

IHF FOCUS: the right to good governance; national human rights protection; elections and referenda; freedom of expression, free media and information; rule of law (general); independence of the judiciary, the right to a fair trial and effective remedies; torture and ill-treatment, conditions in prisons and detention facilities; arbitrary arrest and detention; freedom of religion and religious tolerance; national and ethnic minorities; sexual minorities; asylum seekers and IDPs; trafficking in human beings.

The human rights situation in Macedonia did not change significantly in 2005. As in previous years, violations of the rule of law were of major concern, and the continued practice of decision-making through agreements between the ruling political parties undermined the integrity of state institutions as well as the legal system. Appointments and replacements of government and judiciary officials were typically made in a non-transparent manner and were frequently based on political party affiliation. The government also continued to use implementation of the Ohrid Framework Agreement¹ as an excuse for sidelining democratic procedures and ignoring legal provisions.

Other issues of particular concern during the year included the lack of independence of the judicial system and poor functioning of courts; arbitrary arrests and other forms of police misconduct; widespread corruption; political influence on media and restrictions on the free circulation of information; and active state intervention on behalf of the Macedonian Orthodox Church resulting in violations of the right to freedom of religion and other fundamental rights.

No improvement in the economic situation of citizens was observed. Industrial production fell and both government and private investments remained limited as foreign investors openly declared their reluctance to invest in the country because of its uncertain legal environment. The average monthly salary amounted to EUR 190 and the minimum monthly salary to EUR 30. According to official statistics, about half of

the population lived in some degree of poverty. While the unemployment rate remained at close to 40%, the only measure taken to reduce unemployment was to introduce new restrictive provisions according to which everyone who works on a temporary contract basis, even if only for a day, is considered employed. This measure resulted in a decrease of the number of persons registered as unemployed but did not address the problem of unemployment *per se*.

Regulations on salaries and working conditions were not effectively enforced and an estimated 50,000 people worked outside of the social security system since their employers did not complete social security payments required by law. Overall the gray economy was estimated to account for over 45% of the Gross Domestic Product (GDP) of the country. There were also concerns that new labor legislation restricted the right to strike and that the leaders of some strikes were punished by dismissal. The effectiveness of the Federation of Trade Unions in defending the interests of workers was undermined by internal divisions and conflicts.

Conditions in homes for the elderly and public schools were sometimes deplorable, and there were worrisome gaps in the health care system. Allowances for people with children and benefits for disabled persons were reduced.

The European Social Charter was ratified by Macedonia on 31 March 2005, but no amendments were made to national legislation on the basis of this treaty nor were any measures taken to inform the public about the treaty.

* Based on a report from the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC) to the IHF.

The situation of people internally displaced after the 2001 conflict was not resolved. The authorities failed to assume responsibility for the fate of these people, and IDPs residing in accommodation centers were pressured to leave.

Good Governance

According to the Helsinki Committee for Human Rights of the Republic of Macedonia (MHC), corruption was no longer limited to ruling structures, but was widespread in all sectors of society. The MHC observed that corruption affected the everyday life of citizens to the extent that many citizens did no longer recognize it as a problem. The lack of effective measures to hold accountable those involved in large scale corruption scandals, as well as attempts by the government and the public prosecutor to block the work of the parliamentary anti-corruption commission², contributed to fostering passive acceptance of everyday corruption.

National Human Rights Protection

National Institutions

According to the MHC, the Office of the Ombudsman had yet to assume in practice the role spelled out for it by law with respect to human rights protection. The MHC was particularly critical of the failure of the Ombudsman to take adequate action in the case of Bishop Jovan Vranishkovski, who was brought to court in 2004 for establishing a church structure challenging the Macedonian Orthodox Church (see Freedom of Religion and Religious Tolerance, below), as well as in several cases in which his followers and supporters were subject to human rights violations. The ombudsman also failed to actively engage in problems relating to the 2005 local elections, including the violations of the electoral rights of women from the ethnic Albanian and Roma communities.

