

## Conclusions

### Conclusions regarding misconduct and ill-treatment by the police in the Republic of Macedonia:

- The reports from the Ombudsman Institution and international organizations active in the field of human rights protection indicate the existence of allegations of police misconduct and ill-treatment in the Republic of Macedonia, expressing their concern regarding illegal use of force toward suspected and indicted as well mistreat of the prisoners;
- The majority of the citizens who approach NGOs working on HRSP, are not familiar with the complaint procedures and mechanisms at their disposal, in situations when the police violates their human rights and basic freedoms;
- State authorities at the highest political level and head officials within Mol does not have clear and strong attitude for combating torture or other forms of improper conduct by the police;
- In 2006 and 2007 ECHR has delivered one judgment finding violation of article 3 by the Macedonian authorities as well as three admissibility decisions in which the Court considers that the complaints under Articles 3 and 13 raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. This present our country in very negative illustration regarding the respect of the basic and absolute human rights;

### Conclusions regarding the alleged victims of misconduct and ill-treatment by the police :

- The total number of reported alleged victims of police misconduct or ill-treatment within HRSP is **36**, which is decreasing for 20% in comparison with the same period in 2006;
- From November 1, 2006, up to June 30, 2007, NGOs that implement HRSP have registered a total of **32** cases of exceeded authority by the police, which is decreasing for 20% in comparison with the same period in 2006;
- A huge majority of the recorded victims of police misconduct or ill-treatment are men (88,5%) and adults (97,1%);
- The ethnic structure of the recorded alleged victims is as follows: 28 Macedonians and Albanians;
- Registered cases of police misconduct or ill-treatment are closed following the utilization of the available legal mechanisms for protection, if the violation has been confirmed and the victim believes that in her/his particular case justice has been served; or if the competent bodies

established that there is no case of police misconduct or ill-treatment, and the alleged victims were not interested in further pursuit of the procedure;

- A considerable number of citizens, alleged victims of police misconduct or ill-treatment, approach the HRSP legal advisors, seeking legal aid and advice, but, they are still afraid to initiate a procedure (especially a criminal one) against Mol's AOPs.

### **Conclusions regarding the cooperation between HRSP and state bodies:**

- Despite the fact that HRSP NGOs are experienced in organizing local coordination meetings and the same provide for direct and effective monitoring, i.e. building of a common strategy by the competent institutions in relation to registered cases of police misconduct, the meetings are rarely organized or not organized at all;
- Citizens are not interested in the cases of police misconduct and ill-treatment to be referred to MINOP and the Standing Inquiry Committee for Protection of Human Rights and Fundamental Freedoms;
- On 16<sup>th</sup> of February 2007, by an initiative of the OSCE SMMS the working group for creation of the "External Oversight of the law Enforcement bodies" was established.

### **Conclusions regarding the types of involved AOPs and rights that have been allegedly violated:**

- The majority of the cases relate to involvement of uniformed policemen in the registered cases of exceeded authority by the police;
- The majority of the citizens claimed to be victims of a violation of the provisions of the Criminal Code (art. 142, art. 143, art. 145, art. 146) violation of the Law on Criminal Procedure (the right to be informed for the reasons for the detention, deprivation of liberty or arrest, the right to be brought before a judge within 24 hours, right to have an attorney within the procedure etc.); provisions of the Code of police ethics and art. 2, art. 3, art. 5 and art. 13 of the ECHR;
- As it was previously in past two reports, so the present one makes a note of hard and serious violations of Human Rights in all the cases where Special Police Unit Alfa was involved. All the cases of Human rights violations were conducted through infliction of heavily body injuries, and high amount of cruelty by infliction of injuries was also recorded;
- The members of the special police units are placing themselves beyond the relevant legal regulations;

- The majority of the citizens complained because of bodily injuries inflicted and ill-treatment (49%), as well as because of rude behavior and misconduct by Mol members (25%);
- The tendency that can be followed throughout the many spectacular arrest that have taken place and official statements made by Heads of Mol that have followed is very disturbing. During this statements allegations were made that the police posses undisputable evidences against the arrested persons. That is the strait forwarded violations (violation *in flagranti*) of the principle of presumption of innocence.

