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REPORT BY

**THE COMMISSIONER FOR HUMAN RIGHTS
MR. THOMAS HAMMARBERG**

**on his visit to
“the former Yugoslav Republic of Macedonia”**

25 – 29 February 2008

For the attention of the Committee of Ministers
and the Parliamentary Assembly

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I. INTRODUCTION

1. The Council of Europe Commissioner for Human Rights Mr. Thomas Hammarberg conducted an official visit to the “the former Yugoslav Republic of Macedonia” from 25 – 29 February 2008 upon invitation by the Minister of Foreign Affairs, Mr. Antonio Milososki. The visit came as part of the Commissioner’s continuous process of official country visits to all Council of Europe member states to assess their effective respect for human rights.¹ The Commissioner was accompanied by Mr. Berry Kralj, Ms. Anna Nilsson and Mr. Andrew Forde, members of his Office.
2. During the course of his visit the Commissioner met with President of the Republic, Mr. Branko Crvenkovski, Prime Minister Mr. Nikola Gruevski, Minister of Justice Mr. Mihajlo Manevski, Minister of Health Mr. Imer Selmani, Minister of the Interior Ms. Gordana Jankulovska, Minister of Education and Science Mr. Sulejman Rusiti, Minister of Labour and Social Policy Mr. Ljupco Meskov, Deputy Minister of Local Government Mr. Senad Odzoksi. He also met with Public Prosecutor Mr. Ljupco Svrgovski and Ombudsman Mr. Idzet Memeti. Mr. Hammarberg visited Skopje, Demir Hisar, Tetovo, and Kumanovo where he made several institutional visits to facilities and sites with human rights relevance. His delegation also visited Demir Kapija and Negorci. Furthermore, the Commissioner held discussions with the Mayor of Tetovo and the Mayor of Suto Orizari in Skopje. He held discussions with representatives of national and local authorities, members of the judiciary, parliamentarians as well as civil society representatives and international partners.
3. The Commissioner expresses his great appreciation for the generous co-operation of the authorities at all levels in facilitating the visit and wishes to thank the Minister of Foreign Affairs and his Ministry for their shared commitment to the objectives of the mission. Moreover, he extends his gratitude to all people met during the visit for their open attitude and frank exchange of views. The Commissioner is pleased to have had the opportunity to meet with many civil society representatives who shared their expertise and valuable insights regarding the human rights situation in “the former Yugoslav Republic of Macedonia”.
4. The purpose of this report is to identify opportunities for improving the protection and promotion of human rights in the country. The Commissioner considers that following the open dialogue with the relevant authorities during his visit, this report could serve as a tool for future co-operation.
5. The Commissioner notes with satisfaction the progress which the country has made in recent years, particularly in relation to inter-ethnic relations and the efforts to implement the Ohrid Framework Agreement. However, throughout his visit the Commissioner recognised that this commendable progress may be overshadowed by a continuing negative atmosphere between the two main ethnic groups, and a public perception of corruption within the statutory systems of “the former Yugoslav Republic of Macedonia”, including the judicial system.
6. This report does not elaborate on the current political and economic situation in the country. It is nevertheless worth noting that the visit took place in a difficult political context. The EU integration process is influencing the reform agenda and pace, providing stimuli to the overall reform process: various EU Accession Partnership agreements since 2004 set forth short- and mid-term priorities including human rights priorities, such as full compliance with the European Convention on Human rights and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) recommendations; full implementation of the rules applying to ethics, internal control, professional and human

¹ See the Commissioner’s mandate – especially Article 3 (e), Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

rights standards in law enforcement agencies, the judiciary and prison administration, including by regular training; the establishment of effective mechanisms to identify, pursue and penalise all forms of discrimination by state and non-state bodies against individuals and groups; the upgrading and implementation of the strategy on equitable representation of non-majority communities; and the further implementation of the strategy on equitable representation of non-minority communities. The debates around the new UN-brokered initiatives to resolve the name issue, NATO accession, and the consequences of Kosovo's unilateral declaration of independence continued to dominate public discussions.

7. Moreover, the polarised political climate may in some situations affect the standing of institutions, which should be –and be perceived to be– impartial. The far-reaching dismissal of officials in the public administration following elections seems to illustrate the politicisation of appointments. Such practices lead to loss of continuity and expertise, and have detrimental effects on the reform process and the functioning of the public administration. Clarity of rules regarding mandate periods, appointment procedures and terms of reference is essential to avoid divisive debates on such issues and to protect the independence of the institutions which should have such status. In addition, clear lines should be drawn, and observed, between the administrative and political level.
8. This report is based on information acquired during the visit along with statements, reports and statistics provided for by authorities and civil society organisations in the country. All relevant reports prepared by human rights monitoring mechanisms of the Council of Europe and other international organisations have been considered as a basis for the visit. This first assessment report of the Commissioner on “the former Yugoslav Republic of Macedonia” does not provide an exhaustive analysis of the human rights situation in the country but rather reflects priority concerns the Commissioner has identified for improving the genuine protection and promotion of human rights in the country.

II. NATIONAL SYSTEM FOR HUMAN RIGHTS PROTECTION

2.1 Status of international human rights standards

9. “The former Yugoslav Republic of Macedonia” ratified the European Convention on Human Rights (ECHR) in 1997. The European Social Charter was ratified in 2005 but the Revised Charter remains neither signed nor ratified, though the government has a dialogue with the European Committee on Social Rights on the issue. The Commissioner encourages the government to ratify the revised Social Charter and its collective complaints procedure.
10. Ratification of the European Charter for Regional and Minority Languages is the last remaining accession commitment undertaken by the country when joining the Council of Europe². The Charter sets out fundamental principles as well as detailed provisions for different areas of society. Ratification and implementation of the Charter could therefore be a viable and useful tool in solving the current debate around the tentative drafting and adoption of a revised language law.
11. Apart from the above exceptions, the country has ratified most of the Council of Europe and other key human right treaties, including Protocol n°12 to the ECHR on the general prohibition of discrimination. International treaties are directly enforceable by domestic courts and their status superior to the domestic law.³

² The country signed the charter already in 1996

³ Art. 118 of the Constitution

12. The country has signed the Council of Europe Convention on Action against Trafficking in Human Beings in November 2005 and the recently adopted Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Commissioner welcomes these steps and encourages early ratification and implementation of these Conventions.
13. Among UN treaties, “the former Yugoslav Republic of Macedonia” has signed but not ratified the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN OPCAT) and the Convention on the Rights of Persons with Disabilities (CPD). The country has neither signed nor ratified the Optional Protocol to the CPD allowing individuals and groups to bring complaints before the UN Committee that will be set up to monitor implementation. The Commissioner welcomes that there is an inter-sectoral working group examining the modalities for the ratification of both the Convention and the Optional Protocol. The Commissioner calls on the government to ratify and implement these important treaties as soon as possible to enable further improvements of the protection of human rights for persons with disabilities as well as prevent ill-treatment in all closed institutions.
14. The country ratified the Rome Statute of the International Criminal Court on 6 March 2002 but has signed Article 98 agreements with the United States of America which excludes the extradition of US citizens and military personnel from “the former Yugoslav Republic of Macedonia”. The Commissioner strongly supports the principle that individuals suspected of crimes against humanity, genocide and war crimes should be brought to justice irrespective of their nationality.

2.1 National human rights structures and extra-judicial complaint mechanisms

15. The Commissioner welcomes the impressive pace in legislative reform in recent years and the development of a number of national strategies and action plans to address human rights challenges in the areas of the judiciary, governmental cooperation with the civil sector, Roma and children’s rights, gender equality and trafficking in human beings. The purpose of these plans is to establish the division of labour among the national actors as well as tasks and responsibilities of responsible actors, to set clear timelines and to define the human and financial resources necessary. If followed through on both national and local level with sufficient funds, these action plans have the potential to fundamentally contribute to steady progress of the protection of human rights in the country. However, these plans have not always been coupled with the provision of sufficient resources for implementation of tasks, neither has there been a comprehensive effort to ensure their applicability in domestic courts.
16. An Inter-Ministerial Human Rights Body was established in 2006 and tasked with the overall coordination and implementation of human rights issues. In order to improve the effective implementation of human rights strategies and action plans in practice, the Commissioner recommends the government to consider drafting a comprehensive national action plan for human rights to be coupled with a review of efficiency and effectiveness of the said inter-ministerial coordination body.
17. The Parliament’s Standing Inquiry Committee for Protection of Citizen’s Freedoms and Rights reviews issues related to human rights protection and has the power to initiate procedures for determining liability of public officials, whenever the Committee finds that freedoms and rights of citizens are violated. Procedures may be initiated by any citizen or a group of citizens in writing or orally.
18. In his meeting with the Committee, the Commissioner discussed the body’s mandate and activities. The Committee’s political nature and the general tendency in “the former Yugoslav Republic of Macedonia” to politicize issues of public interest seem to create

difficulties for the committee to become an efficient and effective mechanism for the protection of rights and freedoms of citizens.

2.2 Ombudsman

19. The Ombudsman institution was established in 1997. Its mandate, set out in the Constitution, is to protect citizens' constitutional and legal rights when violated by state organs. The Parliament elects the Ombudsman by a 'double majority vote'⁴. He reports annually to the Parliament and is only accountable to the latter. The Law on Ombudsman further determines competences and working methods. The Ombudsman may examine individual complaints as well as act on his own authority. Public officials are obliged to fully cooperate and provide the Ombudsman with information relevant for clarifying the factual circumstances of cases under investigation. The Ombudsman has the right to access public premises and files he deems necessary. In 2003, the mandate was expanded to cover the monitoring of penitentiary facilities, in addition to considering individual complaints from persons deprived of their liberty. If the Ombudsman concludes that citizens' rights have been violated, he can issue opinions or recommendations to the authorities on how to remedy the situation. He may also call for disciplinary proceedings or request the Public Prosecutor to initiate criminal procedures. The legal framework provides the Ombudsman with a solid institutional basis for promotion and monitoring of most human rights areas.
20. The Ombudsman's head office is located in Skopje and has six regional offices in Bitola, Kicevo, Kumanovo, Strumica, Tetovo and Stip. The number of complaints has increased considerably over the past years. Most complaints concern the functioning and the work of the judiciary, mostly relating to violations of procedural rights and fair trial guarantees, as well as police conduct. Property rights, labour relations, social protection and children's rights are other significant areas. Protection against discrimination is pointed out as a priority in the Ombudsman's mandate. However, the country still lacks a comprehensive non-discrimination law and the Ombudsman only receives a limited number of complaints of discriminatory practices by state agents. During the meeting with the Commissioner, the Ombudsman underlined that a comprehensive set of legislation addressing all forms of discrimination is needed. For him to be able to deal effectively with such complaints, his mandate would also need to be extended to cover private employers and other duty-bearers.
21. The Sector for Internal Control and Professional Standards (SICPS) within the Ministry of Interior is responsible for the internal control of the work of the police. In cases of alleged misconduct and abuse, the SICPS conducts the initial investigations. The Ombudsman may only enter at a later stage, at which point evidence might be more difficult to collect, damaged or actually lost. It seems preferable that the Ombudsman has a clear mandate to interview complainants, witnesses and public officers as well as to collect documentation and request independent forensic opinions in cases of severe injuries or death. This would be in line with a proposal put forward by an international expert working group on how to enhance external control of law-enforcement bodies, which in its proposal, *inter alia*, recommended strengthening the role of the Ombudsman institution⁵.
22. The Commissioner recommends the authorities review the role and mandate of the Ombudsman, particularly in the area of non-discrimination and police misconduct, to guarantee that he has resources to fulfil his mission effectively.

⁴ Meaning that the Ombudsman must be supported by a majority of the voters as well as a majority of voters belonging to minorities, Constitution of the Republic of Macedonia, Art 77.