Elections and Referenda

Local elections were held in March and April of 2005. The elections were expected to be a milestone in the practice of local democracy in Macedonia, with citizens electing mayors and municipal councils to exercise new powers of decentralization. The idea of decentralization, introduced in accordance with the constitutional and legal framework adopted after the 2001 internal conflict, was twofold: firstly, to bring the power closer to the citizens, and secondly, to establish autonomy of the country's different ethnic communities on the basis of the so-called consociation model. As the new decentralized municipalities enjoyed relatively far-reaching autonomy in managing local issues, stakes were higher in these elections than in previous local elections.

The elections were characterized by irregularities and, for the first time in several years, the international community strongly criticized the conduct of elections in Macedonia.³ The pre-election campaign was characterized by verbal insults and threats against political opponents made by all sides, and the ruling parties abused their positions for electoral purposes.

On the election day, numerous irregularities were reported: the unauthorized presence of public officials, political party members and others in polling stations; double or multiple voting; stuffing of ballot boxes; violation of the secrecy of ballot, through inappropriate assistance of illiterate or disabled citizens; irregular vote counts and inadequate voting protocols. A particular problem was the inadequate translation of ballot papers into Albanian; the Albanian versions asked citizens to vote for "prefects" rather than "mayors." In some places, citizens were subject to threats and pressure connected to the elections.

The occurrence of violations followed a pattern similar to that of previous elections, meaning that violations were more fre-

quently reported in areas predominantly inhabited by members of ethnic minorities than in majority regions and more frequently in rural areas than in urban areas. A considerable number of violations targeting Albanian and Roma women were reported, such as proxy voting by family members and names missing from voting lists.

While indictments were brought in the most flagrant cases of violations of the election law – such as in cases when physical violence was used, the majority of perpetrators of violations remained unpunished because of the inefficiency of the judiciary and/or unclear legislation. This widespread impunity reinforced public mistrust in elections as a democratic institution and served as encouragement for those ready to use unlawful methods to secure political influence.

The local elections were carried out without any professional electoral administration, and the existing electoral boards lacked both competence and impartiality. Compared to previous elections, the participation of women on electoral boards and committees decreased. What is more, the lists of counselor candidates of some political parties did not include any female candidates despite the introduction of a legal quota of 30% for both sexes on such lists.

New legislation put forward by the ruling parties introduced new restrictions on the application of constitutional provisions requiring that a referendum be held on a given topic if more than 150,000 signatures have been collected based on civil initiative. According to the new Law on Referendum and Civil Initiatives, a referendum is not required under these constitutional provisions if the civil initiative relates to issues of vital interest to the country's ethnic communities, on which the parliament can only make decisions through so-called double majority (majority of all MPs and majority of the MPs from the non-majority communities in the country).

The new law was apparently prompted by the civil initiative that resulted in a referendum in 2004 on the issue of municipal territory divisions. The MHC concluded that the new law served to promote supremacy of collective rights over individual rights on issues concerning inter-ethnic relations in the country. Such tendencies were also observed in other contexts. For example, in the electoral race for the position as mayor of Skopje, ruling parties from the so-called Macedonian bloc challenged the principle of the individual vote by proposing an agreement with their Albanian coalition partners to secure a certain amount of votes through collective voting or so-called contingents of vote.

Freedom of Expression, Free Media and Information

Publication of the two Albanian-language newspapers *Fakti* and *Koha Ditore* was suspended for an indefinite period of time, and the Albanian-language magazine *Lobby* was not published during a major part of the year. Also, despite announcements to the contrary, *Flaka*, the oldest Albanian-language newspaper in Macedonia, did not resume publication during the year. Previously published by Nova Makedonija, the country's oldest publishing house that was eventually privatized in early 2004, *Flaka* was taken over by new owners in March 2004. In November 2004, publication of the newspaper was halted because of technical and financial problems. These trends greatly limited the availability of Albanian-language media and raised questions about the independence of media in terms of the impact of political actors on funding opportunities of media. Most Albanian-language newspapers on offer in Macedonia were published in Kosovo.