### **Conclusions regarding the operation of SICPS:**

- Police systems in democratic political systems, are trying to strike the right balance of a strong, efficient police, capable of preventing and suppressing crime, terrorism and other challenges that modern society is faced with, without interfering with the basic human rights and freedoms;
- In 2007 there is a visible decreasing of the period required for processing of filed complaints, the period within which SICPS responds to complaints filed for police misconduct and ill-treatment, which correspond with the legally prescribed deadlines;
- In the new Rulebook an obligation will be established for the all employs and police officers to cooperate on all the circumstances with SICPS. Every refusal for the cooperation will be treated like infringement of the professional discipline; all the Head officers of working units will be charged with an obligation to undertake all the activities necessary for the sanctioning of all the occurrences of the human rights violations conducted by AOPs of Mol; an obligation will be established for the Heads of the working units to act upon the decisions and proposals made by SICPS;
- What is characteristic for the 2007., compared to the previous period ( 2004-2006) is that the alleged victim of police abuse have used the possibility to informed themselves about the course of the procedure, and about the cases when the 30 days of deadline was postponed in accordance with article 17., subsection 4 of SICPS Rulebook;
- On the subject of tendency of Mol to give weird, contradictory and confusing statements explaining the injuries causes to the victims by the Mol. a reference should be made to the duty of Mol to give a reasonable explanation of the way the citizens were injured. When a person was brought in the police station in good health, but after his release it was established that he had gained injuries during his detention, or that the injuries were gained during his contact with AOPs of Mol, the obligation rests upon the official to come up with a reasonable explanation;
- As a significant problem the issue of procedure stalling out of unwarrantable reasons must be mentioned. The fact that the deadlines are

often missed leads, as a final consequence, to the statute of legal limitation and to expiration of the possibility to punish the perpetrators;

- There are lots of recorded cases of police abuse where, although lots of evidence were presented, including the medical files of the victims of police misconduct, that the Ministry for the internal affairs had filed a criminal charge against the alleged victim of the police mistreatment, with a accusation that he has committed attack on the authorized official person who has been charged for unnecessary use of force. All of this with a goal to form an impression that AOP is the real victim;
- SICPS is hierarchically submitted to Mol. As a consequence of that fact SICPS is lacking the minimal dose of independence and impartiality required. According to the ruling of the ECHR, SICPS is hierarchically linked to the alleged perpetrators and therefore lacks the independence needed;
- An important amount of the complaints are being described to lack the evidence to declare a complaint, that police official has behaved in illegal or unprofessional manner, founded or even inadmissible. Impression springing out of it is that the SICPS is lacking transparency and analyticity;
- The new Rulebook of SICPS, same as the old one, does not contain provisions that are providing citizens-alleged victims of the police mistreatment with a legal advice of a possibility of a remedy to the higher instance. The same is valid for the legal advice for the remedy existing before other authorized organs;
- At this point a need arise to give further attention to the provisions of article 16, which are regulating a conduct with anonym complaints submitted by citizens. The same provision leaves a lot of space for arbitrariness in the hands of the detached inspector for SICPS. He alone bears the jurisdiction to decide whether to start the investigation on the base of the complaint or not. Anonym complaints are in most of the cases the result of the fear that the citizens are experiencing in respect to possible conflict or retribution from AOPs of Mol. Still they can contain information of serious breaches of Human Rights by AOPs;
- The problem that we are facing in 2007. is that the alleged victim of police abuse, as well as HRSP legal officers are not being informed about the measures that have been undertaken against AOPs of Mol, that have been found to have violated citizens rights. The above mentioned fact is again pointing to lack of transparency in the proceedings of SICPS;
- The only sanction imposed on Mol authorized official persons in the recorded cases of police misconduct or ill treatment, are disciplinary measures. The HRSP is not informed whether monetary fine has been pronounced in the cases;
- The imposing of symbolic and inadequate sanctions in cases of police misconduct and ill treatment generates a climate of impunity of Mol AOPs, thus placing them beyond the applicable legal regulations. According to the

European Court of Human Rights, the establishment of a practice of tolerance for the violations by members of the police, might lead to a systematic violation of the basic human rights and freedoms;

- The SICPS's representatives are of the same opinion with the HRSP representatives that there is a huge discrepancy between the degree and types of violations of citizens' rights confirmed by SICPS on one hand, and the sanctions imposed on Mol AOPs on the other.