⁵ G. Kalajdziev et al. *Proposed mechanism for enhancement of the system for external control of the law-enforcement bodies*, 2007

2.3 Civil society, NGOs and human rights defenders

23. The country has a very vibrant community of civil society activists and a high number of registered NGOs, albeit only a relatively small portion of them being active, vocal and relevant in terms of impact on both the reform process and the work and practices of the state administration.
24. Meeting with relevant NGOs, the Commissioner heard complaints that they had not been included and consulted in policy development and legislative drafting processes. Law reform initiatives by NGOs are rarely picked up by the relevant bodies in the ministries and the parliament.
25. The country's human rights defenders – mainly human rights NGOs, journalists and lawyers defending and promoting human rights – are working on a wide range of issues including women and children's rights, investigation of corruption and torture allegations, Roma and other minority rights and trafficking in human beings. The predominant dependence on outside funding poses a challenge to the long-term sustainability of human rights organisations. The community has improved its networking, coordination and cooperation capacities, and umbrella organizations on the basis of thematic issues or target groups have been created over recent years (e.g. women's issues, Roma and the coalition "All for Fair Trials")⁶. In her two missions to "the former Yugoslav Republic of Macedonia", the UN Special Representative on the situation of human rights defenders (Ms Hina Jilani, hereinafter referred to as "UNSR") highlighted the relatively low level of citizen participation in civil society activities, while pointing to the highest rate of participation with women's organizations, which were also considered the strongest, best organised and most vocal sector of civil society.
26. The Commissioner met with representatives from around twenty human rights organisations during his visit. He was informed that there are about 6300 registered citizen's organisations in the country. The vast majority remains dependent from outside funding, with the Government giving financial support to ca. one hundred of them and according to previously defined criteria. Several organisations claimed that the selection process was biased and arbitrary as well as lacking transparency and that some of the organisations selected did not fit the established criteria. Co-operation and networking between the organisations was said to be improving.
27. The UNSR reports identified a number of obstacles for the human rights defenders to operate effectively: corruption and politicisation of public administration; lack of access to information; inefficiency and lack of independence of the judiciary and absence of transparent procedures for complaints against the police. Although no systemic security risks are evident, some human rights defenders may face security risks, particularly those investigating corruption, trafficking or other forms of organised crime. She recommended the Government to address these concerns through the adoption of new legislation; to enhance consultation with civil society in the law drafting process; as well as to consider developing a strategy to implement the UN Declaration on human rights defenders.
28. The Government's consultation with human rights organisations has been ad hoc and with little strategic involvement. However, last year the Government adopted a Strategy for Cooperation of the Government with the Civil Sector (2007-2011) developed in collaboration with civil society. It aims at enabling civil society engagement in decision-making and strengthening the relations between the Government and civil society, whilst respecting their respective roles. Better access to public information is another aim. The Strategy lists a number of activities to be taken within established time-frames, including

⁶ 2004 and 2008 Reports of the UN Special Representative of the Secretary-General (Hina Jilani) on the situation of human rights defenders [last: A/HRC/7/28/Add.4, 3 March 2008]

the creation of a unit for civil society cooperation within the General Secretariat, where much of the preparatory work for new legislation takes place. Other activities include designing a system for exchange of information between the unit, civil servants and civil society, revising the procedures for allocation of funding and amending tax legislation. The Commissioner welcomes the adoption of the strategy and strongly encourages the Government to fully implement the strategy together with civil society. Having a constructive dialogue between decision-makers and civil society is a tried and tested method for human rights monitoring and improvement.

III. THE RULE OF LAW

3.1 *The Judiciary*

29. “The former Yugoslav Republic of Macedonia” has a three-tier system made of 27 basic courts, four courts of appeals and the Supreme Court as the highest court. The Constitutional Court decides, *inter alia*, on the conformity of laws and regulations with the constitution and on conflicts of competency among the three state branches as well as among organs of the Republic and local self-government. It can only consider individual complaints concerning the freedom of conviction, conscience, thought and public expression, political association and activity and claims of discrimination based on gender, race, religion, national, social and political affiliation⁷.

A. Judicial Reform

30. The country’s judiciary was frequently described by both national and international stakeholders as weak and inefficient, with widespread perceptions of political influence and corruption. To come to terms with shortcomings in the judicial sphere, the Government in 2004 adopted both a strategy and an action plan for the reform of the judiciary. The aim was to strengthen the independence and efficiency of the judiciary through substantial legal reforms and to bring their work more in line with international human rights standards. Since then, a number of reform measures have taken place. The Parliament has issued a large number of laws on both substantive and procedural legislation. As of 2007, judges are nominated by the “Judicial Council of the Republic of Macedonia” (JC) and appointed by the Parliament. Disciplinary procedures have been clarified and the JC was reformed and given increased competences in order to exclude political interference with the appointment of judges. The reformed JC has also embarked on a more resolute approach in combating corruption. One judge has been dismissed and procedures have been initiated against several others. The Public Prosecutor’s Office has been through similar reforms. Public prosecutors are elected and dismissed by the Republic’s Council of Public Prosecutors (CPP). To enhance competence, an Academy for the Training of Judges and Prosecutors has also been established.
31. A main problem remains the backlog of over one million cases⁸. In 2007, the trend shifted. The improved implementation of the judicial reform strategy coupled with other measures tackling the inefficiency of the judiciary resulted in an increase of solved cases by 8% in the first half of 2007⁹. The Minister of Justice informed the Commissioner that the backlog of cases has decreased. However, lengthy administrative and judicial proceedings remain a problem and constitute the bulk of cases brought before the European Court of Human Rights (ECtHR). The Government is addressing this problem with a series of legislative and organisational measures, such as the adoption of the Law on Civil Proceedings limiting the

⁷ Art. 110 of the Constitution

⁸ Statistics from the OSCE; the US State Department’s 2006 Human Rights Report made reference to a backlog of 1,2 million cases.

⁹ 2007 EU Progress report

courts' 'investigative role' in civil proceedings and the parties' possibilities to delay the procedures. A (domestic) legal remedy against lengthy proceedings has been introduced. Parties considering that their right to a hearing within reasonable time was violated may file a request to a higher court. Within six months the higher court must deliver its decision. If a violation is found, the party is entitled to just satisfaction. The new Law on Courts adopted in 2006 re-organised the court structure, reduced the number of courts and introduced new courts such as the Administrative Court to relieve the workload of the Supreme Court. A draft law on processing complaints aiming to speed up procedures is under discussion in parliament. Further, a law on misdemeanours entered into force in May 2007 entitling administrative authorities to decide on certain minor offences. Besides, misdemeanours shall be increasingly dealt with via mediation and settlement.

32. These reforms are important steps to diminish political influence in the appointment of judges and to ensure an independent and efficient judicial system. However, public confidence in the judiciary remains very low. Several international organisations and NGOs have reported on widespread and repetitive postponements of hearings, low quality of judicial decisions and poor standard of court facilities without separate waiting rooms for witnesses and victims, and sometimes even resulting in *in camera* hearings because of lack of space. The Commissioner is of the opinion that more efforts need to be invested to enable effective follow through of the judicial reform process and to consolidate the improvements provided for in reform legislation. Such measures should include continuing legal education for legal professionals including judges and other legal court staff, as well as training on improving case management and handling. More resources need to be invested in court buildings and equipment.
33. Last year, the Supreme Court severely criticised the Skopje District and Appeal Court for serious shortcomings and both procedural and substantive violations in the handling of the so-called "Rastanski Lozja" trial. The case is about an event in 2002 when seven persons of Asian origin were shot in an area called Rastanski Lozja. They all died immediately. Four former officers of the Ministry of Interior were charged but never sentenced for the crime.
34. According to the prosecutor's description of the events, the killings were staged by former Minister of Interior Ljube Boskovski to show the international community that "the former Yugoslav Republic of Macedonia" was playing an active role in combating terrorism. Upon his orders, a group of Asian migrants were lured from Bulgaria to the outskirts of Skopje. Meanwhile he informed the Unit for rapid Interventions (a.k.a. 'the Lions') and the Sector for Operational Techniques that an Islamic terrorist group was coming to "the former Yugoslav Republic of Macedonia" to commit terrorist acts and ordered them to take preparatory action. A fake tape recording indicating the presence of terrorists was forwarded to the embassies of the United States and the United Kingdom. The emigrants were then transported to Rastanski Lozja, where an armed battalion was waiting. The migrants were ambushed crossing a bridge and all shot dead. Afterwards the perpetrators placed automatic guns, hand bombs, radio devices and combat uniforms with 'UCK' emblems next to the bodies. All defendants denied criminal responsibility and were acquitted by the district court and the appellate court.
35. In 2006, the public prosecutor lodged a complaint before the Supreme Court arguing that serious breaches of the Law on Criminal Procedure were committed by the lower courts. In its decision, the Supreme Court found serious violations of procedural rules during the main hearings. Evidence was refused without proper reasoning. The lower courts' judgements were found unclear and contradictory. The courts' very conclusions that no crimes were committed were in contradiction with the evidence presented. However, the Supreme Court did not revoke or overrule the judgements nor did it order the case to be retried. The Commissioner is concerned about the number and severity of the flaws pointed out by the Supreme Court in this case as well as by the fact that no further action has been taken as a consequence of the conclusions by the Supreme Court. He is of the opinion that the case

could not be considered finally concluded while allegations of very serious crimes and human rights violations remain still unaddressed.

B. Legal aid

36. "The former Yugoslav Republic of Macedonia" does not yet have a specific law on legal aid, but the drafting of such legislation is under way. Several NGOs active in this field are involved in the drafting process. The Commissioner encourages the Government to continue the work towards the adoption of a comprehensive law on legal aid and maintain an inclusive approach taken due consideration to input from civil society.
37. The Criminal Procedural Code (CPC) grants everyone charged with a crime the right to a lawyer during pre-trial and court proceedings. Persons who cannot afford to pay for legal assistance should be provided with legal aid free of charge. However several actors, including the CPT, report on wide discrepancies between law and practice. Most detained persons complained that the first contact they had with a lawyer occurred when they were brought before an investigative judge.
38. The CPC also sets out the right for a detained person to communicate freely and without supervision with his or her lawyer. This right can be limited, however, if the detention is based on the risk that the suspect will destroy evidence or hamper criminal investigations in combination with the grounded suspicion that the accused might abuse the communication with his counsel. According to the director of the Skopje Prison, it was not uncommon that pre-trial detainees, against whom the prosecutor had not brought an indictment, were only allowed supervised contacts with their counsels.

C. Execution of court sentences and ECtHR judgements

39. As part of the judicial reform strategy, a new system of enforcement was introduced in 2006. The introduction of enforcement agents tasked with the implementation of judgments resulted in immediate improvements with almost half of the decisions transferred having been implemented in the first half year after introduction.
40. Thirty-two cases against "the former Yugoslav Republic of Macedonia" from the European Court of Human Rights are subject to control by the Committee of Ministers. A majority of these cases involve violations related to lengthy civil proceedings. The ongoing process of law reform in the country addresses these shortcomings. Legislative measures to prevent similar violations in the future have been taken. In addition, a legal remedy against lengthy proceedings was introduced. However, the acceleration of the respective domestic proceedings remains to be implemented. Another group of cases¹⁰ against the country concern lengthy administrative proceedings. Further measures to accelerate administrative proceedings and the introduction of effective remedies remain to be implemented, as well.

D. The problems linked to corruption

41. There is widespread public perception that corruption infiltrates political life and public administration in "the former Yugoslav Republic of Macedonia". Surveys by Transparency International showed that it is one of the countries in Europe most affected by petty bribery¹¹. The lack of confidence in the judiciary constitutes a serious problem. About 85 % of the population have described their legal system and the judiciary as corrupt¹². This

¹⁰ "Dumanovski" case

¹¹ Transparency International, report on the Global Corruption Barometer 2007: Out of 1141 persons asked, 44% responded that they had paid or obtained bribes.

¹² Transparency International report 2007 on Corruption in the Judiciary

information was corroborated by a large number of testimonies received by the Commissioner during his visit, touching upon a great variety of situations in dealings between state authorities and citizen.