Discussions about libel and defamation continued. The new criminal code adopted in 2004 retained provisions criminalizing libel and defamation, providing for imprison-

ment of up to six years if such acts are considered to have “grave consequences.” Journalists opposed these provisions, pointing out that the Council of Europe had recommended that slander and libel should be de-criminalized. However, the provisions remained in force, and several court cases were initiated on the basis of them during the year. The MHC concluded that the fact that journalists continued to be held liable for libel and defamation undermined freedom of expression and the independence of media. It also noted that while courts acted promptly in cases of alleged libel and slander, they did not respond adequately to threats and pressure leveled against journalists by the government and ruling parties.

A new Law on Access to Information was under preparation but was yet to be adopted at the end of the year. This law is intended to ensure better access to information for journalists and others.

The MHC criticized the Association of Journalists, an independent organization, for failing to defend freedom of expression and to speak out on behalf of the rights of journalists in specific cases. However, individual journalists sought to bring public attention to the problems facing journalists, including the inappropriate involvement of political parties in media outlets - in particular electronic ones.

Rule of Law: General

The MHC noted with concern that wide-reaching powers were concentrated in the hands of the leaders of the ruling parties, i.e., the Social Democratic Alliance of Macedonia (SDSM), the Liberal Democratic Party (LDP) and the ethnic Albanian coalition party the Democratic Union for Integration (BDI). Major decisions concerning state activities and strategies, legislation and the appointment of officials were made by these leaders, with the parliament merely bestowing legitimacy to their agreements.

In comparison to previous years, this way of conducting public affairs was no longer hidden, but was openly acknowledged even by members of parliament, e.g. through statements such as: “we will vote tomorrow after the presidents of the [ruling] parties have agreed on how we should vote.” The MHC concluded that, as a result of this decision-making practice, democratic procedures and rules were ignored and the will of the leaders of the ruling parties took precedence over other considerations.

According to the MHC, political considerations also influenced the implementation of legislation. Some laws that were in conflict with the interests of the ruling parties were amended in an ad hoc manner and in other cases legislation was selectively applied. For example, outstanding debts of major electricity consumers such as large private businesses were not pursued, while households that did not pay their bills promptly had their electricity cut off. Likewise, several illegal construction projects initiated by individuals with close ties to the government were tolerated, while rundown buildings inhabited by poor citizens were demolished in an urgent fashion, thus rendering their residents homeless. The MHC expressed concern that this state of affairs undermined public confidence in the legal system and in the rule of law.

Independence of the Judiciary, Right to a Fair Trial and Effective Remedies

Two main problems with respect to the functioning of the judiciary were that courts were under the influence of the executive power and ruling political parties and that judges often lacked adequate knowledge of the standards of international treaties ratified by Macedonia.

The MHC received numerous complaints about violations of due process, the right to a fair trial and effective legal reme-

dies. It detected obvious violations in the handling of cases involving juvenile offenders, cases where defendants were representatives of the Interior Ministry and cases affecting the interest of the state or the Macedonian Orthodox Church.

The MHC was particularly concerned about the functioning of the Supreme Court and the Constitutional Court. Procedures before the Supreme Court typically lasted several years and the court frequently returned cases for retrial - further prolonging the procedures. Most complaints about excessively lengthy procedures that the MHC received concerned cases involving the rights of members of vulnerable population groups, such as pensioners or people depending on social security payments. The worst example was a case about pension payment that had been pending with the Supreme Court for 17 years. As an exception to this general practice, the Supreme Court did, however, typically deal promptly with cases against the state that resulted in not guilty verdicts.

Most members of the Constitutional Court had been appointed on a political basis, which was reflected in the work of the court. In a new practice, the court declared itself incompetent in any cases that were related to the policies of the executive authorities. Thus, the Constitutional Court declared itself incompetent with respect to a number of complaints filed by MHC and other NGOs, including complaints about the appointment of the former interior minister in violation of the constitutional requirement that bodies of state administration in charge of police matters be headed by persons who have been civilians for at least three years; the adoption of the Law on Ratification of the Agreement between Macedonia and the USA on Non-Extradition of US Citizens to the International Criminal Court; and the failure of the government to challenge the police practice of carrying out short term

detentions on the basis of so-called police order without court approval (see Arbitrary Arrest and Detention, below).

