In pursuance to the Ministry's internal regulations, this Directorate is responsible for issues related to affirmation, advancement and presentation of cultural creative work and cultural heritage of the communities living in the Republic.

709. In the framework of the aforementioned Directorate, the following departments have been created: Department for Affirmation, Advancement and Publication of Cultural Creative Work and Fostering and Presentation of Cultural Heritage of the Communities in the Republic of Macedonia, and Department for Encouragement and Improvement of Cooperation with Neighbouring and European Countries.

710. In 2002, a Directorate for Development and Advancement of Education in the Communities' Languages was formed within the Ministry of Education. In the activities of this Directorate, a particular emphasis is given to the prevention of discrimination in the area of education and the overall educational process.

711. In order to ensure observance of the principle of adequate and equitable representation, and to coordinate and monitor the accomplishments and improvements in adequate and equitable representation of persons belonging to the communities, the Government established several bodies for coordination and monitoring of the improvements in adequate and equitable representation of the communities in public administration and public enterprises.

712. To this effect, in 2003 the Government decided to establish a Committee of Ministers chaired by the Vice Prime-Minister, which is responsible for adequate and equitable representation of persons belonging to the communities. This Committee monitors and coordinates all activities and actions taken for improvement of adequate and equitable representation of persons belonging to the communities in public administration and public enterprises.

713. At the very same session, the Government made a decision to establish a Coordination Body charged to develop an operational programme for advancement of adequate and equitable representation of the communities in public administration and public enterprises, and a plan for implementation of this programme. At its session held on 14 April 2003, the Government adopted an Operational Program for Improvement of Adequate and Equitable Representation of the Communities in Public Administration and Public Enterprises.

*Rights of Roma People*

714. According to the data collected during the last census in 2002, there are 53,879 Roma living in the Republic. This amounts to around 2.66% of the entire population in the country.

715. Ever since the introduction of political pluralism in the country, Roma people are actively involved in the political life and arena; they have established their own political parties and are engaged in their political activities. There are several Roma political parties, including: Party for Complete Emancipation of Roma (PCER), United Party of Roma (UPR), Alliance of Roma in Macedonia, Single Party of Roma and the Democratic Party of Roma.

716. In addition, there are 30 to 40 Roma NGOs, which are active in the areas of human rights, culture, education, environment and infrastructure. Also, there are several printed media in the Roma language, two local television stations and several radio stations that broadcast programmes in Roma. In the framework of the programmes broadcasted by the Macedonian Radio and Television, there is a 30-minute television programme in Roma, which is broadcasted twice a week. Also, on the Macedonian Radio - Network 3 there is a 30-minute programme in Roma, which is being broadcasted on a daily basis. Radio Kumanovo has its own Roma editorial board, and programmes in Roma language are broadcasted by Radio Tetovo as well (30 minutes per day).

717. The real socio-economic situation of Roma places them under the category of the poorest people in the country. According to the data of the Macedonian Employment Agency, inclusive as of 31 August 2004, the total number of unemployed Roma is 17,014 or 4.3% of the overall unemployed population, out of which 7,114 are women.

718. In order to develop a consistent approach in its efforts to improve the situation of Roma and to ensure their swift integration into the society, in 2005 the Government adopted a National Strategy for Roma.

719. The general objectives of this Strategy are: to achieve better integration of Roma in the mainstreams of Macedonian society, to reduce poverty among Roma (considered to be the most marginalized group), to achieve a sustainable and long-term development of Roma community in all aspects, and to create normative and institutional preconditions for effectuation of relevant standards of the European Union.

720. In parallel to this, the Republic of Macedonia was actively involved in the initiative "The Decade of Roma". A national working group was created, which was tasked to develop an implementation plan for the four priority areas of the decade. In October 2004, a conference was held where a large number of representatives of Roma political parties and Roma non-governmental organizations were in attendance and working on finalization of national action plans. These action plans were adopted by the Government on 31 January 2005.