42. "The former Yugoslav Republic of Macedonia" has ratified the Council of Europe Civil and Criminal Law Conventions on Corruption as well as the United Nations Convention against Corruption. Combating corruption is a stated top priority of the government, evidenced in the government program. Reforms to strengthen the independence of the judiciary are mentioned above. A strategy to combat corruption is currently being implemented and the State Anti-Corruption Commission's mandate has been renewed. Last year, the department for organised crime and corruption within the Prosecutor General's Office was transformed to an independent prosecution office. There have been a number of court judgements, including in cases involving higher-level politicians, judges, and police officers. The Group of States against Corruption of the Council of Europe (GRECO) concluded in its latest evaluation report that most recommendations have been implemented.
43. Civil society and human rights NGOs expressed concerns that the fight against corruption was not effective and merely targeting petty crimes and political or business opponents. Whilst welcoming the priority given to combating corruption the Commissioner stresses the importance of procedures for combating crime being free from political or other undue influence.

E. Charges brought before the International Criminal Tribunal for the former Yugoslavia

44. Five charges involving incidents from the 2001 conflict have been brought before the International Criminal Tribunal for the former Yugoslavia (ICTY). The Tribunal Prosecutor issued indictments against former Minister of the Interior, Ljube Boskoski, and Mr. Tarculovski for disproportionate police attacks on the village of Ljuboten in August 2001. The four other charges concern the interruption of the water supply to the Kumanovo area, leaving nearly 100.000 without fresh water for several weeks; the discovery of a mass grave in the vicinity of the Nprosteno village; the abduction, detention and ill-treatment of five road workers, as well as indictments for command responsibility for serious crimes, such as a massacre of soldiers and police officers near Vejce and kidnappings in the Tetovo area. They were all deferred back by the ICTY to "the former Yugoslav Republic of Macedonia" under its completion strategy and "none of the alleged perpetrators reached the level of responsibility required for an indictment to be issued in the event that there was sufficient evidence to link them to the crimes committed"¹³.
45. Measures have been taken to prepare for the return of these cases. In June 2007, the Law on Cooperation with ICTY was adopted as a result of consultations between the national authorities and ICTY. According to this law, the cases shall be handed over to the state body from which they were taken over by the ICTY or to the body that is competent to proceed with the cases given their procedural status when the procedure before the ICTY was terminated. The cases are at different procedural stages. Most of them are still in the investigation stage, but indictments were issued against 23 accused in the case concerning the road workers in 2002. During the five years that these charges were with the Tribunal Prosecutor, the judiciary has been reorganised in "the former Yugoslav Republic of Macedonia", such that a transfer to the body in charge before the charges were brought before the ICTY is not possible. The Deputy Prosecutor General informed the Commissioner that the files have just been handed over from the ICTY to the prosecutor general's office. All documents and evidence are currently being analysed and thereafter the prosecutor will decide on how to proceed.

¹³ Decision of the ICTY Office of the Prosecutor on referral to "the former Yugoslav Republic of Macedonia"

46. Without taking a stand in these individual cases the Commissioner reiterates the principle that individuals suspected of crimes against humanity, genocide and war crimes should be brought before justice. Given the political sensitivity in these cases involving high level politicians it is of utmost importance that the rule of law is fully respected and fair and open procedures ensured.

3.2. Law enforcement

A. Police behaviour

47. Interlocutors met during the visit confirmed that police behaviour had improved over the last years. Improvements primarily concerned procedures, such as the right to be notified of the reasons of arrest in a language that one understands and the right to notify family or another person of the arrest. The practice of summoning persons for questioning to so-called “informative talks”, are now regulated in the 2006 Police Law setting out the conditions and procedures for police questioning and custody. The action plan developed to implement the Code of Police Ethics, which includes adequate training and funding, is a positive development that should be followed through to fully do away with mentalities considering use of force as the most efficient way to secure evidence and confessions. Respect for human rights is not an obstacle to efficient law-enforcement and crime prevention, but rather a guarantee to this end.
48. Despite improvements, police violence remains a problem. In 2005, the SICPS received 1385 complaints relating to police behaviour, including 68 cases from the Ombudsman and 63 from NGOs. Out of these, 184 were considered as well founded leading to 27 suspensions and 36 reassignments. Criminal procedures were initiated in 55 cases¹⁴. In 2006, the total number of complaints was 1377, including 112 cases from the Ombudsman and 87 from NGOs. SICPS considered 152 as grounded, decided on 12 suspensions and 29 reassignments. These SICPS statistics are not segregated into different categories, wherefore it is not possible to conclude how many of them concern excessive use of force and the exact number involving serious injuries and deaths. However, the Commissioner was informed that the system for data-collection is undergoing reform. The improved system of data-collection will enable better analysis and follow-up.
49. Statistics from the Prosecutor’s office evidence 54 complaints against 69 police officers received in 2005-2006 concerning “mistreatment in performing duty”, “unlawful arrest” and “torture and other cruel, inhuman, or humiliating activities and punishments”. More than 70% of the complaints came from victims and civil society.
50. The so-called “Alpha” police unit is overrepresented in statistics on ill-treatment. The unit was formed by a decision from the Ministry of Interior enabling regional police directors to concentrate police officers for plain clothes policing for a limited period of three months. The Minister of Interior confirmed that the Police Law and Code of Ethics fully apply and that the “Alpha” unit is under the chain of command of the district they operate in. Experience and duty record are the basis for selecting officers to serve in the “Alpha” unit. The Minister of Interior highlighted the difficult conditions the unit was operating under referring to its exposure to, and frequent direct contacts with suspects. Such circumstances demand for particular caution in the selection of “Alpha” officers. In addition, specialised training is necessary, including training of non-violent dispute resolution to guarantee adequate response and behaviour of officers to provocations. Use of force is the last resort and must always be lawful, necessary and proportional.

¹⁴ G. Kalajdziev et al. *External oversight of the law-enforcement bodies – analysis of the international standards, domestic legislation, mechanisms, institutions and practice*, 2007

51. Several interlocutors brought the November 2007 police operation in Brodec to the Commissioner's attention. They alleged disproportionate use of force resulting in severe injuries. Even assuming the operation was well planned, its follow-through was unacceptable. The evidence pointing to the continued use of excessive force *after* the cessation of the actual operation is of particular concern. The SICPS assessed the operation as professional and the use of firearms both necessary and proportional to the goal of breaking the resistance. The Ombudsman visited the prisoners in Skopje prison on the 8 January 2008 informing them of their rights. No complaints were made regarding the treatment in prison. However, the Ombudsman did not deem himself competent to judge if the injuries were a result of legitimate use of force or ill-treatment. Since then new documentation has been made available, including a video clip. The Commissioner recommends a prompt, independent and transparent investigation of the event.
52. Statistics collected by NGOs representing victims of police violence indicate that the Roma population is particularly affected by police abuse, as nearly 12,5% of the cases last year involved Romani individuals¹⁵. This appearance of an ethnic profiling within the police seriously affects the standing and reputation of the police force in the country and outside. Several cases brought before the European Court of Human Rights also concern violence against Roma and lack of independent and effective investigation. The Commissioner recommends the Government to take effective measures to address this and combat prejudice and discrimination by the police. The European Commission against Racism and Intolerance (ECRI) General Policy Guidelines No. 11 on combating racism and racial discrimination within policing provide good guidance in this regard.
53. The Ohrid Framework Agreement pays particular attention to ensuring minority inclusion and their equitable representation in the police force. The Commissioner was informed that the trend is positive regarding representation of the Albanian population as its participation in the force in recent years continued to increase to an actual percentage of ca. 15,0% in 2007. The other minorities, however, expressed their worries of being left out of the process of equitable representation. The number of women in the police is also low. The Minister stated the problem was in mentality and recruitment: the last recruitment received only 15% of applications from female candidates. The Commissioner recommends the authorities to continue its efforts towards the creation of a representative police force. Particular attention should be given to the need to include women and other minorities than the Albanian minority.
54. After his visit to Tetovo, the Commissioner expressed his deep concern over the apparent breakdown of communication between the mayor's office and the Office of the Chief of Police in Tetovo. After a protracted period of lacking direct engagement, the respective offices are in a stalemate of nil cooperation and have been for the past 19 months, according to the Mayor of Tetovo. The situation is exacerbated by what appears to be a party-political position of incompatibility and an apparent unwillingness to engage in a *real* and constructive dialogue leaving party-politics aside by. The Commissioner was unable to meet with the Chief of Police to discuss these issues.
55. The Commissioner reiterates the necessity to ensure that police are aware of, and responsive to, the needs of the local population and that municipal authorities are a constructive partner in this regard. The local police force must understand, and be guided by, local priorities and local needs. Local government should play a fundamental role in supporting the role of the police also in terms of crime prevention, working alongside the police and other partner agencies. Local authorities can have a positive impact on the safety and security of communities focusing on the long-term benefits delivered by, *inter alia*, the provision of education, social services, and youth services.

¹⁵ G. Kalajdziev and K. Krstevska, *The Police and Human Rights*, 2007. For the period 2004-2006 almost 15% of all registered victims in were Roma.

B. Investigating police misconduct

56. Independent mechanisms capable of conducting impartial and effective investigations leading to the identification and punishment of those responsible of police brutality is key to ensuring accountability and public confidence in the law-enforcement system. Complaints against the police can be submitted to the prosecutor's office, to the SICPS and to the Ombudsman¹⁶. The current system has been criticised by several actors, including the CPT, for being too passive or biased (or both). Even when confronted with victims with visible injuries, judges, prosecutors and the SICPS have been reluctant to act. The European Court for Human Rights also concluded that neither the SICPS nor the Ombudsman can, in their current position, be considered effective remedies against police brutality¹⁷. The SCIPS lacks independence and the Ombudsman is not authorized to take binding decisions.
57. It has been a standing recommendation from the CPT since 2001 to strengthen the capacities of the prosecutor's office to handle cases of police violence. An expert working group on how to enhance external control of law-enforcement bodies identified a number of obstacles that prosecutors face handling such complaints: e.g. inadequate medical documentation of injuries coupled with poor cooperation with the Ministry of Interior and insufficient information sharing from disciplinary proceedings in a complete and timely manner often result in long delays and denial of justice. Another major obstacle to effective and efficient investigation of incidents involving the police is the prosecutor's de facto dependence on the SICPS. Even though the prosecutors' mandate and powers equip it sufficiently for conducting impartial and effective investigations on their own, it is not done in reality. Instead it is common practise that prosecutors refer the issue to SICPS. The results are frequent delays and lack of independent and transparent investigations¹⁸.
58. The government established a working group tasked with analysing the domestic legal framework against international standards and comparative examples. The working group proposed a three-pillar system of external control over law-enforcement. The model foresees the strengthening of prosecutorial control over law-enforcement bodies and the Ombudsman's monitoring capacity, as well as an independent commission overseeing the Sector of Internal Control and Professional Standards. The Commissioner recommends reforms in this direction.

C. The Penitentiary system (including pre-trial detention)

59. The Law on Execution of Sanctions (hereinafter referred to as "LES") entered into force in 2006. The law contains several provisions relating to rehabilitation and reintegration. For example, prisoners should have the opportunity to work, education and leisure activities. All prisoners have the right to two hours of out-door activities per day. Sentenced prisoners may receive family visits. The law also provides for progressive transfer of well-behaving prisoners to more open facilities and so-called home leave as part of the reintegration process.
60. The Ombudsman has followed the situation in prisons and other places where persons are deprived of their liberty since 2003, when he was given the mandate to do so. He concludes that the system does not function in accordance to LES, nor does it live up to

¹⁶ For matters of accuracy it is noted that complaints can also be communicated to the parliamentary standing committee for human rights, but its impact remains questionable.