Torture, Ill-Treatment and Conditions in Prisons and Detention Facilities

During the year, five new cases of death were registered in the Idrizovo prison - the largest prison in Macedonia. According to the prison authorities, three of these cases were suicides, one was a murder and one was an "unexplained" case; the inmate was found dead in his bed without any signs of violence. Three suicide deaths were also reported in the Skopje remand prison, and one in the Tetovo prison. Thus, in total nine deaths in prison were registered in 2005, compared to three in 2004, and one in 2003. The MHC considered this trend alarming, especially as there were additional reports of suicide attempts and one unconfirmed death. There were no effective investigations into the deaths, and no information about the causes of death were made public. Two guards were reportedly punished by fines in connection with prison deaths, although it remained unclear on what grounds.

Monitoring conducted in the framework of an international project in which the MHC participated⁴ revealed numerous problems in the Idrizovo prison. The prison was overcrowded and different categories of inmates were not separated or provided differentiated treatment despite their varying needs, and no satisfactory efforts to ensure re-socialization of prisoners were made. As authorities continued a long-term project to renovate the main building of the prison, inmates from two prison wings were moved together, which further worsened overcrowding. Among those who were affected by the move were eleven patients diagnosed with serious mental problems and at least 40 drug addicts, who thus were accommodated to-

gether with every one else despite their particular needs.

After long delay, a state commission charged with monitoring prisons was eventually established under article 79 of the 1997 Law on Execution of Sanctions. However, the commission, which was composed of judges, penologists, sociologists and education experts, had only limited powers and remained inactive throughout the year. The MHC suspected that the establishment of the commission merely represented an attempt to avoid creating an independent commission to investigate cases of torture, in accordance with international conventions for the prevention of torture ratified by Macedonia. In practice, prosecutors and judges often overlooked indications that prisoners had been subject to torture.

Arbitrary Arrest and Detention

Police continued to carry out detentions based on so-called police order, i.e. detentions that were authorized solely by police commanding officers. The number of such detentions, however, decreased somewhat from previous years. Police authorities rejected claims that these detentions amounted to arrests, saying that cases in which citizens were “forcefully escorted” to police stations and kept for a short period of time - which in practice could mean up to 24 hours - did not qualify as deprivation of liberty. The government tacitly approved of this practice, but it was strongly criticized by NGOs.

During the year, police launched a new campaign called “Alpha Policemen,” the idea of which being to identify and arrest street criminals on the spot. The campaign started out in a positive manner and brought about a noticeable improvement in the fight against street crime. However, following an incident in which two so-called Alpha policemen were beaten up on duty in September, the approach of the

campaign changed and ordinary citizens who were not involved in any crime also became targets. Hence, on arbitrary grounds, ordinary citizens were “forcefully escorted” to police stations for interrogation. A large number of complaints were filed about such arrests, but all of these had yet to be investigated at the end of the year. As a result of public criticism, this new practice quickly waned.

In a positive development, some prosecutors and judges began determining the length of pre-trial detention depending on the circumstances of individual cases, instead of automatically requesting or granting 30 days of detention as was the common practice. However, these cases remained isolated and did not have any broader impact.

Freedom of Religion and Religious Tolerance

The year 2005 saw new developments in the so-called Vranishkovski case. In this case, state authorities exploited Articles 5 and 8 of the Law on Religious Communities and Religious Groups, which prohibit the establishment of more than one community within any religion, to actively interfere on behalf of the interests of the Macedonian Orthodox Church. In various ways, state authorities sought to obstruct efforts to establish the so-called Orthodox Ohrid Archbishopric (OOA) on the territory of Macedonia, which resulted in violations of the right to freedom of religion as well as other fundamental rights such as the right to freedom of expression, the right to privacy and the right to freedom of movement. In January 2004, Jovan Vranishkovski, the main advocate of the OOA, was found guilty of incitement to religious hatred and intolerance and sentenced to 2.5 years in prison. This verdict was upheld on appeal in June 2005.

In contrast to their actions in the Vranishkovski case, state authorities remained

passive with respect to disputes within the Islamic community. Internal tensions within this community escalated to the level of violence after a group of *imams* requested the chief *mufti* to dismiss the Skopje *mufti*. The chief *mufti* subsequently resigned from his position and, at the end of the year, a successor had yet to be appointed.

The state also failed to take effective measures to address problems faced by the Bekteshi religious community, as well as some other smaller communities. These groups and their members were refused permission to construct places of worship, treated unequally by the state television MTV and openly attacked by representatives of the Macedonian Orthodox Church.

A new Law on Religion drafted in 2005 did not introduce any substantial changes to the existing legal framework, but maintained the special position of the Macedonian Orthodox Church vis-à-vis other religious communities. The draft also retained the provisions prohibiting the existence of more than one community within any religion and granted the Commission for Relations with Religious Communities, which in past years openly had defended the interests of the Macedonian Orthodox Church, unchanged powers.

The Constitutional Court rejected a request by a group of citizens to assess the constitutionality of articles 5 and 8 of the Law on Religious Communities and Religious Groups. In its decision, the Court referred to article 28 of its Rules of Procedure, according to which, it shall reject a request if it already has decided on the same matter and there are no grounds to change that decision. The court had considered the relevant provisions in 1998 and found that they were constitutional, and it did not see any reason to re-examine the issue. Moreover, the court defended the provisions by arguing that they “protect” citizens from “manipulations” aimed at separating the followers of a religious

community and thereby at creating “schisms” in the church. The MHC criticized this approach and concluded that the Constitutional Court was, in fact, protecting the monopoly of the Macedonian Orthodox Church.

National and Ethnic Minorities

While efforts to ensure the development of Macedonia into a bi-national state continued, problems faced by ethnic minorities other than the Albanian minority were given little attention.

The situation of Roma was particularly worrisome. Many Roma children continued to drop out of elementary school, and there were no significant improvements in the enrollment of Roma in secondary education. According to a survey conducted by the European Centre for Minority Issues, every third Roma child was not part of the system of education.⁵ A considerable number of Roma were dependent on social security benefits,⁶ and while progress occurred in terms of the representation of other minority members in public administration and institutions, no corresponding development took place for Roma. Roma constituted 3% of the population of Macedonia, but only 0.5% of the employees in public bodies and enterprises were Roma.

The state did not take any effective measures to address the problems of Roma.

Sexual Minorities

The Center for Civil and Human Rights filed a complaint with the Constitutional Court regarding a provision of the Law on Service in the Army, according to which, “homosexuality” was to be treated as a disciplinary offence. The center argued that this provision amounted to discrimination on grounds of sexual orientation, but the Constitutional Court rejected the complaint. In spite of this, the government initiated a process to amend the provision in

question, and at the beginning of 2006 corresponding amendments were adopted by parliament.

Asylum Seekers and IDPs

As of the beginning of March 2005, the asylum department of the Interior Ministry had considered a total of 881 asylum applications since asylum seekers first started arriving in the country, with another 247 requests pending. A total of 12 people had been recognized as refugees in the country and 1,160 persons had been granted asylum on humanitarian grounds. There were 358 asylum applications rejected and the asylum procedure was terminated in 238 cases. A total of 613 asylum seekers from Kosovo had voluntarily returned prior to having their applications considered.

The authorities failed to deal adequately with the issue of IDPs from Aracino and the Kumanovo region. Instead of focusing on efforts to promote conditions and ensure funds enabling IDPs to return voluntarily, the competent bodies repeatedly resorted to coercive measures, such as forced de-registration and pressure on IDPs to leave accommodation centers.