### **Conclusions regarding the operation of the Ombudsman Institution:**

- During 2006, the Ombudsman in Skopje, as well as the regional offices, do not inform HRSP NGOs, whether a procedure has been initiated or not, and what is the outcome, although HRSP NGOs are accredited by their clients, in relation to the filed complaints;
- In the cases that where the members of the Special Forces ALFA and EBR were involved, Ombudsman was not allowed making an interview with them. Such a conduct stands in contradiction with the empowerments invested in Public Attorney by the provisions of the Law on Ombudsman office;
- Ombudsman office has not used all the legal means that he had on his disposal in the cases where police exceeded its authority. In most of the cases, he has narrowed down his involvement on righting a letter to SICPS and waiting for reply.

### **Conclusions regarding the work of the Public Prosecutor's Offices:**

- One of the major problems that concern the work of the Office of Public Prosecutor is the insufficient data about charges submitted and unaffordable medical files- medical certificate. Namely, the Office of Public Prosecutor does not have separate budget from which it can finance medical checks of the victims in order to provide valid medical certificates. If the medical certificates are not provided by the victims themselves, and other evidences are not available or do not exist, Office of Public Prosecutor will not most likely, open the case;
- In those cases where body injuries are not being caused, which is the situation in 50% of all cases of police mistreatment that SICPS is dealing with, and where witnesses testimonies does not exist, usually the court will not accept the jurisdiction, concerning the fact that apart from statement of the injured party no other evidence exist.
- The procedure in relation to criminal charges filed with the BPPO is lengthy and not efficient enough for the alleged victims of police misconduct and ill-

treatment. Out of a total of 37 criminal charges, only a single case resulted in an indictment raised by the BPPO;

- In cases of police abuse, Macedonian society faces with disturbing and complex problem of solidarity between Public prosecutor, the judiciary and the police.

#### **Conclusions regarding judicial proceedings:**

- One portion of the alleged victims of police misconduct or ill-treatment are not interested in determination of the criminal responsibility of AOPs, responsible for the violation, but they directly initiate a civil procedure for compensation. By doing this, they allow for certain Mol AOPs who violated human rights to remain unpunished. Also, they would like to avoid criminal procedure which is ineffective and time consuming

# Recommendations

## Recommendations for the Government of the Republic of Macedonia:

- State authorities at the highest political level, have to send a clear message that there will not be any tolerance for torture or other forms of improper conduct by the police;
- The Government of the Republic of Macedonia, with support by the working group for creation of the “External Oversight of the law Enforcement bodies” should establish an independent, external body for the evaluation of complaints, related to alleged cases of exceeded authority by the police;

## Recommendations for the Ministry of Internal Affairs:

- Mol should continuously work and make attempts to raise the general awareness with respect to human rights and the provisions of the “Code of police ethics”, applicable to AOPs from the Ministry;
- Mol and all other state bodies and institutions, should work on the continuous education and training of AOPs working with the Ministry, in relation to APOs rights and obligations, and human rights and freedoms in citizens’ contacts with the police;
- Proportionality should be respected in all the circumstances when police duties are being carried out;
- The belief should be overcome that the use of force is the most appropriate mean to get a confession for the commission of a criminal act;
- A need is being imposed to further elaborate on the obligations contained in the provisions of article 16, which are regulating a conduct with anonym complaints submitted by citizens. The same provision leaves a lot of space for arbitrariness in the hands of the detached inspector for SICPS. He alone bares the jurisdiction to decide weather to start the investigation on the base of the complaint or not. Anonym complaints are in most of the cases the result of the fear that the citizens are experiencing in respect to possible conflict or retribution from AOPs of Mol. Still they can contain information of serious breaches of Human Rights by AOPs;
- There is a need of clarification of the relations between SICPS from one side and the Ombudsman office and NGOs dealing with police abuse cases, in order the cooperation to be strengthened and improved;
- Proper modalities should be found for the inclusion of independent members, citizens’ representatives in the system of disciplinary proceedings with the Mol, in accordance with CPT’s recommendations;