¹⁷ Jashar v. former Yugoslav Republic of Macedonia, 15 February 2007 and the Court decision on admissibility in Dzeladinov v former Yugoslav Republic of Macedonia, application no. 13252/02

¹⁸ G. Kalajdziev et al. *External oversight of the law-enforcement bodies – Analysis of the international standards, domestic legislation, mechanisms, institutions and practice*, 2007

international standards. In general, the premises are substandard and overcrowded. Lack of staff, particularly teachers, psychologists and social workers, hamper prisoners' possibilities for effective reintegration. Even though the law grants prisoners access to education, work and leisure activities to prepare for life outside the prison, such activities are not offered in a professional and organised way. Isolation is another problem, especially for remand prisoners who are often not even granted the minimum-standard one-hour outdoor exercise per day¹⁹. Remand prisoners' contact with the outside world is limited and needs approval by the investigative judge. The Director of the Skopje Prison explained that this was a continuous problem linked to CPC provisions preventing any contact between remand prisoners being investigated for the same case. Especially cases concerning organised crime often involve a large number of persons. At the time of the Commissioner's visit to the Skopje Prison, for example, over 50 persons were detained in the current investigation of a case concerning corruption. The current facilities did not separate the outdoor areas, making it impossible to guarantee proper daily outdoor activities for everybody. The Minister of Justice informed the Commissioner that the Skopje prison will be expanded with a new building to address overcrowding.

61. Other problems concern the right to access and communication with one's lawyer in private, as described above, and the lack of access to quality health care, particularly mental health care. In addition, poor material conditions, lack of privacy, periods of isolation and lack of meaningful activities all have negative effects on the health of prisoners. Children are especially vulnerable in this regard.
62. One of the CPT's concerns was related to the unacceptable practice of using chains and handcuffs to fix prisoners in bed or to other objects for prolonged periods as well as the lack of separate registration of the use restraints. The Director of the Skopje Prison informed the Commissioner that the chains have been removed under supervision of the SICPS. Moreover, use of restraints is recorded in a specific book, indicating the time of application of use of restraints and its lifting, as well as the reasons for resorting to restraints. The local court is systematically informed about the restraint measures.
63. The government adopted a prison reform plan to improve material conditions in prisons including refurbishment of existing or building of new prisons. However, there has not been much progress thus far. The Minister of Justice confirmed that there was ongoing construction work to refurbish prisons in Kumanovo and Stip. A new prison was built in Stip but is not operational yet. The government claimed it was also investing efforts to improve educational activities, vocational training and computer literacy courses. The Minister of Justice expects more progress with the entry into force of the amended LES. Additional and sustained efforts are needed to fully implement the CPT's recommendations.
64. The Commissioner advises the Government to allocate sufficient funds to improve the worrying and substandard situation in prisons. Every prisoner should have at least 4m², decent material conditions and access to health care and a lawyer. Outdoor facilities need to be accommodated to allow everybody at least one hour of outdoor exercise. Further action is needed to provide for the reintegration programs foreseen in the LES.

D. Juvenile justice

65. The Commissioner visited the "Educational-Correctional Institution" located on the Skopje prison premises. This is an institution for boys and young male adults between 14 and 23 years of age, serving court sentences. The facilities were moved from the original juvenile detention facility in Tetovo in 2001. The original juvenile detention facility in Tetovo, of high modern standard and established with international aid 10 years ago, was damaged in the 2001 armed conflict. The location in Skopje prison was supposed to be a temporary

¹⁹ European Prison Rules Art. xx

solution during and in the immediate aftermath of the 2001 armed conflict but has been going on for seven years already. There is an urgent need to give this pressing matter the high priority it deserves and find a viable solution to remedy this situation.

66. The material conditions in the current facilities are substandard, particularly the sanitary facilities. Juveniles and adults share the outdoor areas. The LES only stipulates that juveniles should be separated from adult convicts. However, international standards set out that juveniles should not socialise or have contact with unrelated adult prisoners, including remand prisoners. Another problem is the lack of activities. There were no organised activities except for some scheduled education. The education staff was frustrated because the current location prevented them from providing any vocational training or adequate leisure opportunities, as foreseen in the LES. Moreover, several sources made reference to practices of corporal punishment and prolonged isolation.
67. The Commissioner strongly recommends the government to take action without delay to remedy this situation. The law should be amended to ensure that juveniles are always accommodated separately from unrelated adults. The children should also be moved from the current premises to ensure such separation in practise. They should be provided with an adequate programme of education, vocational training and recreation. While the lack of meaningful activities is detrimental for all prisoners, it is especially harmful for juveniles, who have a particular need for physical activity and intellectual stimulation²⁰. Any disciplinary regime should be adapted to the juveniles' age and focused on establishing responsibility, understanding the consequences of their acts and preventing recidivism, but not aiming to punish. Solitary confinement should only be used in exceptional cases. If used, appropriate human contact, possibilities to read or other activities and at least one hour of outdoor exercise per day must be granted in accordance with CPT standards on juveniles deprived of their liberty.

E. Monitoring mechanisms

68. The LES sets out a system for monitoring of penitentiary facilities. The Ministry of Justice has an internal inspection system. To each prison, a local judge is mandated to talk to prisoners in private and have access to relevant documentation. The law also foresees the establishment of a State Commission, to be a multidisciplinary body composed of experts that shall visit every prison at least twice a year. The Commission's mandate covers both material conditions and treatment of inmates, and provides access to all records and other documentation as well as the authority to interview prisoners in private. The Commission would report to the Government and to the local court. Its recommendations would be binding. However, such Commissions still remain to be established in practice.
69. As described, the Ombudsman has the mandate to monitor conditions of detention including treatment. To increase access for detainees and prison staff's to the Ombudsman and to facilitate effective and confidential communication, complaints boxes have been installed in all prison facilities. This was coupled by visits to prisons and detention centres, informing detainees of their rights and the Ombudsman's role in protecting their rights. There is no regularised system of civil society monitoring of places of detention.
70. The CPT has concluded that neither the internal inspection system nor the supervision executed by local judges function satisfactory. It has been a standing recommendation from the CPT since 1998 to establish supervisory mechanisms operating in a professional, transparent and independent manner.
71. Given the situation in the penitentiary facilities in "the former Yugoslav Republic of Macedonia" and the importance of such mechanisms to prevent ill-treatment, the

²⁰ CPT Standards

Commissioner recommends the Government to give this issue the highest priority. He welcomes the steps taken to extend the Ombudsman's mandate in this area.

72. The Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN OPCAT) sets out important criteria for a such domestic monitoring mechanism. Such a mechanism should be independent and dispose of sufficient professional knowledge, be sufficiently resourced, gender-balanced and have an adequate representation of minority groups. As a minimum, the inspection body should be authorised to regularly and without prior notice have full (i.e. unlimited and unhindered) access to places of detention and relevant documentation. It should examine treatment and conditions for detainees and make recommendations for improvement. A constructive dialogue on ways for improvement should follow.
73. The Commissioner welcomes that the draft law being currently considered by Parliament envisages the Ombudsman and NGOs registered in the country and appointed by the Ombudsman, shall be the National Preventive Mechanism to carry out effective monitoring of the penitentiary facilities in line with the OP-CAT standards. This will require a widening of the Ombudsman's mandate, and allocation of adequate financial and human resources in order to be effective. Moreover, the Commissioner welcomes the possibility for civil society to access places of detention, which would be in accordance with the UN Declaration on Human Rights Defenders²¹.

3.3. Counter-terrorism activities

74. The case of Khaled El-Masri was discussed with the Minister of Justice during the visit. The case concerns a German citizen of Lebanese descent who travelled by bus from his home in Neu Ulm, Germany, to Skopje in the end of 2003. He was detained at the Serbian-Macedonian border because of alleged irregularities with his passport. Information differs concerning the following course of events. According to the facts Mr. El-Masri presented in court, he was interrogated by the Macedonian counter-intelligence service (UBK) and subsequently transported to and detained in a hotel in Skopje. For three weeks he was repeatedly interrogated about alleged contacts with Islamic extremists and denied any contact with the German Embassy, an attorney or his family. He was told that if he confessed to Al-Qaeda membership, he would be returned to Germany. After 23 days of detention, Mr El-Masri was blindfolded, and transported to an airport. There, he was beaten and put on a plane chained spread-eagled to the floor. He was injected with drugs and flown to Kabul where ill-treatment continued. On 28 May 2004, he was released and no charges were brought against him.
75. The circumstances of this case have been subject to both national and international scrutiny. Mr. El-Masri's civil law suit against the CIA in the United States is now pending before the Supreme Court. In Germany, both criminal proceedings and a parliamentary inquiry are on-going. In "the former Yugoslav Republic of Macedonia", the SICPS conducted an internal investigation and concluded that El-Masri was questioned by the UBK in accordance with applicable European standards. After checking his travel documents against the Interpol database they released him. The country's parliamentary inquiry committee came to the same conclusion and the authorities deny any involvement in the further rendition of Mr. El-Masri. However, Council of Europe Parliamentary Assembly member Dick Marty in his report established that the version provided by the Macedonian authorities not only contradicts Mr. El-Masri's description of the events but also the facts gathered by the German Bundestag, the Munich Prosecutors Office and himself.

²¹ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, known as the "Declaration on human rights defenders"

Recently, the UN Human Rights Committee²² concluded that the authorities' denial of involvement in the rendition despite detailed allegations from different sources motivated a new comprehensive investigation as well as revision of practices and procedures in order to ensure that such acts will be committed again.

76. The Commissioner supports the opinion of the UN Human Rights Committee that a full and independent investigation of the treatment of Mr. El-Masri during his stay in former Yugoslav Republic of Macedonia be undertaken. Full cooperation with the Munich Prosecutors Office during this process is also strongly recommended. After reviewing domestic practices and procedures for combating terrorism, appropriate safeguards and scrutiny procedures should be established to prevent and investigate such allegations.

IV. FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

77. Several of the Commissioner's interlocutors complained about bias and poor quality of the media. For instance, the Roma often suffer from stereotyped, negative reporting. Many media outlets are commercially owned and often politically connected. There seems to be a growing trend of journalists taking these interests into account, or exercising excessive self-censorship out of fear of negative repercussions following reports which are not seen favourably by the media owners.
78. The quality of investigative journalism was, however, said to have improved in recent years and this trend is welcomed by the Commissioner. At the same time, there appear to be limits on the freedom of access to information for investigative journalists and civil society representatives. The 2006 Law on Free Access to Information of Public Character is not being effectively implemented. The work of professional investigative journalists should be facilitated rather than limited in access to information.
79. A Press Council per se does not exist. Instead a "Court of Honour" is in place, but it had has not delivered any decisions at the time of the Commissioner's visit. The State Broadcasting Council is formally independent, impartial and mandated to deliver opinions on ethics and quality of broadcasted reporting. Its functioning, however, depends on direct decision by Government for its budget and thus its full-fledged independence is questionable. The Commissioner stresses the importance of ensuring a free and independent media as a core element for a healthy democracy based on freedom of information and expression within the confines of the law. Self-regulation may be considered as a favoured best-practice and thus the Commissioner urges the authorities to make every effort to ensure that an effective self-regulatory system exists for all media outlets by considering the possibility to develop a fully independent media regulatory body.

V. NATIONAL MINORITIES

80. "The former Yugoslav Republic of Macedonia" has ratified the Framework Convention on the Protection of National Minorities and, as of yet, only signed the European Charter for Regional or Minority Languages. Article 48 of the "Constitution of Macedonia" guarantees rights of national minorities²³, such as the right to develop and foster identity and the right to instruction in their language in primary and secondary education.

²² Concluding observations of the Human Rights Committee on "the former Yugoslav Republic of Macedonia" from 03 April 2008

²³ According to the most recent population census of 2002, from a total of 2,022,547 inhabitants, there were 1,297,981 Macedonians (65,2%), 500,983 Albanians (25,2%), 77,959 Turks (3,9%), 53,879 Roma (2,7%), 9,695 Vlachs (0,5%), 35,939 Serbs (1,8%), 17,018 Bosniacs (0,8%), 20,993 others (1,0%).