Trafficking in Human Beings

As in previous years, policies to fight trafficking in human beings remained insensitive to two key aspects: the human rights of victims and the gender aspect of the problem.⁷ A shadow report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women, which was prepared by a number of women's rights organizations, pointed to a number of problems concerning the rights of trafficking victims. According to the report, field monitoring had showed that assistance schemes for trafficking victims were applied in a selective manner and that many victims did not want to make use of such schemes since

they required that they agreed to return to their countries of origin, where they, however, feared public condemnation as well as poverty, discrimination, limited education and job opportunities and other problems that made them vulnerable to trafficking in the first place.⁸

Analyses of the practice of domestic courts indicated serious problems with regard to the rights of trafficking victims in court procedures. There were obvious difficulties related to obtaining remedy for non-pecuniary damage. In 73% of all court cases concerning trafficking that took place in 2005, victims or damaged parties requested compensation for non-pecuniary damage.⁹ However, in only two of the 15 cases where guilty verdicts were handed down on charges of complicity in prostitution or trafficking in human beings, such claims were satisfied.¹⁰ Moreover, in several cases, victims requesting compensation were reportedly denied the right to submit new evidence during the court procedure.

With respect to victims' right to protection, courts did not generally apply the special method of questioning witnesses outside the courtroom. Only in one case was the questioning of a witness conducted by means of video conference, whereby the defendant and the court audience were not allowed to watch and could only listen to the testimony. In not one case did the court order the defendant to be taken out of the courtroom during a witness testimony. Moreover, in several cases, victims who appeared as witnesses were not informed about their right not to answer certain questions, and many witnesses did not appear familiar with their right not to disclose personal data.

The lack of adequate witness protection legislation sometimes resulted in the absence of victims during the court procedure. For example, in one case, five victims were not present during the hearing because they had been returned to their

countries of origin due to suicide attempts. It remained unclear whether the situation would improve with the new Law on Witness Protection, which was adopted in May but was only due to enter into force in 2006.

Other problems related to the administration of justice in the field of combating trafficking in human beings included lengthy criminal procedures; lenient sentences for perpetrators; rare application of legal provisions enabling courts to order the confisca-

tion of property or property gain acquired through trafficking and non-disclosure of sentences. In addition, the Ministry of Justice and the Interior Ministry continued to deal with the issue of trafficking in a non-transparent manner; since 2003 no statistics on the number of registered cases of trafficking had been made public.

The overall impression of the MHC was that policies to fight trafficking in human beings had reached a stalemate in the country.

Endnotes

- ¹ The Ohrid Framework Agreement was signed on 13 August 2001 and was hailed as the peaceful solution to the 2001 armed conflict. It envisaged a complex system of voting in the parliament, quantitative standards for the representation of minorities in the administration and public services and changes in the use of the minority languages. Its full implementation is the precondition for integration into the EU and NATO and also for economic development and job creation.
- ² This commission had a mandate to investigate allegations of corruption, initiate proceedings in front of the public prosecutor and report on corruption cases.
- ³ See OSCE/ODIHR, *Election Observation Mission Final Report*, June 2005, at www.osce.org/documents/odihr/2005/06/15001_en.pdf.
- ⁴ This project, "Preventing Torture in the Closed Institutions of Central and Eastern Europe," was coordinated by the Bulgarian Helsinki Committee. For more information about the project, see www.ihf-hr.org/projects/prj_dsc.php?sec_id=5&pag_id=18&prj_id=18.
- ⁵ For more information, see the website of the ECMI at www.ecmirom.org/index.html.
- ⁶ While Roma constituted 2.7% of the population, they amounted to 12% of the total number of recipients of funding from the Fund for Social Security.
- ⁷ According to information from the International Organization for Migration (IOM), 99.7% of the victims of trafficking in human beings were women. See IOM, *Towards a manual for public prosecutors in the prosecution of human trafficking*, 2005, p.169.
- ⁸ For more info about this report, please contact the MHC.
- ⁹ Observed by the Coalition for Fair Trial. See "Elimination of Human Trafficking Through the Practice of the Domestic Courts," Skopje, November 2005.
- ¹⁰ In these cases, compensation to the amount of MKD 98.023 (about EUR 1,600) was awarded.