- SICPS should conduct a timely, unbiased and effective investigation, whenever there is reasonable grounds for suspicion of an act of police misconduct or ill treatment;
- SICPS to conduct effective and thorough investigation instead of delivering respond stating that there are not enough evidence of the committed act of police mistreatment;
- Mol should always provide reasonable explanation about any injuries that citizens might have. If a person has acquired any injuries during a contact with Mol AOPs (state agents), the burden of proof about the reasons for that injury, should lie with the authorities;
- The Sector should be provided with the necessary personnel in Kumanovo, i.e. to appoint detached inspector, so that it can respond to all filed complaints within the deadlines prescribed in the Rules of Procedure of the Sector;
- There should be an adequate sanction, whenever it is determined that an Mol AOP did not act in accordance with Mol rules and regulations, i.e. in recorded and confirmed cases of police misconduct and ill treatment, in order to prevent and reduce the number of such cases of police misconduct and ill treatment;
- The Sector to inform the victims of police misconduct, about the measures that have been undertaken against police AOPs, in the registered cases of police misconduct and ill treatment, i.e. to make the work of the SICPS transparent and public;
- Article 17 of the Sector's Rulebook should be changed in order to reduce legally prescribed deadlines within SICPS is obliged to complete the investigation in the cases of police misconduct.;
- The initiative should be raised for changes of the Law of Internal affairs and Collective Agreement of the Mol with scope additional disciplinary measures to be established, besides the existing ones.

#### **Recommendations for the Ombudsman Office:**

- Proactive and more aggressive approach is required in confirmed cases of police ill treatment, by the representatives of the Ombudsman office, according to their rights prescribed by the Law;
- Extensive use of the media as a means for pressure in the confirmed cases of police abuse and publishing the case in the press and the media, at the expense of the institution that is responsible for the violation (in this case Mol);

- Widespread use of the available legal mechanisms in the cases of police misconduct, by the Ombudsman office;
- Reestablishment of the cooperation between the Ombudsman and HRSP NGOs, i.e. informing them whether a procedure has been initiated or not in relation to the filed complaint, and what is the outcome, in order to protect and promote human rights and fundamental freedoms in the cases of police misconduct or ill-treatment.

#### **Recommendations for the judiciary:**

- The provisions from the LCP should be fully respected, regarding the timely completion of the investigation in a period of 90 days, in order for an indictment to be raised against the alleged offenders;
- BPPO and the investigative judges should use all possible legal means at their disposal in these cases of police misconduct or ill-treatment, instead of just sending a request to Mol for additional information;
- The competent institutions have to be alarmed in those cases where the existence of police misconduct or ill-treatment has been confirmed in a civil procedure before the court, or if the court received information about an out of court settlement, above all the Public Prosecutor's Office and the body in charge of implementation of the disciplinary proceedings within the police;
- The provisions of article 144, subsection 3 of Law on Civil Procedure. According to provision just mentioned Public Prosecutor can ask the opinions of experts from respective areas of specialty that are needed to make an assessment on vindication of criminal charge.

#### **Recommendations regarding the future activities of HRSP:**

- Modification of local coordination meetings, i.e. having of a separate meeting with the representatives from Mol and the Ombudsman Office. That is better solution then not having meetings at all;
- Citizens should be educated regarding the mandate of the Standing Inquiry Committee for protection of human rights and possible ways in which they can exercise their rights through the Committee;
- Additional information for the citizens regarding their rights during contacts with the members of the police, as well as their encouragement to exercise their rights by initiating disciplinary and criminal proceedings against Mol AOPs;
- Finding proper modalities for inclusion of the Roma population, alleged victims of police misconduct or ill-treatment, in order to report such incidents, thus exercising their rights.