81. Despite still tangible ethnic tensions, the country has successfully embarked on a difficult process to overcome the effects of the 2001 ethnic conflict and the threats for good and fruitful inter-ethnic relations stemming from it. There seems to be general consensus among the ethnic groups as well as political parties with regard to the main political goals of Euro-Atlantic integration. What is lacking to date is a unified vision of the steps needed to reach these goals in the most effective and efficient fashion.

5.1 Implementation of the Ohrid Framework Agreement: status, results, effects

82. The 2001 Ohrid Framework Agreement set forth a series of clearly-defined targets to reduce inter-ethnic tensions and to promote tolerance and understanding between the main ethnic groups as well as promoting participation and equitable representation of national minorities within the state.
83. Much has been done in developing both the legislative framework and institutional capacity to reach the current situation where participation of minorities has greatly increased. In particular, the Albanian minority is better represented in local and national politics and state administration, whereas the participation of other minorities is progressively increasing. It may indeed be said that the legislative and administrative prerequisites for promoting and ensuring an effective political dialogue exist, but that the political culture is such that this does not directly equate to an adequately or effectively functioning, open political dialogue, particularly between the two biggest ethnic groups of ethnic Macedonians and the Albanian population.

5.2. Use of minority languages

84. According to current legislation regarding official languages, in municipalities where 20% of inhabitants are from a minority with a language other than Macedonian, their language becomes the second official language with equal status in correspondence and other interaction with authorities. In practice, there appear to be difficulties with regard to the adequate implementation of this framework, on the one hand, and with the general public's understanding of the dimension of these provisions. There is also the appearance that the language issue is constantly politicised and high-jacked by political parties and representatives of the various ethnic groups, thus hindering the country's ability to move ahead from today's dominating focus on collective rights to securing and protecting individual rights.
85. "The former Yugoslav Republic of Macedonia" has signed but not ratified the European Charter for Regional or Minority Languages. As the protection and promotion of minority languages has been part of the Governments agenda for a considerable length of time, increasing efforts to ensure the legislative and administrative framework is adjusted in order to ratify this convention would send an unequivocal message that the issue continues to be taken seriously. Besides, the country with its ethnic mix and multi-cultural and multi-lingual history and background, could well set standards of multilingualism for other multinational states. The said Charter could provide for a useful tool with its provisions on minimal standards giving the necessary implementation guidance and advice.
86. A problem, which appears to persist, is the lack of interpreters and translators for minority languages. This has contributed to the substantial delays in court proceedings and thus has been a contributing factor to the backlog which exists.

5.3. *The Roma Minority: Concerns facing the Roma Population*

87. Roma are recognised as an ethnic minority in the Constitution of the Republic of Macedonia and Article 48 (2) of the Constitution guarantees the protection of all minorities' ethnic, cultural, linguistic and religious identity. According to the census of 2002, 53,879 persons declared themselves as being part of the Roma community, representing approximately 2.66% of the country's total population.
88. In recent years the Government has taken some positive steps towards improving the socio-economic status and social inclusion of Roma by adopting the National Strategy for Roma in 2005 along with a series of Action Plans, as well as with joining the Central and South-eastern Europe regional framework to do so vis-à-vis the Decade of Roma Inclusion 2005-2015. Action Plans devised for development in terms of education, housing, employment and health care have been drafted. Despite these efforts, the real impact has been dismal according to the recent assessment of progress made until now. In 2007, "the former Yugoslav Republic of Macedonia" appeared third from the bottom of comparative performance ranks in terms of implementation which reflects the lack of continued political efforts to allocate resources for the proper implementation of the decade's Action Plans²⁴.
89. Roma remain on the margins of society and continue to face obstacles in realising their economic and social rights particularly. Many Roma find themselves caught in a generational cycle of poverty, which proves difficult to break free from. Access to education, employment, social welfare, healthcare and housing are restricted more for Roma than any other community in the country. The vast majority of Roma live in urban areas where the population is concentrated and services and facilities are lacking. Those living in rural areas or informal settlements face particular difficulties in this respect. Employment opportunities in these regions are also minimal. In fact according to statistics for every one employed Romani person, nearly three remain unemployed²⁵.
90. The Commissioner was pleased to note that some progress has been made in terms of attaining personal documents including birth certificates, identity cards, passports and other documents related to the provision of health and social security benefits.
91. Roma suffer from continuing implicit discrimination throughout Macedonian society. In this regard, the Commissioner reiterates the importance of a comprehensive Anti-Discrimination Law with appropriate enforcement and oversight mechanisms.
92. A low level of education among the Roma community is the single most significant concern as it impacts directly on other aspects of life. This is particularly prevalent among Roma in rural areas. Although primary education is free and compulsory as per Article 44 of the Constitution, a combination of low-attendance rates and high drop-out rates of Roma students are indicators that this right is not being realised. During his visit, the Commissioner met with Mr. Erduan Iseni, the Mayor of a predominantly Roma-inhabited suburb of Skopje, Suto Orizari. The delegation also visited a predominantly Roma school in the area. The Mayor, who is of Roma ethnicity himself, mentioned education, employment and substandard living conditions as primary concerns within his community. The Commissioner was satisfied to be informed of a new high-school which is being built in the area to allow possibility for Roma and others to continue their education. However, the Commissioner notes that other costs such as for books and supplies remain a real obstacle for some children to attend school.

²⁴ Roma Activists Assess the Progress of the Decade of Roma Inclusion 2005 – 2006, DecadeWatch, 2007.

²⁵ 3, 558 employed Romani individuals compared to 9,776 unemployed Romani individuals (source: "Macedonian Agency for Employment", 2004).

93. Furthermore, the practice of segregation of Roma students from others is still practiced and must be actively avoided. Attendance and integration of all Roma students should be the goal, and the Commissioner would urge the authorities to take all feasible measures to realise this goal.
94. Treatment of Roma at the hands of the police has not always been in line with international standards. The recent judgment of the European Court of Human Rights on *Dzeladinov and Others V. "The Former Yugoslav Republic Of Macedonia"*²⁶ echoed this as it considered the states failure to investigate the Roma applicants' allegations of police brutality as a violation of Article 3 of the Convention. While this case did not directly imply that there was a discriminatory element to the inaction to properly investigate, when taken in conjunction with reports of ill-treatment from civil society in the country, there is reason for the Commissioner to believe that it is not uncommon for Roma to be subjected to improper treatment as a result of their ethnicity.
95. Though Roma are represented in local politics and in the parliament, the general participation in decision-making remains low. Removing obstacles does not suffice when a culture of lacking participation has developed. A proactive process of training, recruitment and encouragement of qualified Roma to positions in national and local administration is required.
96. A cross-cutting problem through many sectors of Macedonian society is the lack of disaggregated data. The lack of nationally representative data regarding Roma poses a distinct problem in terms of planning for the needs of the community. The Commissioner stresses the importance of ensuring a full picture of the overall economic and social situation of people in "the former Yugoslav Republic of Macedonia"

VI. EFFORTS TO COMBAT DISCRIMINATION

97. "The former Yugoslav Republic of Macedonia" ratified Protocol No. 12 to the ECHR in 2005, thus binding itself to provide heightened safeguards against discriminatory practices by public authorities on any ground as regards the enjoyment of all rights set forth by law. However, other international agreements such as the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), Convention on the Elimination of Racial Discrimination (CERD) and EU directives require states to protect also against discrimination by private actors, particularly employers. The country has neither signed nor ratified the Council of Europe Convention on the Legal Status of Migrant Workers, and has neither signed nor ratified the Revised European Social Charter.
98. The country is rife with low-scale but tangible inter-ethnic tensions which fuels societal discrimination and intolerance at many levels. Minorities, Roma and persons with disabilities suffer most explicitly from this. The LGBT community is afforded less protection than others, and a certain stigma is still attached to being openly LGBT within certain parts of society, particularly within rural communities.
99. A new Anti-Discrimination Law is in the final stages of preparation before being considered by Parliament, which is a welcome step forward. The hope would be that this legislation would offer comprehensive protection against all forms of discrimination, leaving the possibility of expanded scope therein. The inclusion of a reference to "other status" would be in line with the European Convention of Human Rights and its Protocol 12. Discrimination against persons with disabilities manifests itself not only through prejudice and ignorance. An inaccessible environment is an equally big problem. Effective protection

²⁶ Application no. 13252/02, Judgement 10 April 2008.

against disability-based discrimination should therefore include an obligation for employers, teachers and other duty-bearers to take reasonable measures to eliminate such obstacles. This would be in line with the UN Convention on the Rights of Persons with Disabilities. The Commissioner was encouraged to hear that this legislation is being carefully prepared, but he has been informed of limited involvement of civil society and other non-governmental experts. The Commissioner would stress the importance of the law being adopted as soon as realistically possible, without jeopardising its quality in order to ensure that legislative safeguards are in place to provide a basis for implementation.

100. The legislation should also identify an appropriate oversight and recourse mechanism to accept complaints on the grounds of discrimination in order to provide victims a means to achieve satisfaction. The authorities should carefully consider all possibilities so as to ensure independence, accessibility and overall effectiveness of such a complaints body. There are numerous comparative examples from other countries in this regard including specialised Ombudsman institutions, specific anti-discrimination bodies, or, in general terms, human rights institutions with enlarged human rights mandates. The Commissioner would suggest minimising the complexity of structures by focussing on strengthening existing structures in this regard. Educating the public about the rights and possible means for recourse in case of suffering a violation of these rights is key to a functioning system overall.

6.1. Gender discrimination

101. The Law on Equal Opportunities between Men and Women prohibits discrimination in the fields of employment, education, social security, culture and sport, both in the public and in the private sector. The Government should itself be a role model and gender coordinators are to be appointed within each ministry. The law further obliges the Government to ensure equal representation of men and women when forming working groups and consultative bodies as well as when selecting representatives in public companies and institutions. The importance of efforts at the local level is emphasised. Commissions on Equal Opportunities should and have been set up to coordinate and promote equality in the municipalities.
102. The Government has revised its national action plan from 2000 for the advancement of equality between genders in consultation with civil society. The new five-year action plan (2007-2012) has several focus areas, such as women and decision-making, education, employment, health, social care, media, environment, violence and peace-keeping activities. Realising the delicate but necessary task to prioritise, the focus for 2008 is education and violence against women. To this end, the Government plans to introduce education on gender equality to combat stereotypes; to take efforts to improve the gender balance in the choice of education, and to analyse the reason behind drop-outs of girls in minority communities and rural areas and take action to increase school enrolment.
103. Women in rural areas as well as minority women, particularly Roma women, are still in a vulnerable situation. They suffer from double discrimination as well as from pressure from within their community. School drop-out and unemployment rates are higher compared both with men in rural areas, minority men and compared to women in general. A representative from a Roma women's organisation listed access to better health care, efforts to empower women to be able to earn their living as well as measures to stop the violence as priority areas for government policies in this field.
104. Different interlocutors pointed out positive developments in "the former Yugoslav Republic of Macedonia". From a legal perspective women are equal to men and implementation of the Law on Equal Opportunities is progressing, though slowly on the local level. The Law on Election of Parliament and the Law on Local Elections ensure that both sexes are represented by at least 30% of the candidates for national and local elections. Since the elections in 2006, one third of the members of the Parliament are women. The number of

women employed in the judiciary and state administration has also increased. However, only a few hold management positions. The police force is another area where women are clearly under-represented.

105. The Commissioner strongly encourages the Government to follow through the action plan and continue to consult civil society, including minority and rural women's representatives, in their work. Local authorities play a vital role in human rights implementation and the Commissioner invites the authorities to consider additional efforts ensure full implementation of the Law Equal Opportunities between Men and Women on the local level. Comprehensive non-discrimination legislation to protect against gender discrimination as well as multiple discrimination is necessary.

6.2 Violence against women

106. The high prevalence of violence against women is well known. Research from 2004 indicates that violence against women is common in the country. Over 60% of the female adult respondents stated that they had experienced psychological violence. Nearly 25% were victims of physical violence and 5% had been sexually abused. These figures and other findings from civil society helped to initiate several reforms. Domestic violence was incorporated in the Criminal Code as a separate crime prosecuted *ex officio*. The law provides for protection and support measures against domestic violence such as shelters for victims, counselling services, legal assistance and the possibility to issue restraining orders against perpetrators. However, several actors in this field questioned the effectiveness of this law both with regard to punishing perpetrators and providing protection for victims. A group of female parliamentarians has initiated the preparation of a specific law on domestic violence seeking to respond to such shortcomings.
107. Violence against women is one of the Government's focus areas for 2008. As envisaged in the action plan, data collection and analysis, public awareness-raising, training for the police, social workers and medical personnel are among the activities for this year. These activities correspond well with the recommendations from the UN Committee on the Elimination of Discrimination Against Women²⁷ as well as with the concerns articulated by women's organisations during the Commissioner's visit.
108. The Commissioner encourages the Government to review existing legislation and practices to identify and effectively address possible legal gaps or procedural obstacles to effective investigation, prosecution and punishment of perpetrators. The same is recommended to ensure victim protection and support. Recognising the important work of NGOs in providing protection and support to victims, the Commissioner also stresses the responsibility of local authorities. Special attention might be needed to cater for the needs of minority women, women from rural areas and women with disabilities who are often in an especially vulnerable situation.

6.3 Inclusion of persons with disabilities

109. The country has signed but not ratified the UN Convention on the Rights of Persons with Disabilities. Domestic provisions safeguarding rights of persons with disabilities are established in several laws in the area of social protection and employment.
110. Persons with disabilities face a number of obstacles that prevent their participation in society. High drop-outs in primary and secondary school as well as high unemployment rates were highlighted by international organisations as well as the national disability movement. Inaccessible public buildings and public transport are other challenges.

²⁷ Concluding comments of the Committee on the Elimination of Discrimination against Women: the former Yugoslav Republic of Macedonia, 3 February 2006.

Domestic provisions safeguarding rights of persons with disabilities are laid down in several laws in the area of social protection and employment. Labour law prohibit discrimination against persons with disabilities and provide a provide a system for enhancing the de facto situation at the labour market giving employers who hire persons with disabilities special benefits on condition that they provide posts adequate for the employees working capacity for indefinite time. Representatives from the disability movement raised their concerns regarding employers benefiting from this law without fulfilling the obligations but instead providing inadequate work, firing persons without justified reasons and paying below minimum salaries. Even if the legislation grant pupils with disabilities the right to have their needs catered for, most schools remain inaccessible and many teachers lack skills to teach and support children with different needs.

111. In 2001, the Government adopted a national strategy on achieving equal rights for persons with disabilities, based on the UN Standard Rules. Still, according to several sources the impact of this strategy has been limited. To be effective, such plans and strategies should be action-oriented, designate who is responsible for implementation and indicate timeframes and benchmarks. There need to be high level of political support and allocation of adequate resources. All relevant actors need to be during the entire process, including authorities at national and local level as well as people with disabilities and their representative organisations. Such a participatory approach will contribute to the legitimacy of the plan, create ownership and make implementation effective.
112. The disability movement has drafted a comprehensive law proposal incorporating such provisions into one law and adding new provisions as set forth in the UN Convention. The Minister of Labour and Social Policy informed the Commissioner that the General Secretariat is investigating the financial implications of this proposal.
113. The Commissioner encourages the Government to continue cooperating with persons with disabilities and the organisations regarding the comprehensive draft law. Action is also needed to address the situation in the field of education and at the labour market. The Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society suggest several measures to be taken in this area. The Commissioner encourages the Government to study the plan, consult with local authorities and the disability movement and take appropriate action.

A. The de-institutionalisation process

114. The Commissioner's team visited the Care Centre in Demir Kapija, an institution for persons with disabilities. It accommodates 315 persons with physical and intellectual disabilities, of which 45 are considered "immovable". It employs 189 employees, most nurses and auxiliaries, one doctor, four physiotherapists and six educators. One third of the employees, including three physiotherapists and three educators have temporary contracts of seven months. For the time being, it is unclear whether they will continue their work at the centre or not. The director of the centre stressed the importance of keeping the physiotherapists and educators. Even today they are too few to meet the needs of the residents.
115. Material conditions are of very low standard, even if some renovations have been undertaken recently. The old buildings are not suitable for persons with reduced mobility and the Commissioner's team were informed that persons who were considered "immovable" hardly left neither their room nor their bed. The conditions are subject to internal monitoring by the Ministry of Labour and Social Protection. Civil society is also allowed access on an ad hoc basis.
116. The Government recently adopted a strategy for de-institutionalisation. The aim is to move residents from social institutions, such as Demir Kapija Care Centre, and develop

alternative forms of assistance to children and families in the community. The Ministry of Labour and Social Protection will set standards for care and services and provide a monitoring system. Responsibility to provide and finance these services will be decentralised to local level, with financial assistance from the state in the beginning. The civil sector is foreseen as one of the main service providers. Persons with disabilities and their families should participate actively in creation of services.

117. In line with this strategy, new admissions to the Demir Kapija Care Centre are not allowed. Only under exceptional circumstances, such as death of parents, and after decision by the Ministry of Labour and Social Protection are new admissions accepted. During the last years, five persons have been admitted due to exceptional circumstances and 30 former residents have moved from the centre to foster care. Foster families are selected from municipalities that provide organised daily activities. Today, 21 such day centres are set up in the country and two more will be opened later this year.
118. The Commissioner welcomes the efforts taken to replace institutions with community based care and services. Life-long terms in institutions such as Demir Kapija have serious impacts on human rights such as the right to family life, to education, to earn a living and decide how to spend one's assets. The Commissioner therefore urges the government to speed up the process, including efforts to prepare residents to move and to develop adequate services at the local level in consultation with persons with disabilities and their organisations. Adequate safeguards are also needed to monitor conditions at group homes and in foster care. As long as people are residing at institutions they should have access to education and adequate care. Institutions should also be open to independent public scrutiny to prevent human rights violations.

B. Psychiatric hospitals

119. The Commissioner's team visited two psychiatric hospitals, Demir Hisar Psychiatric Hospital and Negorci Neupsychiatric Hospital. Demir Hisar Psychiatric Hospital accommodates about 400 in-patients, the majority with schizophrenia. About 75% of the in-patients are hospitalised for several years, some have been there over 40 years. The global trend is, however, to treat more and more patients without hospitalisation. Both the unit for persons who are sentenced to the hospital by a court and the 'chronic unit' are overcrowded and suffered from bad material conditions.
120. Negorci Neupsychiatric Hospital has a capacity of 200 patients. About half of them are considered to be chronically ill with limited possibilities of leaving the hospital. According to the director, all patients are considered to be there on a voluntary basis. Still, patients are locked in over night and the delegation was informed that if someone tried to leave, the doctor would stop the person and convince him or her of the need for treatment. The hospital is accommodated in a former military facility constructed in the 1950's and not suitable for mental health care. The material conditions are very bad with sanitary facilities in the chronic unit dilapidated, unhygienic and in urgent need for renovation.
121. As regards treatment, both hospitals provide mainly medical treatment. Other rehabilitative and therapeutic activities are underdeveloped. Another problematic area was the use of restraints on agitated patients. Even if considered positive that both hospitals have moved away from using certain physical restraints, the Commissioner is concerned about the use of medical restraints and sedatives. Given the serious effects restraints have on patients, their usage should be the subject of a clearly-defined policy and initial contacts with an agitated or violent patients should, as far as possible, be non-physical. In addition, recourse to restraints should be properly recorded and subject to independent monitoring. Currently, complaints can be forwarded to the director of the hospital but very few if any patients use this possibility.

122. The Minister of Health informed the Commissioner that a new law on the protection of patients' rights was being considered. This law will regulate the doctor-patient relationship and set out every patient's right to be involved in the decision-making regarding treatment options as well as the right to refuse treatment. In addition the law establishes a system of patients' ombudsmen. Every medical care institution will be obliged to appoint a Patient Rights Advisor employed by the Ministry of Health to monitor that rights of patients are ensured and fully respected. The Commissioner welcomes the strengthening of the legal protection of patients' rights as well as the initiative to have ombudsmen to protect these rights. To gain patients' confidence and function effectively these Patients' Rights Advisors need to be as well as perceived to be independent from the hospital. Their mandate should be designed accordingly and provide for communications in private between the Patient Rights Advisor and the patient. The Commissioner further recommends the Government to review admission procedures for in-patient care and policies for use of restraints to ensure that this is clearly regulated and complied with in practise.

6.4. Rights of Lesbian, Gay, Bisexual and Transgender Persons

123. Since same-sex consensual relations were decriminalised and the age of consent was made equal for homosexual and heterosexual sex in 1996, the atmosphere and attitude towards LGBT persons in "the former Yugoslav Republic of Macedonia" has improved. However, certain persisting discriminatory attitudes exist at all levels, and legal safeguards are insufficient.
124. Legal protections against discrimination remain particularly weak. Currently, there are limited specific legal protection provisions available for discrimination on the basis of sexual orientation but not on the basis of gender identity. The Law on Military Service was amended and took out the prohibition for homosexuals to serve. Moreover, a recent amendment to the Law on Work Relations prohibiting discrimination on the basis of sexual orientation is a welcome positive legislative change albeit with a narrow scope of application. The LGBT community also highlighted that the terminology used in the labour law did not fully correspond with the term "sexual orientation" that is also used by the ECtHR. This discrepancy is creating uncertainty regarding the scope of the protection. Finally, there is no existing law specifically against hate crimes, whereas LGBT persons are one of the most vulnerable targets of such crimes.
125. Article 9 of the Constitution guarantees citizens equality to enjoy their freedoms and rights irrespective of a number of grounds. "Sexual orientation", however, does not appear *expressis verbis* nor is there scope for its interpretation as no "other status" reference exists. This lack of the possibility to identify sexual orientation as ground for discrimination is a distinct shortcoming and results in lacking protection for LGBT persons.
126. A new comprehensive Anti-Discrimination Law is in the final stages of preparation before being considered by Parliament. The Commissioner was pleased to note during his meeting with the Minister for Labour and Social Affairs that indeed the new law shall include reference to sexual orientation as a recognised ground of discrimination. The Commissioner stresses the importance to ensure the Anti-Discrimination law is as comprehensive as possible, and inclusive to a wide spectrum of persons who may be discriminated against.
127. In general the LGBT community appears not to suffer from specific restrictions to their freedom of expression as both individuals and groups. LGBT-focussed NGO's gain regular media exposure of their activities in both print and electronic media. However, the Commissioner has been made aware of instances of apparent discriminatory attitudes towards the LGBT community by local authorities.

128. Education is the key to informing and developing a culture of tolerance and inclusiveness. Human rights education programmes should be developed and expanded for Governmental officials including police officers and judicial officials at all levels, and also for school-going students.
129. There should be a possibility of legal recognition of same sex partnership.

VII. RIGHTS OF CHILDREN

130. “The former Yugoslav Republic of Macedonia” succeeded to the Convention on the Rights of the Child in 1991, and has since made significant efforts to comply with its obligations. In 2007 a National Commission for the Rights of the Child was formed and early in 2008 the Government adopted an action plan for the period 2008 – 2015 and set up a national coordination body for the protection of children's rights.
131. The core concerns of the Commissioner in relation to children falls within the scope of education, children deprived of their liberty and violence against children primarily.

7.1. Right to Education

132. The Commissioner was encouraged to learn that during the 2005/2006 school year 95 percent of children of primary school age (ages 7-14) were attending primary school, with little noticeable difference between rural/urban populations or between male/female²⁸. This is indeed a commendable achievement and demonstrates a determination to ensure all children receive at least primary education, as codified in article 44 of the Constitution. The Minister for Education also told the Commissioner that investment was on the increase both in terms of physical reconstruction of schools and increasing salaries of teachers.
133. Retention rates between primary and secondary school cycle illustrate a problem: only 63 percent of children of secondary school age (ages 15–18) are actually attend school. The reasons may include costs of continuing with secondary schooling particularly for those living in poverty, or a generational pattern of not doing so. While in principle education is free, in reality there are many associated costs including books, uniforms, transport and stationary which may inhibit parents' ability to send their children for continued education. Further efforts are needed to increase school attendance in secondary school, particularly measures supporting children in poverty.
134. Those living in poverty invariably face increased difficulties in accessing and continuing with the cycle of education. Of those in such a situation, Roma may be identified as a minority group of greatest concern in this regard. Roma children have the lowest levels of participation in primary school with only 63 percent attending the first grade of primary school according to UNICEF's recent survey. The proposed new secondary education institution in Suto Orizari is welcomed in a region of Skopje with the highest population and concentration of Roma inhabitants in the country. It is hoped that this new school will ease the access for Roma children and thus increase attendance and retention rates.
135. Only eleven percent of children aged 36-59 months are attending preschool education and the attendance is almost ten times higher in urban than in rural areas. Attendance in early childhood education is important to prepare children for further schooling and the authorities should examine possibilities to expand the scope of pre-schooling in the context of the goal to increase longer participation of students through the education system.

²⁸ UNICEF, Multiple-Indicator Cluster Survey – Republic of Macedonia 2005-2006.

136. Recent years have seen determined efforts by the authorities to provide possibilities for ethnic minorities to be educated in their own language. This is important and must be combined with efforts to avoid segregation of ethnic Macedonian students from their ethnic Albanian peers which may lead to a dualist society further dividing the country and further diminishing inter-ethnic interactions. It is crucial for all students to have the national language as a common basis for dialogue and interaction.
137. Quality of delivered education is of primary importance in every education system. In this regard teacher training, physical conditions, class sizes and class composition all influence the quality of education. Poor physical conditions of schools and insufficient classroom space are common complaints in schools in “the former Yugoslav Republic of Macedonia”.
138. During a meeting with the director and teachers of the School “26th July” in Suto Orizari, the Commissioner’s delegation was impressed by the enthusiasm and competence of the team of teachers particularly in light of the obvious physical, financial and administrative obstacles they persistently face in this regard. The delegation was particularly impressed with serious concerns of overcrowding on the basis of lacking capacity, very bad sanitary conditions and the lack of appropriate heating during winter months.
139. A more immediately concern was the fact that toilets had been closed down for sanitary reasons by the Ministry of Health in 2007, but no extra funding was forthcoming from the Ministry of Education to implement required improvements. In this “catch 22” situation, the management was left with the choice to choose the lesser of two evils by reopening the toilets, and risk facing prosecution for doing so, in order to avoid imminently closing the entire school for reason of not having toilet facilities for students. The delegation was informed of the school management’s persistent efforts to seek support from the Ministry of Education and the municipality, and yet one year later no appropriate solution to the problem was received. Upon inspection of the facility, the delegation noted the unacceptably poor condition of the toilets and on this basis urges the authorities to address this situation appropriately as a matter of priority.

7.2. Violence against children

140. A “Special report on physical, psychological and sexual abuse in schools” prepared by the Ombudsman’s office for protection of children’s rights in 2007 showed that 34% of the 4449 students included in the research stated that physical abuse to some extent occurs in the schools.
141. While the extent of violence in the home is impossible to discuss with a high-degree of certainty, information which the Commissioner gathered has indicated that violence in the home is not uncommon with various degrees of severity.
142. According to the UN Secretary General’s study on violence against children of 2006, no violence against children is justifiable and all violence against children is preventable. The UN Convention on the Rights of the Child is unequivocal that authorities have a duty to protect children from all forms of violence in all instances.
143. The Commissioner is encouraged that the Ombudsman’s office has a designated a deputy Ombudsman with special responsibility for Children’s rights, and each sub-office has the mandate to accept complaints from children in relation to violence inflicted by state authorities. Of course, other instances of physical violence may also be reported to the police. However, the Commissioner recognises that in reality children may be unwilling or unable to access such complaints mechanisms.
144. Eliminating corporal punishment requires more than having legislative and administrative safeguards in place. Educating children about their rights and educating those in contact

with children about their obligations to protect are key to increasing protection against violence. The Commissioner would stress the need to look seriously into the matter of violence against children in terms of prevention and protection and also promote human rights education.

145. To address a wider issue of attitude towards the rights of children not to be subjected to such violence requires both a legal base and a firm message from both political and institutional leadership. Indeed, recognising the crucial role of such leadership, the Commissioner further outlined his concerns on this issue in a letter to Prime Minister Gruevski, in May 2007 in which he proposed a legal ban on all forms of corporal punishment of children.

VIII. TRAFFICKING IN HUMAN BEINGS

146. “The former Yugoslav Republic of Macedonia” is a transit and a destination country for trafficking in human beings, with victims originating mostly from Albania, Serbia and UNMIK/Kosovo, most of which are destined for Greece²⁹. The Council of Europe Convention on Action against Trafficking has been signed with ratification due until the end of the year. The country has also signed the UN Convention against Transnational Organised Crime (UNTOC) and the “Palermo” Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2005.
147. The multiple measures adopted by the country on the legislative, institutional, capacity- and awareness-building as well as on the operational level to tackle trafficking in human beings more effectively has produced positive results over the past years. Both Government and NGO sources reported a downward trend in cross-boarder trafficking. There is conflicting information on internal trafficking with the government reporting downward trends whereas both specialised NGOs and international actors point to an increase of cases. An analysis conducted by the Ministry of Labour found that young, uneducated women and children from socially vulnerable backgrounds and originating from the eastern rural areas of the country were at the highest risk of becoming victims of internal trafficking. The latter point underlines the importance to tackle the socio-economic root causes of trafficking more pro-actively and effectively. The Ministry of Labour and Social Policy has implemented an economic-educational program with vulnerable groups and potential trafficking victims registered at the social work centres.
148. The country has introduced some of the strongest anti-trafficking legislation in Europe with organisers of trafficking facing minimum prison terms of 8 years if convicted. Trafficking for sexual exploitation, forced labour or servitude, slavery, or a similar relationship is a criminal offence with minimum punishment of at least four years imprisonment³⁰. The mandatory minimum sentence for trafficking in children or for knowingly using trafficked children and juveniles for sexual exploitation is eight years.
149. In 2001, the country established the “National Commission for the Fight Against Human Trafficking and Illegal Migration” (hereinafter referred to as “National Commission”) tasked to coordinate all activities and actions carried out by the authorities in tackling trafficking in human beings. It is further tasked with monitoring developments and analysis of data and trends. The Commission is an inter-ministerial coordinating body headed by the National Coordinator, the function of which is performed by the Ministry of Interior’s state secretary.

²⁹ According to international and national sources, some 90% of THB victims were destined for Greece

³⁰ Art. 418 Criminal Code

The National Commission gathers representatives from relevant branch ministries (interior, justice, labour and social policy, education, and foreign affairs). These positive institutional and organisational steps are countered by the shortcoming that only some ministries had actually designated representatives, and that the commission had not met for over six months. The National Programme for the Fight against Trafficking in Human Beings was adopted in 2003, containing legislative action, victim support and training for officials. In 2006, the Government adopted its National Strategy for Fight against Trafficking in Human Beings and Illegal Migration, supplemented with an action plan for its implementation. The two documents foresee increased training activities, programs for awareness-raising and prevention activities.

150. All above mentioned concerted efforts contributed to tackling trafficking more effectively and efficiently in recent years, resulting in significant progress and a decreasing cross-boarder trafficking trend. The Minister of Interior stated that the fight against trafficking was among the government's top priorities pointing to the good results evidenced in statistics. Over the years, investigations, prosecutions and sentencing of perpetrators have been steadily increased. According to information provided by the National Commission, in 2007 77 prosecutions resulted in 56 convictions, some of which included law enforcement officials (border guards and police officers). Some cases concerned higher-profile organizers of trafficking networks. In theory, confiscation of criminal proceeds (property etc.) is mandatory, but in many instances such decisions are not executed, sometimes for execution agents' fear of retribution from the criminal networks. The adoption of a separate Law on Witness Protection and the establishment of a Witness Protection Unit within the Ministry of Interior are other areas where significant progress is expected.
151. Victim identification and protection remain areas of concern. Since there was no central database for trafficking victim information, NGOs and government officials often disagreed on who was a trafficking victim, resulting in disputed or generally unreliable statistical data. Government statistics did not identify the age of the victims, but local NGOs estimated that 20 percent of the victims were minors. Identified victims of trafficking are entitled to housing and health care. The National Referral Mechanism and the police's Standard Operational Procedures adopted in January 2008 set out principles for dealing with trafficking victims and establish a multi-disciplinary approach for conducting joint operations combining police, social workers and NGO representatives e.g. when raiding trafficking networks. But according to leading local NGOs, this interdisciplinary approach is not followed through in practice, or does not happen systematically but on ad hoc basis or upon own intervention by the NGOs.
152. Based on memoranda of understanding with the Ministry of Interior, two NGOs are providing protection measures and are running two shelters for trafficking victims. Trafficking victims that are foreign nationals are placed in a reception centre for foreign citizens. This practice should be reviewed as trafficking victims are in need of specialised and targeted assistance to recover and should not be mixed with other individuals.
153. The NGO La Strada conducts a re-socialisation programme and works on prevention issues. In cooperation with the International Office for Migration IOM, the Ministry of Labour's re-socialisation and integration program for child victims of trafficking is being implemented with the help of social work centres. Trafficking in human beings has been introduced in school curricula and the International Office for Migration runs a project targeting potential victims and helping them to start small businesses.
154. According to various interlocutors, there is still a lack of proper implementation of laws, strategies and action plans; lacking cooperation between police, prosecutors and courts, but also between police and NGOs, which are still only included on an ad hoc basis and regarded as "junior partners" by the police.

IX. REFUGEES AND INTERNALLY DISPLACED PERSONS

9.1 Refugees from Kosovo

155. “The former Yugoslav Republic of Macedonia” acceded to the 1951 Refugee Convention and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless persons and the International Covenant on Civil and Political Rights (ICCPR) on 18 January 1994 by succession. The country has made no progress in the direction of acceding to the 1961 UN Convention on the Reduction of Statelessness. The Commissioner commends the amendment of certain legal provisions including the 2006 Law on Aliens and its 2007 by-law which built upon the 2003 Law on Asylum and Temporary Protection which provide safeguards against *refoulement*.
156. According to the UNHCR, some 1800 Kosovo refugees remained in the country as of 1 January 2008. The majority are ethnic Roma and other minorities who were forcibly displaced from Kosovo during the 1999 crises. Until now, only 28 have been recognised as refugees; 1115 persons are under humanitarian protection and 454 are persons whose cases were rejected. The vast majority of these people are living in the Skopje district of Suto Orizari. The Commissioner is encouraged by the Macedonian authorities’ vigilance in upholding their publicly proclaimed policy that none of the 454 rejected cases would be forcibly returned until Kosovo’s final status was determined. The Commissioner urges the authorities to remain firm in upholding this policy of no forced returns irrespective of Kosovo’s status and indeed given the passage of time among other factors, he would urge the authorities to reassess the fundamental “returnability” of these persons as they are now long-term residents.
157. The Commissioner, having met with a number of these persons, was informed of their poor living conditions, lacking possibilities for education, training and employment, and dubious position regarding identity documents. The status of these persons, many of whom have lived in the country for close to 10 years, remains unregulated. As their residence in the country is still seen as an interim measure, they hold documents commonly referred to as a “yellow paper”, which carry no legal weight. The Commissioner reiterates the necessity for persons to hold valid legal identity and status documents, and stresses the need to reassess the legal status of these persons urgently, appropriately and with due regard for their particular circumstance and already long-term residency in the country.
158. Considerable progress has been otherwise made to reduce the possibility of *de facto* statelessness. According to UNHCR, 4’754 individuals had been naturalised by the time of the visit. Legislation in this area is largely compatible with the 1961 Convention on the Reduction of Statelessness, but it appears that the determination procedure is not totally clear. The Commissioner encourages the authorities to take a proactive approach to this issue and move in line with international standards by acceding to the 1961 Convention on the Reduction of Statelessness.
159. Although a new law Changing and Amending the 2003 Law on Asylum and Temporary Protection will apply as of July 2008, the Commissioner was made aware of legislative and procedural deficiencies in the Asylum system at all levels from reception to application to decision, which should be reconsidered and addressed as a matter of priority in conjunction with UNHCR advise. Here too, the Commissioner recognises a problem with lacking appropriate identity documents which would identify persons as asylum seekers, or persons granted asylum.