## Annex

### Reference List of Current Legislation Used in the Preparation of this Report

- *The Constitution of the Republic of Macedonia* (published in the “Official Gazette of the Republic of Macedonia [hereinafter referred as RM]” No. 52/91, 1/92, 31/98, 91/2001, 84/2003 and 107/2005);
- *Law on Asylum and Temporary Protection* (published in the “Official Gazette of RM” No. 49/03);
- *Criminal Code* (published in the “Official Gazette of RM” No. 37/96, 80/99, 4/02, 43/03, 19/04 and 81/05);
- *Criminal Procedure Code - Consolidated Text* (published in the “Official Gazette of RM” No. 15/04);
- *Law on Public Prosecutors’ Office* (published in the “Official Gazette of RM” No. 80/92, 19/93, 9/94, 9/96 and 38/04);
- *Civil Procedure Code* (published in the “Official Gazette of RM” No. 33/98, 44/02 and 79/05);
- *Law on Enforcement* (published in the “Official Gazette of RM” No. 35/05);
- *Law on Execution of Criminal Sanctions* (published in the “Official Gazette of RM” No. 22/06);
- *Family Law* (published in the “Official Gazette of RM” No. 83/04);
- *Law on Maintenance of Personal Records* (published in the “Official Gazette of RM” No. 8/95 and 38/02);
- *Law on Census of Population, Dwellings and Apartments in the Republic of Macedonia* (published in the “Official Gazette of RM” No. 43/02);
- *Law on Election of Representatives in the Assembly of the Republic of Macedonia* (published in the “Official Gazette of RM” No. 28/90, 24/98, 50/99, 42/02, 50/02 and 46/04);
- *Law on Local Elections* (published in the “Official Gazette of RM” No. 12/03, 35/04, 42/04 and 45/04);
- *Law on Local Self-Government* (published in the “Official Gazette of RM” No. 5/02);
- *Law on Personal Identity Card* (published in the “Official Gazette of RM” No. 38/02 and 16/04);

- *Law on the Electorate List* (published in the “Official Gazette of RM” No. 42/02 and 35/04);
- *Law on General Administrative Procedure* (published in the “Official Gazette of RM” No. 38/05);
- *Law on Political Parties* (published in the “Official Gazette of RM” No. 7/04);
- *Law on Police Academy* (published in the “Official Gazette of RM” No. 40/03);
- *Law on Citizens’ Associations and Foundations* (published in the “Official Gazette of RM” No. 3/98);
- *Law on Ombudsman* (published in the “Official Gazette of RM” No. 7/97 and 60/03);
- *Law on Labour Relations* (published in the “Official Gazette of RM” No. 62/05);
- *Law on Broadcasting* (published in the “Official Gazette of RM” No. 100/05);
- *Law on Defence* (published in the “Official Gazette of RM” No. 42/01 and 5/03);
- *Law on Court Budget* (published in the “Official Gazette of RM” No. 60/03);
- *Law on the Protection of Children* (published in the “Official Gazette of RM” No. 98/2000, 17/03 and 65/04);
- *Law on Civil Servants* (published in the “Official Gazette of RM” No. 59/2000, 34/01, 43/02, 98/02, 17/03, 40/03, 85/03, 17/04 and 69/04);
- *Law on the Protection of Personal Data* (published in the “Official Gazette of RM” No. 07/05);
- *Law on Free Access to Information* (published in the “Official Gazette of RM” No. 13/06).

**Reference List of International Human Rights Treaties Ratified  
by the Republic of Macedonia from 2000 until 2005**

- *The United Nations Convention against Transnational Organized Crime and the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, and the Protocol against the smuggling of migrants by land, sea and air;*
- *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racial and xenophobic nature committed through computer systems;*
- *European Convention on Nationality;*
- *Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances;*
- *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;*
- *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;*
- *The Hague Convention on the Civil Aspects of International Child Abduction;*
- *European Convention on the Exercise of Children's Rights;*
- *European Convention on the Legal Status of Children born out of Wedlock;*
- *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children;*
- *European Convention on the Adoption of Children;*
- *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;*
- *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;*
- *European Social Charter and the Protocol amending the European Social Charter;*
- *European Convention on Transfrontier Television.*

**The Republic of Macedonia has signed the following**

- *Council of Europe Convention on Action against Trafficking in Human Beings;*
- *Additional Protocol to the European Social Charter;*
- *Additional Protocol to the Convention on Human Rights and Biomedicine,<sup>a</sup> on the prohibition of cloning human beings;*
- *Additional Protocol to the Convention on Human Rights and Biomedicine, on the transplantation of organs and tissues of human origin.*

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<sup>a</sup> Full name: Convention on the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine.