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**Response of the Government of
"the former Yugoslav Republic of Macedonia"
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to "the former Yugoslav Republic
of Macedonia"**

from 15 to 19 July 2002

The Government of "the former Yugoslav Republic of Macedonia" has requested the publication of this response. The Government's report is set out in document CPT/Inf (2003) 5, which was published on 16 January 2003.

Strasbourg, 16 April 2003

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Response by the Government of the Republic of Macedonia on the Report on the visit to the Republic of Macedonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (15-19 July 2002)

The Government of the Republic of Macedonia remains fully committed to fulfilling its obligation arising from the Convention for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment and to complying with the recommendations contained in the CPT reports, including the one to which this Response refers to.

In response to **the CPT recommendation that a formal statement at the highest political level be delivered to law enforcement officials**, the Government of the Republic of Macedonia, on its session held on 10 February 2003, reviewed and adopted the Information on the CPT Report on the July 2002 visit and the Preliminary Observations on the November 2002 visit and made the following conclusions:

“1. The Government of the Republic of Macedonia is firmly committed to overcome the problems identified in the CPT reports and to act on their recommendations, what is in full compliance with its lasting commitment to the functioning of the rule of law in the Republic of Macedonia.

2. The Government of the Republic of Macedonia underscores that ill-treatment of detained persons by law enforcement officers is an affront to the values which constitute the foundations of a democratic state, respect for human rights and the rule of law, and that such acts shall not be tolerated, as well as that the perpetrators shall be severely sanctioned, as prescribed by law.

3. The Ministry of Internal Affairs is ordered to investigate all cases of ill-treatment or inappropriate conducts by officers of the Ministry of Internal Affairs identified in the CPT reports and to act accordingly. In this context, the need for further intensive cooperation with the Committee of the Ministry of Internal Affairs, in particular of the Department for Security and Counter-Intelligence for whose operations the CPT has had a large number of objections.”

The Government also tasked the concerned ministries to act upon the recommendations contained in the July 2002 Report and the Ministry of Foreign Affairs to keep the Government informed about the development of cooperation with the CPT.

COMMENTS BY THE MINISTRY OF THE INTERIOR

Presently the Interior Ministry focuses its activities on the prevention and detection of all forms of criminal activity, with a special accent on the development and strengthening of the legality, professionalism and acting within the powers the Ministry has.

The Interior Ministry members are instructed to carry out their actions and tasks in accordance with the rights, duties and powers as provided for by the law and other regulations, and in their work to protect and guard the life and property of citizens, to respect freedoms and rights of man, and to use only means and methods as provided for by the law.

Due to the fact that in the enforcement of the measures and activities set out in the law, there have been cases of overstepping of police powers, that was also concluded by the CPT delegation, we would like to hereby state that the Interior Ministry intensifies the activities by instructing its officers on proper expert and professional execution of the working tasks. Appropriate measures will be undertaken in all cases of established overstepping.

Having in mind such a commitment and the obligations stemming from the ratification of the European Convention on Prevention of Torture, the Interior Ministry respects the recommendations of the CPT given in the report and makes serious efforts for their implementation.

In this regard, we would like to offer the following comments with regard to the concrete comments and recommendations in the CPT report:

- With regard to **the CPT comment that all relevant authorities should receive detailed information on the CPT's terms of reference and their obligations vis-à-vis the Committee and that undelayed access to police establishments must be ensured**, we inform that in December 2002, acting upon resolution of the Interior Minister, instructive telegram was sent from the Office of the Director of the Public Security Bureau to all organizational units within the Interior Ministry. This telegram underlines the need to overcome the conditions concluded during the CPT visit. It also explicitly orders strict respect of the Rules of engagement of the Interior Ministry and the Regulation on use of means of coercion and fire-arms, full implementation of the legal provisions and the prescribed procedure of taking and keeping in custody of persons in police stations and of use of means of coercion and fire arm.

The telegrams underlines specifically the requirement that persons arrested for having committed a serious offence for which the law prescribes a prison sentence, be sent without delay to the competent court, together with an explanatory written request for initiating appropriate procedure. In other cases, when applying the police measure "keeping in custody", it also underlines the requirement to act in accordance with the Law on Criminal Procedure, with special attention to the articles relating to the duration of custody, as well as to the need of advising the persons deprived of their liberty in language they understand, about the reasons for their deprivation of liberty, about the right to remain silent, the right to be counselled and defended by lawyer and about the right to inform a family member of this deprivation of liberty.

In accordance with the instructions contained in the telegram relating to the use of means of coercion and fire arms, authorized officials are obliged to fully comply with the articles of the Law on Internal Affairs and the Regulation on use of means of coercion and firearms whereby special attention should be paid not to overstep police powers and to use only the prescribed instruments of coercion (physical force, rubber baton, handcuffs, etc.). In cases of application of any of these powers, the officials are obliged to submit appropriate report, and their supervisor to check the validity of the application of the power. All heads of the organizational units within the Interior Ministry are obliged to inform all authorized officials on the contents of this telegram and to focus their attention on the articles of the Macedonian Constitution and laws.

In January 2003 the UBK Director sent the instruction No 35. to all UBK units explaining in detail the powers of the CPT and underlining that any disrespect for the obligations arising from the Convention shall be most severely sanctioned. The copy of the instruction was forwarded to the CPT on 4 February 2003.

- With regard to **the CPT recommendations for strict observance of the rule of 24 hour detention limit, the right of access to a lawyer and the introduction of the practice of asking people deprived of liberty to sign a statement attesting that they have been informed of their rights**, we would like to point out that at the end of last year, in accordance with the Macedonian Constitution, the Law on Criminal Procedure and the Rules of Engagement of the Interior Ministry, the Ministry prepared a special form for recording that a person that is summoned, taken, or kept in police station and a person deprived of his/her liberty has been advised and whether he/she used to right to have a lawyer and other rights. In addition to personal details of the person summoned, taken or deprived of liberty, the form should also indicate the legal grounds for this measure, that the person has been advised on his right to be silent and right to have a lawyer present, the time of arrival of the lawyer, etc. The form is filled in by the authorized official and is signed by the person that has been deprived of liberty. That person may also give his/her remarks about the procedure by the authorized official.

- With regard to the **CPT recommendations that all relevant authorities take the necessary steps to ensure effective investigation into possible ill-treatment by law enforcement officials**, the Ministry of the Interior, by respecting the relevant regulations, takes care that the investigation and evidence collecting procedures are carried out by officers who do not have any kind of working or private relations with possible perpetrators. This is particularly taken into account when the internal investigation commission are being set up. The Minister of the Interior and other senior officials of the Ministry, during the meeting with the CPT delegation in November 2002, underscored that all allegations of ill-treatment by police officers would be thoroughly and properly investigated and sanctioned in case of the established ill-treatment.

- With regard of the **CPT comment on the Code of Police Ethics, Guidelines on Professional Standards and a Code of Conduct for Police Interviews**, we would like to point the following:

Guided by the determination to harmonize local laws and other regulations with the European standards, the Interior Ministry has established a working group, that together with a CoE expert, should make harmonization of the present Police Code with the European Code of Police Ethics. This will be done in 2003.

However, every Ministry's employee must abide by the present Police Code, prepared by the Ministry in 1993, while authorized officials when being granted the powers personally accept this code, with obligation to implement it in their work. This code obliges the officials to observe the laws and regulations, to protect life and property of citizens, to prevent crime without fear, favouritism or bad intention, never to use unnecessary coercion or violence, not to allow to be bribed and not to allow influence of one's own personal feelings, prejudices, political convictions and inclination relative to decision-making. The police badge given to all authorized officials should be personally felt by the official as symbol of the trust vested by the public and this will last as long as the official respects the ethical principles of policing. At the same time, this code obliges the official to lead a proper life and not to allow he/she or the service to be discredited. The code also says that when facing danger, ridicule or humiliation, the official should exercise self-control and have in mind the care for others.

In the Interior Ministry - Police Division, a proposal has been prepared for Draft Strategy on reforms in the police force. This provides for introduction of a work place for a separate authorized official that will receive the suspected persons from the very moment of their entry in the police station, will take care of the rights of the suspected person during his/her stay in the station, of informing the suspected person of his/her rights, of calling a physician if required, a lawyer, of escorting the suspected person from the detention room to the interrogation room and back, of providing food, of taking away personal belongings, of their return, all the way until the suspected person is released or handed over to another institution.

- With regard to **the PTSD**, the Ministry of the Interior undertakes appropriate measures for the protection, medical treatment and support of the affected officers in coordination with the Ministry of Health. The treatment is provided at a special medical facility in Ohrid.

- With regard to **the CPT recommendation on devising a strategy to improve conditions of detention in police establishments**, the Interior Ministry has conducted needs assessment in regard to reconstruction and improvement of conditions in detention premises, as recommended by the CPT. To this end, in accordance with the Draft Strategy on reforms in the police force, it is planned to build, in the area of Skopje, a separate detention facility in line with the European standards. However, taking into consideration the financial potentials of the Ministry, presently there are no conditions for significant investments in detention premises; rather, only activities related to improvement of hygiene and to maintenance repairs have recently been undertaken.

- With regard to **the Vinica case**¹ when in a mass fight between the members of the special task police unit "Tigers" and several locals, one person died and several were injured, we would like to inform that upon proposal by the Director of the Public Security Bureau, procedure was instituted against 14 members of the "Tigers" in order to establish the responsibility for violating the working discipline, because the police officers behaved in a manner inconsistent with the rules and regulations of the Ministry. Criminal charges were also filed against these officers due to reasonable grounds that they committed a criminal act: "taking part in fight", according to Art. 132, paragraph 1, of the Criminal Code of the Republic of Macedonia.

The Dismissal Commission of the Interior Ministry, acting upon the proposal, carried out the procedure pursuant to the Collective Agreement in the Interior Ministry and reviewed all written and other evidence. Having considered the evidence, the commission concluded that the officers in question were accountable for violation of the working discipline, pursuant to Art. 133, paragraphs 1 and 15, of this Collective Agreement in the Ministry, i.e., that the officers acted contrary to the rules and regulations of the Ministry. The commission also established that these police officers, with their conduct, marred their reputation, as well the reputation of the Ministry and acted contrary to the Police Code.

Pursuant to Art. 148 of the Collective Agreement in the Interior Ministry, the said commission filed a proposal to the Interior Ministry which proposes that the said officers be dismissed given the breach of the working discipline, what is to be replaced by a fine amounting to a 15% deduction from the salary for the next 6 months. After this a decision was made and the said disciplinary measure proclaimed.

¹ The information on the court proceedings is contained in the part of the Response prepared by the Ministry of Justice.

In considering the level of the fine, the Dismissal Commission took in account also Art. 138 of the Collective Agreement in the Interior Ministry that says that depending on the degree of the liability of the officer, the conditions of the violation of the work obligations, etc., the dismissal may be replaced by a maximum fine amounting to a 15% deduction from the monthly salary. Starting from this, and taking in consideration the circumstances of this incident, i.e., that in the moment of this critical event the punished officers were not on their duty, that at very time they were only police trainees, meaning they still did not have the status of authorized officials, that they used proportional force to repel the assault provoked by the guests, the commission proposed the said disciplinary measure.

As regards the case of V.Q., the Ministry of Interior cannot provide full information because the UBK documentation contains only two official records, prepared by UBK officers who were engaged in this case. The court proceedings are under way.

COMMENTS BY THE MINISTRY OF JUSTICE

As recommended by the CPT, the Ministry of Justice is in regular contacts with the judicial and prosecuting authorities, the aim of which is to keep them informed as widely as possible of the terms of reference of the Committee and their obligations vis-à-vis the Committee. For that purpose, the Ministry regularly circulates briefing notes to the relevant authorities.

The last one was sent out on 15 January 2003 and it served as a reminder about the powers of the Committee and the main findings and recommendations contained in the July 2002 report, stressing that the principle for cooperation is of essential importance for the relations of the Committee and state-parties to the Convention. It was circulated to all basic courts, appellate courts and the Supreme Court, basic and higher public prosecutor's office and the Public Prosecutor's Office, the State Judicial Council, the Ombudsman's Office and the Macedonian Bar Association.

In February 2003 the representative of the Ministry of Justice had a meeting new Public Prosecutor Mr. Prcevski at which he was briefed in detail about the Committee, identified problems and the recommendations. Mr. Prcevski was of the opinion that the CPT recommendations should be implemented as soon as possible. In this context, he underlined the need to organize an information meeting for public prosecutor's offices at all levels the aim of which would be yet another briefing about the CPT, the obligations arising for the State Parties and the implementation of the recommendations contained in the reports on the Republic of Macedonia. It was agreed that close cooperation on this matter should continue.

The Supreme Court of the Republic of Macedonia at its session held on 10 January 2003 decided that the Centre for Education within the Association of Judges of the Republic of Macedonia hold consultations regarding the implementation of the European Convention for the Prevention of Torture.

Combating impunity: test cases for accountability of law enforcement officials

Formal instructions have been issued to all public prosecutors emphasizing that, in every case where it comes to a prosecutor's attention that a person may have sustained serious injuries while in the custody of law enforcement officials, the prosecutor must issue a formal proposal to take action to an investigating judge in order to establish the facts of the case, and for improving the efficiency and objectivity of the work of the public prosecution and investigating judges.

In regard to this recommendation, the Basic Court Skopje 1-Skopje has informed us that it is a customary practice (in accordance to articles 150 and 151 of the Code on Criminal Procedure), if body injuries are confirmed on the person detained in the Skopje Prison upon the person's admission into the prison system, to request and conduct an examination of the person by an independent doctor, who would comment on the injuries. The statement of the person until the moment of appearance before the investigating judge is recorded in the minute book, as well as the fact whether the person requested the presence of a lawyer. The minute book is prepared and submitted for further procedure to the Public Prosecutor, who is the competent state organ for prosecution (in accordance to article 42 of the Code on Criminal Procedure), thus, upon which, the Court, confirms that it has completed its obligation to inform of the situation.

The Public Prosecutor decides whether there will be further prosecution or to initiate other procedures. The Court also notes the statements in regard to over 24 hours of detention, as well as the eventual prevention of the right to an attorney present (in accordance to article 3, Para. 2 of the Code on Criminal Procedure).

The President of the **Basic Court in Tetovo** after the completed inspection of the subject OID br. 172/01. concluded that the findings of the CPT are accurate and realistically described. In this case, the investigating judge and Public Prosecutor did not use the instruments available them, with the aim of making an effective contribution to prevent ill –treatment by police officers. Also, the family of the victim had a passive attitude and did not use the legal instruments for their involvement in the procedure.

It is evident that the Ministry of Interior, on that crucial day for the case was obliged even without the order from the Public Prosecutor and investigating judge to find the perpetrator of the crime, i.e. the person that shot the deceased S.A. and to obtain evidence and objects connected to the crime, which means that orders were given for examination of the weapon used, but from the completed inspection contained in the records for OID.br. 172/01, it is evident that such a procedure did not take place.

The President of the Court informs that in January 2003 a meeting was held with Minister of Justice Mr. Ismail Dardista, the President of the Supreme Court of the Republic of Macedonia and the President of the Republic Judicial Council. At that meeting full cooperation had been expressed in regard to legal powers of the courts and prosecutions. The President of the Court is of the opinion that the climate is gradually becoming more positive to avoid in the future and in cases like this ill-treatment of persons by the police officers, that is, to carry out the procedure in full as envisaged in the Code on Criminal Procedure.

Request for information: Update of the relevant proceedings in the Vinica case

In regard to the “Vinica case”, the Basic Public Prosecution in Kocani submitted a request to the investigating judge at the Basic Court in Kocani to initiate investigation with a proposal to detain 14 members of the Unit for Special Assignments “Tigers”, on the grounds that they had each committed a crime under section 131, paragraph 3 (inflicting serious bodily harm) and three criminal charges each under section 131, paragraph 1, of the Criminal Code of the Republic of Macedonia.

The investigating judge acting upon the request of the Basic Public Prosecution in Kocani, brought a decision to carry out investigation Ki. Br. 67/2002 of 18.07.2002 against 14 members and against 6 took a measure of detention up to 30 days. With decision Ki. Br. 67/2002, detention was suspended, which means that they were detained only for 8 days. The investigation was complete and the case handed over to the Basic Public Prosecution in Kocani. The Basic Public Prosecution in Kocani, against the 14 members against whom investigation was carried out, submitted indictment acts for the crime “participation in a fight” of article 132, paragraph 1 of the Criminal Code of the Republic of Macedonia to the local competent Basic Court in Vinica.

The role of the prison service in the prevention of ill-treatment

The Department for Execution of Sanctions within the Ministry of Justice, after examining the Report, has accepted remarks, comments and conclusions in regard to the given recommendations, and measures are being taken to overcome the established weaknesses.

In regard to the assessment that prison services can contribute to the prevention of police ill-treatment, the following measures have been undertaken:

- The instruction has been sent to all detention facilities by which they are obliged to establish a central register which will contain all the information as indicated in item 34 of the CPT Report. Namely, the findings on the admission of persons in the detention unit should be noted, i.e. to conduct a detailed screening by a security officer, either by male or female prisoner officer depending on the prisoner’s gender, and record every sign of visible injuries, after which the detained person immediately or within 24 hours at the latest should be seen by the prison doctor.
- Information regarding the condition as registered by the prison officials (by the security and medical staff) on possible previous ill-treatment by police officers and their hand written statements on the ill-treatment, to be immediately submitted to the prosecutor and investigating judge, for taking further activities for discovering and finding the perpetrators. The information should be accurate, with detailed description of the injuries.

- The medical examinations carried out by the prison doctor within 24 hours upon admission of the detained person, should be complete and registered regularly with details. The medical report should contain:
 1. Full account of statements of the ill-treated detained person, describing the injuries and their origin, and which are important for medical examination;
 2. Full account of Complete review of the objective medical findings of the doctor based on a thorough examination;
 3. Conclusions by the prison doctor based on his objective findings from the completed medical examination and assessment of the basis for the statement by the detained person on the alleged ill-treatment.
- The results from every examination, statement and conclusions of the doctor must be available to the detained person and his/her lawyer.
- Medical examinations must be, as a rule, carried out in the absence of security officers or other non-medical staff, except when otherwise requested by the doctor as a result of signs of aggressiveness of the detained person.

Safeguards against Ill-treatment

The Ministry of Justice has established a standing commission for amending the Criminal Procedure Code. One of the tasks of the Commission will be to amend Article 70 of the Code, as recommended by the CPT.