9.2 Internally displaced persons

160. The 2001 conflict displaced around 74,000 persons internally in “the former Yugoslav Republic of Macedonia”. According to statistics from the Ministry of Labour and Social Protection only 799 persons have not been able to return. The majority of them are ethnic Macedonian or Serb and do not want to return to the Albanian dominated municipalities in the Lipkovo-Aracinovo area. The Commissioner met with a group of them at the accommodation centre Cuba Hotel in Kumanovo. Many voiced their fear for returning and added that the fear had even increased recently due to the developments in Kosovo.
161. The government provide accommodation and monthly payment for basic needs corresponding to pensions and basic social welfare benefits. The material conditions at Hotel Cuba were of very low standard. The government has offered to give allowances for accommodation elsewhere and several families had accepted that. Those remaining claimed that the money offered by the government was not enough for single households neither for elderly and ill persons in need of care and assistance. They also reported on problems in the local community where they are accommodated. Many felt unwanted and said they had experienced discriminatory practices.
162. Their main claim towards the government was fair compensation for the damage caused to their property during the conflict. In 2003 they went to court on this issue represented by a lawyer but proceedings are still on-going. Parts of their claim is still in the first instance whereas other parts are pending before the Supreme Court and the European Court of Human Rights.
163. The Commissioner welcomes the efforts taken by the Government leading to solutions for the vast majority of the internally displaced persons in the country. He is however concerned about the persons that still remain in temporary accommodations over six years after the conflict. Noting that the legal procedures take time, he encourages the Government to cooperate with the persons concerned to find practical solutions to the problems identified above. Such measures should respect basic principles regarding the individual's choice to return or settle where they have been placed as a result of the conflict. Future legislation against non-discrimination also needs to protect this group against discriminatory practices.

X. SUMMARY OF RECOMMENDATIONS

General recommendations

1. Set up a mechanism, preferably an inter-ministerial task force, for the review and implementation of recommendations made in this report.
2. Consider drafting a comprehensive national action plan for human rights incorporating the existing strategies and action plans and ensuring partnership with civil society, and to be coupled with the establishment of a national coordination mechanism for the overall coordination and implementation of human rights issues.

Status of international human rights standards

3. Continue dialogue for ratification of the revised European Social Charter and its collective complaints procedure.
4. Ratify and implement the Convention against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
5. Ratify the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and set up a national mechanism to prevent ill-treatment in places where persons are deprived of their liberty.

National System for Human Rights protection

6. Review the role and mandate of the Ombudsman, particularly in the area of non-discrimination and police misconduct, and take necessary action to guarantee that the institution has sufficient resources to fulfil its mission adequately.
7. Fully implement the "Strategy for Cooperation of the Government with the Civil Sector (2007-2011)", preferably through an institutionalised consultation framework for exchange between government and civil society.

Rule of Law

8. Fully implement the judicial reform strategy.
9. Increase capacity-building for judges and other court staff, including further capacity-development on case management.
10. Further invest in refurbishment of existing and in construction of new court buildings as well as equipment to consolidate the improvements provided by the law reform process.
11. Continue investing efforts aiming to accelerate domestic judicial and administrative proceedings.
12. Consider the possibility of reopening the Rastanski-Lozja-case involving allegations of very serious crimes and human rights violations.
13. Work towards the adoption of a comprehensive law on legal aid.
14. Ensure that legal representatives have adequate competence and experience for the work they are assigned to.

15. Take necessary action to ensure that persons deprived of their liberty have access to *in camera* communication with their lawyer.
16. Ensure effective and efficient implementation of ECtHR decisions.
17. Ensure effective and efficient execution of domestic court.
18. Continue to combat corruption in the court system and the public administration, while ensuring that these anti-corruption procedures are free from political or other undue influence.
19. Ensure the observance of the Rule of Law and to ensure fair trials in public proceedings in the cases returned from the ICTY.

Law enforcement

20. Fully implement the action plan developed to put the Code of Police Ethics into practise. This includes adequate training with a view to fully do away with mentalities considering use of force as an efficient way to secure evidence and confessions.
21. Continue efforts towards the creation of a representative police force. Particular attention should be given to the need to include women and other minorities than the Albanian minority.
22. Apply particular caution in the selection of "Alpha" officers and provide these officers with additional and specialised training including on non-violent dispute resolution techniques.
23. Ensure a prompt, independent and transparent investigation of the police operation in November 2007 in Brodec.
24. Take effective measures to combat prejudice and discrimination against Roma by the police. The ECRI General Policy Guidelines No. 11 on combating racism and racial discrimination within policing provide good guidance.
25. Reform the system of investigating police misconduct taking into consideration the advice and proposals by the working group on external oversight of the law enforcement bodies.
26. Allocate sufficient funds to improve the material conditions and human resources shortages in prisons.
27. Ensure that all prisoners have at least four square meters of space, decent material conditions, adequate health care and access to a lawyer.
28. Accommodate appropriate outdoor facilities to allow everybody, in particular remand prisoners, at least one hour of outdoor exercise.
29. Take necessary action to implement the reintegration programs as established in the law on the execution of sanctions.
30. Take all necessary action to ensure that the rights of juvenile detainees and prisoners are fully respected and applied without further delay. This includes the adjustment of existing legislation to ensure that juveniles are always separated from unrelated adults.
31. Ensure, in particular, that the under-age inmates in the Skopje prison are moved from the current premises to suitable facilities and that they are provided with adequate education, vocational training and recreation programmes.

32. Ensure that disciplinary regimes are adapted to the juveniles' age and focused on establishing responsibility, understanding the consequences of their acts and preventing recidivism, but not aiming to punish.
33. Ensure that solitary confinement is used in exceptional cases only. Ensure human contacts, reading possibilities and at least one hour of out-door exercise per day during such confinement in accordance with CPT standards on juveniles deprived of their liberty.
34. Consider empowering the Ombudsman to carry out effective monitoring of the penitentiary facilities in line with the OP-CAT standards.
35. Grant access to relevant civil society organisations and NGOs to all places of detention, in accordance with the UN Declaration on Human Rights Defenders.
36. Conduct a full and independent investigation into the treatment of Mr. El-Masri during his stay in "the former Yugoslav Republic of Macedonia", while improving efficiency and effectiveness in the cooperation with the Munich Prosecutors Office on this case.
37. Review domestic practices and procedures in combating terrorism, and to establish appropriate safeguards and scrutiny procedures to prevent and investigate such allegations in the future.

Freedom of Expression/access to information/media

38. Ensure an effective self-regulatory system for all media outlets, including considering the possibility to develop a fully independent media regulatory body.

National minorities

39. Consider the ratification of the European Charter for Regional or Minority Languages.
40. Proceed with the full implementation of the Ohrid Framework Agreement.

Roma

41. Step up efforts to fully implement the national Roma strategy and related action plans as well as the objectives set out in the Roma decade plan.
42. Invest more efforts to secure full and equal participation of Roma in politics and society.
43. Take comprehensive measures to increase the attendance of Roma children in school and to prevent their drop-out.
44. Ensure the inclusion of Roma children in pre-school education and of Roma girls in education at all levels.
45. Plan and implement consistent and long-term strategies for improving the housing and employment situation of Roma.

Efforts to combat discrimination

46. Adopt a comprehensive law protecting against all forms of discrimination, including multiple discrimination.

47. Include a legal obligation for employers, teachers and other duty-bearers to take reasonable action to resolve the problems persons with disabilities face due to an inaccessible environment.
48. Strengthen existing human rights structures to create an effective, accessible and independent complaints mechanism to ensure implementation of the protection against discrimination.

Gender discrimination and violence against women

49. Implement the Action Plan for Gender Equality in consultation with civil society, including minority and rural women's representatives.
50. Take additional efforts to ensure the full implementation of the Law on Equal Opportunities between Men and Women on the local level.
51. Review existing legislation and practices to combat violence against women and address possible legal gaps and procedural obstacles to effective investigation, prosecution and punishment of perpetrators of violence.
52. Ensure adequate protection of and support to all victims of violence, including minority women, women from rural areas and women with disabilities who are often in an especially vulnerable situation.

Inclusion of Persons with Disabilities

53. Ratify and implement the UN Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention.
54. Make use of the Council of Europe Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society as an implementation tool.
55. Continue improving legislation to protect the rights of persons with disabilities in consultation with those affected and their organisations.
56. Speed up the process of replacing residential institutions for persons with disabilities with community based care and services, in consultation with persons with disabilities and their organisations.
57. Establish adequate safeguards to monitor conditions at group homes and in foster care.
58. Strengthen the legal protection of patients' rights by adoption and implementation of the envisaged law on rights of patients. To ensure that the patients' ombudsmen established by the law are independent from the hospital and mandated to communicate in private with patients.
59. Review admission procedures for in-patient care and policies for use of restraints to ensure that such procedures are clearly regulated in line with international standards and complied with in practice.

Rights of Lesbian, Gay, Bisexual and Transgender Persons

60. Harmonise the legal terminology regarding non-discrimination against LGBT persons in line with terminology used by the ECtHR.
61. Draft hate-crime legislation in consultation with civil society, including the LGBT community.

- 62. Ensure legal recognition of same sex partnerships.
- 63. Develop human rights education and awareness-raising programmes on LGBT rights for governmental officials including police officers and judicial officials at all levels as well as for the general public and students.

Rights of children

- 64. Tackle the high drop-out rate between primary and secondary school, including with measures to reduce costs for transport, textbooks, uniforms and other obstacles preventing children to continue secondary education.
- 65. Examine possibilities to expand the scope of pre-school education to ensure that children are better prepared for school, especially in rural areas, and to increase school attendance.
- 66. Ensure regular opportunities for interaction between students from different ethnic groups to foster mutual respect and understanding between ethnic and cultural groups.
- 67. Adopt a legal ban on all forms of corporal punishment.
- 68. To consider other measures to prevent such violence guided by the principles to protect and support the victims and to punish the perpetrators.

Trafficking in Human Beings

- 69. Continue to vigorously implement the respective anti-trafficking legislation
- 70. Set aside adequate resources for NGOs providing services to THB victims, including for the funding of shelters for victims of trafficking.
- 71. Strengthen efforts to tackle the socio-economic root causes conducive for THB including the women's position in society.
- 72. Allocate necessary state funds for the National Referral Mechanism Coordination Office with a view to make it self-sustainable and institutionalized.
- 73. Ensure that trafficking victims are accommodated in adequate shelters; stop the practice of accommodating trafficking victims in the country's transit-centre.
- 74. Ensure trafficking victims receive adequate recompensation.

IDPS/Refugees

- 75. Increase efforts to find practical solutions to the problematic life-situation of the remaining IDPs from the 2001 conflict while respecting the individual's freedom of choice to return or settle elsewhere. Such measures need to address problems relating to housing, pensions and social benefits, the on-going court proceedings as well as assistance for local integration.
- 76. Find durable solutions for the refugees from Kosovo wishing to integrate in the country.
- 77. Avoid forceful return of refugees from Kosovo.